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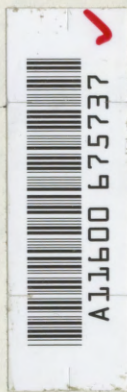
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REGIONAL OMBUDSMAN PROPOSAL

GOVERNMENT

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HEARINGS BEFORE THE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE OF THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETIETH CONGRESS

SECOND SESSION

PURSUANT TO

S. Res. 232

ON

S. 3123

TO ESTABLISH A TWO-YEAR STUDY OF THE OFFICE OF
ADMINISTRATIVE OMBUDSMAN

MARCH 27, 28, AND MAY 10, 1968

Printed for the use of the Committee on the Judiciary



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REGIONAL OMBUDSMAN PROPOSAL

WEDNESDAY, MARCH 27, 1968

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND
PROCEDURE OF THE COMMITTEE ON THE JUDICIARY,
St. Louis, Mo.

The subcommittee met, pursuant to notice, at 10 a.m., in courtroom No. 2, U.S. Court and Customs House, 1114 Market Street, St. Louis, Mo., Senator Edward V. Long of Missouri (chairman of the subcommittee) presiding.

Present: Senator Long of Missouri.

Also present: Bernard Fensterwald, Jr., chief counsel; Benny L. Kass, assistant counsel; and William G. Ohlhausen, assistant counsel. Senator Long. The committee will be in order.

This morning the Senate Subcommittee on Administrative Practice and Procedure begins hearings on S. 3123, a bill to create a regional ombudsman.

(S. 3123 follows:)

[S. 3123, 90th Cong., second sess.]

A BILL To establish a two-year study of the Office of Administrative Ombudsman

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subchapter III of chapter 5 of title 5 of the United States Code is amended by inserting a new section 577 entitled "Office of Administrative Ombudsman".

The Congress hereby finds and declares that the growing number of citizen complaints about the workings of the Federal agencies is a critical domestic problem which deserves serious study. The multiplication of Federal administrative agencies and their expansion over the last three decades has had a serious impact on the private rights of citizens. There has been a great deal of interest shown in the Ombudsman concept and to determine the feasibility of such an establishment in the United States at the Federal level, the Congress finds it desirable to inaugurate a study of the Office of Ombudsman—the "people's defender". The purpose of this Act, therefore, is to establish a study of the Administrative Ombudsman.

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

(a) "Ombudsman" means the Administrative Ombudsman duly appointed and serving under the provisions of this Act.

(b) "Office" means the Office of the Administrative Ombudsman established by this Act.

(c) "Agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, and any officer, or member thereof acting or purporting to act in the exercise of his official duties, but does not include—

- (1) the Congress;
- (2) the courts of the United States;
- (3) the governments of the territories or possessions of the United States;
- (4) the government of the District of Columbia;
- (5) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

- (6) courts martial and military commissions;
- (7) military authority exercised in the field in time of war or in occupied territory; or
- (8) functions conferred by sections 1738, 1739, 1743, and 1744 of title 41; or sections 1622, 1884, 1891-1902, and former section 1641 (b) (2), of title 50, appendix;

(d) "Administrative act" includes any action, omission, decision, recommendation, practice, or procedure.

SEC. 3. (a) There is hereby created as a pilot project an establishment of the Government to be known as the Administrative Ombudsman, which shall be independent of the executive department. There shall be in the Office an Ombudsman and a Deputy Administrative Ombudsman who shall be appointed by the Ombudsman and shall perform such duties as may be assigned to him by the Ombudsman. During the absence or incapacity of the Ombudsman, or at any time at which there is no Ombudsman, the Deputy shall act as Ombudsman.

(b) The Ombudsman shall be appointed by the President, by and with the advice and consent of the Senate, for a term of two years. The Ombudsman shall receive compensation in the amount of \$20,000 per annum. The annual rate of basic compensation of the Deputy Ombudsman shall be \$17,500.

(c) The Ombudsman and the Deputy Ombudsman appointed under this Act shall be chosen, without regard to political affiliation, from individuals specially qualified to perform the duties of the office. Each individual so appointed shall be an individual who—

(1) has been admitted to the practice of law before the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is a member of the bar of that court in good standing;

(2) is of good moral character, and possesses a good reputation for professional legal competence, personal integrity, diligence in the performance of duty, and freedom from personal bias or prejudice;

(3) has not, within the five-year period immediately preceding his appointment, served as a Member of Congress or as an appointed officer of any agency as defined in this Act;

(4) is a citizen of the United States.

(d) No person may serve as Ombudsman or Deputy Ombudsman while a candidate for or holder of an elected office, whether municipal, State, or Federal, or while engaged in any other business, vocation, or employment.

(e) The Congress of the United States, by two-thirds vote in each House, may remove the Ombudsman from office when, in the judgment of the Congress, he has become permanently incapacitated, or has been guilty of any felony, misconduct, or any other conduct involving moral turpitude, and for no other cause and no other manner except by impeachment.

(f) Subject to the civil service laws and the Classification Act of 1949, the Ombudsman may appoint and fix the compensation of such personnel as may be required for the performance of the duties of the office. The Ombudsman shall promulgate such rules and regulations as may be necessary to carry out the duties imposed upon him by this Act, and he may delegate authority for the performance of any such duty, except those specified in section 6 of this Act, to any officer or employee of the office. Such regulations shall include procedures for receiving and processing complaints, conducting investigations, and reporting his findings.

SEC. 4. (a) The Ombudsman shall have jurisdiction to investigate the administrative acts, practices, or procedures of any agency as defined in section 2(c). Where necessary, the Ombudsman may exercise his powers under this Act without regard to the finality of any administrative act.

(b) Upon his own motion or upon any oral or written complaint of any resident of the State of Missouri, the Ombudsman shall conduct or cause to be conducted, in such manner as he shall determine to be appropriate, a full and complete investigation of any matter which is an appropriate subject for investigation under section 5 of this Act, unless in his opinion—

(1) there is presently available an adequate remedy for the grievance stated in the complaint, whether or not complainant has availed himself of it;

(2) the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;

(3) complainant does not have a sufficient personal interest in the subject matter of the complaint;

(4) complainant has had knowledge of the action complained of for too long a period before the complaint was submitted; or

(5) the complaint is trivial, frivolous, vexatious, or not made in good faith.

(c) If, with respect to any complaint the Ombudsman decides not to investigate, he shall inform the complainant of that decision and his reasons therefor; except that he shall not be required to divulge matters which would invade the privacy of any individual, or interfere with legitimate governmental activities. In the event he decides to investigate, he shall notify the complainant and the agency concerned in writing of that fact. The Ombudsman shall not be prohibited from making on-the-spot investigations of agency proceedings and activities, subject to proper notice to an appropriate official.

SEC. 5. (a) For purposes of this Act, an appropriate subject for investigation by the Ombudsman is an administrative act, practice, or procedure of any agency which might be—

- (1) contrary to law or regulation;
- (2) unreasonable, unfair, or oppressive;
- (3) based wholly or partly on a mistake of law or fact;
- (4) based on improper or irrelevant grounds;
- (5) unaccompanied by an adequate statement of reasons;
- (6) performed in an inefficient manner; or
- (7) otherwise erroneous.

(b) In carrying out his duties under this Act, the Ombudsman may investigate to find an appropriate remedy, or to make routine checks of the operations of any agency or agencies covered under this Act. The Ombudsman 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.

(c) In any investigation under this Act, the Ombudsman may (1) make inquiries and obtain any and all information from the agency or agencies as he deems necessary; (2) enter to inspect the premises of an agency; and (3) hold private hearings with both the complaining individual and agency officials.

(d) Subject to the privileges which witnesses have in the courts of the United States, the Ombudsman may (1) compel, at a specified time and place, by subpoena, the appearance and sworn testimony of any person who the Ombudsman has reasonable cause to believe may be able to give information relating to a matter under investigation; and (2) compel any person to produce documents, papers, or objects which the Ombudsman has reasonable cause to believe may relate to a matter under investigation. The Ombudsman is authorized to bring an action in a district court in which the complainant resides, or has his principal place of business, or in which the agency is situated, in order to enforce the aforementioned powers.

SEC. 6. (a) Prior to rendering any opinion or making any recommendation that is critical of any agency or person, the Ombudsman shall consult with that agency or person. The Ombudsman shall allow that agency or person a reasonable period of time to take the necessary or appropriate action indicated, or to file a statement of explanation with the Ombudsman.

(b) If, after any investigation conducted by him under this Act, the Ombudsman finds that (1) a matter should be further considered by the agency; (2) an administrative act should be modified, amended, or canceled; (3) a statute or regulation on which an administrative act is based should be amended or repealed; (4) reasons should be given for an administrative act; or (5) any other action should be taken by the agency, he shall submit his views and recommendations to the agency. The Ombudsman may request the agency to notify him within a specified time of any action taken by the agency on his recommendations. Any agency so requested shall be required to comply with such request.

(c) Within sixty days following the submission of his views and recommendations to any agency under subsection (b) of this section, the Ombudsman shall transmit copies thereof, together with copies of the agency's reply, to the head of the concerned agency, to the Chairman of the Administrative Conference of the United States, and to the appropriate committees of the Senate and of the House of Representatives. The Ombudsman is further authorized to take such action as he may determine feasible to make such information available to the general public.

(d) The Ombudsman shall notify the complainant in writing of any action taken by him and by the agency with respect to his complaint.

Sec. 7. (a) If, in carrying out his duties under this Act, the Ombudsman determines that any employee or officer of any agency has been guilty of a breach of duty or misconduct in connection with his duties as an employee or officer of such agency, the Ombudsman shall refer the matter to the appropriate authorities in the Department of Justice.

(b) Upon completion of the pilot project authorized by this Act, the Ombudsman shall submit to the President, to the Congress, and to the head of the Administrative Conference a written report concerning his activities under this Act during the preceding two years.

Sec. 8. (a) No proceeding, decision, or report of the Ombudsman conducted or made in accordance with the provisions of this Act shall be challenged, reviewed, quashed, or called into question in any court. No action, civil or criminal, shall lie against the Ombudsman or against any person holding any office or appointment under the Ombudsman, for anything the Ombudsman or such persons may do, report, say in the course of the exercise of or intended exercise of their functions under this Act, unless it is shown that they acted in bad faith. The Ombudsman shall not be called to give evidence in any court, or in any proceeding of a judicial investigation of his functions.

(b) Any letter addressed to the Ombudsman and written by any person in custody on a charge of, or after conviction of, any offense under the laws of the United States, or by any inmate of any institution under the control of the Bureau of Prisons, shall be immediately forwarded, unopened, to the Ombudsman by the institution where the writer of the letter is detained or of which he is an inmate.

(c) The provisions of this Act shall be in addition to the provisions of any other law or regulation under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy, right of appeal, or procedure. The powers conferred on the Ombudsman by this Act may be exercised by him notwithstanding any other provision of law to the effect that any administrative action or omission shall be final or that no appeal shall lie in respect thereof.

Sec. 9. Any person who willfully obstructs or hinders the Ombudsman in the proper exercise of his powers under this Act, refuses or willfully fails to comply with any lawful requirement of the Ombudsman under this Act, or willfully makes any false statement or misleads or attempts to mislead the Ombudsman in the exercise of his powers under this Act, shall be fined not more than \$1,000.

Sec. 10. There are hereby authorized to be appropriated such sums as may be necessary, not in excess of \$125,000 to carry out the provisions of this Act.

Sec. 11. The provisions of this Act shall cease to be in effect no later than two years following the appointment of the Ombudsman.

Senator LONG. My subcommittee is a part of the full Senate Committee on the Judiciary. After hearing from witnesses on all sides of this issue, the subcommittee members will consider the legislation and decide whether to report it to the full committee. If the bill is reported and if the full committee approves, the bill is then sent to the entire Senate for its consideration. If the Senate decides to pass the legislation, it is then sent over to the House of Representatives for its consideration. If and when both bodies agree, the bill becomes an act, and becomes the law of the land when the President of the United States gives his written approval. Thus, this morning's hearing is but the first step in the lawmaking procedure.

The subject of ombudsman needs no great description today. Two years ago when my subcommittee first began considering this concept, ombudsman was a strange, foreign word.

I don't know whether it is pronounced correctly yet or not. I hear it pronounced in many ways, and I am not sure myself.

Today many people understand the concept and, in fact, when they are having problems with the Government often say, "Wish we had an ombudsman." These problems occur at all levels—local, State, and Federal. Having served both in the Missouri Legislature and as Lieutenant Governor of this great State, I strongly believe that there is great merit in creating an ombudsman at the State level. One of the purposes in bringing my subcommittee hearings to St. Louis is to bring information to the public and government officials, whether elected or appointed, about the ombudsman concept.

My subcommittee has no jurisdiction whatever over the government of the State of Missouri; we can only deal with Federal problems. But we are a Nation of 200 million Americans and it is not feasible to experiment with a new concept for such a large number of people. Accordingly, I have introduced my regional ombudsman bill. If enacted, this regional ombudsman would not only allow us to determine the effectiveness of the concept but would also immediately assist the citizens of Missouri when they have problems with the Federal Government.

As I stated on the floor of the Senate when my bill was introduced, there are a number of reasons which, in my opinion, justify the selection of Missouri for this pilot project.

First, I am, after all, a Senator representing the citizens of the State of Missouri, and, second, in my opinion the State of Missouri has the right size and the right makeup for this pilot project. We have agricultural production ranging from wheat to cotton. We have within our boundaries almost all of the Federal agencies with which the ombudsman would be concerned. We are at the crossroads of East and West, North and South. Missouri is in many ways an almost perfect cross-section of America and in the subcommittee's opinion an excellent region for this 2-year pilot project.

This Missouri ombudsman which I have proposed will, in my opinion, help our Government officials improve their operations and thus better serve the citizens of my home State. We are proud of our Federal employees, both here in Missouri and across the Nation. With but few exceptions they perform sincere service to the citizens. But the citizens are often frustrated and upset when they deal with their Government. It is my belief that the ombudsman will help create more trust and faith in our Federal system. The office works in Sweden and in the other Scandinavian countries. It works in New Zealand and it is beginning to work in Great Britain, a nation which recently established the office. We should at least give the concept a chance to prove itself, and that is simply what this bill seeks to do.

Our first witness this morning is Mr. John F. Nagle, chief of the Washington office of the National Federation of the Blind.

It is my understanding Mr. Nagle has two citizens from Kansas City, members of his association, with him. I believe they are blind. They made the trip from Kansas City by bus last night to be here at the hearing this morning.

We welcome all three of you.

Mr. Nagle, we are happy to have you here and the committee is happy to hear your statement at this time.

STATEMENT OF JOHN F. NAGLE, CHIEF, WASHINGTON, D.C., OFFICE,
NATIONAL FEDERATION OF THE BLIND

Mr. NAGLE. Thank you, Senator.

Mr. Chairman and members of the committee, my name is John F. Nagle. I am chief of the Washington office of the National Federation of the Blind. My address is 1908 Que Street NW., Washington, D.C.

Mr. Chairman, I am appearing here, today, as the spokesman both of the Progressive Blind of Missouri and the National Federation of the Blind.

The Progressive Blind of Missouri, with chapters and blind members throughout the State, is an affiliate of the National Federation of the Blind, which has affiliates in 36 other States and the District of Columbia and blind members in every State.

We of the National Federation of the Blind—here in Missouri and countrywide—are joined together in common cause and concerns.

Our cause is the welfare of all blind people.

Our concerns are the disadvantages and denials experienced by all blind people, the discriminations and exclusions encountered by all blind people.

We of the National Federation of the Blind are working together—on the local, State, national, and international level—to improve the circumstances of blind people, to equalize the presently unequal opportunities of blind people.

As members of the Progressive Blind of Missouri, Mr. Chairman, we fully endorse and vigorously support S. 3123, a bill introduced by the able and distinguished Senator Long of Missouri, to establish a 2-year study of the Office of Administrative Ombudsman.

With equal supportive interest and vigor, we of the National Federation of the Blind give our endorsement and approval to the proposals and provisions of S. 3123.

We believe that as the Office of Administrative Ombudsman is demonstrated to be an effective instrument for the citizens of Missouri, including the blind citizens of Missouri, in their sometimes discouraging and entangled dealings with Federal agencies and officials, the success of this experiment in Missouri will serve as a refutable evidence of its value, and Congress will then make the Office of Administrative Ombudsman a national institution and available to all citizens of the Nation, including all blind citizens of the Nation.

Therefore, Mr. Chairman, the members of the National Federation of the Blind urge committee approval and congressional passage of this proposed legislation now pending before the committee.

As citizens, we believe it is essential that a high-level, independent institution be created in the Federal governmental structure that will serve as a resource to which American citizens may turn in their troubled and troublesome dealings with Federal agencies—

To receive complaints of actions and inactions, denials and delays;

To investigate such complaints thoroughly and objectively; and then,

To resolve the cause of the complaints in favor of complainants, or, to comprehensively and clearly explain the justifiable reasons for the administrative actions or inactions; and, when deemed necessary,

To recommend congressional enactments when statutes are determined inadequate to fulfill specified statutory purposes.

Mr. Chairman, as blind persons, the members of the National Federation of the Blind have frequent dealings with Federal agencies and federally financed State agencies administering programs established by Congress in recognition of our need for special services and particular kinds of assistance.

But, Mr. Chairman, when we, blind people, seek these special services Congress intended for us, when we apply for the assistance Congress has determined we should have, far too often, we encounter frustration, disappointment, aroused expectations followed by failure of performance.

Letter after anxious letter is written to administering agency officials.

And, after long lapses of time in between, reply after reply is received.

But, Mr. Chairman, far too often such replies only compound confusion, and heighten frustration.

Far too often, such replies only emphasize the futility of obtaining a solution, an explanation, a redress of grievance, a remedy of administrative injustice or incompetence.

Then, in desperation, letters are written to Congressmen and Senators—but, usually, the answers received contain the very same confusing statements, the very same ambiguous and nonsolving explanations already so well known to complainants.

Mr. Chairman, who are these complainants for whom we speak when we plead for the approval of the administrative ombudsman bill?

What is the nature of the complaints for which these people seek redress from the instrumentalities of their government?

Needy applicants for aid to the blind who are determined ineligible for publicly provided assistance even though they are destitute and desperate in their need.

Needy recipients of aid to the blind who are granted assistance but in an amount far less than that received by acquaintances of similar circumstances.

Recipients of aid to the blind who are needlessly humiliated and callously disparaged and degraded by administering agency personnel.

Blind applicants for disability insurance payments who wait and wait and wait for their applications to be acted upon.

Blind beneficiaries of disability insurance payments who receive benefit checks for several months, and then they stop coming—perhaps an incomprehensible letter of explanation is received, perhaps no letter of explanation is received at all.

Physically handicapped applicants for vocational rehabilitation services and recipients of such programs, who hope for help to return

to constructive, competitive employment, to resume self-dependent living and worthwhile lives.

But in their dealings with vocational rehabilitation administering agency personnel, such people encounter, far too often, indifference, delay, neglect, incompetence, and prejudice.

And disillusionment, futility, and despair replace hopes and expectations, and sheltered workshop employment or public assistance become their unhappy lot, when their talents and abilities would merit them a far higher station in life.

The blind man, capable, employable, who is a recipient of public assistance even though he is trained and qualified to operate a vending stand business under the Federal Randolph-Sheppard Vending Stand Act—But such a blind man, far too often, remains upon public assistance for years or for all of his life, because officials in charge of federal property will not permit the location of vending stands upon their premises—even though suitable locations are available.

The blind man who operates, and successfully operates, a vending stand merchandising business in a post office or other Federal building under the Randolph-Sheppard Act—This blind businessman earns an adequate living, supports himself and his family, pays taxes, is self-dependent because of his livelihood.

And then, vending machines are installed to compete for his vending stand customers, and the income from the machines is usurped by employee associations with the approval of the officials in charge of the Federal premises.

The blind man's earnings dwindle as his business declines.

The blind man protests—to those in charge of the Federal building where his stand is situated, to agency authorities in Washington, to his Congressman, to his Senators.

But all these protests are in vain.

The blind man receives much sympathy, but no solution.

Physically handicapped workers in sheltered workshops—who are paid subminimum wages of only a few cents an hour, while physically fit workers and physically fit supervisory personnel are paid, at least, prevailing wages and standard salaries.

Who are laid off when work is slow, while supervisory employees continue on workshop payrolls.

Who are denied the right to exercise their right to collectively work for workshop betterments under the protection of Federal law because of adverse rulings of the National Labor Relations Board—and thus, such workers can be, and often are, individually harassed, punished by receiving poor pay work, and may even be fired from their jobs, when they are dissatisfied with shop conditions and dare speak too loudly in voicing their complaints.

Blind persons who are qualified to work, and yet—when they apply for jobs to governmental agencies and institutions, whether Federal, State, county, or municipal, when they apply to private businesses, industries, and establishments—are refused employment because they are blind.

They are even refused the chance to demonstrate their qualifications for work, their capacity and capability to perform the duties of the job applied for, and they are denied this chance because they are blind.

Blind persons who would be teachers, and are denied admission to teacher training schools and colleges because they are blind.

Blind persons who are able to secure the required education and teacher training to qualify them for employment, still are denied employment, because they are believed incapable of functioning successfully as teachers, because they are blind.

Blind persons, well qualified scholastically, well qualified by demonstrated aptitude, capability, and ingenuity, to successfully cope with the obstacles resulting from their lack of sight, who are refused admission to colleges and universities to pursue their studies at the graduate degree level.

Denied admission, because college and university officials, knowing little or nothing about the competencies of blind people, knowing little or nothing about the competencies of the particular blind applicants, believe blind persons cannot function successfully in their chosen fields of advanced study—cannot function successfully because they are blind.

The blind person who would occupy an apartment in a Federal housing installation, and is refused because he has a guide dog—and dogs just aren't allowed.

The same blind man who is denied admittance to public places and on public transportation facilities for the same reason: Because he has a guide dog—and dogs just aren't allowed.

The blind person who is traveling alone, and traveling competently alone—yet is denied a hotel room, a room in a YMCA—who is denied the right to purchase a ticket to travel, alone, by train or bus or plane.

The blind person who is denied the right to purchase life insurance and other forms of insurance or is required to pay a punitive premium charge because he is blind.

Blind persons who wish to join an organization of blind persons, to work with their fellow blind to improve conditions and equalize opportunities for all blind people—and yet, if such persons are recipients of aid to the needy blind, of vocational rehabilitation services, are operators of agency-controlled vending stands, or are employed in sheltered workshops—they may be dissuaded from joining such an organization, an organization such as the Progressive Blind of Missouri and the National Federation of the Blind.

They may be dissuaded, by administering agency personnel, by words of warning given as friendly advice, by words of intimidation and threat with loss of benefits, services, or employment; by words however spoken, that command acceptance and obedience because of the power of position of administering agency personnel over the lives and livelihoods of their sightless clients.

Organizations of blind persons, organizations of persons with other kinds of physical impairments, though their members possess expert knowledge on the problems and potentialities of those with such disabilities—still, such organizations are far too seldom consulted by public and private administering agencies established solely for the purpose of meeting the special needs of blind persons and other physically disabled persons.

Such organizations of the blind and physically handicapped are far too seldom consulted on the formulation of programs and plans, the

development of methods and techniques, they are far too seldom consulted on administrative policies and practices, on agency program administration and implementation.

Mr. Chairman, in the foregoing, we have endeavored to describe the kinds of complaints the administrative ombudsman will receive from blind people, from the physically disabled people, if S. 3123 is enacted into Federal law.

We know that some of the complaints we have enumerated are not related to agencies intended to be covered by the provisions of S. 3123.

We know that some of the complaints we have listed are not related to Federal agencies or federally financed State agencies at all, but refer, instead, to statutory vacuums, to lacks in Federal law or laxities in enforcing Federal law—or they may not even be related to any Federal jurisdiction at all, or even to any level of Government at all.

But the National Federation of the Blind has been deliberately unselective in describing the problems and difficulties of trying to function, physically disabled, in a society, in an economy, oriented to physically fit persons, for the blind and other physically impaired persons of this State will not be selective, either, as they seek help from the Office of Administrative Ombudsman.

They will not be aware of the statutory scope of this office.

Nor, Mr. Chairman, will many complainants be aware as to which programs with which they deal are Federal programs, which are federally financed and federally regulated State programs, and which are purely State programs.

Physically disabled complainants will only know this, will only believe this, Mr. Chairman: That the Office of Administrative Ombudsman in Missouri is a new resource to which they may turn with renewed hope of obtaining assistance in the resolution of their difficulties.

Mr. Chairman, it is the hope of the National Federation of the Blind that this committee will recognize that too much may be expected of the Office of Administrative Ombudsman in Missouri, and we ask that you consider how this most likely problem should best be handled.

Surely it would be undesirable for the Office of Administrative Ombudsman to send a politely worded and mimeographed form letter to complaining and help-seeking citizens, advising them the office lacks legal authority to help them.

Rather, we believe, a procedure must be established whereby complaints, ultra vires in nature, may be referred by the administrative ombudsman to a State-level Missouri official for consideration and possible action.

Of course, Mr. Chairman, the ideal answer would be a legislative created ombudsman, to function, in Missouri, on State and local matters, as the Office of Administrative Ombudsman to be established by S. 3123 will function on Federal matters.

Lacking such State ombudsman, however, Mr. Chairman, we believe the office of attorney general of Missouri might serve the purpose, and provide the cooperating adjunct we deem most necessary, if the Office of Administrative Ombudsman is to fulfill the expectations of those who will look to it for help.

We would suggest, therefore, Mr. Chairman, that the committee report to accompany the issuance of S. 3123 contain language that will express the thoughts we have delineated to the committee, with recom-

mendations of the State-level procedure you consider necessary if the Federal Office of Administrative Ombudsman in Missouri is to be of full value to the citizens of Missouri.

In conclusion, Mr. Chairman, members of the committee, we, blind people, members of the Progressive Blind of Missouri and the National Federation of the Blind, urge committee approval and congressional passage of S. 3123.

As blind people, far too often, when we seek benefits and services from programs established by Congress solely for our help and assistance, we become mired in the quicksands of governmental bigness, and lost in the endless maze of bureaucratic structure.

We need the aid of an administrative ombudsman to save us from the quicksands, to guide us safely through the bureaucratic maze.

In some of the instances we have cited to show the need for the enactment of S. 3123, the ombudsman for Missouri bill, blind men and women, other physically disabled men and women, are bewildered, confused, and victims, not beneficiaries, of public programs and publicly supported activities established and intended only for the purpose of aiding them, of reducing the disadvantaging circumstances of their disabilities, of equalizing their unequal lot in life and livelihood.

In other examples we have given, we who are physically disabled are victims of adverse public attitudes embodied in discriminatory policies and prejudicial practices.

Mr. Chairman, members of the committee, the two most basic concepts of our governmental system, of our democratic society, are that of the paramount importance of each individual and the accountability of Government to each individual.

The first amendment to our Federal Constitution recognizes this accountability of Government to each individual concept by guaranteeing to each individual the right to petition Government for a redress of grievances.

The blind people, the physically disabled people, whose difficulties and problems we have described to this committee have repeatedly exercised this right of citizen petition and have sought from Government and the instrumentalities of Government a redress of their grievances—but their petitions have remained unanswered, or the answers they have received were incomprehensible to them—and their grievances have continued without redress.

We believe the Office of Administrative Ombudsman would give real meaning, effective meaning, to the right of petition constitutional guarantee.

The Administrative Ombudsman for Missouri provided for in S. 3123 would seek solutions to citizens' grievances.

It would make government, even big Government, accountable, in fact as well as in constitutional phrase, to the citizens of Missouri, to each individual citizen of Missouri.

We thank you very much, Mr. Chairman, for this opportunity to appear here.

Senator Long. Thank you, Mr. Nagle. We are very grateful to you for appearing this morning. I can't help but comment on how fascinating it is for me to watch you read this statement. I don't think you missed a word in reading it on the Braille System. That is amazing. I

know it is a routine matter for you, but for we people not familiar with it, it is amazing.

I noticed on page 5 of your statement you mentioned that blind people were having some problems, and you discussed the matter with your Congressman and your Senators and such protests were in vain. I want you and your people to know that certainly my office is very anxious to be of every assistance to you, and if they do have problems, we certainly hope they will contact our office, even if this bill never passes and we never have an ombudsman. We certainly are very interested in the problems of the blind and will want to help you in every way possible. I hope they will write us or contact us if they do have problems.

Mr. NAGLE. I am happy to say, Senator, that you have always been most cooperative with our legislative efforts in Washington. We carry a big legislative program, but, Senator Long of Missouri, your office has always been most cooperative and most helpful in whatever we have tried to do in Congress.

Senator LONG. I noticed you mentioned some of the problems that the blind people have. We are going to have representatives of the Social Security and the Veterans Administration testify here today. Are there any specific problems with those agencies that you might want to discuss with them while their representatives are here and testifying?

Mr. NAGLE. I don't believe so, Senator. When a difficulty arises, I generally contact them directly in Baltimore or Washington on specific cases. The problems we talk about here are just the generalized problems of Federal agencies being inundated by hundreds of thousands, maybe millions, sometimes, of letters with just the physical difficulties of handling promptly, expeditiously, and wisely each individual case. Oftentimes, the petitioner, the blind person, who has dealings with one of these agencies, whether his case is handled expeditiously cannot be quite a matter of life and death but can be a very, very serious matter to him. So a delay of 3 months, which might be considered routine processing time in a Government agency, to this person, 3 months might be 3 months of just dire circumstance. We would hope that the administrative ombudsman, if he did nothing more, by his intervention in social security cases, in other cases, if he did no more than cut down the lapse of time between the origin of a complaint to its resolution in terms of weeks, from months down to perhaps a couple of weeks, this would justify whatever the costs are for the operation of this program, we believe.

Senator LONG. Would it serve, too, as sort of a steam valve in that many people who have problems with the Federal Government would have a chance to discuss their problems with someone? This could serve to relieve tension, and perhaps help solve their problems in some way.

Mr. NAGLE. I expect that might be so, Senator, except those, I suppose, are the letters that you and Congressmen would get. The kind of letters that the administrative ombudsman would get, I think, at least from my people, are the kind that I get now—difficulties in trying to establish their claim to benefits that they are told they are entitled to receive. This is the difficulty, and, of course, they will write to Congressmen and Senators, but it has been my experience that the usual office has such a vast amount of correspondence from their con-

stituents that they forward our letters to the Government agencies involved, receive replies, and then forward these to constituents. Too often, the letters that are forwarded by Congressmen and Senators to their constituents pretty much contain the very same paragraphs that were contained in letters originally received by the constituents from the agencies. So instead of the Congressmen and Senators solving the problem, it merely compounds the confusion.

Senator LONG. There is not a personal touch there. They are not as close to their people as you think they should be?

Mr. NAGLE. It is not possible, it is just physically not possible for a Senator or Congressman with his staff to take each individual case and fight it through. I realize there are many that you do do this with, but every one that comes in, many of them must be handled routinely, and yet the routine ones may represent the same types of serious problems that the major ones do.

Senator LONG. An ombudsman being here in St. Louis with his office here or in Kansas City where you could come in and talk to him personally would be a great deal of help, would it not?

Mr. NAGLE. That would be excellent; that would be excellent. Oftentimes, the ombudsman might be able to explain the ramifications of an action as proper, that the case has been competently handled, and yet the agency's inability to talk the kind of language the complainant can understand causes the complainant continued frustration. Oftentimes, I have to interpret, for my members, letters they receive from Federal agencies on claims, simply because they are so involved in legal language, governmentese, I suppose you might call it, that the complainant reads the letter and will send it to me and say, "Well, did I win or lose? What happened?" because he just can't tell from the letter.

The ombudsman, I think, would serve as an interpreter to the citizen for the Government agencies. This would be a very valuable function.

Senator LONG. Thank you, Mr. Nagle. Your statement and your comments have been very helpful to me. We are grateful to you for making your trip out here.

Mr. Kass or Mr. Ohlhausen, do you have any questions?

Mr. KASS. No, Mr. Chairman.

Senator LONG. Thank you, Mr. Nagle. We appreciate your being here.

Our next witness this morning is Mr. Theodore Schafers, the financial editor of the St. Louis Globe-Democrat.

Ted, we are delighted to have you here this morning. I am sorry we don't have you starting quite on time.

For the record, would you state your name and official position.

Mr. SCHAFERS. My name is Ted Schafers, financial editor of the Globe-Democrat.

I am here at the request of the committee, which seems to think that I might add something to the proceedings. I hope I merit that feeling.

Senator LONG. I am sure you can. You have a column or a program of some kind, where you act as sort of an ombudsman yourself on problems, do you not?

Mr. SCHAFERS. We have one every Thursday called "Ask the Reporter," and it goes for 1 hour on radio station KMOX. I see that Bob Hyland is on the program, too, so I prefer that he go into that.

Senator LONG. You may proceed, then, with your statement.

**STATEMENT OF THEODORE SCHAFERS, FINANCIAL EDITOR,
ST. LOUIS GLOBE-DEMOCRAT**

Mr. SCHAFERS. I have no statement, Senator, except that I was asked by your staff to review briefly a series we carried which we call "Ask the Globe." In other cities, newspapers call it "Action Line." We carried it from June 3 to October 31, and during that period of time we had more than 100,000 telephone calls from people with complaints asking for help, and they covered the waterfront.

Of course we have this same problem almost daily. There isn't a day that passes that someone doesn't call a newspaper with a complaint or writes a letter. So I think probably the newspapers have been the ombudsman since the beginning of time. I think we do a pretty good job, being limited by staff, just like you. If you had 20 more people, you could do a better job.

Listening to this gentleman who preceded me, if you didn't know the problems you'd swear that the Senators and our Congressmen weren't doing a darn thing for the blind. This of course, is not so. I thought the one comment the previous speaker made that he needs an ombudsman to decipher the gobbledygook of the governmentalism, having received a few letters from some of the agencies, gives me a keen appreciation of his problem. Certainly the comment about the average guy being mired, as he said, and I quote, "in the quicksands of governmental bigness," I think is one of the problems the average man faces today.

We are continuously passing more laws. Every agency creates more rules and regulations. And, as our people live longer, the older people are getting involved with all the rules of social security, medicare, medicaid. These being old people, they have a terrible time, I think, understanding what is really going on.

Senator LONG. A member of my staff has just advised me that, in a conference with Mr. Bexelius, the ombudsman from Sweden, he told us that that was one of the great problems that he had—one of the many services that he performed, translating, as you say, the gobbledygook that the agencies in that country had in their letters when they wrote to their constituents. He found it to be a very valuable service.

Mr. SCHAFERS. Senator, I don't want to be cast in the role of favoring this or being against it. I raise the question of what kind of staff would the ombudsman need? Do we create another governmental agency with more investigators? What kind of men will run this? I have a feeling that if all of us at every level of government, including the press media, do a better job we can solve more of these problems.

I worry every time we create a new governmental agency; but I see a need for something like this.

Senator LONG. Ted, we do, too; and that's one of the reasons we designate this just as a pilot project for 2 years, to see what we will need. We don't know yet. It may not work, we don't know; but we think it is worth trying.

Mr. SCHAFERS. Have we ever had any governmental agencies that we have been able to create for 2 years and then get rid of them?

Senator LONG. They are more difficult sometimes to get rid of than they are to create; I know that.

Mr. SCHAFERS. I was asked by your staff to review some of the "Ask the Globe" columns to give you some idea of the problem kind of questions. Is that what you wanted from me?

Senator LONG. Yes.

Mr. SCHAFERS. If I get too long, just shut me up.

I went over the columns and it seemed like most of them applied to ADC questions.

The way we operated this, Senator, we had a telephone number, people would dial this number. They would speak their piece and we would record this. The next morning we would have a typist who would type up the question. When we got too many questions on social security and ADC problems we worked out a deal. Every week we would bundle these in an envelope and send them over to the local social security director. I think the very fact that they came from a newspaper got action.

Repeatedly, older persons would say, "I have applied to ADC to no avail; I need clothes, can't find a job, et cetera." Then you'd check into it, and you would find out that these people had applied. But for some reason they weren't on the list. Then after we gigged the officials a little bit—to use the parlance of the street—we got action. So, in that sense, the program we had was very effective.

I think we made a mistake. Our late publisher decided that we should answer every question that came in. God Almighty, it got to be a fantastic job.

Senator LONG. Excuse me for interrupting. Could you give us some idea about what percent of the requests were unfounded or what percent were justified?

Mr. SCHAFERS. I would say that less than 10 percent were silly questions. Most of them had to do with something which was important to that person.

Senator LONG. And what percentage was there that the agency had been wrong on?

Mr. SCHAFERS. In most instances, it wasn't the fact that the agency hadn't done anything, but the request had gotten mired down along the way and was forgotten.

Senator LONG. Redtape?

Mr. SCHAFERS. Yes; let me give you more examples:

There were all kinds of things that people needed. Here is a teenage mother deserted by her husband. She needs food stamps and she apparently wasn't able to get them over a period of weeks. So when we called up on June 14, we were able to get her on the list immediately.

Here is another ADC case. This woman called and was told they couldn't do anything until her husband, who had been jailed for non-support 5 months before, had been tried. This is ridiculous. Here is a woman who isn't getting any help. Her husband is in jail awaiting trial, he can't make bond, and the social welfare people would not do anything for her because he is in jail. They ought to be doing something for her while he is in jail. We got that taken care of.

I should have checked this case before I came in. We even got the metropolitan sewer district, apparently, to use 4 cents postage instead of 5 cents.

Senator LONG. Why is it they wouldn't write the social security office directly instead of writing and calling there? They don't know how or they are apprehensive of a Federal agency or a Government agency of that kind?

Mr. SCHAFERS. I just think in our zeal to cover everything we have passed so many laws that we have made this country heaven for lawyers and hell for the average man. That is oversimplifying it, but I think there is a germ of truth there, particularly with the older and the undereducated. Just take myself, for example. I have been a newspaper reporter for 30, 40 years. There are many places I still have to scratch to figure out where to go, particularly if you get into the Federal or State Government, particularly Federal Government. You walk around those ivy halls in Washington, brother, you feel lost. If you ever get in the Pentagon, that's when you really feel lost.

Senator LONG. Even the Senators and Representatives there have complications sometimes in finding which agency or which branch of it to make our inquiries or to send our people to get results.

Mr. SCHAFERS (referring again to columns). Here is an old house that caught fire four times. It had been condemned. The people couldn't get the building commissioner to do anything about it. When we wrote him a letter we got something done.

Most of these things you can get accomplished if you are a newspaper, because officials just don't want to have their name in the paper, that they didn't do anything, so they do something.

I am sure that many of these letters that came to us got priority, because they came to us, over others from citizens that may have been lying there even longer.

Senator LONG. That is one of the theories behind the ombudsman concept. The power that the ombudsman has is not to tell them to definitely do this but the fact that he is going to investigate and turn the white light of publicity on them has a wholesome effect on the agency. They will give prompter service.

Mr. SCHAFERS. I hope so. I just hope it is just not another agency with a lot more staff. Actually, if I were mayor, I would have a staff of people who would be available to clean up redtape. I think this should be true of a governor, social security, and so forth.

Mr. FENSTERWALD. Mr. Schafers, could I suggest one thing. You have alluded to the question of staff. I know you told us that one time you had as many as 20 people trying to keep up with this flurry of phone calls and letters and so forth. We don't have any idea how much staff would be required even for an ombudsman for a unit the size of Missouri. We do know at the moment, though, that in Washington on Capitol Hill you have approximately 2,000 to 2,500 people actually operating as an ombudsman staff today. Every Senator and Congressman has a number of people in their office who really do nothing but what an ombudsman would do if we had one. The problem is they have to do it on a case-by-case basis.

Mr. SCHAFERS. How else would the ombudsman do it? He would have to go on a case-by-case basis, too.

Mr. FENSTERWALD. He would be able, I think, very quickly—say in cases involving a particular agency—to see the trends of complaints and be able to do something about the root cause of the trend, whereas

the individuals in Washington who are doing it now in the Senator's office and the Congressman's office or your newspaper, or other places, don't really have the facilities to see the trends that need correcting and have the legal authority to go in and investigate them. This would be the big advantage to setting up an office.

But with your experience of the number of people you required just to handle the incoming calls and letters that you got at the newspaper, it obviously poses a problem as to how many people it would take if you were to set one up for the whole Federal Government in Washington.

Mr. SCHAFERS. I went to Chicago and they told us they could get by with six people. We started out with six. We had three full-time reporters who knew where to go to find the answers. We started out with three recording telephones. I think we wound up with six or seven. Luckily we found college people whom we used as researchers for typical questions. Here is one that comes to mind, "Why was the old Chain of Rocks Bridge built so crooked?" I have been going over that bridge for years. You have, too, Senator. These people wanted to know the answers to some of these questions. You really had to do a little digging. We finally got up to about 14 or 15 researchers.

Mr. KASS. Mr. Schafers, of the letters that came in to ask for assistance, what percentage were based on Federal complaints compared to State and local complaints on private stores credit consumer problems, do you have any idea?

Mr. SCHAFERS. I would say 50 percent of the total involved governmental problems, not necessarily Federal, but State or local welfare was high on the list.

Social security was high on the list. We got wonderful cooperation from the Social Security Administration.

Like the previous witness, if you listened to this man's recitation of his problems for the blind, you get sort of a feeling nobody has been doing anything for the blind, which, of course, is not so. The ombudsman problem, would be one of staff.

Senator LONG. That is one of the reasons, of course, we have it as a pilot project here, which would automatically die. We don't know what the staff will be, we just don't know. This is the first testimony, the first information we have had.

Mr. SCHAFERS. You are going to have to come up with a more meaningful term than ombudsman to get people walking in.

Senator LONG. That is one of our problems.

Mr. FENSTERWALD. You used no selectivity in the cases that you investigated; any call or letter that came in, you automatically tried to make some investigation?

Mr. SCHAFERS. Every call that came in was recorded. That was typed onto a piece of paper and carbons kept. If it was worthwhile, it was sent out or was recorded by the people who made phone calls. Our biggest problem I thought, and it was a good idea, was to answer everybody. It got to be a madhouse, 600 a day. Three hundred of them were at least bona fide questions that somebody thought important.

Mr. FENSTERWALD. I think one of the difficulties in this is going to be that if and when an ombudsman is set up here or any other place, when he first goes into business there will be a tremendous flurry of activity

which after a year or two should fall off to some reasonable amount, but there will be a huge backlog of complaints that people have which he would get almost immediately, I would think.

Mr. SCHAFERS. Ours fell off from about a thousand or something like that down to the lowest, I think, we ever had was 300 calls a day. That's a lot of calls. He'll not be lacking for work, I'll assure you of that.

Senator LONG. Your statement indicates a need for this type service.

Mr. SCHAFERS. I think there is a need for aid, for agencies who are servicing people to do a better job of servicing. I am not going to say they do not try. I think we have made life really complicated.

Senator, if you go in for this ombudsman project, I would like to see the utilization of more retired people for this kind of work. We need to utilize this growing manpower of men and women in our country.

Senator LONG. The ombudsman's staff could be composed of many of those people.

Mr. SCHAFERS. I think there is a need to utilize this mature brain-power which we are now, in effect, releasing because they have reached the age of 65.

Senator LONG. There is a tremendous amount of it that is available to the Government and to the communities if it could be used.

Mr. KASS. I just have one more question, Mr. Chairman.

I wanted to know if Mr. Schafers has ever felt the need for an ombudsman himself in running the Globe column, or were you able to solve all the problems?

Mr. SCHAFERS. No, we didn't solve all the problems. We got some of them solved for the people; others weren't solvable. Some people had problems you just couldn't solve. You would have to sit down and explain why you couldn't get anything done. It got to be a difficult job on a few cases. We answered almost all of the questions, I will say that. We worked our heads off doing it. And there wasn't a single member of that department who wasn't happy when the department was closed. They were all happy to get that one closed.

Senator LONG. Apparently you did render a great service to those people and helped them with their problems.

The thing that impresses me, one of the things you said, Ted, is that you might think some questions are foolish, but they are vitally important to the people who are asking them.

Mr. SCHAFERS. You're not kidding. I joked about one question on television one day and the lady called up the next day and she said, "You think it is a joke." I thought it was funny but she didn't. Boy, she let me know.

Senator LONG. Are there any other questions? Is there anything further?

Mr. SCHAFERS. No.

Senator LONG. Thank you so much. We do appreciate your taking the time and giving us the benefit of your experience here this morning. I am sure that the record will be very helpful to the committee.

Mr. SCHAFERS. Thank you.

Senator LONG. The next witness is Mr. Sydney Jacobs, Urban Affairs Consultants, Inc., St. Louis.

Mr. Jacobs.

STATEMENT OF SYDNEY JACOBS, URBAN AFFAIRS CONSULTANTS,
INC., ST. LOUIS

Mr. JACOBS. I am glad to be here and will be as helpful as possible.

Senator LONG. For the record, state your name, please.

Mr. JACOBS. My name is Sydney Jacobs and I am president of Urban Affairs Consultants, Inc.

Senator LONG. Mr. Jacobs, we appreciate your being here. You may proceed with your statement.

Mr. JACOBS. I would just note briefly my background in terms of my interest in this particular problem. I have served as a health and welfare consultant for a period of years, and originally became interested in the problem of ombudsman in the New York area many, many years ago, and have since engaged in various forms of community organization and business enterprises.

I would like to thank Senator Long and members of the Subcommittee on Administrative Practice and Procedure for making these hearings possible. I think this interest on the Senator's part is very vital and important to the community.

These hearings do represent an opportunity to air the problems that confront the members of our community in dealing with extremely complex organizational structures of our Federal, State, and local agencies.

At this time I am particularly concerned about the plight of the small businessman. He is confronted on all sides with rules, regulations, and hurdles that can be extremely frustrating and discouraging to the small businessman. A successful and healthy economy in this country requires the continued and economically sound operation of small businessmen. Small businessmen face a shocking number of problems and are particularly vulnerable to arbitrary administrative rulings. They are not in a position to employ counsel and take the time and effort to obtain what they consider a fair deal.

By small businessmen, I am thinking about the neighborhood storekeeper as well as the man who may run a small factory operation.

Small businessmen today have a variety of problems that are handled by Federal agencies in different ways. He is up against displacement by urban renewal, displacement by highway construction, by other forms of Federal construction, and at times by military installations. He must deal with many entities in the Federal Government who often do not act in a concerted fashion. The small businessman has very little to say about the forces that affect his basic earnings and means of living. We must be more concerned about the continuation of small firms in urban areas. It does not make much sense to build new apartment structures if the small businessman is displaced and the tenants must travel miles to do their shopping. We must find every possible means to simplify his efforts to relocate and expand. This involves easy access to Federal agencies and a fair and just hearing.

Although the Small Business Administration representatives in this area have considerable authority to assist financially, we have found that small businessmen are often confused by the complexities of application, the difficulties of eligibility, and he is often discouraged with any preliminary rejection. Any kind of rigidity on the part of

an administrator will throw him. He feels he has no recourse and very often just gives up his ideas of relocation or his ideas of expansion. The small businessman, I believe, in Missouri needs an Ombudsman office where he can air his grievances, where he can discuss the legitimacy of his complaints and obtain constructive assistance. The Small Business Administration programs vary from city to city and State to State, as evidenced by the amount of loans made.

There is a natural partiality, I think, on the part of Federal agency administrators to big business. Large corporations have legal counsel, can appeal decisions, prepare briefs and more effectively work with their elected representatives. Problems with various Federal agencies can have a tremendous impact on the citizens of this State. I have had occasions when liens were recorded on property by the Internal Revenue Service in situations where names were identical. No one was to blame. Yet that has held up transfers of property or the transfer of a business until clarification was obtained. Serious delays and emotional problems can ensue in this type of situation. This is only one kind of an example where an Ombudsman could facilitate matters and take appropriate and prompt action.

I came across a situation on the local scene the other day which I think is so indicative of a need for the common man to have help. This was a small businessman who had applied for an occupancy permit somewhere in the county and the fire department marshal refused to give it to him on a basis which he did not specify. He did not give him any details, wouldn't put it in writing. When I intervened to get full information, I found that there was considerable prejudice against the previous tenant who had conducted a very poor operation internally and externally and there had been a lot of pressure on the fire department to refuse the occupancy permit because the neighbors had been disturbed about the previous tenant. On inquiry, and I suppose I did what an ombudsman would do, and on insistence that the fire department's comments be put in writing, the problem suddenly evaporated. If it had continued for a day or two, this occupant would have given up the idea of going into business. This is how serious a problem can be when prejudice or other factors enter the picture.

Mr. FENSTERWALD. Could I interrupt at that point. I gather from what you are saying you think that someone physically on the scene to talk to and explain your troubles to would help the small businessman, in particular by explaining to him some of the—

Mr. JACOBS. Yes. I have some additional comments to make on this, but it is a two-way process. Sometimes the complaints will be legitimate, sometimes complaints will not be. It is just as important that the citizens of our State get an interpretation of valid position of agencies, Federal, State, and local, as a third-party kind of an interpretation, as it is to help them when it is a justifiable complaint. I will have some comments on this particular issue.

Mr. FENSTERWALD. This is what we call the steam valve?

Mr. JACOBS. I feel very strongly about this and I will make some comments on that as I go along.

The President's Commission on Civil Disorders noted the importance of communication between minority groups and government

officials. There is at present a great deal of feeling that equal treatment is not possible. I think this ties up to what we were just talking about in relations to having a steam valve.

Throughout the country there is renewed interest and concern about what are called neighborhood information centers. This is taking the form of information centers of the type set up by industry: Smith, Kline, and French in Philadelphia who are financing the salary of a staff member who is available to people in the ghetto area adjoining that plant. The information worker assists people to make maximum use of public and private resources. This operates in ombudsman style in that every situation is investigated and there is intervention where there is a question of rights in welfare, housing, social services. The recognized need of private industry to do this was very interesting, I think.

The efforts in New York City to set up little city halls, regardless of political features, indicate a trend toward assisting individuals in neighborhoods with their problems and difficulties.

The Detroit Council of Organizations is using its grant from the new Detroit committee to establish an ombudsman service, as reported in the Wall Street Journal on Tuesday. It will put neighborhood residents in touch with the proper public and private agencies to help them with their problems and follow through.

You might be interested in knowing that universities are getting so complicated today, that Michigan State has just set up an ombudsman service for students who have tuition problems and so on.

It is my contention that ombudsman service would be worth more in savings in time and effort to Federal officials, Congressmen, and Senators than it would cost, aside from having a service available to the common man.

As things stand now, a Congressman's or a Senator's desk can be clogged with a tremendous multiplicity of complaints and problems that he or his staff cannot personally evaluate. They particularly cannot easily have a conference with the complaining individual or personally confer with the Federal officials involved.

You, Senator Long, can confirm this, I am sure.

The Federal officials themselves can get involved with unjustified and reasonable complaints which they cannot dismiss in terms of use of their time because they are accused of prejudice. Interpretation from a third party is often more acceptable and can potentially be a satisfactory solution. This kind of saving of valuable time on the part of officials should be a factor that would weigh strongly toward the kind of program that the committee is projecting. I am making a point here that I think that one must weigh the cost of this service against the saving of time, which, I think, is significant.

I want to mention a significant study that you gentlemen may or may not be aware of. This was a study which cast considerable light on the psychological need for an ombudsman. This is a work by Dr. G. A. Almond and Sydney Verba made at Princeton just a few years ago. These professors asked, among many other questions:

Suppose there were questions that you had to take up to a government office; for example, a tax question or a housing regulation, do you think you would be given equal treatment—I mean would you be treated as well as anyone else?

Although a large majority of Americans are not concerned about favoritism, a percentage or a large numerical groups, about 20 million people based upon a percentage, did not expect equal treatment.

The above questions were followed by another :

If you explained your point of view to the officials, what effect do you think it would have? Would they give your point of view serious consideration, would they pay only little attention, or would they ignore what you had to say?

It appeared on this survey that one-third of the people of this country expect little or no attention to be given their point of view by bureaucracy, while only half expect serious attention.

Mr. KASS. For the record, could we get a copy of that?

Mr. JACOBS. Yes.

Senator LONG. That will be included in the record at this point.

(The document referred to follows:)

THE CIVIC CULTURE

(By G. A. Almond and S. Verba)

[Excerpts from ch. III of their book]

FEELINGS TOWARD GOVERNMENT AND POLITICS

Although we stressed the dimension of knowledge or cognition in the preceding chapter, we included data and drew inferences about the state of feeling about government and politics in our five countries. Thus when we spoke of Italy and Mexico as having large proportions of alienates, we were implying that the citizens of these countries are cognitively oriented toward their political systems, yet they reject them either completely or in some of their aspects. In this and the following chapters we shall consider the affective dimension more directly.

In the present chapter we shall deal with generalized attitudes toward the system as a whole: toward the "nation," its virtues, accomplishments, and the like. We call this "system affect." We shall also deal with "output affect," or the kinds of expectations people have of treatment at the hands of government officials. Here we shall be describing the attitudes people have toward the executive or administrative agencies that enforce laws and toward regulations affecting them: that is, that part of the political system in relation to which they have a predominantly passive role. Finally, we shall treat "input affect," or the feelings people have both about those agencies and processes that are involved in the election of public officials, and about the enactment of general public policies. In the present chapter we shall introduce the dimension of input affect with an analysis of attitudes toward communicating about politics. In the chapter that follows we shall deal in detail with partisan attitudes and feelings in election campaigns.

We shall first treat the general dimension of "system affect," using as our measure the objects of national pride in our five countries. . . .

OUTPUT AFFECT: EXPECTATIONS OF TREATMENT BY GOVERNMENT AND POLICE

The feelings that people have toward governmental authorities may be inferred from their expectations of how they will be treated by them. In constructing our interview we assumed that most people preferred to be treated fairly and considerately when in contact with officials. If they expected fair and considerate treatment, we could safely assume that at least in these respects they were favorably disposed toward governmental authority. And in the opposite case, we could assume that they were unfavorably disposed. Thus our questions were intended to discover what qualities our respondents imputed to the executive side of government.

We confronted our respondents with two hypothetical situations. In the first they were asked to imagine themselves in a government office with a problem that called for official action. How did they think they would be treated? Would they be treated equally, like everyone else? We then asked them to imagine that they were explaining their point of view to the official or officials. Did they expect

that they would be listened to attentively and considerably? In the second situation they were asked to imagine themselves as having some minor trouble with the police. Did they expect to be treated equally and considerably by the police? The results of the questions on equality of treatment are summarized in Table III.2.

TABLE III.2.—EXPECTATION OF TREATMENT BY GOVERNMENTAL BUREAUCRACY AND POLICE; BY NATION¹

	United States		United Kingdom		Germany		Italy		Mexico	
	Bureaucracy	Police	Bureaucracy	Police	Bureaucracy	Police	Bureaucracy	Police	Bureaucracy	Police
Percentage who say—										
They expect equal treatment.....	83	85	83	89	65	72	53	56	42	32
They don't expect equal treatment.....	9	8	7	6	9	5	13	10	50	57
Depends.....	4	5	6	4	19	15	17	15	5	5
Other.....							6	6		
Don't know.....	4	2	2	0	7	8	11	13	3	5
Total percentage.....	100	100	98	99	100	100	100	100	100	99
Total number.....	970	970	963	963	955	955	995	995	1,007	1,007

¹ Actual texts of the questions: "Suppose there were some question that you had to take to a government office—for example, a tax question or housing regulation. Do you think you would be given equal treatment—I mean, would you be treated as well as anyone else?" "If you had some trouble with the police—a traffic violation maybe, or were accused of a minor offense—do you think you would be given equal treatment? That is, would you be treated as well as anyone else?"

The pattern that emerges is of great interest. The Americans and the British, who in large majorities perceived the significance of national and local government for their daily lives, who said they followed politics and political campaigns, and who most often spontaneously expressed pride in their political systems, also in large majorities expect equality of treatment at the hands of government. In theoretical terms we can say that the British and Americans are high in output and input cognition, high in system affect, and high in output affect. The Germans again conform to the British and American pattern, although the proportions expecting equal treatment are somewhat lower. Though they are low in system affect, they are high in output affect, just as they were high in output and input cognition.

The responses in Italy and Mexico confirm the high incidence of output alienation in these countries. These people are alienated in their expectations of treatment at the hands of governmental authority and police. Again, on the output side, the Mexicans show more frequent alienation than the Italians—a repetition of the pattern in the dimension of output cognition.

Table III.3 reports the frequency of expectations of considerate treatment at the hands of governmental officials and the police. Here we were concerned with whether or not our respondents imputed responsiveness to government officials, whether they felt they would be treated with dignity, on a "give and take" basis. Although there are structural differences in the bureaucratic and police organizations among our five countries, our questions were directed at those bureaucratic and police authorities with whom the respondents might come in contact in the hypothetical situations set up by the questions. (A more discriminating series of questions, which would get at differences in expectations of treatment by different levels of bureaucratic authority and different types of bureaucratic or police agencies, would no doubt have produced a more complex pattern and more reliable body of information.) Given the problem of interview length, we sought to attain comparability by specifying the type of problem (e.g., taxation, housing) or the type of offense (traffic violation, misdemeanor) that occasioned the bureaucratic or police encounter. . . .

Mr. JACOBS. I am not certain that an ombudsman in St. Louis, in a central office location, will do the job. I know that the Human Development Corp., and other groups here have experimented with neighborhood information centers. It is my opinion that a good many of the questions and problems could be clarified and could be answered in neighborhoods if people could have easy accessibility to the informa-

tion and the ombudsman's assistance. I think you ought to give some serious thought to reviewing this structure a little bit in terms of the serious disadvantages of having a central office at a State or Federal office building in contrast to having some people out in the field in a close relationship.

I would say, too, that the complexities of matters such as new set-aside contracts, which are of particular interest to me, to help businessmen would indicate the need for more effective and adequate information services on the part of Federal agencies. There has to be a place where the ordinary citizen can go to get information.

As an example, an associate was in Washington trying to get information on set-aside contracts. He telephoned the Department of Commerce. The operator there said she wasn't sure which department, which division, and suggested a call to General Services. He called them. They suggested the procurement, Department of the Army, who suggested the Air Force, and it went on and on. In other words, I think there could be a savings in time and increased efficiency if information services are available at a central point where an individual with any kind of problem can go. This is necessary here and it is necessary in Washington.

I would like to make one additional comment before I wind up, and that is with due deference to the fact that your bill calls for attorneys and with due deference to the attorneys here, I think the basic qualification, gentlemen, should be ability; ability to sensitively handle people, an ability to have an understanding as to what is the problem, what is emotionally motivated, what is fact. I am not certain that legal training in itself is best for this kind of job, and I think it would be worth some consideration as to whether there should be a broadening of the qualifications of an ombudsman. Although I have no reservations about using retired people, obviously I know you agree that the basic factor should be ability to handle the job. It is a complicated business to talk to somebody who is in trouble and needs help.

Senator LONG. The Chair agrees with your statement of that generally and that will certainly be given some consideration by the committee.

Are there any questions?

Mr. KASS. No questions.

Mr. FENSTERWALD. I just have one comment to make. I think your suggestion about having people possibly not inside the Federal office building but out where they are more accessible is certainly one that has never been made to us before, and I think it is probably a very valuable one. I think one of the purposes of setting this thing up on a trial and error basis is to see how you would go about the physical aspects of doing this and how it would be most helpful.

Mr. JACOBS. I don't think it will work in a Federal office building. I think the kind of hurdles that people face in going to administrative organizations would be duplicated in your approach if the person is asked to come to a very formal setting. We need to have locations that are easily accessible and I think it would have to be a neighborhood approach. Where the ombudsman could work with existing agencies that are offering services in neighborhood areas, it would

eliminate a vast number of perhaps unreasonable and unnecessary problems.

I want to emphasize, too, that I think that the money spent in this is not a significant amount.

The question of trends that you mentioned, in the period when it was very difficult to get FHA loans in the intercity, the problem of rejection of the minority applicants because the houses were old—this has been changed by the FHA—is the kind of problem that would have been spotted by the concentrated number of rejected persons coming to discuss their problem with an ombudsman. In the long run a proper use of this information in terms of social science research could be tremendously valuable in modifying agency programs and procedures.

Senator LONG. Thank you, Mr. Jacobs. Your statement has been very helpful to us. We appreciate your suggestions.

Our next witness will be Mr. Clyde Cahill, Human Development Corp., of St. Louis.

Will you state your name and position for the record, please, sir?

Mr. CAHILL. My name is Clyde Cahill and I am the general manager of the Human Development Corp. of Metropolitan St. Louis.

Senator LONG. Mr. Cahill, we appreciate your being here this morning. You may proceed with your statement.

STATEMENT OF CLYDE CAHILL, HUMAN DEVELOPMENT CORP., ST. LOUIS

Mr. CAHILL. Thank you, Mr. Chairman.

I do thank the committee for this opportunity to speak with you and to give my views, which are essentially in support of the proposed ombudsman bill.

My comments proceed from my experience as a lawyer engaged in the private practice of law here in St. Louis for a goodly number of years, my experiences as an assistant circuit attorney in the State office, the State prosecutor's office here in the city, and later my experiences as the general counsel for one of the Federal offices, the Office of Economic Opportunity in Kansas City, Mo., and more currently and presently, my job now as the general manager of the anti-poverty program for Metropolitan St. Louis.

Many of the comments that have been made heretofore, of course, I am in complete and absolute agreement with. I am going to depart from the text material that I have prepared today for the sake of brevity and for, I hope, the sake of clarity also.

Senator LONG. If we may have a copy of your full statement, we will have it put in the record in its entirety and then you may comment about it.

Mr. CAHILL. Gentlemen, I thank you for this opportunity to lay before you my views which essentially are in support of the proposed ombudsman bill.

My comments proceed from my experience as a lawyer engaged in the private practice of the law as attorney in the law enforcement arm of State government, as a regional legal officer of a Federal agency, the Office of Economic Opportunity, and most recently and

currently, as general manager of St. Louis's antipoverty agency, the Human Development Corp. The latter administers a legal aid program to protect the rights of low-income persons.

I am aware of the fact that there exists in our society a large body of citizens who lack the familiarity with even the most elemental governmental processes and can, as a consequence, become victims of government malfunction at many levels.

It seems to me that, with the vastness of the Federal structure being what it is, it makes extremely good sense for this Nation to assure the citizen of adequate methods for relating to our Federal agencies. I do not believe here there is meant to be a blanket criticism or indictment of the particular agencies proposed in the bill's present form. The volume of contacts they have with the individuals and the sensitivity of many of these cases, as well as the particular factor of justice inherent in one, the Bureau of Prisons, supports the logic of these beginning choices. I hope, however, that the bill will not finally exclude others.

Rather than speak extensively of the parts of the proposed legislation, I would, instead, like to comment on the principle behind it.

Though this concept had its origins outside of the United States, it strikes me that it is quite consonant with our long-pursued American ideal of liberty and justice for all. This is an ideal as old as Solomon. Our court system is based upon its philosophy.

But there is fast emerging in this country the problem of super-saturation of our court system's capacity to deal with all matters of justice. And, indeed, some matters are awkward or inappropriate for the courts to handle. This is especially true of the cases involving relatively small sums of money, which, while important to the individual, are of less moment to the agencies concerned. In fact, the most satisfactory handling for the individual's interests may be the presence of an expediter. It would be his task to speed the processes that now result in excessive delay in the resolution of an individual's problems. The present route, which is transmittal to the courts, in many cases compounds the delay because of the ever-present problem of overloaded dockets.

I am not suggesting that the very small number of staff envisioned in this proposal could alleviate that problem. This would, however, be the first step toward a larger scale solution at the Federal level. There will be many counterparts of the office, I am sure, at the State and local levels in the years ahead.

As a matter of practicality, we here in St. Louis know from our experience in the poverty program that there is a substantial need at the local level for expeditors to cut through administrative red-tape. Many individuals come into our stations each day bringing with them instances of snarled situations that some officially designated institutional machinery should have resolved for them. Instead, the citizen becomes enmeshed in the problem of regulation and the agency in question remained impersonally behind its barricade of regulations. Those regulations can become more important than the person who is not served.

The same dilemma for the individual must exist at the Federal level, I am sure. I know that local agencies have their hours of

contention with Federal agencies and the mysteries that their operations sometimes pose.

But agencies are in a position to carry on this contention. So often the individual is not. That is why the office of ombudsman is needed.

The need must be particularly prevalent for the individual in less populated areas, where there are fewer resources on which he can draw to extract himself from a tangle of redtape.

As presently proposed, the Federal ombudsman would have to be highly selective of the matters he could take on. How much can be accomplished with a national budget of \$100,000, the maximum that the bill proposes, in the face of what I am sure will reveal itself as a need of people in every State of the Nation?

But it would be a beginning, a beginning that needs to be made and as quickly as possible. I endorse it in principle and urge its early adoption by this subcommittee and the U.S. Congress.

As some of you may know, of course, most antipoverty agencies, and particularly the Human Development Corp. of St. Louis, have experimented in the last year or two with the general philosophy and idea of an ombudsman approach. Our neighborhood stations have, in effect, served in a junior capacity in this area. Many of the people to whom we are dedicated to serve need the kind of basic elementary information that some of our more fortunate citizens have at hand.

We try to fulfill the role of giving that kind of information to the persons who need it best. We did not, however, have the stature and the contacts with the vast number of Federal agencies and State and other government agencies that was needed to actively and to effectively produce the kind of changes and effective action that would come immediately. All that we could do was to serve in a junior way as an advocate of sorts.

We do maintain a legal services program, and I see one of our officials of that agency here today. I am certain that he may have some comments which would indicate the kind of responses and the kind of difficulties that the Legal Aid Society has experienced, but I am convinced that many of the problems besetting our own communities are ones that do not, in the initial stages, at least, require the services of a Legal Aid Society attorney. In many cases they are simply the kind of information which could be gathered, if this kind of question were placed in the hands of a knowing individual, in a very short period of time and then related to the individual in the kind of language that he would understand. Most frequently the answers that come back from the Federal agencies, even after they have been approached by your good offices, and the offices of the other Senators and Congressmen who take an interest in their constituent's problems, come back in the language of the agency, which as a lawyer perhaps I am familiar with, which as a Congressman and Senator many of the Representatives in Congress are familiar with, but which are totally foreign in their language and in their interpretation to the persons for whom aid is needed.

If we could have the kind of response from the administrative ombudsman who would say in the language of the person who needs help, this is the method by which you proceed, there are three steps, one, two, and three, and we will help you, furthermore, in following those three

steps if you find difficulty in step No. 2, we will be on hand to aid you to be able to climb out of the morass that happens in step No. 2 and go on to step No. 3.

Unfortunately, I remember a year or so ago, OEO nationally tried to set up its own operations in giving information about other agencies and they published a very large periodical, some 360 pages in thickness, indicating all the agencies that had Federal fundings that might be particularly important. This booklet was prepared basically for the preparation, for the use of community action agency staff officials. Its purpose, I think, was misunderstood. In any event, it indicated the vast number of agencies and the vast extent of Federal activities in our country here today.

There is one other point that I would like to make, Mr. Chairman, that I think has not been mentioned by most of the other speakers, and that is the dignity and the respect of an individual for his government is developed to some degree by the kind of responses that he gets when he appreciates the officials of the government and knows that they look upon him as an individual and as a citizen.

Too often in our innercities the persons who need help the most feel that the agencies involved and the officials concerned have no real interest in their particular problems and that they do not look upon them as worthy of any kind of reasonable response, but simply try to find a way of answering them in a very routine and sometimes arrogant manner.

Senator LONG. You agree with the Riot Commission's discussion, then, that one of the problems that we have is the lack of communication, lack of grievance procedure between the people and the government in those areas where we have had trouble?

Mr. CAHILL. I definitely do. I definitely think that this is part of the problem. Part of the problem of communication is not due entirely to the inability of those who are seeking aid and assistance, but also due to our government officials who do not understand the problems that are faced by the individuals who come to them for help and who think that they can respond to these inquiries in a very routine and simple manner.

Senator LONG. Would our ombudsman be able to help in those areas?

Mr. CAHILL. I think he would help tremendously because he would bring stature to the request. They would come from him. They would establish the kind of rapport and respect that the individual could not do. We have been trying to do that ourselves and have had some limited success, but a man who would be knowing in the ways of all the government agencies would be able to do this, I think, much more so.

Senator LONG. Are you saying, then, in effect, that the ombudsman theory would help the ghetto areas or the other areas where there was unrest in bringing appreciation and respect for our government?

Mr. CAHILL. Absolutely. And I am saying that the ombudsman would have the kind of intimate knowledge of the operations which your office and the other offices of Senators and Congressmen could not of necessity bring to each individual, because the man would be here, he would be accessible to our offices, we could serve as a sort of a bridge. It would be ideal, I think, if we could have a local

ombudsman in every one of our target areas. Obviously, we can't do that. So the next best thing that we can do, it seems to me, would be to have a centralized office which would, I hope, establish very, very close communications and very close cooperation with our own operations in the innercity.

I endorse the idea in principle, and I hope that the four agencies involved will not be the only ones that ultimately will be covered by the kind of activities that we have at hand.

Senator LONG. Our pilot project, the one we have here, doesn't limit it. It is for all Federal agencies operating in the State of Missouri, and there are 15 or 20 of them, but practically all of them. There is a great cross section of them here in Missouri. Some of the other bills that we have introduced just limit it to certain areas and certain agencies, but this would be for any Federal agency operating in the State.

Are there any questions?

Thank you very much, Mr. Cahill. Your statement has been very helpful to us.

Mr. Donald Bourgeois, executive director, St. Louis Model City Agency.

Your name is almost as hard to pronounce as ombudsman. We do appreciate your being here.

For the record, could we have your name and your position?

Mr. BOURGEOIS. A. Donald Bourgeois. I am the executive director of the St. Louis Model City Agency.

It is good to see you again, Senator.

Senator LONG. Thanks. It is good to see you. I appreciate your being here.

Do you have a prepared text?

Mr. BOURGEOIS. Yes, sir. I do.

Senator LONG. Are you going to follow that?

Mr. BOURGEOIS. Basically, yes, sir.

STATEMENT OF A. DONALD BOURGEOIS, EXECUTIVE DIRECTOR, ST. LOUIS MODEL CITY AGENCY

Mr. BOURGEOIS. First of all, I am pleased to have the opportunity to make a brief statement before the Senate Subcommittee on Administrative Practice and Procedure on the subject of Federal ombudsman. My experience with the poverty program and, more recently, with the model cities program here in St. Louis has provided me with ample evidence of the need for ombudsman. You, Senator Long, have already elaborated several ways in which such ombudsman would be useful. I would like to second your suggestions and add some of my own.

For example, it is the trend in Federal antipoverty type programs to seek "maximum feasible participation of the poor" or "widespread citizen participation." We have been involved in an effort to mobilize resident participation in our St. Louis model city program for over a year. Here we are asking poor people to give freely of large chunks of their time, to sit in planning committees and meetings, for the purpose of developing proposals for programs which they know are needed. During the course of this planning effort, however, the citizens have a way of asking rather frequently, "How much money is avail-

able," or, "Will agency X be able or willing to fund this type of program?" Now, we transmit these questions to the Federal agencies, but we do not usually receive any kind of direct answer, rather, we receive a continuous stream of something they call guidelines, which they write and send out to us during and throughout the operation of a program officially announced months before. Most of these guidelines take the form of "We can't" rather than "We can." That is, the Federal agencies continue to find new rules and restrictions to place upon their programs, all of which limit the way in which a local community can make use of those programs.

Senator LONG. That is what we call Federal redtape, isn't it?

Mr. BOURGEOIS. That is correct.

Now, poor people have a rather low tolerance level for this sort of thing. It's very hard, for example, for us to meet with them and say, "Well, the rules have been changed again. You'll have to throw out that plan you've been working on, the one the Federal agency said was a fine program, and start on a new one," or, "Yes, I know the Federal agency representatives said they had the money for this program last month, but now they have discovered that, after all, they don't have any money left for this type of program," or, worst of all, "Yes, I know you've been meeting and working on plans for this program for 6 months, but the Federal agency has changed the guidelines and this program is now going to have to be moved over into a different neighborhood."

That actually happened here in St. Louis, Senator.

You see, while we concur in the philosophy of maximum citizen participation, we would like to be able to make sense when we talk to citizens about Federal programs. At the moment we are as helpless as they when a Federal agency makes a judgment and changes the rules. It seems to them, and to us also, that any Federal agency ought to be able to give a reliable sort of ball park estimate of how much money they have for a given program which we have been invited to apply for, and then they ought to be able to make good on those estimates, particularly when large numbers of citizens have spent countless volunteer hours preparing an application.

In the model cities program we will be involving the volunteer time of several hundreds, perhaps a few thousand, low income persons in our target area. In this program Congress has said, "Tell us your needs and what kinds of programs are needed to solved them," and we have taken this message to the residents of the target area. Already, however, we are forced to apologize to them, and the program is hardly begun. They want to know why we haven't spent more time with them in the neighborhood, and the simple fact is our entire staff has been occupied full time and overtime merely filling the continuous requests from HUD for more information and detail on a planning process fully described in our original proposal. In order to receive the first monthly allotment on our grant, we had to spend 2 full months of staff time virtually rewriting our initial proposal and rewording the description contained therein of the planning model we intend to use. This is not something we feel we can explain to citizens, for they simply would not tend to believe it.

More recently we have had a request to change our target area boundaries, which were evolved out of a public hearing and board of

aldermen action in March 1967. Since then we have heavily involved the residents of that target area. It is this sort of practice, which touches directly upon the lives of individual citizens, which an ombudsman might profitably investigate. At present no city has enough resources to provide the staff an agency like ours would need to investigate these practices and seek changes in them. Surely, any citizens' group which has invested months of free time in planning at the direct invitation of a Federal agency should have some recourse to such a person, who could make an investigation of any last-minute rule changing by that agency.

For these many other reasons, Senator Long, the model city agency supports this legislation.

Senator LONG. Thank you, sir. Your statement bears out the contentions that many of us have had for so very long, that when you deal with the Federal Government, you get wound up in volumes of redtape, you get confused and mixed up in it. It is easy to realize how confused and how frustrated an ordinary citizen out in a community gets when he attempts to deal with an agency of the Federal Government. I appreciate your endorsement of this program. It seems to me that the ombudsman theory is one way that we have of cutting this redtape and making our Federal Government more understanding, more appreciative, more susceptible to the wishes of the citizens.

Do you have any questions?

Mr. KASS. Mr. Chairman, the only question I have is that perhaps Mr. Bourgeois, in his consideration of plans for model cities, would consider creating a form of ombudsman. Whether it is legislatively created or not certainly depends on the Federal, State, or local governments, but perhaps an information service or something that your model city's program could consider would fill the grievance gap right now.

Mr. BOURGEOIS. I have been in communication with the mayor about this, and we have had several conferences with respect to it. There are several ideas still in the embryo stage, though, which embody this same concept, and I am sure that something will evolve out of it, and perhaps some of the model city's money will be used for it.

Mr. FENSTERWALD. Do you have any comment on the testimony of several of the other witnesses about the availability of the ombudsman? Do you have any suggestions as to where he should be located, whether he should ride circuit like judges used to?

Mr. BOURGEOIS. I have some definite thoughts about that. One technique would be to utilize, perhaps, the technique that was used by the Globe and the other newspapers around the country that use the telephone system, and to set up in neighborhoods, maybe, in a city the size of St. Louis, about 15 phones out in the neighborhoods which, when they were picked up, would ring downtown.

You notice as you come into the airport there is a phone there for tourists to pick up and call down to the mayor's office. The mayor is now considering establishing a series of a network of phones out in the neighborhoods where people could pick them up and where the phones would ring in a kind of a boilerroom operation where people not necessarily requiring a great deal of training, maybe retired people or maybe people from the neighborhood, could transmit these kind of complaints to the agency affected. To try to outpost large numbers

of staff under this legislation would perhaps be difficult, and so perhaps this gentleman, if this legislation is enacted, could work in conjunction with programs such as that created by the mayor of the city of St. Louis or that created by the poverty program and, therefore, the request could be funneled in that direction.

Mr. FENSTERWALD. I think we have to be careful here not to confuse the two processes; one of giving information to the citizens, and the other process which is the ombudsman, which is accepting complaints, grievances. The Veterans' Administration, whom we are going to hear from later, has a system whereby any veteran in the State can phone in directly, and the ombudsman may be able to use the same system—one telephone number throughout the State where you could phone in directly to the ombudsman, which would make him available without his physically going around the State.

Mr. BOURGEOIS. I think that system might work best, Mr. Fensterwald.

Senator LONG. I understand the Veterans' Administration does have that program, and I commend them for their effort to be of service to the people.

We thank you so much for being here and appreciate your statement. It has been very helpful to us.

Before I call the next witness, I notice we have in the jury box Mr. Bill Snyder, of the Springfield paper, who made the trip up from Springfield to cover the hearing.

Bill, we are happy to have you here with us. I saw you down at Jackson Day's the last 2 or 3 days. We appreciate your coming up.

Mr. SNYDER. Thank you.

Senator LONG. Thomas Guilfoil is also here. I express the appreciation of the committee to Mr. Guilfoil for loaning the committee one or two of the members of his staff, his secretaries, who are helpful to us in preparing some of the records of the committee.

We appreciate it, Mr. Guilfoil, very much.

Our next witness will be Mr. Morris Hatchett, president of the National Association for the Advancement of Colored People.

Mr. Hatchett.

STATEMENT OF MORRIS HATCHETT, PRESIDENT, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. HATCHETT. I don't have a prepared text, Senator, and I purposely don't have one.

Senator LONG. Give us your name, position, and residence, and we will be happy to hear any statement you might care to make.

Mr. HATCHETT. My name is Morris Hatchett, and I am appearing here as the president of the NAACP and also as the Deputy Director of Legal Aid Services of the OEO program of St. Louis and St. Louis County.

I don't have a prepared text, principally because I think this demonstrates the type of thing we are trying to get away from. One of the main purposes of an ombudsman might be to create more Government efficiency. I think, in fact, what most people are saying is this: that there is too much governmental redtape, there is too much govern-

mentalism, and that something which can be said very, very simply is often said in some voluminous document that has to be interpreted by lawyers.

It has been my experience that in dealing with the people in the inner city, with what we call the legally indigent, dealing with the racially and culturally deprived, we found that usually their complaints are extremely simple to them. They come in and state in very simple language what their problems are, and the additional problems arise when they get the answers and sometimes, as the gentleman testified here for the National Foundation of the Blind, they don't know whether they have won or lost, or where they are.

In my opinion, I think that the office of ombudsman can serve about five basic things:

One, it can see that statutes presently enacted are in the interest of the common people;

Second, it can see that they are impartially administered on all levels;

Third, they can see that the powers of the various governmental agencies are in balance;

The fourth part, of course, is this overriding matter of efficiency in Government.

I think, too, that if the office of ombudsman is established with the idea in mind that this will be the cure-all for all Government complaints then it will be self-defeating. It should not be just set up as another complaint bureau. I disagree with some of the prior speakers. I think that it should be housed in a Government building of some sort. The person having office should be clothed with all of the aspects and all the authority of Government, but he would be there as a representative of the people he intends to serve, rather as a representative of big government.

I think this fact alone would give to the people who need the service the feeling that they have an agency of their own which would then deal with this big, multifaceted Government agency, someone to whom they could appeal who would have the authority to move on their behalf.

Basically, I believe in certain areas the answers are relatively simple. I don't see this as in opposition to big government. I believe, for example, with the Internal Revenue Service, with some of the decisions they have to make, particularly minor employees who are forced to interpret a Government regulation in which they themselves do not believe; which they think is unfair, but which their reading of the law and the interpretation given to them by their superiors would indicate to them that they have to make such a ruling, and I think they would be happy that there was some other person to whom the person with whom they were dealing could then appeal who might possibly rule against them.

I can give an example where a divorced couple in modest circumstances would be trying to determine who would claim a dependent's deduction on their individual tax returns. Certainly one of them should be able to claim the child or children of the former marriage, but I can cite numerous instances where both parties have been denied such a deduction. This is self-defeating and the people don't under-

stand. I don't think the Government officials who make such a ruling understand, and by not so understanding they create an image which of itself is the very purpose for the office of an ombudsman.

Senator LONG. Mr. Hatchett, my counsel just called my attention to the fact that I have received hundreds of letters the last few months dealing with this same problem that you mentioned.

Mr. HATCHETT. It is dramatic to me, because I see also hundreds of people who come into my office with this same sort of problem. Also, in efforts like the poverty program where the questions are referred time and time again to lawyers, most of these questions can be answered administratively. You don't need the services particularly of an attorney. You can easily have some person who would have the expertise, who had the ear of Government, who also had the ear of people who could settle these things, who could call to the attention of governmental agencies their responsibility in the area, could actually interpret for the Government agencies their own regulations to such an extent that they then could better serve the people.

I don't want to belabor this, and I am going to be very, very short, because I feel that such an office as would be created by the major bill, the original bill, in Congress and in the Senate, and by the attempt of the pilot program here in Missouri, I would say that the pilot program could serve, as it should serve, to iron out the difficulties, to iron out the technical bugs, how large a staff would be needed? How this staff would best be employed? Whether or not there would be a necessity for holding of hearings? What would be the extent of the subpoena powers used to secure the desired results? But I think the basic service would have to be that of cutting the redtape.

I don't think the ombudsman would do himself a service if he were, in turn, to set up such a rigid set of rules and a long set of documents so that he would then need an ombudsman to interpret his own regulations. I think simplification is the thing that is needed. The big danger is that if this becomes another Government bureau, if this were allowed to become such an overall and omniscient bureau, we could create a creature that is worse than the creature that it was designed to defeat. This, in essence, is what I would like to testify to.

Senator LONG. Regarding your suggestion, that is one of the reasons we are attempting to keep this ombudsman deal on as low a tempo as possible so that he could handle as many of these personally as he can.

Mr. HATCHETT. I think personal contact would be desirable without the necessity for lengthy treatises to determine what he intends to do. I think if he could sit down and talk with the people and sometimes explain why they cannot be helped, and, when it is pointed out that they cannot be helped but should be helped, he could then point out the type of approach needed to amend the law and to do the things that have to be done.

Senator LONG. That is a very fine statement as to the purpose of the office. We certainly don't want to set it up so that we have to have an ombudsman to help the ombudsman to help the ombudsman. Your last statement there is very fine as to the purpose of it.

Are there any questions?

Mr. KASS. I have one question.

Mr. Hatchett, when people come to the ombudsman with a complaint and the ombudsman tells them why the Government had to act

as it did, although it may be inequitable—do you think the people will be satisfied because they have talked to the ombudsman, a person whom presumably they can trust?

Mr. HATCHETT. I think that would depend on several factors: how the ombudsman has conducted his office, the type of rapport he has set up with the individual he is attempting to serve. If they can realize that here is a person who will make a genuine attempt to answer their questions, who is definitely trying to solve their problems, and then explains to them why this is so, and if he says it is the law that is at fault, what steps can be taken to probably change the law, or if it is as it is in fact the various agencies, the administrative procedures' fault, what steps he can take to cure these things, and then perhaps he may say, "Well, now, if we were to do this for you we would, in fact, be imposing a greater responsibility and doing more harm to someone else." I think this is the crux of the matter; it would be his approach to the problem. People don't necessarily believe that everything wrong in their particular lives can be solved by big government. Sometimes by the very fact that big government can't solve it, he—the ombudsman—might be able to point out to them the reason why.

Mr. KASS. I take it you subscribe to the Riot Commission Report that there is a great gap in communication procedure between Government and the citizen?

Mr. HATCHETT. There is no doubt that there is a gap. And you call attention to the Commission's report. A lot of this is due to the very fact that persons have no place where they can turn to air a just grievance. Sometimes the very factor of airing a grievance goes a long way toward solving the problem.

Mr. KASS. And although the ombudsman is not a complete panacea for the problem, this would help.

Mr. HATCHETT. That is true, I think. If it were made a panacea for all ills, then you have a frustration when problems were not solved. Sometimes we oversimplify our problems and we overemphasize the proposed solutions, to the end result that people are more frustrated after the proposed remedy has been invoked than they were before they came to a particular agency.

Senator LONG. Mr. Fensterwald?

Mr. FENSTERWALD. I would just like to stress this question of not trying to oversell this concept, because it is a limited amount that the ombudsman could do regardless of what staff he has. I think it would be a disservice to give the idea that he could be a cure-all for all government ills. He would not be that.

Mr. HATCHETT. That is quite true. I think this might be one of the problems, because if it were overemphasized and if each particular facet of the community thought that their particular ills could be cured by this one office, then, of course, we would need a governmental agency larger than big government already is.

Senator LONG. Thank you, Mr. Hatchett. We appreciate your coming.

Our next witness is Mrs. Bernard Goodman. She is from the Greater St. Louis Committee for Freedom of Residence.

Mrs. Goodman, will you give us your name, official position, and your residence?

Mrs. GOODMAN. Residence, did you say?

Senator LONG. Yes.

Mrs. GOODMAN. Mrs. Bernard Goodman, research chairman and member of the executive board of the Greater St. Louis Committee for Freedom of Residence. I live in University City.

Senator LONG. Do you have a prepared statement?

**STATEMENT OF MRS. BERNARD GOODMAN, RESEARCH CHAIRMAN,
GREATER ST. LOUIS COMMITTEE FOR FREEDOM OF RESIDENCE**

Mrs. GOODMAN. I have a prepared statement which is, in essence, a letter that we are releasing today for the first time publicly to Dr. Robert Weaver, Commissioner, Department of Housing and Urban Development. I would like to comment on the letter of how an ombudsman could help us in the various complaints that we have registered with the Federal Government in the past 6 years.

Mr. KASS. Mrs. Goodman, before you proceed, would you tell us about the organization you represent.

Mrs. GOODMAN. It is an organization that tries to help minority citizens find housing without discrimination. It was our understanding that the Presidential Executive Order was intended to do this with respect to housing that was insured by Federal loans, but it has been our finding that this simply is not the case. We don't really think that the Government seriously has an occupancy policy with regard to housing.

What I would like to think in your bill relates to the problems that we have had in section 5, "For purposes of this act, an appropriate subject for investigation by the ombudsman is an administrative act, practice, or procedure of any agency which might be—"

I think that many administrative offices do not follow their own regulations, and we need help this way.

"(5) Unaccompanied by an adequate statement of reasons." Often when they answer, they just simply don't even answer our complaints.

Mr. KASS. Are you talking about the Federal Government's local representative here, or both here and in Washington?

Mrs. GOODMAN. Both in Washington and the local representative here.

Mr. FENSTERWALD. You mean they simply don't answer your letters?

Mrs. GOODMAN. They take a long time to answer them. We have not received a reply to our latest letter. However, we did get a reply to our letter of January 30 when we sent the letter of March 14.

In essence, this letter of March 14 to Dr. Robert Weaver, Commissioner, Department of Housing and Urban Development, expressed our intention to file suit for declaratory judgment as to just what the law required HUD to do. In other words, we certainly haven't had the time to look into all of the violations that we might look into or to take up all the complaints of citizens that we have heard, but we think that we have gone as far as we possibly can go without an ombudsman and have not met with success.

The reason that we are thinking of filing the suit is because we think that the Federal Government does not follow the spirit of the Presidential order of open housing for Government-insured housing and is also not enforcing the letter of their own regulations. What

this means is that we will be taking the case of the people to the courts.

Since we are only taking this action; that is, suit action, or might possibly take this action only as a last resort, it seems reasonable to assume that, if there were an ombudsman other than us in the State of Missouri, we would have first gone to him.

What we are finding out, it seems to me—I don't know if section 7(a) could be applied here, but it says here:

If, in carrying out his duties under this act, the ombudsman determines that any employee or officer of any agency has been guilty of a breach of duty or misconduct in connection with his duties as an employee or officer of such agency, the ombudsman shall refer the matter to the appropriate authorities in the Department of Justice.

It seems to me he could be an intermediary between the citizens and the Department of Housing and Urban Development organization.

As an example of one of the many things, this is the FHA manual, this is exhibit A, property disposition handbook. We have not been able to thoroughly go over this. Each day we find some new regulation that is being violated, and then, of course, this is constantly being amended. I will just read this one, or perhaps just refer to it on page 8509.4. It was in here that we found out that someone was supposed to go to the site to see that there was no discrimination on employment, but it was very unclear from this and it took a lot of investigation on our part to find out that it was the local FHA officer and not their property managers who do, in fact, hire the people to go to the work site. And, as Mr. Galli told us here, they simply do not have the funds to go out and inspect to see if there are any Negroes employed on the site, although this is in the regulation that they must do so.

Mr. KASS. Do you think the ombudsman will be able to help you in that particular case where the local Government agency representative says, "I'm sorry, there are not enough funds to enforce the regulation?"

Mrs. GOODMAN. What is the real case? What is the real truth of the matter?

Mr. KASS. I am asking you, do you think the ombudsman would be able to help you? What would you be asking the ombudsman to do at that point any more than, for example, your organization can do?

Mrs. GOODMAN. Ask him the same thing we are now asking: "Is there a serious intent by the local agency to enforce their own regulations?" You know are they really serious?

Mr. KASS. You have as an organization sat down with the local people and tried to talk to them?

Mrs. GOODMAN. Yes; they are improving.

Mr. KASS. So, in effect, your organization, in the absence of an ombudsman, is fulfilling the ombudsman's function?

Mrs. GOODMAN. Well, let's go to point No. 1, to answer your question, all right?

Point No. 1, with respect to FHA-repossessed housing, we still do not know if there are any sanctions to punish discrimination, except for the 90-day suspension for preshowing.

This is in repossessed housing. There is no effective means of detecting preshowing of FHA-repossessed housing, because a lockbox system is used, giving access to all real estate firms and others who

have lockbox keys. So, is there any serious attempt on the Government's part to see that Negroes are not discriminated against in the sale of repossessed FHA housing if anybody can preshow? This has been improved. They do now advertise in the newspaper. However, it still indicates that there are no sanctions for any property manager that violates any of the rules. It is still the case, and we still have a case pending with the Government.

There are no appeal procedures. There are no direct guidelines relating to FHA-repossessed property, for example. You asked me would the ombudsman be able to help draw official guidelines. Would he be able to help establish appeal procedures?

Mr. KASS. Presumably on the complaint he could ask the FHA or HUD why, in fact, they don't have these appeal procedures.

Mrs. GOODMAN. And, in fact, when we do have the appeal, it is not an appeal at all. It is just simply a rehearing by the local officer who turned down the case in the first place.

Mr. KASS. However, as Mr. Fensterwald and the Senator both pointed out, the ombudsman wouldn't be able to change the law.

Mrs. GOODMAN. This is not a law.

Mr. KASS. Or the regulation. All he could do is make recommendations. He could not direct in any way the agency to change its procedure.

Mrs. GOODMAN. Could he ask that the regulations be enforced?

Mr. KASS. That is what I am asking you, what you think he could do to help you.

Mrs. GOODMAN. I think he could see that the regulations that exist could be enforced. I think if there are no Negroes employed by the contractors on the site, and if someone is responsible according to the regulations to see that this is done, I think he could see that it was set up.

Mr. KASS. This, Mr. Chairman, would be an appropriate area for the ombudsman.

Senator LONG. I think the ombudsman could investigate and recommend to the agencies or the other Government officials that regulations be enforced.

Mr. FENSTERWALD. He might also send a blistering report to the committees of Congress and might get some action on the subject.

Mr. KASS. And to the President.

Mrs. GOODMAN. Here is another violation:

Since the local office can list the property before the repairs are completed, in violation of the FHA regulations, the whole system of selling repossessed homes is susceptible to manipulation.

Senator LONG. You are saying the FHA agencies do that here in St. Louis now?

Mrs. GOODMAN. That they have. This is the case that has been pending since last June.

The local FHA office does not always comply with the regulations regarding removal of repossessed homes from the market, when complaint is filed.

Mr. KASS. Mrs. Goodman, let me ask this question just as a citizen concerned with this problem. Do you think that if a case is pending before the courts that the ombudsman should intervene or should investigate?

Mrs. GOODMAN. I don't understand the question.

Mr. KASS. Your organization is planning to bring suit?

Mrs. GOODMAN. Only if there is no other alternative.

Mr. KASS. Let's assume a suit has been brought. Do you think it is appropriate for the ombudsman at that point, while the case is pending before the courts, and granted it may take several years before the completion of the case, to investigate?

Mrs. GOODMAN. I think perhaps I should read this last paragraph first to make it a little bit clearer. It is not the desire of Freedom of Residence to file a suit. This is only the last resort. You know, we'd like to think as everyone else has testified today that the Federal Government is a friend of the citizen, protecting the citizen and working for the citizen. It would seem to be much better to work with an ombudsman. Our point is we have tried every single avenue at this point without success in certain areas. [Reads:]

It is our feeling that despite repeated letters, phone calls, inquiries, complaints, and suggestions on our part, that progress in ending discrimination has been at a snail's pace over the past 6 years. During this period, all the Government housing programs have been proceeding at a jet age pace, and countless more segregated homes and apartments have resulted. We have tried to express to you our feelings of urgency about the situation, and we feel that your office can by simple and effective administrative measures accomplish a hundred times more than we can accomplish with our limited information and financial resources. We have now reached the point where we believe that unless we can receive from you some immediate straightforward attempts to deal with the matters raised above and with all the other discrimination in housing permitted by HUD agencies, we will have no recourse but to file suit for declaratory judgment as to just what the law requires. We feel that this is not the most desirable way to solve the problem, but if we wait for mere persuasion to take effect, we will increase the risk of an accelerated pace of the further social and economic decay of our city.

This was March 14. We have not received any answer.

Senator LONG. Mrs. Goodman, let me suggest that if you don't get an answer from Secretary Weaver, if you will write my office, I think perhaps I can expedite an answer for you.

Mrs. GOODMAN. All right.

Senator LONG. That is not the way it should be done. It shouldn't have to be that way.

Mrs. GOODMAN. Yes. For instance, we cannot take a position.

Senator LONG. I think we will get an answer for you.

Mrs. GOODMAN. All right.

Then this goes to the spirit of the law, and this is pointing up essentially our feeling that a real estate agent who discriminates 99 percent of the time can't suddenly take over property for the Federal Government and handle that in a nondiscriminatory fashion. This is not within the regulation, but we feel that this should be changed.

Mr. KASS. Could you submit that entire letter for the record?

Senator LONG. Could we put it in the record?

Mrs. GOODMAN. I will give you this letter.

Senator LONG. Fine.

Without objection, the entire letter will be placed in the record at this point, and then you may proceed to comment on it now as you desire to.

(The document referred to follows:)

GREATER ST. LOUIS COMMITTEE FOR FREEDOM OF RESIDENCE,
St. Louis, Mo., March 14, 1968.

Dr. ROBERT WEAVER,
*Department of Housing and Urban Development,
 Washington, D.C.*

DEAR DR. WEAVER: Over the past year we have engaged in continuing correspondence concerning the procedure and practices of the agencies now comprised in the Department of Housing and Urban Development.

In some instances, such as with respect to the submitting of contracting for the purchase of repossessed housing to the FHA, we note that considerable progress has been made.

We would now like to summarize the areas where we feel further action is needed.

1. With respect to FHA repossessed housing, we still do not know if there are any sanctions to punish discrimination, except for the 90-day suspension for preshowing.

2. There does not seem to be any effective procedures to determine whether there has been such discrimination.

3. The appeal procedures in such cases are extremely vague, resulting in review by the same person who makes the original decision, the local FHA Director. In at least one case in our district this person was a former employee of the property management firm involved. We would suggest, as a minimum, in this respect that Regulation 51610.2 be changed to provide that the jurisdiction of the Director shall always cease upon the filing of the appeal. Actually the whole procedure needs to be strengthened and sanction provided for.

4. There is no effective means of detecting preshowing of FHA repossessed housing, because a lockbox system is used, giving access to all real estate firms and others who have lockbox keys.

5. Since the local office can list the property before the repairs are completed, in violation of the FHA regulations, the whole system of selling repossessed homes are susceptible to manipulation.

6. The local FHA office does not always comply with the regulations regarding removal of repossessed homes from the market when complaint is filed.

7. The local FHA office does not require its property management agents to comply with regulations for postings of "for sale" signs on repossessed houses.

8. The FHA does not require as a condition of contracting that the private contracting agent be a nondiscriminatory real estate agent. We feel this is required by Executive Order 11063. In addition, although you have stated that such contracting agents will be required to comply with applicable local fair housing laws, we have seen no evidence that any investigation of compliance with this is made. Nor have we seen any investigation of compliance with fair employment requirements, which are required by such contracts. In fact, the only response to the complaint of Mrs. Lamar Smith, dated January 31, 1968, alleging discrimination in employment by the Dolan Co., and our letter to you of January 30, 1968, notifying you of our complaint against the Dolan Co., has been a form letter rejection from the Office of Federal Contract Compliance, a copy of which is enclosed. Apparently the extent of your interest in the matter was to turn it over to an office which as I understand it does not even have jurisdiction.

Since that time we have learned that the local FHA office violates its own regulations by not having equal employer signs on the job sites and by not having job site inspection to determine compliance with equal employment requirements. In fact, Mr. Galli admits in his letter of February 29, 1968, that of 16 contractors employed by FHA to repair and rehabilitate housing, only three employed any Negroes at all. Mr. Galli has frankly stated that he does not have the manpower to enforce these requirements.

9. With respect to subdivisions and multiple housing there is no requirements that subdivisions using FHA financing must publicize the policy of FHA on nondiscrimination in all advertisements regarding such properties. There is no policy for any affirmative action that would require FHA financed subdivisions properties to be advertised in minority newspapers and radio stations in a manner commensurate with the advertisements of such properties in the dominant newspapers and radio stations.

10. In subdivisions and multifamily housing, the contract requirement for nondiscriminatory dealing is very loosely worded and probably meaningless

in a court of law. In addition, we have seen evidence that subdivision developers discriminate freely despite requirements that they do not do so in order to obtain a FHA commitment for the subdivision. This is again because there is no investigation of compliance made. Furthermore, there is no general requirement of nondiscriminatory dealing in making such commitments with dealers who openly discriminate with respect to all their other properties.

Finally, even for the developer who openly disclaims obtaining such commitments, because he wants to discriminate, the FHA will still insure loans for the purchase of homes in such exclusive subdivisions upon the application of the individual homebuyers.

11. Although we frankly have not had time to make a thorough investigation of VA practices, we feel that on the evidence we do have the VA is subject to all the same criticisms as are listed with respect to the FHA in paragraphs 1 through 10 above. In fact, the VA has not even matched the minimal progress made by FHA in publishing its available repossessed housing on a regular day in the newspaper, and in awarding contracts to prospective buyers of such housing by a fair manner such as public drawings.

12. The miserable performance of the various land clearance authorities with respect to nondiscrimination in public housing has been well documented elsewhere. We are presently accumulating evidence which will be referred to you at a later date concerning the local land clearance and housing authority. We will not go into it with detail, other than to say that, for one thing, regulations of the Renewal Projects Administration do not clearly require nondiscriminatory ordinances, even in designated urban renewal areas, where such ordinances and policies, in fact, should under law be required for the entire governmental subdivisions wherein the urban renewal area exists.

It is our feeling that despite repeated letters, phone calls, inquiries, complaints and suggestions on our part, that progress in ending discrimination has been at a snail's pace over the past 6 years. During this period, all the Government housing programs have been proceeding at a jet age pace, and countless more segregated homes and apartments have resulted. We have tried to express to you our feelings of urgency about the situation, and we feel that your office can by simple and effective administrative measures accomplish a hundred times more than we can accomplish with our limited information and financial resources. We have now reached the point where we believe that unless we can receive from you some immediate straightforward attempts to deal with the matters raised above and with all the other discrimination in housing permitted by HUD agencies, we will have no recourse but to file suit for declaratory judgment as to just what the law requires. We feel that this is not the most desirable way to solve the problem, but if we wait for mere persuasion to take effect, we will increase the risk of an accelerated pace of the further social and economic decay of our city.

It is our judgment that people are weary of empty promises. What is needed now is immediate full enforcement of constitutional rights to equal opportunity in housing. If you feel that there is any possibility of direct affirmative action by your office to achieve this, we will be most happy to meet with you or to cooperate in any way possible. The only other alternative is to take the case of the people to the courts.

Sincerely,

SAMUEL H. LIBERMAN.

U.S. DEPARTMENT OF LABOR,
OFFICE OF FEDERAL CONTRACT COMPLIANCE,
Washington, D.C., February 21, 1968.

Re Dolan Co., St. Louis, Mo.

Mrs. LAMAR SMITH,
St. Louis, Mo.

DEAR MRS. SMITH: We are sorry, but we can take no action on your complaint of discrimination for the reason checked below:

- ☐ A complaint must be filed within 90 days of the act of discrimination.
- ☐ Executive Order 11246 directs this Office to act only in discrimination cases involving race, creed, color or national origin.
- ☐ This Office restricts its definition of "creed" for complaint purposes to discrimination against a person because of his religious belief, or the lack of it.

☒ This Office can act only in cases where a company has agreed to provide equal employment opportunity under a Government contract. The employer named in your complaint does not have a contract with the Government at this time.

Sincerely yours,

WARD MCCREEDY,

Assistant Director for Compliance Operations.

However, we have forwarded your letter to the Director of Compliance, Equal Employment Opportunity Commission, Washington, D.C. 20506, for further consideration. We trust you will hear from that agency shortly.

Senator LONG. Let me ask you to expedite as much as possible. I have two more witnesses yet before noon.

Mrs. GOODMAN. I will just take a couple more minutes.

With respect to subdivisions and multiple housing, there is no requirement that subdivisions using FHA financing must publicize the policy of FHA on nondiscrimination advertisements regarding such properties.

In subdivisions and multifamily housing, the contract requirement for nondiscriminatory dealing is very loosely worded and probably meaningless in a court of law. We have seen evidence that subdivision developers discriminate freely despite requirements that they do not do so in order to obtain a FHA commitment for the subdivision. There is no investigation of compliance made.

Finally, even for the developer who openly disclaims obtaining such commitments, because he wants to discriminate, the FHA will still insure loans for the purchase of homes in such exclusive subdivisions upon the application of the individual home buyers.

And then with the VA, my comment here with Veterans' Administration we simply have not had the free volunteer time to investigate violations of the Veterans' Administration. We do know they don't have the minimum improvements, which are a public draw and the advertisements in the newspaper.

Then a brief comment which I only have in printing, not with the statement. Our Committee on Urban Renewal has investigated practices of land clearance in several localities, this year concentrating in the west end of St. Louis and the Webster Groves community of the Greater St. Louis area. We believe the changes could have been effected before the urban renewal programs were written and alterations during the time they were implemented if a powerful intermediary such as an ombudsman had been in existence. Because of the lack of such an intermediary, many citizens in Webster Groves have already been uprooted without their consent in a previous program. Another similar program is underway that will bring in commercial and industrial development to the Webster Heights urban renewal area seemingly without the consent of the residents.

The west end is fraught with problems of homeowners who must make home alterations that they cannot afford, that do not qualify for loans, and large indigent families who are displaced without any adequate standard of housing for them to move into.

An ombudsman is especially needed to represent the poverty level resident who does not vote because he does not know his rights or has no powerful intermediary to act in his behalf.

Senator LONG. Does that conclude your statement, Mrs. Goodman?

Mrs. GOODMAN. I could just read the last paragraph, the conclusion.
 Senator LONG. Very well.
 Mrs. GOODMAN (reading):

It is our judgment that people are weary of empty promises. What is needed now is immediate full enforcement of constitutional rights to equal opportunity in housing. If you feel that there is any possibility of direct affirmative action by your office to achieve this, we will be most happy to meet with you or to cooperate in any way possible. The only other alternative is to take the case of the people to the courts.

Senator LONG. Thank you, Mrs. Goodman. We appreciate your coming to testify. It has been very helpful to the committee. You have suggested several problems. We will certainly give them every consideration when the report of the committee is made.

As I told you a moment ago, if you still have difficulty with that letter, I think perhaps we can get you an answer.

Mrs. GOODMAN. Thank you.

Senator LONG. Our next witness is Mr. Joseph F. Anderson, St. Louis district manager, Social Security Administration.

We understand that you are not authorized by your agency to take a position on the ombudsman one way or the other at this time; that is, they haven't made up their mind, which is typical. We do appreciate your being here. If you will give us, for the record, your name and official position, and residence, and then proceed with any statement you may have.

STATEMENT OF JOSEPH E. ANDERSON, ST. LOUIS DISTRICT MANAGER, SOCIAL SECURITY ADMINISTRATION

Mr. ANDERSON. Mr. Chairman, my name is Joseph Anderson. I am district manager of the downtown social security office here in St. Louis.

In listening to the previous testimony, on several occasions I have heard the term "social security" used, and it reminded me, as it may well have reminded you, that the term social security is often used to describe the complete range of programs that was established by the original Social Security Act, many of which, of course, were established as Federal-State grants-in-aid programs. I mention this because, of course, I will be talking only about the old age and survivors insurance program rather than the complete range of activities.

I am delighted to have this opportunity to talk to you very briefly about two of my favorite subjects, "social security" and "service to the public."

I think it is only fair for me to state that I am speaking from a rather limited vantage point, as a district manager of a local social security district office.

At the district office level in the Social Security Administration, we certainly must say that service to the public has to be our primary goal. Perhaps you will permit me to discuss very briefly the organizational structure through which we serve the residents of Missouri, our concept of service to the public, a brief review of the appeals process, and perhaps also our method of handling grievances.

Within the State of Missouri there are, at the present time, over 660,000 persons who are drawing social security benefits; about 175,000 of them reside within St. Louis City or St. Louis County. To serve these beneficiaries and also, of course, all residents of the entire State of Missouri, we have a network of 14 district offices, plus six recently created branch offices. In a further effort to bring the services of the Social Security Administration closer to the people, persons travel from these 20 different locations to 144 cities throughout the State, which we refer to as contact stations. These calls may be made on a weekly or a biweekly or a three times monthly or a monthly basis, depending on the need, and are publicized many months in advance.

Perhaps a word is in order about our concept of service to the public.

Organizationally, we have a dual objective. The first objective is to pay benefits to everyone to whom a benefit is due and, conversely, not to pay benefits to those persons who do not meet the requirements of the social security law.

In pursuing the first of these objectives, we try to remember that we are dealing with a program that is very complex, that is technical for those who have not had the opportunity to acquire a working knowledge of its provisions, and, likewise, our inquirers very often are persons whose ability to do for themselves has been dulled somewhat by old age or disability or perhaps by bereavement. So ours is a program, at the district office level, that is built on service. That is all we have to offer. When we fail to provide this kind of service we may well have outlived our usefulness.

You might be interested in the extent of our public contact and information concerning its characteristics. The three social security offices in St. Louis will receive from 7,000 to 12,000 telephone calls during a single week's time, and will receive personal visits from 3,000 to 7,000 inquirers.

Many of the questions we receive, as you would have surmised from the previous testimony, really do not pertain to social security programs at all, because, unfortunately, problems do not fall in nice, neat, well-defined program departments. They are interrelated. While we do not pretend to advise persons on the content of other programs, we do believe it is an important part of our responsibility to try to refer persons to an organization or agency that can afford them help.

It is our obligation to try to maintain a knowledge of the various kinds of resources in the community, both public and private, to which people can be referred to help fill their unmet needs. Perhaps in rural areas this is especially important, because many times the Social Security Administration, in the rural area, provides the only real, personal, direct contact that the rural resident has with the Federal Government.

I think probably there is nothing quite so frustrating to an inquirer than to call at an office only to be told that "this isn't handled by our department," still having the basic problem that concerns him so much and not having the vaguest idea where to go.

In the claims process, for the individuals who might be entitled to social security benefits, we urge persons to file a formal application whenever there is any possibility of entitlement so that their benefit rights can be formally determined. If a person who has filed a claim

receives a disallowance letter from our reviewing office—or what we refer to as a payment center—the letter tells him why his claim was disallowed, and it also explains to him that he has 6 months in which to request that his claim be reconsidered. It urges him to contact his nearest Social Security Office if he has any questions. As a matter of fact, a booklet goes out to him, entitled “Right To Question the Decision Made on Your Claim.”

If the individual contacts us and requests reconsideration, we try to assist him in obtaining any additional evidence which might help him meet any deficient requirement. If on reconsideration his claim is disallowed, he, in turn, then is afforded an opportunity to request a hearing from a hearing examiner. Again he has a 6-month period in which to ask for a hearing, and the hearing is handled by a bureau that has no connection or no acquaintance or contact, with the bureau handling the initial action.

Mr. FENSTERWALD. Mr. Anderson, could I interrupt. Normally how big a lag is there between the request for a hearing and the actual hearing?

Mr. ANDERSON. I think, Mr. Fensterwald, this would depend on the load of the hearing examiners. I just couldn't speak with authority on that at all. The hearings are scheduled by the hearing examiners who correspond directly with the applicant or the individual who has requested a hearing. Very often their workloads in the St. Louis area, have been quite current, or so I have understood, but I would be loath to comment on the exact period of time.

Mr. FENSTERWALD. Could you give me, as one of the other witnesses said, a ball park estimate? Would it be a matter of weeks or months?

Mr. ANDERSON. A matter of weeks would certainly cover it very nicely.

Mr. FENSTERWALD. Thank you.

Mr. ANDERSON. If the hearing examiner's decision is adverse, the individual, within 60 days, can appeal to the Appeals Council in Washington, and thereafter if there is an adverse decision, of course he can begin action in the U.S. district court.

Generally speaking, the initial decisions that are made on social security cases, are sound and complete and they are in accordance with the law. But with each succeeding layer of appeal, we have reduced somewhat, the possibility that an injustice might have been done in an individual case, so that at the end of the appeals process the prospect that an incorrect decision has been made becomes quite small. Nonetheless, there undoubtedly are still some instances in which there have been injustices, and by adding additional layers of review or additional appeals or providing additional help, no doubt some of those could be eliminated as well. At the same time, the layers of appeal in our existing appeals process occasionally frustrate persons who receive an initial decision that was completely in accordance with the law. They sometimes regard the present appeal process as extra layers of frustration.

If we receive a grievance or a complaint, our method of handling it would depend entirely on the nature of the dissatisfaction. If the person is dissatisfied with the decision that has been made in a particular case, then, of course, the appeals process to which I just referred would be used and we would make every effort at that time

to assist the claimant in securing the best possible supporting evidence for his case.

If we receive repeated expressions of dissatisfaction that might be legislative in origin—that is, deal with the basic content of the law—then, by all means, this is conveyed to our national office.

If the grievance is against a person, then, of course, we would determine the nature of the dissatisfaction. We would investigate this completely. In many instances we find that the complaint against the individual stems from the fact that the inquirer has been disallowed. Because he has received an unsatisfactory decision as far as his case is concerned, sometimes this is equated with bad service.

This very briefly gives you an idea of my own feelings, as far as service to the public is concerned. I think the attitude of individuals working within the district offices is of the very, very greatest importance. This doesn't mean that we always have to give the people the answer that they want to hear, but it does mean that district offices must continue to emphasize service to an entire public in a courteous, friendly, and constructive way.

I wish I could assure you we were perfect, Mr. Chairman, but that I obviously cannot do. Generally I think we are quite successful. I am proud of the job that our employees do, considering the size of the task assigned to them. When we fail, then we just have to renew our determination to do better in the future. Of course, our involvement in the social security program is a very small part of a gigantic process, but from our own selfish point of view we think that our smallness does not detract from our importance. It is at the local district office level that the program touches the public, it assumes its greatest meaning, and it becomes at that time, I think, a person-to-person program.

I have appreciated the opportunity to come, Mr. Chairman.

Senator Long. Thank you, Mr. Anderson. You have made a very fine statement. The philosophy of service to citizens that you have laid down is a very fine philosophy, and I am sure that your agency, perhaps above the average, attempts to carry that out and does to a large extent carry it out.

We have very few complaints from people about your agency. You are dealing with the people who generally are of an age who need special attention and appreciate the interest and consideration that you have given them. There are times that it would be easy for them to become frustrated or unhappy because they don't understand. I think perhaps it is there where an ombudsman could sit down and discuss their problem with them, knowing it is an outside agency rather than part of the agency that they are dealing with, but it would be of help to them and perhaps make them more contented and more satisfied with the services that your department gives them.

As you suggested, you have so many employees, and Federal employees within our State are very fine. They do a great job with very few exceptions. We think this type of system would help them in their job, help them with some of the problems that they have.

Mr. Kass, do you have any questions?

Mr. Kass. No, Mr. Chairman, I do not.

Senator Long. Mr. Fensterwald?

Mr. FENSTERWALD. Could you tell me whether you think the establishment of a Federal ombudsman in Missouri would inhibit your operation in any way?

Mr. ANDERSON. I presume that would be, at least to some extent, dependent on the final form that the legislation would take. I can certainly see no reason in the world why it should inhibit our activities or the operation of our functions. I think, as has been mentioned frequently, Congressmen have been serving as splendid "limited ombudsman" in the past, have done a magnificent job in responding to requests from the public, and have been very useful and helpful to us. As long as the ombudsman carries out his activities in accordance with what I would believe to be the intent of the legislation, and handles his activities in a highly professional and understanding manner, I think there would be no reason at all to feel that his activities or his office would inhibit a Federal agency.

Senator LONG. Mr. Ohlhausen?

Mr. OHLHAUSEN. No questions.

Senator LONG. Thank you, Mr. Anderson. We appreciate your being here.

Our next witness this morning is Mr. Philip S. Pollock, manager of the Veterans' Administration.

We apologize to you and the other people here for keeping you so long, but since this is the last witness, we thought we would rather work a little longer during the noon hour than come back this afternoon.

Mr. Pollock, will you state your name and position for us, please?

Mr. POLLOCK. Philip S. Pollock, manager of the Veterans' Administration regional office, 1520 Market Street, St. Louis.

Senator LONG. Do you have a prepared statement?

Mr. POLLOCK. I do not have a prepared statement.

Senator LONG. The committee will be happy to hear any comments you have to make at this time.

STATEMENT OF PHILIP S. POLLOCK, MANAGER, VETERANS' ADMINISTRATION

Mr. POLLOCK. I first want to thank you for inviting me here this morning. It is a privilege for me to appear.

Going to your letter of March 22 to comment upon the assistance that the Veterans' Administration renders veterans and a statement as to the grievance procedures, I will take those up in order, if I may. In regard to the assistance, I think I would refer to Mr. Guy S. Williams' statement given before the subcommittee in regard to Senate bill 1195. Then I would like to continue and relate what he has said there as to what occurs here in Missouri, what occurs in the Veterans' Administration regional office.

Senator LONG. We understand that Mr. Williams passed away about 2 weeks after he testified before us. He made a very fine statement.

Mr. POLLOCK. We have in the Veterans' Administration employees who are called contact representatives. We have them in our office here in St. Louis, we have some in the Kansas City VA office, and we have one at each of the VA hospitals here in the State. Mr. Williams pointed out the training and the capabilities of these men. They are well versed

in all of the aspects of the Veterans' Administration programs. They are there to advise and to assist claimants and to actually become their advocates, if necessary and desired by the claimant.

I might give you just a little picture of how much volume these people handle. There are 14 such representatives in the State, and through February of this fiscal year they handled 32,000 personal interviews and over 100,000 telephone interviews.

The next type of assistance that veterans receive, and this is from service organizations, nationally recognized service organizations, they have office space in our building and in the hospitals, and they represent and assist veterans in their business with the Veterans' Administration.

Mr. KASS. Mr. Pollock could I interrupt at that point? The service organizations that you speak of have complete access to your records in a particular case, haven't they?

Mr. POLLOCK. Yes; I was going to comment on that. They are accredited representatives. They have the same record and information upon which we decide the case or handle the matter. They have the file; they have access to it.

In the State of Missouri we have the Department of Veterans Affairs. This is a State organization. They have 40 to 45 men throughout the State. We work very closely with these gentlemen. They serve very much in the same way as the contact representative. They are also accredited representatives that have access to the files.

Senator LONG. Is that the one that Mr. Roy Carver heads?

Mr. POLLOCK. Mr. Chairman, this is one of the finest organizations I have ever had any dealings with, and they do an excellent job.

Senator LONG. Mr. Carver has been there a number of years. He has been a good friend of mine and was of much help to me. He is really an ombudsman, don't you think?

Mr. POLLOCK. Yes, I think that Roy could very well be called an ombudsman. He runs a very efficient organization.

In addition to this, VA employees, who not only render assistance, but may also, as I mentioned, be advocates for the veteran, can go all the way with him in the grievance procedure, which I will later describe.

In addition, and I mention these very briefly, we have, and I think this is an assistance, a guardianship program rendering supervision and assistance over estates created by benefits paid to incompetent and minor beneficiaries. We also render counseling service to veterans who find it difficult in their educational training, and especially to those who are in rehabilitation training, and this is a continuous program.

We also have publications that we furnish various service organizations and others and veterans if they desire them.

These latter things, I would say, are sort of the outreach programs, programs designed to render further assistance to veterans and their dependents.

Coming now to the grievance procedure, the grievance procedure was revised by Public Law 87-666 back in 1966, which established a statement of the case procedure within the appellate provisions.

We render a decision on a case, the veteran is notified, he is also told that he can disagree or appeal. If he does so, he lets us know that

he disagrees. We then furnish him a statement of the case, which includes a summary of the evidence, discussion of the pertinent law or regulation, a decision on the issue, and the reasons for the decision. This is then sent to the claimant and he is told that if he wishes to perfect his appeal he has a brief form that he submits. This case then comes back and is then reviewed by the Board of Veterans Appeals.

During this process, if statements he makes in his disagreement, produce any information that was not available, new and material information, this decision is completely reviewed, and it may even be that the man is examined again, but anything that he submits is reconsidered.

We have, in our compensation and pension program alone, about 10,000 such actions a month that a person can disagree with. We get disagreements of about 100 a month, and 55 out of the 100 result in substantive appeals, so from the decisions rendered it shows a rather small percentage of these disagreements that do occur. The Board of Appeals, of course, can affirm a decision made locally, they can reverse it, or they can remand it. In the latter two cases they do in about 13 percent. I don't know the exact percentage on the remanded cases when they go back up if they are not changed locally by further investigation and reconsideration.

Of course, I listened to Mr. Anderson's statement. The Veterans' Administration is an agency that renders service. That is its purpose. President Johnson, in his message on servicemen and veterans on January 30, made a statement to the effect, as I recall, that Abraham Lincoln recognized the Nation's obligation to care for him who shall have borne the battle, for his widow, for his dependents.

Senator LONG. It has been my observation from seeing your department and working with you that you do a very fine job of performing that service to our veterans. I am particularly impressed with the program and plan that you have now of setting up a telephone system where, in any community, veterans can pick up the phone and free of charge can call the Veterans' Administration with his problem. I think perhaps you already have some pilot programs set up, whether you have it in Missouri.

Mr. POLLOCK. We do not have it here. There are pilot operations and tests being made, and hopefully we will have it.

Senator LONG. You know, Missouri would have been a good place to have that pilot test made.

Mr. POLLOCK. I agree with you.

I think this certainly is an indication of what the Veterans' Administration is trying to do and I assure you here in Missouri we go all out in rendering service to its veterans.

Senator LONG. Like in the town of Bowling Green, there would be a telephone which a veteran could pick up and call free of charge a number in St. Louis or Washington, or wherever the main contact office is, and talk to someone about his problem?

Mr. POLLOCK. Yes, that is the way the pilot projects are working. They haven't been in very long. I don't know what the ultimate will be, but I certainly hope that we do have something like that in Missouri.

I would like to just mention in closing another example of what we are doing, and we do have this here in St. Louis. We have the

U.S. Veterans' Assistance Center, which is a one-stop center. These again were mentioned in the President's message of January 30. We opened ours on March 11. We dedicated it last Friday. We have people there, the Civil Service Commission has people there, the Labor Department has people there, and Missouri Unemployment Service has people in the Center. We have liaison service with Small Business, FHA, Social Security, and the U.S. attorney on an as-needed basis. This is a one-stop center for the Vietnam veteran who is returning to civilian life. In the State of Missouri we have 1,500 or more a month. In addition to this Center, we send each returning veteran a letter describing his benefits, send him some information of what the benefits are, urging him to complete his education, and offering our assistance in his postservice adjustment.

That is all I have.

Senator LONG. Thank you, Mr. Pollock. I am delighted that you could be here with us this morning to make the statement for the record.

Mr. KASS. Mr. Pollock, if the pilot project ombudsman were established here in Missouri, do you think it would interfere in any way with the operations of your office?

Mr. POLLOCK. I would have to give you my personal opinion. As the chairman knows, I was restricted on policy. My personal opinion, I can't see that it would, and from what I have heard here this morning, we would get very little business. It is going to be somebody else and not the Veterans' Administration.

Senator LONG. Such as the Internal Revenue Service?

Mr. POLLOCK. I didn't mention any names.

Senator LONG. I believe those are all the questions, then, Mr. Pollock. Thank you so very much.

The hearings will resume tomorrow morning at 10 o'clock in this room. Until that time the committee will stand in recess.

(Whereupon, at 12:45 p.m., the hearing recessed, to reconvene at 10 a.m., Thursday, March 28, 1968.)

REGIONAL OMBUDSMAN PROPOSAL

THURSDAY, MARCH 28, 1968

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND
PROCEDURE OF THE COMMITTEE ON THE JUDICIARY,
St. Louis, Mo.

The subcommittee met, pursuant to adjournment, at 10 a.m., in courtroom No. 2, U.S. Court and Customs House, 1114 Market Street, Senator Edward V. Long of Missouri (chairman) presiding.

Present: Senator Long of Missouri (chairman).

Also present: Bernard Fensterwald, Jr., chief counsel; Benny L. Kass, assistant counsel; and William G. Ohlhausen, assistant counsel. Senator Long. The committee will be in order.

Our first witness this morning is a very distinguished Missourian who has had very distinguished service in journalism here in St. Louis and for the past 3 or 4 years has rendered a great service to the Government in Washington. He is back in St. Louis now. We are happy to have him here as our witness this morning. Mr. Howard B. Woods, editor and publisher of the St. Louis Sentinel.

Howard, we are delighted that you would take time to appear before our committee this morning. We would be very happy to hear any comments or statement that you have.

STATEMENT OF HOWARD B. WOODS, EDITOR AND PUBLISHER, ST. LOUIS SENTINEL

Mr. Woods. As you are aware, I did have a few months there in Washington in that interesting caldron of activity, exciting, I should say. If it taught me anything, I think it enlightened me on the immovability of government, even when one attacks it from the inside.

About 3 weeks ago we started publishing a weekly newspaper in St. Louis. It began following an announcement sometime the latter part of January. At that time we stressed that the St. Louis Sentinel would put great stress on integrity, service, and justice.

We set about assembling a staff, planning content, and as these plans took shape, it became apparent that what masses of people wanted more than anything else was an assist for problems that baffled them, a helping hand for the frustrations of day-to-day living.

Within the framework of this thinking, we instituted a column which we called Aid-a-Nabor. This is patterned after many columns in other newspapers across the country, both weekly and daily. In it we welcomed complaints of those who find the complexities of life just too much with which to cope.

It is apparent to us at the Sentinel that we were wise in our judgment. Already the Aid-a-Nabor column has drawn more mail than any single feature in the newspaper, on an average of five to six letters a day, and we just went on the streets. Many of the letters are seeking assistance in how to cope with government—city, State and Federal.

I think that one of the essentials of a stable community is the presence of those ingredients with which residents can achieve their goals and realize the measure of their daily aspirations. If you take this away, you have displeasure, unrest, frustration, although it may be in low key.

It is the feeling of some in the position of leadership that one of its responsibilities, that is, leadership responsibilities, is to extend a helping hand wherever possible.

Without even discussing the merits of this bill, and I would certainly say that I think it serves a good purpose, I would go on record as saying that any device, machinery, or technique which would slice through the maze of bureaucracy would be a boon to mankind.

After having served in government, I can now fully understand the snail's pace at which it must travel. Far too much is at stake and too much hangs in the balance of either movement by government or decision by those who make government move. Yet to John Doe, American citizen, it matters little to him when his needs are to be served that his Government, this gigantic company in which he holds stock, is unable to respond immediately.

Thank you.

Senator LONG. Thank you, Mr. Woods.

It is interesting to note in your statement that within the short time you have been publishing your paper the interest has grown already in the ombudsman column that you have.

Mr. Woods. That's right.

Senator LONG. Do you think it is a reluctance on the part of the citizens? We know that many of the agencies are anxious to help the citizens and want to solve their problems for them. Apparently, there is a reluctance or a lack of knowledge on the citizen's part as to where to go to get assistance from an agency.

Mr. Woods. That is true. This exists in every respect. Believe me, we aren't talking necessarily about poverty-stricken people. It is amazing the number of fairly sophisticated individuals who do not know how to relate to government. I think the whole specter of government has a tendency to frighten them, as I say, in a low key way, but it is there, nevertheless. The feeling is that they have to go through something and that there is a built-in barrier.

When you juxtapose this against the normal areas of bureaucracy that exist, then this is multiplied.

I think it is very essential that people get a helping hand, because this is their company; they are stockholders; and they ought to be able to relate to their company, in the most expedient manner possible.

Senator LONG. I recall that in the report of the Riot Commission some time ago they mentioned that they thought one of the problems was the lack of communication and the lack of a method for the people in those communities where they had had riots and had had trouble

of being in contact with the government, of knowing what to do or whom to contact. They don't know where to go with their grievances and their problems.

What would be your opinion as to an ombudsman or some of his people in an area of that kind who would have the confidence of the local citizens?

Mr. Woods. I think it would serve a useful purpose. I spoke to the Riot Commission at their invitation when they had the national media in. I have been to Poughkeepsie, N.Y., and this one of the things that I said to the Commission at this time as one of my observations. I would certainly feel that this kind of service would be very useful, very meaningful.

Senator LONG. Are there any questions?

Mr. KASS. I don't know that it is a question, Mr. Chairman, but I think Mr. Woods made a very significant contribution this morning by pointing out that the ombudsman is not necessarily geared for the poverty-stricken area, but perhaps all levels of citizens can have access to the concept, to the office.

Senator LONG. I agree with that entirely and I think that is a very important observation. It is not just for one level of society. We know even in the little towns they need an alderman or someone to help them fight city government.

Mr. Woods. That's right. I have found in my own experiences during my tenure here in St. Louis as a newspaper person that the real—should we say operators—the “hustlers,” prey upon people who have no knowledge of how to deal with government. They are not preying on poor people because the poverty-stricken people don't have the resources to support the “hustlers.”

I have had some experience with people dealing with city government on a simple traffic ticket. I had a gentleman once who brought me a simple traffic ticket for which there was an \$8 fine involved, \$5 and \$3 court costs. Somebody had gotten hold of him and he had given them his \$8. He was going down to pay this ticket and he came to me and said, “I have to go out of town. So-and-so is going to take care of this for me.” I said, “How long has he had it?” He said, “About 2 months.” I said, “How did he get it?” He said, “I was down in the courtroom to pay it and he told me he would fix it for me and I gave him \$8.”

I said, “Let's look at the rationale here. You were down in the building to take care of it and he said he would fix it for you for the \$8. Why did you give him the money?”

This man was a fairly articulate man. All of a sudden he realized he had been had. As I said, when the “hustlers” and the operators prey upon people, they don't prey necessarily upon the poverty-stricken people; they prey upon the sophisticated people because I think they are the ones who do not touch government normally. Certainly they may get an FHA loan, but then they have the bank between them and they know the banker and they know this person, but when it gets down to dealing with government, you see, all kinds of things are possible without the necessary aid and advice and counsel.

Senator LONG. Over the years I have tried to make my Senate office a service to the people. My staff and I go out of our way to pay special

attention to minor requests that any citizens have. It is interesting that while you get four letters, we get hundreds of them. It literally runs into thousands a month. Some of the requests are minor, but they are important to those people and the staff goes out of the way to help them.

We think with an ombudsman, Mr. Woods, and I would like your opinion about it, it would help our office and it would help the offices of the other Senators and Congressmen to function more efficiently. It would be here on the ground floor and the man could follow through.

We may have just the one complaint from one individual about a certain matter, but would it not be much more satisfactory to the local citizen to have a man right here they could come to and talk face to face?

Mr. WOODS. I think so, providing he would be able to cut through the redtape and achieve some of the things that were necessary.

Senator LONG. Have the confidence of the people; know that he is on their side and not on the side of government.

Mr. WOODS. That's right, and he only could build their confidence by being able to accomplish something.

Senator LONG. And he would have the authority to move into the agencies and talk to them.

Mr. WOODS. I think so.

Mr. OHLHAUSEN. Mr. Woods, I wonder if you could give us a little more detail on the type of questions or complaints the Sentinel received.

Mr. WOODS. At this point they have not been of a Federal nature. They have involved themselves in a State nature, a local nature, city. There is one I remember in particular that wanted to know how to get the housing authority department to get a place. They had been told that they had to pay a fee. What we do, we ask them to submit their names and addresses and this sort of thing. We found that this was simply an old wives' tale, nobody in the authority had told them this.

We had one this week in which a gentleman wanted to know how he could move from one building in the authority to another one. He didn't even know the basic machinery for this.

I am giving this now purely from the level of the city government, but I'm certain as we get these letters the Federal Government will enter into it. We are only 3 weeks old, so our experiences are rather new.

Mr. OHLHAUSEN. Would you say that most of the requests are requests for information rather than complaints?

Mr. WOODS. It is information. This is the general tone. It is information. You get the complaints, certainly; there is always the complaint; but normally it is for information, direction, counsel, this kind of thing.

Mr. OHLHAUSEN. Thank you, sir.

Senator LONG. We have many problems, Howard, with people with pensions. Since I stepped into the courtroom this morning I have already had one man talk to me about it. He talked to some of my staff about a problem that he has with his pension, which we certainly want to help him with. But if there was an ombudsman here, he

would have the opportunity to go over his problem with him face to face and maybe be able to solve it.

Mr. Woods. Perhaps so.

Senator LONG. Thank you very much for being here. We appreciate your contribution to this hearing. It has been very helpful.

Mr. KASS. With Mr. Woods' permission, we have an issue of the Sentinel and the "Aid-a-Nabor" column which I would like to have put in the record.

Senator LONG. I will direct it be put in the record at this point.
(The document referred to follows:)

[From the St. Louis Sentinel, Mar. 23, 1968]

SEND PROBLEMS TO AID-A-NABOR

Aid-a-Nabor solves problems of a public service nature, cuts red tape, investigates complaints. To get results, write Aid-a-Nabor, c/o St. Louis Sentinel, 3000 Easton Ave., St. Louis, Mo. 63106. All letters must be signed, but names, addresses and telephone numbers will be withheld. No telephone calls accepted.

I bought a bedroom suite from a neighborhood furniture company. The bed is sagging in the middle and the man won't fix it up. I have talked and talked and they won't help me.—R. N.

A. We talked with the dealer. You bought the furniture on Dec. 16. You called the company on Jan. 11 and they sent a repairman out to see the bed. It was obvious from the condition of the bed that the damage came from some source other than a defect in the bed. Besides, you are delinquent in your account by two months. The company will be glad to talk to you again about the problem.

* * *

Two boys came to my house and told me that they were working their way through school. I gave them a subscription for some magazines. As yet I have not received them. What should I do?—O. P.

A. Aid-a-Nabor has talked with the subscription departments of the magazines in question. They are coming within a short time. Hereafter, however, it might be well to check the credentials of salesmen at your door.

* * *

I would like to subscribe to the St. Louis Sentinel. How can I go about it? I saw the first issue at the Urban League dinner last week.—S. T.

A. You may clip a coupon in this week's Sentinel and mail it to the offices at 3000 Easton Avenue. Be assured that the Sentinel will be on the way.

* * *

Where can I go to get one of the public housing units? I have been told that I must see my committeeman to get on his list. Isn't there some other way. I don't have the \$5 to spare.—R. P. W.

A. Pay no heed to anyone who asks you for money to get in a public housing project. There is no charge for this. File an application at the St. Louis Housing Authority offices, 1300 Delmar blvd. As soon as there is a vacancy to fit your family's needs, they will house you.

* * *

Where can I get tickets to the Hawks game? I am new in the city.—O. B.

A. Check the Hawks ticket office in the Arcade Bldg., 8th and Olive streets. They will be happy to serve you.

Senator LONG. Thank you, Mr. Woods.

Our next witness is Mr. Stephen Skrainka, an attorney, and I understand he is accompanied by Mr. Charles Clayton, also an attorney in St. Louis, who have had some problems that we'd like to discuss with them. We would be happy to hear them at this time.

STATEMENT OF STEPHEN W. SKRAINKA, ATTORNEY; ACCOMPANIED BY CHARLES CLAYTON, ATTORNEY

Mr. SKRAINKA. Senator Long, I am Stephen W. Skrainka. I am an attorney, and I am appearing before you today as vice chairman of the American Civil Liberties Union of Eastern Missouri, and as chairman of its legal panel.

Mr. Charles Clayton, an attorney from St. Louis, is also with me today. He does not represent the Civil Liberties Union, but he has some similar problems which he would like to tell you about.

I am also authorized to testify today as a representative of the organization with which we are nationally affiliated, the American Civil Liberties Union, which is, as I said, a national organization.

Since 1920, these private, nonprofit membership organizations have been actively engaged solely in the defense of the Bill of Rights and the Civil War amendments. Our interest in testifying today is prompted by our longstanding concern with serious broken and dangerous violations of constitutional rights, particularly violations of the first, fifth, and sixth amendments, which are occurring in the administration of the selective service laws and regulations, and most particularly today, the unconstitutional denial of the right to counsel in hearings before the local boards held by the selective service.

While the ACLU of Eastern Missouri has not as an organization, taken an official position on Senate bill 3123 relating to the creation of the Office of Administrative Ombudsman, or any of its predecessors, the national organization has taken a favorable position.

I have furnished to your staff copies of that policy statement, No. 230, and I will not read it into the record. I would like it placed in the record. It is based on action of the national board and a statement made before the Senate Subcommittee on Administrative Practice and Procedure in 1964.

Senator LONG. Without objection, it will be placed in the record at this point.

(The document referred to follows:)

POLICY No. 230.—OMBUDSMAN

The Union urges legislative consideration of the possibilities of adapting the Scandinavian "Ombudsman" concept for use in this country as a means of assuring fair dealing for individuals adversely affected by the failure of an administrative agency to carry out procedural due process safeguards. At present the only recourse available to a person so affected is judicial action through the appellate courts, perhaps as far as the Supreme Court, a burden obviously beyond the resources of most private citizens. The ACLU feels that the "Ombudsman," or something like it, might be the means of obtaining prompt and inexpensive redress to correct procedural abuses. [Board Minutes, April 27, 1964; ACLU Statement before Senate Subcommittee on Administrative Practice and Procedure.]

Mr. SKRAINKA. As indicated by that statement, our main interest in an ombudsman was the correction of the failure of administrative agencies to carry out properly due process safeguards. The problems that we note today relating to the Selective Service are of that kind. We feel they should be promptly investigated and remedied by appropriate action by Congress or possibly by an ombudsman.

In general, I do not intend this testimony as a criticism of any local board clerks or officials who in many cases are performing in a dedicated manner to the limits of their capacities. Our observation, how-

ever, is that their capacities are limited; the complexities of the Selective Service System are such that even experienced personnel board members do not possess the knowledge, training, understanding, and time necessary to handle the many important cases which are not routine.

Many of the provisions of the Military Selective Service Act of 1967 and the regulations have received extensive interpretation, elaboration, and definition by the courts, but this information is falling on deaf ears because the traditional methods for communicating the courts' directives to the local boards and appeal boards are lacking. The registrants are denied counsel to make presentation on their behalf.

In order to understand these problems——

Senator LONG (interrupting). Let me interrupt you here in that statement. What type of hearing are you talking about where they can't have attorneys?

Mr. SKRAINKA. Senator, I was just going to explain.

Senator LONG. Excuse me.

Mr. SKRAINKA. The key to the Selective Service System is the local board. The local board registers the individual, classifies him, selects him, and orders him to induction. But the key to selection and induction is classification. Normally, when an individual is first registered, he is not classified for a certain period of time and then he will receive a classification. Very often these days it is a student classification, or it may be 1-A, which is the classification for availability for service.

With that classification card comes a notice which is Selective Service form 217. I have furnished a copy of that form to your staff, and I believe it would be appropriate for that also to be a part of the record. There are two particular points relating to that form.

Senator LONG. Without objection, this will be placed in the record at this point.

(The document referred to follows:)

SELECTIVE SERVICE SYSTEM

ADVICE OF RIGHT TO PERSONAL APPEARANCE AND APPEAL
Selective Service Board No. -----

[Local board stamp]

Date of mailing

(Month) (Day) (Year)

Selective Service No.

Enclosed is your Notice of Classification (SSS Form 110). Your right to ask for a personal appearance and an appeal within-----days is prescribed on the reverse side of that Notice of Classification.

Each local board has available a Government Appeal Agent to aid you with a personal appearance, an appeal, or any other procedural right. The Appeal Agent or his representative will give you legal counsel on Selective Service matters only at no charge.

If you should desire a meeting with him, this office will arrange a time and place for such meeting upon request.

(Member or Clerk of Local Board)

Mr. SKRAINKA. The form is entitled "Advice to Right of Personal Appearance and Appeal."

When a registrant is notified of his classification, this means that the local board has reviewed his file, and, without any testimony or information other than what is in the file, it has already determined that he belongs in the classification that they have placed him in, so his right of personal appearance is essentially a kind of rehearing after they have already made up their minds once.

He gets this form with his notice of classification. And you will notice it says: "Right to personal appearance and appeal." Then it says: "Your right to ask for a personal appearance or an appeal within 30 days is prescribed on the reverse side of that Notice of Classification."

I don't know how that would read to a lawyer. As I read it, I become a little concerned and suspicious because I wonder what is a personal appearance and what is an appeal right. If I were an 18-year-old or a 20-year-old, and I have seen this happen on numerous occasions, their immediate reaction is, "I don't like this. I will appeal." Right there, they have waived the right to the only hearing they will ever get anywhere, including in court, because the only hearing they ever get is this right of personal appearance.

To that extent, I think the form is quite misleading in not spelling out that these are separate rights of personal appearance and appeal.

Senator LONG. Is this by law or by regulation?

Mr. SKRAINKA. Is what by law—that this is the only hearing they ever get?

Senator LONG. Yes.

Mr. SKRAINKA. It is by law and by regulation. It is initially by regulation, and the problems of scope of review, once you get to court, are matters which have been determined by the court to be required by congressional action.

Senator LONG. In this second paragraph of this "Advice to Right of Personal Appearance and Appeal," it says that the local board shall have available a Government appeal agent to aid you with personal appearance, appeal, or any other matter. Is he a lawyer?

Mr. SKRAINKA. According to the regulations, he shall be a lawyer, if possible.

Senator LONG. At that point, this man can't appear with his counsel if he cares to?

Mr. SKRAINKA. He cannot. He is affirmatively prohibited by regulation, and I have furnished a copy of the regulation to your staff.

Senator LONG. He can't bring his own attorney to that hearing, but, if he uses an attorney, he must use an appeal agent that the agency furnishes him?

Mr. SKRAINKA. That would be what this form seems to say, Senator, but in practice he doesn't even have that right, which I want to explain.

This whole thing is a very interesting thing. Unfortunately, I think, there is a facade of due process, and it is one that looks fine until you press into the detail, and then you become very upset. The registrants who have experience in the unusual cases—

Senator LONG (interrupting). I don't want to admit that it looks fine without even going into the detail. It looks to me like there is some problem with it.

At this point in the record shall be placed, without objection, excerpts from the selective service regulations dealing specifically with "Government Appeal Agents" and "Appearance Before Local Boards."

(The material follows:)

[Excerpt from Selective Service Regulations, Packet No. 67-2, October 16, 1967]

[Pp. 1604-11, 1604-12, 1624-3, 1624-4]

GOVERNMENT APPEAL AGENTS

1604.71 *Appointment and Duties.*—(a) For each local board a government appeal agent shall be appointed by the President upon recommendation of the Governor.

(b) One or more associate government appeal agents may be appointed by the President for each local board when either the government appeal agent appointed for that board or the local board requests such assistance and the Governor, being of the opinion that the circumstances warrant such action, recommends appointment. Whenever an intercounty local board is established an associate government appeal agent shall be appointed by the President, upon recommendation of the Governor, for each county included within the local board area.

(c) Each government appeal agent and associate government appeal agent shall be, whenever possible, a person with legal training and experience.

(d) It shall be the duty of the government appeal agent and in his absence or inability to act or at his direction, the duty of the associate government appeal agent:

(1) To appeal, as prescribed by the regulations in this chapter, from any classification of a registrant by the local board which is brought to his attention and, in his opinion, should be reviewed by the appeal board.

(2) To attend such local board meetings as the local board may request him to attend.

(3) To suggest to the local board a reopening of any case where the interests of justice, in his opinion, require such action and to submit to the local board, with such suggestion, the information obtained by his investigation, of the case which has caused him to arrive at his decision that the case should be reconsidered.

(4) To render such assistance to the local board as it may request by advising the members and interpreting for them laws, regulations, and other directives.

(5) To be equally diligent in protecting the interests of the Government and the rights of the registrant in all matters.

(e) The State Director of Selective Service may authorize any duly appointed government appeal agent or associate government appeal agent to perform such duties for any local board within the state.

INTERPRETERS

1604.81 *Authorization and Oath.*—(a) When necessary, the local board is authorized to use interpreters.

(b) The following oath shall be administered to an interpreter each time he is used by a local board:

You swear (or affirm) that you will truly interpret in the matter now in hearing. So help you God.

* * * * *

PART 1624—APPEARANCE BEFORE LOCAL BOARD

1624.1 *Opportunity To Appear in Person.*—(a) Every registrant after his classification is determined by the local board, except a classification which is determined upon an appearance before the local board under the provisions of this part, shall have an opportunity to appear in person before the member or members of the local board designated for the purpose if he files a written request therefor within 30 days after the local board has mailed a Notice of Classification (SSS Form 110) to him. Such 30-day period may not be extended.

(b) No person other than a registrant shall have the right to appear in person before the local board, but the local board may, in its discretion, permit any person to appear before it with or on behalf of a registrant: *Provided*, That if the registrant does not speak English adequately he may appear with a person to act as interpreter for him. *And provided further*, That no registrant may be represented before the local board by anyone acting as attorney or legal counsel.

1624.2 *Appearance Before Local Board.*—(a) At the time and place fixed by the local board, the registrant may appear in person before the member or members of the local board designated for the purpose. A notation that he has appeared shall be entered on the Classification Questionnaire (SSS Form 100).

(b) At any such appearance, the registrant may discuss his classification, may point out the class or classes in which he thinks he should have been placed, and may direct attention to any information in his file which he believes the local board has overlooked or to which he believes it has not given sufficient weight. The registrant may present such further information as he believes will assist the local board in determining his proper classification. Such information shall be in writing, or, if oral, shall be summarized in writing by the registrant and, in either event, shall be placed in the registrant's file. The information furnished should be as concise as possible under the circumstances. The member or members of the local board before whom the registrant appears may impose such limitations upon the time which the registrant may have for his appearance as they deem necessary.

(c) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board shall consider the new information which it receives and, if the local board determines that such new information justifies a change in the registrant's classification, the local board shall re-open and classify the registrant anew. If the local board determines that such new information does not justify a change in the registrant's classification, it shall not reopen the registrant's classification.

(d) After the registrant has appeared before the member or members of the local board designated for the purpose, the local board, as soon as practicable after it again classifies the registrant, or determines not to reopen the registrant's classification, shall mail notice thereof on Notice of Classification (SSS Form 110) to the registrant and on Classification Advice (SSS Form 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter.

(e) Each such classification or determination not to reopen the classification made under this section shall be followed by the same right of appeal as in the case of an original classification.

1624.3 *Appearance Before Local Board Stays Induction.*—The local board shall not issue an order for a registrant to report for induction either during the period afforded the registrant to request an appearance in person before a member or members of the local board or, if the registrant has requested such an appearance, during the period such appearance is pending. Any order to report for induction which has been issued during either of such periods shall be ineffective and shall be cancelled by the local board.

Mr. SKRAINKA. I think the place to begin is with this regulation, 1624.1(b) which says that no person other than the registrant shall have the right to appear in person before the local board, but the local board may, at its discretion, permit any person to appear before it with or on behalf of a registrant, provided he gets an interpreter if he doesn't speak English and provided further that no registrant may be represented before the local board by anyone acting as attorney or legal counsel.

In the first place, the regulation seems to acknowledge that these 18- or 20-year-olds may be a little confused about the regulations which, in my opinion, are second only to the Internal Revenue Code in being complex and ambiguous. They say you can bring an adviser, if we agree. I am aware of local boards that exercise their "discretion" by uniformly ruling that no one may come besides the registrant. So while you read this thing, and it says he may bring somebody else as

long as it isn't an attorney, in practice many boards say you can't bring anybody else; that's the way we exercise our discretion.

Then, assuming he brought somebody else, it would have to be somebody like a friend, a teacher, a minister, who is not trained in the law and is not trained in explaining to the local board what the controlling criteria may be in these difficult cases.

Senator LONG. Let me get this straight in my mind. He can appear, though, with this Government appeal agent?

Mr. SKRAINKA. I will come to the Government appeal agent. The regulation is 1604.71(d)(5), I believe, and I have furnished a copy of that to your staff.

The first thing to say about the Government appeal agent is some boards don't have them. For instance, there is a board out in Clayton now that for almost 6 months has been trying to get a Government appeal agent to serve. They have almost 25,000 registrants, and they have had no Government appeal agent. On the other hand, they have been classifying and drafting people right along.

Mr. KASS. Do they waive the lack of right of counsel?

Mr. SKRAINKA. Do they?

Mr. KASS. In other words, do they allow counsel to come in at that board?

Mr. SKRAINKA. Oh, no. For instance, there is a regulation that if there is no Government appeal agent, the State director can designate some other Government appeal agent from some other board to represent or act for the individual in his case.

Senator LONG. They are all Government employees, aren't they?

Mr. SKRAINKA. No, they are not. These are volunteers and that's why they can't get one.

Mr. Green is laughing because his brother is a Government appeal agent, and he knows what the burden of a Government appeal agent is. These people are supposed to volunteer their time to do a conscientious job in representing both the registrant and, under the regulations, looking out for the interests of the Government. The regulation is perfectly clear that this fellow is supposed to wear two hats. He is supposed to represent the registrant very vigorously; he is also supposed to represent the Government, an idea which I think is totally foreign to our idea of counsel in the adversary system.

Mr. KASS. Do the local boards have in-house counsel?

Mr. SKRAINKA. Not other than the Government appeal agent.

Mr. KASS. Forgetting the fact that a board member may, in fact, be a lawyer.

Mr. SKRAINKA. In general, board members are not lawyers.

Mr. KASS. But there is no specific in-house lawyer representing the Selective Service Board?

Mr. SKRAINKA. No. Generally if they want advice and their Government appeal agent can't give it to them, they ask for the State director to furnish it.

Mr. KASS. The first avenue of approach, then, would be to the Government appeal agent?

Mr. SKRAINKA. That's correct.

I know of a case which I handled, coming out of Cairo, where the Government appeal agent who was to be equally diligent in represent-

ing the rights of the parties was a former prosecutor, and he was introduced to the registrant as the board's attorney. He conducted himself as you would expect a former prosecutor in that situation would conduct himself.

Senator LONG. I know what you are talking about. I am a former prosecuting attorney, and I have also served as an appeal agent in years gone by.

Mr. SKRAINKA. Aside from the fact that the Government appeal agent may not exist, and aside from the fact that he is supposed to represent both parties, General Hershey has taken it upon himself as of last October or November to write a directive to all Government appeal agents asking them please to report any violations of the law that they may learn on the part of a registrant.

Certainly if a man is held out, as this notice holds him out, to furnish free legal counsel in selective service matters, it seems to me that this directive is patently in violation of any idea that there be an attorney-client relationship. It is in direct violation, of course, to the canons of ethics. All of this has been pointed out to General Hershey, and it seems to be of no significance to him.

Mr. KASS. Will the Government appeal agent ask the young man coming before the board to tell him his problems or to confide in him?

Mr. SKRAINKA. As a matter of course?

Mr. KASS. Not necessarily as a matter of course, but if there is a problem, and they want to talk to the Government appeal agent, how does he hold himself out? In other words, a young fellow, 18 years old, has a problem and he comes to the local Government appeal agent. What does the Government appeal agent tell him? Does he tell him his constitutional rights?

Mr. SKRAINKA. If you mean does he get *Escobedo* warnings, the answer is no.

Mr. KASS. I don't mean in that sense, but does he tell him, "I am not your lawyer per se," or, "Anything you tell me can be held against you," or, "I can report this to General Hershey"?

Mr. SKRAINKA. I don't know what the answer to that question is. From my minimal experience, I think there are no such cautions or warnings given. But I'm not a Government appeal agent, and I have had great difficulty in getting any of my clients to a Government appeal agent, because, while they are held out, they are, in many cases, quite inaccessible.

Mr. KASS. Do you think that if the law could be changed, the Government appeal agent should inform the young person that this is his position; that he wears two hats?

Mr. SKRAINKA. I think, frankly, the regulation in this respect is absurd. I don't think any man can be equally diligent in representing the Government and representing the rights of the registrant. I wouldn't want the job. I admire the people who try to do this conscientiously. I think they are few. The obvious point is to change the regulation so that he performs the function which he, in fact, performs and that is advising the board, and then get somebody else to advise the registrants.

Mr. KASS. And there is one Government appeal agent per board?

Mr. SKRAINKA. There is supposed to be a minimum of one Government appeal agent per board. However, under the regulations, they

can appoint as many as seem necessary, provided they can find the volunteers, as an assistant or an associate Government appeal agent.

Mr. KASS. Despite the caseload, therefore, it is possible that a young man, even if they have the minimum of one, may not have access to the Government appeal agent because he is either on another matter or he is doing his own personal business?

Mr. SKRAINKA. That's right; that's right.

I think, though, in order to understand just how serious this is, one has to view the selective service process as a whole. As I started to say, you get this notice and you find you either have a right to a personal appearance or an appeal. If you are smart enough to figure it out, you know that what you want to ask for is a personal appearance and not an appeal.

If you get a personal appearance, if you ask for one, you will be accorded one. The time spent with you will range from something like 2 minutes to 30 minutes as a maximum. There are rare exceptions. It is a relatively brief hearing.

As the regulations make clear, the board has complete control, first of all, over how many board members will sit and listen to you; secondly, how much time they will give you. About the only thing they can't do is refuse to let you discuss any classification that you want to bring up. Many times registrants are saying they are entitled to a 2-S deferment, but if they are not, they are, for example, physically handicapped, or they should be a conscientious objector or something of that nature.

I have had boards say, "We don't want to hear about this sort of stuff. Just tell us about the fact that you think you are a conscientious objector." I would suppose that if there were a lawyer present at that point representing the registrant, the board would not take that attitude. When they do, they are, of course, inviting reversal from the court subsequently.

Mr. KASS. When the young man comes before the local board, he is not entitled to a lawyer, but is there a transcript taken of his discussion?

Mr. SKRAINKA. Many boards have secretaries sit in, and the transcripts I have seen coming out of these hearings are totally unsatisfactory. They are generally jibberish. They are misleading, and they are relied upon by the appeal board in making a determination. So there is no record, as such, kept.

Under the regulations—

Mr. KASS (interrupting). For the record, that's your own personal opinion as far as the transcript?

Mr. SKRAINKA. I have seen enough to think that may be a fair characterization. I don't have nationwide experience. It may be there are some boards that actually have a court reporter.

Mr. KASS. My question is directed to whether there is a regulation that provides for the local board to take transcripts.

Mr. SKRAINKA. To the extent that I can understand the regulations, the regulations seem to prohibit it, and the reason I say that, I could give you a number of regulations, but the basic regulation on this point says the registrant shall submit his information in writing or, if oral, he has to summarize it and place it in his record within a reasonable time, which means that as a practical matter as soon as the registrant

gets done testifying he has to run out, write down the notes as best he can, and then throw it in his file.

I had one Government appeal agent, who is supposed to be equally diligent in protecting the rights of the parties, say that the registrant who had been told that this was a regulation by an attorney and that he ought to do this, that the registrant's action in so filing this summary showed he had changed his mind; he was obviously trying as a second thought to prejudice the appeal board. This was shown by the fact that he put this material in the file after the close of the hearing which, of course, the regulation required him to do. The Government appeal agent, without notifying the registrant involved, placed a letter in his file, as I say, without notice, saying that this obviously indicated his lack of sincerity.

Mr. KASS. Mr. Chairman, I hate to prolong the questioning on this point, but having never sat physically in an appeal board or gone up before a board myself, I don't quite understand the procedure.

Let's say the young man gets this letter and he decides he wants to go for a personal appearance before the board. Is it a formal hearing? I realize it is not covered by the Administrative Procedure Act, but is it a formal hearing whereby he is sworn in and there is testimony taken and there may or may not be a court reporter? Or is there a minimum number of people required at the board, or is it sort of an ad hoc thing?

Mr. SKRAINKA. You realize, of course, that I am testifying second-hand because I have always been excluded from one of these. However—

Mr. KASS (interrupting). From your knowledge.

Mr. SKRAINKA. From my knowledge I would say it is a highly informal proceeding, generally quite brief. In my experience all of the board members who can be present generally try to be present, although under the regulations they could, as I said, have just one person there.

The registrant, as far as I know, is not sworn. No witnesses are presented, except that if the registrant wants to present a witness, the board may, at its discretion, permit him to do so, and there are boards who uniformly exercise their discretion not to permit him and for that reason I advise any registrant if he has something he wants a witness to say, he had better bring it along in writing to make sure he can submit it, even though he would prefer to have the board meet the person.

There is no record required to be kept by the regulations. The registrant is required to summarize any oral evidence put in at that point, and then the board retires and a quorum of the board must consider whether to reclassify the registrant based on the material submitted. It is highly informal proceeding. The board gives no reasons for its decision, and if you try to find the reasons, you are generally unsuccessful.

Senator LONG. Of course, I think we ought to make it clear that this is not the fault of the local boards. Those members of the local boards have rendered very distinguished service, a job that 99 people out of 100 wouldn't even consider wanting or doing, but they are just following the rules and regulations that are laid down in Washington.

Mr. SKRAINKA. I agree with you, Senator, and I think that is quite true. Most of these people are quite dedicated, quite patriotic, and

they are performing a chore which most of the rest of us would not want to perform. They deserve our thanks for that.

I think it is the fault of the system, the regulations, and probably the man who was primarily responsible for designing those.

Senator LONG. Counsel suggested that it is not 99 out of 100; it is 1 out of 100 whose rights are perhaps being violated.

Mr. SKRAINKA. I think that's also true, and that's why it is difficult to understand the great reluctance on the part of the Selective Service System to allow a person to have counsel, because it is, as you say, 99 out of 100 or 999 out of 1,000 that are routine cases, that either the fellow is in school or he isn't in school and there is no problem. In fact, the clerk could make the classification and not bother the board.

But it is in that one case where it is difficult, where he is asking for a ministerial exception and there is a question of how much time he spends in that, or where he is asking for a conscientious-objector classification, where the issues are extremely subtle and the question of sincerity is a difficult one to judge.

In these kinds of situations, I don't think you would want to have a 20-year-old or an 18-year-old trying to decide what he should tell the board, what witnesses does he want to bring, what does he ask them, how do they respond. It is a totally unreal world in that context.

To spell out the remainder of the system, because this is what makes the failure to have counsel of the local board so flagrantly unconstitutional, in my opinion, after the personal appearance, the registrant gets another letter. It is the same letter, and this may thoroughly confuse him. But if he reads the fine print he finds that this means he has 30 days to appeal if he has already had a personal appearance. It doesn't mean he can have another personal appearance.

He then has 30 days to state the reasons why he thinks his classification is wrong. This goes to an appeal board. In Missouri there are two appeal boards, one for the eastern district, one for the western district, divided along the judicial lines, and each appeal board has five members.

I had the pleasure of submitting a 43-page memorandum to the appeal board in a very complex case in which there was a recommendation from the Department of Justice, based on nonexistent facts. It would have taken anybody, I am satisfied, this was a very thick file, a good 24 hours with nothing else to do to study this file and arrive at a reasonable conclusion. The appeal board acted the day after my memorandum was filed. They acted on numerous other cases at the same time. I cannot determine how many others, because I have asked for the information and I was told they didn't have the—

Senator LONG (interrupting). Was that before the freedom of information bill was passed?

Mr. SKRAINKA. No. I didn't press the point. I think if I pressed the point, I probably could have found out, but the attitude was there.

Needless to say, the classification was denied that next day. When I asked why, again, you get no response. You were simply told you didn't meet the requirements of the regulations. In this particular case it was a conscientious objector, so there was a question of sincerity and there was also a question of whether his beliefs were moral or religious. The regulations require that one be able to separate those two. So you have no idea why you were turned down.

If you refuse to submit to induction, and an induction order will follow from the classification, if you refuse to submit to induction, if you file a motion for a bill of particulars in court and ask why you were turned down, you will be told the burden under the regulations is upon the registrant to establish to the satisfaction of the appeal board that he is qualified for some classification other than 1-A; and the registrant failed to do so, which, of course, is no reason whatsoever.

Here is where the real crunch comes. When you get into court the only factual issues that are really open to you are whether you went down to the induction center, went through the line, and then refused to step forward. Anything beyond that is foreclosed.

There was one time at which it was thought that the courts had no power whatsoever to set aside these orders, but after World War II was over the Supreme Court in the *Estep* case determined that where there was no basis in fact whatsoever in the record before the local board or appeal board for the classification, the board would be held to have acted beyond its jurisdiction, and, therefore, the court could in that extreme event set aside the classification and the induction order.

Senator LONG. Do you see anything in your thinking that, in view of a national emergency or in a national defense emergency, that there would be any waiving or that there should be any difference in the individual's rights than there would be in ordinary times in ordinary matters? Do you place this draft procedure on any different basis than we would just as an ordinary administrative agency?

Mr. SKRAINKA. I think not, Senator, and for these reasons. I recognize the force of that argument and, obviously, it has been what has influenced the philosophy today. Congress, after all, has created certain deferments. They have created certain exemptions and they have said to the local boards, "You find out the facts and you put the people in these classifications." I don't think the adequate response to that is, "Well, boys, we don't have time to do a good job. We'll just do a sort of slipshod job, and those we miss on, that's the price of having a national emergency."

First of all, in terms of the number of people with these problems, they are relatively few. Second, the regulations themselves say that you can have an adviser in the discretion of the board. If you ask the Selective Service people why you don't get counsel, they don't tell you, you don't need one; they tell you, you have an adequate substitute. They say you have the Government appeal agent, you have clerks, which in my experience are not adequate, and you have these so-called advisers who sometimes are lawyers; sometimes are not. Most of them don't even know they have been designated as advisers and most of them don't do very much, and they rarely get the case referred to them.

Senator LONG. It would seem to me that there is no time in a young man's life, or nothing in his life that might affect him more than the decision that might be made there about his draft status.

Mr. SKRAINKA. Absolutely.

Senator LONG. It would seem to follow that there would be no more important time in his life that he would need to be represented by competent counsel of his own choosing.

Mr. SKRAINKA. I can think of no more significant determination as to whether this boy is going to be put in class 1-A or not, because induction follows from that as surely as night follows the day. From that he goes to Vietnam, and he may or may not be killed.

Senator LONG. And we aren't talking now about beatniks and rabble rousers and that group. We are talking about the legitimate claim, the young man who is sincere and has a legitimate claim. Congress has recognized and has laid down those rules.

Mr. SKRAINKA. This is a question of implementation of rules and regulations which Congress has established. What I am saying is in the application in the nonroutine case, the system does not work. One reason it does not work, in fact, in my opinion, the main reason it does not work, is that the registrants are denied counsel.

What good does it do, for instance, for the Supreme Court to issue a long opinion, as they did, for instance, in the *Cedar* case, where they go on with very precise directives to local board members as to what they ought to consider and what they ought not to consider, and it is a beautiful opinion, but there is no lawyer to tell the local board members; in this case you ought to read that opinion. The Supreme Court is talking to itself, and there is no way for this law really to be implemented, other than to give these people counsel.

Senator LONG. Mr. Ohlhausen.

Mr. OHLHAUSEN. Has the Supreme Court ever touched on the right to counsel at all?

Mr. SKRAINKA. No; the Supreme Court has not, and I might say that the history of Selective Service cases has shown that the majority of reversals are not based on substantive matters; that is, whether the guy was really qualified to be 1-A or 1-O or whatever. They have turned on procedural errors for precisely this reason, that there is no lawyer to say, "Look, fellows, you have this regulation and you really ought to consider it."

You get cases reversed on a question such as this: A fellow has a separation from his wife. His wife has the children. There is a regulation 3-A classification where he would be if he and his wife were living together and they had children. We now have a cutoff date as to when they had the child, and he would be entitled to a 3-A classification. As soon as he separates and the children are no longer living with him, he falls into a different classification. The one I mentioned first is mandatory. The second classification is a hardship classification where the board has the discretion, and they can put him in this 3-A classification in spite of the separation if they determine that the impact on the children would be such that it would not be in the national interest to take him away.

You have cases where the courts have reversed boards on the simple ground that they thought once he was separated, it was automatic they had to make him 1-A. Any lawyer in that proceeding would obviously have said, "Here is the regulation. You have discretion. You can make a decision one way or the other." In my opinion, it would actually assist in raising manpower; it would cut down on the number of these cases going to court; and it could clearly cut down considerably on the resistance on the part of the youth to the draft, because what they meet is a sort of arrogance and nonreasoning fiat, you will do thus or so.

No matter how much a local board clerk may try, this is the result. They get no response. They are not told why. They are not allowed to present their case in a reasonable manner, and the kids know it.

Senator LONG. I am sure you feel, do you not, that a Government appeal agent of this kind—one who is employed by the Government or is a part of a particular agency—must feel that his loyalties are strangely divided when he must act on behalf of the Government as well as trying to represent this man on an appeal basis?

Mr. SKRAINKA. He is not only a part of it, but he is, by regulation, out of his five specified duties, four of them represent duties which he is to perform for the benefit of the board. It is the fifth one that says, by the way, while you are doing that, be equally diligent in representing the registrant.

Senator LONG. The Internal Revenue Service has the fine-spun theory that they have an appeal board, I believe that is still hired and employed by them. They say, "They are no part of us. They have an office across the hall." You don't think the taxpayer would get a fair shake over there either?

Mr. SKRAINKA. I would have to know more about the particular fact, but on the face of it, I would be inclined to say that these principles which we have embodied in the Administrative Procedure Act don't sound like they are being followed.

Senator LONG. You heard some question about someone wearing a white hat and one a black hat. Apparently both of them wear black hats.

Mr. KASS. Do you feel that if there were a right of counsel at the local board level that this would raise or lower the number of cases that got into court, or would it have any effect?

Mr. SKRAINKA. I think there is no question but that it would lower them.

Mr. KASS. Could you briefly elaborate why?

Mr. SKRAINKA. Because, as I pointed out earlier, the majority of these cases that are won and lost in the courts are won or lost, or won, rather, on procedural errors. These procedural errors occur because the boards and the clerks, no matter how conscientious they may be, just miss the boat every now and then.

Mr. KASS. Furthermore, at the next level there is a lawyer allowed anyway, at the appeal level?

Mr. SKRAINKA. No; there is no lawyer allowed.

Mr. KASS. Where is there a lawyer permitted?

Mr. SKRAINKA. A lawyer is never permitted as far as I can see, even when you are indicted. In essence they say, "Yes; you get a lawyer." But, as I pointed out, the record has already been made. The only record you can make on the substantive issue of whether he is in the right classification or not is the one made at the personal appearance which he may waive inadvertently. He cannot, at the trial, introduce any evidence on whether he is sincere, whether he is in school, or whatever it may be. He must stand or fall on the record made before the Selective Service.

It is true he gets counsel and the counsel can point out whether or not he actually appeared or refused to submit, but the guts of the case is already decided before you get to court.

Mr. KASS. Can the Government appeal agent represent the young fellow before the court on indictment?

Mr. SKRAINKA. No. The Government appeal agent can't do that and the Government appeal agent can't even be present at the local board hearing unless the board invites him. The Government appeal agent is just window dressing from my point of view. In spite of the fact that some of them try very hard to do conscientious jobs, the way the regulations are structured, they are doing it with one hand tied behind their back and they are doing it in a situation where they are also supposed to represent the Government, which is an impossible situation.

Senator LONG. An appeal agent must be a lawyer?

Mr. SKRAINKA. No; the appeal agent does not have to be a lawyer.

Senator LONG. Then any individual can appear before the board representing the man—his father, or anyone else?

Mr. SKRAINKA. Under the regulations, the board has discretion whether they will allow any person in the capacity of an adviser to appear with him. As I pointed out earlier, there are boards that uniformly exercise their discretion by denying the right to bring anyone along. I don't think that's the case with most boards, but there are a number of boards that do it.

Mr. KASS. Mr. Chairman, it is an interesting regulation. It does provide that the local board can at its discretion permit any person to appear before it with or on behalf of a registrant, and further allows the registrant who doesn't speak English adequately to appear with a person as an interpreter, but it specifically prohibits counsel.

I think Mr. Clayton has a few words at this point, unless Mr. Skrainka has more to say.

Mr. SKRAINKA. I would like to sum up with two sentences.

I interpret this regulation, frankly, as a slap at every lawyer in the United States, because the obvious point of it is that if we let lawyers in here where they are going to be affected, they will abuse this privilege so as to snarl up the operation of the Selective Service System. I know lawyers and you know lawyers, and that is not a lawyer's function, and I think that is the only possible justification or rationale for this regulation.

Senator LONG. I am more concerned about it, rather than the smack at the lawyer—he can take care of himself—but I am more concerned about the effect it has on the 18-year-old boy there without representation coming before this Government agency. I'm not too impressed with the effect it would have on the bar, because most of those cases would not be of particular interest to them, other than a patriotic service, but I am concerned about the boy standing before this Federal agency without representation.

Mr. SKRAINKA. And this brings me to my last point.

I think the parallel between this situation and the situation in *Escobedo* is clear. The court there said:

No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of and exercise these rights. If he exercises constitutional rights, then there is something very wrong with that system.

Senator LONG. Is that your statement?

Mr. SKRAINKA. I thank you very much.

Senator LONG. Thank you, Mr. Skrainka.

Mr. Clayton, do you have a separate statement?

Mr. CLAYTON. Yes, sir; I do.

STATEMENT OF CHARLES CLAYTON, ATTORNEY

Mr. CLAYTON. Mr. Chairman, I came today for a very brief statement as to one specific case that I encountered along the same lines that Mr. Skrainka just outlined.

A client came to me who was of foreign extraction and had recently come to this country and, as a matter of fact, is not a citizen. He was, however, required to register with the draft board and did so, and subsequently was classified 1-A. He is from a country that by treaty he should not be classified as 1-A, and he has a very meritorious defense. I suggested to him when he got this advice of appearance and appeal that has been entered into the record so far, that he write and request these things.

Subsequently, a hearing date was set by the local board. Not having read as thoroughly as Mr. Skrainka at that time, and not conceiving that any administrative agency of the United States would not allow the right of counsel, I had not read that, and I went to the draft board and was excluded from the hearing.

At the hearing, which I presume went on, my client was advised that parts of his file had been selected by the clerk and had been sent to the State board for determination of the merits of his case. This, on its face, seemed to me to be blatantly unfair, if we just ignore the fact that he is of foreign extraction, and does not speak English the best, it would benefit him just to have someone who spoke the language. If it is an appeal, it strikes me that he ought to have some option as to which parts of his file are to be sent for determination, and not to let the clerk decide solely in the clerk's discretion which parts of the file are to be sent.

He was then told there was a determination by the State board and his appeal had already been decided, before he had anything to say. I got a little hot about it at the time.

Mr. KASS. Outside of the board room?

Mr. CLAYTON. In fact, out on the sidewalk. It was a warm day, luckily.

I got very hot about it because of the basically unfair way the whole thing was run, it seemed to me. Here you had a good and meritorious reason why he should not be classified 1-A, and it is specifically spelled out in the law that he shouldn't be. He was not afforded the opportunity to present this. His appeal had been decided by a clerk who decided what parts of the file to send to an appellate board.

Senator LONG. What did the appellate board decide?

Mr. CLAYTON. That he is to be 1-A.

Senator LONG. Is he in service now?

Mr. CLAYTON. No; he is not. There are more appeals left.

Mr. KASS. Is this an 18-year-old?

Mr. CLAYTON. No; it is not. It is a person over 30 years old who is very well educated, to boot. As Mr. Woods said, this is not a poverty man either, by a long shot. It is not a poverty man; it is not a dumb

man. It is a person who is a desirable human being to have in the United States, not one we ought to abuse.

These are matters that I just wanted to show by one case that I thought were so blatantly unfair that anyone who had been there at that time could easily see, without having read the law or the regulations on the case, that the person was not getting an appeal. When you boil it down, he was not getting a fair shake in any respect on the whole thing.

I thank you.

Mr. KASS. Mr. Clayton, I have just one question.

The regulation that was submitted to the record earlier states that "provided that the registrant does not speak English adequately, he may appear with a person to act as an interpreter for him." Were you able to use this or were you familiar with this regulation?

Mr. CLAYTON. Yes; I knew about that, but this person does speak English. I could easily carry on a conversation with him. However, I think if it is going to be interpretive in a legal sense of certain words, I think he might have an awful hard time.

Mr. KASS. As you described the case to me earlier, wasn't he personally concerned that he had a problem, that he wasn't sure whether his English was adequate to appear before the board?

Mr. CLAYTON. He did raise that point; yes. We did not object to the interpreter part because I couldn't see, frankly, what it would add.

Mr. KASS. But he came to you seeking legal counsel?

Mr. CLAYTON. Right. He called me on the phone, came to the office and asked for advice on the matter.

Senator LONG. Are there any other questions?

Mr. FENSTERWALD. Mr. Clayton, do you think if you had been with him before the board he would have been classified 1-A?

Mr. CLAYTON. That's kind of asking me how persuasive I'd be.

Senator LONG. They might classify Mr. Clayton while they are at it.

Mr. CLAYTON. He's been that route already, sir.

I don't think so, because the defense is so meritorious. If it were properly presented, it is kind of like when you are going into trial and you move for a directed verdict on the grounds that a reasonable man could not find any other result. This, I think, is the case.

Mr. FENSTERWALD. Would you think it would be reasonable if a selectee wants to have a lawyer present that he inform the board in advance so the board could have the Government appeal counsel present at the same time if it so desired?

Mr. CLAYTON. I think again this would be only fair. If one side is going to gird for battle, I think the other ought to, too. In fact, I would see nothing wrong with a regulation giving a reasonable notice that you intend to be represented at the hearing. If the draft board is going to act as it does now with ones who are not skilled in the law, I think they should have their own representative who does possess some skill, but I think that the person who is subjected to the draft has that right, also, which is now being denied.

Mr. FENSTERWALD. Do you think, even though you were excluded at that hearing, if the Government appeal counsel had been there, your client would have been classified 1-A?

Mr. CLAYTON. This, I think, would depend upon whether the Government appeal agent had had an opportunity to talk to the registrant at some length and had an opportunity to read the documents that he possessed and had an opportunity to look up the law, which, I might add, took me some considerable time to find what I was trying to find in there, because, as Mr. Skrainka pointed out, it is very long, complex, and exceedingly hard to find anything. I might add to his comment on the Internal Revenue Code, it is perhaps even more poorly indexed, so you can find anything to look over.

Mr. FENSTERWALD. That's hard to believe.

Mr. CLAYTON. It is true. If you try to find something in there, it is next to impossible without sitting down and reading the whole thing.

Senator LONG. Mr. Ohlhausen.

Mr. OHLHAUSEN. This is directed to either of you. I am sure you both have heard the argument that the right to counsel does not attach to administrative proceedings. I just wonder if you would care to comment on that argument?

Mr. CLAYTON. I would, and I imagine Steve would, too.

Yes, I would like to comment on it, because you are going to define an administrative proceeding, then, as something that doesn't touch the substantive right of life of the human being, and to chop 2 years out of his life and to ask him to go into a land where there is a war going on when he shouldn't have to under the law, I think, is hitting right at the substantive rights of life of a human being. If you are going to hit at those, I think there is an inherent right to counsel, whether it be in court, whether it be in an administrative hearing, or whatever it be. But I think to deny this is to deny the person due process of the law, even though it is not in court.

Mr. OHLHAUSEN. You wouldn't characterize it as a criminal proceeding?

Mr. CLAYTON. No; I wouldn't, but it has almost the same result at times.

Mr. SKRAINKA. May I comment on that?

Senator LONG. Yes.

Mr. SKRAINKA. I think the same, that the argument that the right to counsel doesn't apply in an administrative proceeding may be of some solace to the administrative agency and the administrator, but, in fact, that is not the way the courts are behaving. They took that position in the immigration proceedings in the Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144. The Court said that if you want to deport somebody, Congress says to have a hearing. Congress means have a real hearing, let him have counsel. Revocation or probation proceedings were long considered to be civil and the Court of Appeals of the District of Columbia said, "You want to take the probation or parole away? We have fact disputes. Give them counsel."

Then we all know about the juvenile code. That's a civil proceeding. They lock people up, and it is still a civil proceeding, but the Supreme Court says, "Give them counsel."

The sixth amendment which gives you counsel in criminal proceedings is not the only provision of the Constitution that gives you counsel, as you well know. The fifth amendment says no person

shall be deprived of life, liberty, or property without due process of law. In this situation where there are fact disputes necessary to be resolved in order to make a proper classification, where the result may be to take away that person's life, I cannot conceive the Supreme Court is not going to require counsel, if it isn't changed before it gets to them.

Mr. FENSTERWALD. Why hasn't the Supreme Court ever passed on this?

Mr. SKRAINKA. As far as I know, there was only one case in which certiorari was sought, and I haven't studied it enough to determine why they didn't take it up. There was some indication in a prior Supreme Court case that when they got to it, it wouldn't last long. I don't know why.

Senator LONG. Thank you very much, gentlemen. We appreciate your being here this morning. Your statements have been very helpful to us.

Mr. SKRAINKA. Thank you.

Senator LONG. Our next witness this morning is General Laurence Adams, Jr., State director of the Selective Service System of Missouri. I believe the general is also the commander of the National Guard. He is the husband of the Governor's secretary, and I have occasion to deal with her more often than I do with the general.

STATEMENT OF MAJ. GEN. LAURENCE B. ADAMS, JR., STATE DIRECTOR OF THE SELECTIVE SERVICE SYSTEM FOR MISSOURI

Major General ADAMS. Senator, I have a prepared statement I would like to read.

Senator LONG. Before you do that, please state your name and official position and residence for the record.

Major General ADAMS. My name is L. B. Adams, Jr.; I am State director of the Selective Service for the State of Missouri.

Senator LONG. I think before you make your statement and before any questions are asked, we might point out that you weren't responsible for the situation that we are discussing here today. The regulations come down to you, and you are not authorized to pass an opinion one way or the other about them.

Major General ADAMS. That's correct, sir.

Senator LONG. You may proceed with your statement.

Major General ADAMS. I have two extra copies of my statement if you would care to have them.

Senator LONG. We'd be delighted to have them.

Major General ADAMS. As instructed by your letter, I am here to advise you of the assistance the Selective Service System gives citizens, especially when they feel they have a grievance against the system or its operations.

I am happy to be able to do this so that you will be aware of the many devices the Missouri Selective Service System uses to inform the registrant and other interested persons of what the law requires of him, and what are his rights and privileges.

When a young man registers under the Military Selective Service Act of 1967, within 5 days after reaching age 18, the clerk or registrar

asks him for certain information which is placed on a registration card, SSS Form 1. He is asked to verify the entries on the form 1 and to sign his name indicating that the entries are correct.

At that time he may ask any questions he may have concerning Selective Service. He is handed a mimeographed sheet entitled, "General Instructions to Registrants," MoIS 1. He is also furnished the publication, "You and the Draft," or "Selective Service and You," SSS Form 136. He is also advised of the names and addresses of the advisers to registrants for that board.

After he is assigned a selective service number, usually within a month's time, he is mailed a registration certificate, SSS Form 2. This is a tear-out form designed to be carried in his wallet. The tear-out part contains on one side a brief general statement entitled, "This is Your Selective Service System."

Senator LONG. That's the one we hear about them burning sometimes?

Major General ADAMS. Yes, sir.

On the reverse side the selective service classifications are listed.

Either at time of registration or when he is mailed the registration certificate, he is furnished a classification questionnaire, SSS Form 100, to be completed. The entries the registrant makes on this form constitute the basis for his initial classification. In the 13 sections he may include information concerning his marital status and names of dependents; his occupation; farming operations, if any; whether or not he is a minister or preparing for the ministry; a conscientious objector or an alien; his physical condition; court record, if any; and whether or not he is a sole surviving son.

Classification action by the local board follows shortly thereafter. By regulation the registrant must be classified in the lowest class for which he is determined to be eligible, with class 1-A considered the highest and class 1-C the lowest, section 1623.2, SSR.

A notice of classification, SSS Form 110, is mailed to the registrant advising him of his classification. Like the registration certificate, this is a tear-out form containing instructions that the form is to be retained in his possession, another listing and explanation of the 18 classes, and, of paramount importance, a notice of right to personal appearance and appeal.

In addition to the form 110, if the registrant is classified by the local board in class 1-A, 1-A-O or 1-O, the registrant is mailed at the same time an advice of right to personal appearance and appeal, SSS Form 217. This form advises the registrant that there is a Government appeal agent available at no charge to aid him with a personal appearance, an appeal or other procedural right on selective service matters, and further that an appointment with the appeal agent will be arranged by the board if desired by the registrant. Upon receipt of a request for an appointment with the appeal agent, the local board sets up the appointment and advises the registrant of the name of the name of the appeal agent, his address, and the date and hour of the appointment by means of a notice of appointment, SSS Form 218.

In the event a dependent or employer of the registrant had, prior to classification, filed a written request with the local board for the deferment of the registrant, he is mailed a classification advice, SSS

Form 111, advising of the classification of the registrant, and of the right of the dependent or employer to appeal the classification.

The foregoing is a brief report on the forms received directly by the registrant and the very important instructions to him of his rights and privileges.

As you are aware, a registrant is classified by his local board composed of unpaid individuals performing a patriotic service to our country. The local board has the function of determining whether the obligation to serve in the Armed Forces prescribed by the Congress must be performed by the registrant when he is reached in the prescribed order, or whether it is necessary to delay his service to maintain the national health, safety, or interest.

Indicated previously is the fact that the registrant, his dependents, or his employer is informed that if he does not agree to his classification, he may take advantage within the time prescribed of simple appeal procedures available to him. He may request a personal appearance before the board to present information he considers vital to his case. After the personal appearance the board must consider the new information submitted by the registrant and determine whether the new information justifies a change in the registrant's classification. If the board determines that the new information does justify a change in his classification, it must reopen his classification and classify him anew. If the board determines that the new information does not justify a change in his classification, it will not reopen the classification. In either event, the board is required to mail to the registrant a new SSS-110 and a new SSS-111 to dependent, or employer, if applicable.

Following the personal appearance and the board's determination to either reclassification or not to reopen the classification, the registrant, his dependent or employer, has an additional period of 30 days to file a written appeal from this action.

The appeal need not be in a special form. "I want to appeal" is sufficient. Missouri local boards are instructed to be liberal in determining whether or not a letter concerning a classification constitutes an appeal, and in many cases are urged because of peculiar circumstances to extend the appeal period well beyond the mandatory 30 days after the mailing of the classification notice or advice.

Upon receipt of the written appeal, the local board is obliged to forward the registrant's file to the State appeal board, and may not order the registrant for induction while the appeal is pending.

Like the local boards, the two appeal boards, one from each Federal judicial district of the State, are composed of unpaid individuals. These boards meet at least once a month.

The appeal board considers only the information contained in the registrant's files, and only that information that has been considered by the local board. No one may appear before the appeal board in any case. If the vote by an appeal board is unanimous, there exists no right to further appeal. If there is a split vote, however, the appellant may appeal to the President.

The Director of Selective Service or a State director, if he deems it to be in the national interest or necessary to avoid an injustice, may

appeal at any time to the President from any determination of an appeal board.

No classification is permanent and deferred classifications are usually granted for a period of 1 year or less by the local or appeal board. Prior to the expiration of a deferred classification, ordinarily the local board mails the registrant a current information questionnaire, SSS form 127, or in the case of a deferment for hardship reasons, a dependency questionnaire, SSS form 118, for completion and return to determine if there has been any change in the registrant's status which may affect his classification.

A registrant or interested parties are free to contact the local board adviser to registrants, the Government appeal agent, the State director, or the Director of Selective Service when they are of the opinion that the registrant has not been afforded all his rights and privileges.

In these cases, every contact made to Missouri State headquarters and national headquarters is investigated to determine if the regulations and procedures are followed.

Many individuals contact the President, Members of the Congress, the Governor, and members of the State legislature. Each of these contacts result in a review of the case by State headquarters.

In the event a review by the Director of the State director of any case discloses that an injustice has been done, a local board is required, if requested by either, to reopen a classification and classify the registrant anew and, further, if the registrant is under an order to report for induction, his order must be canceled.

The many safeguards outlined here have resulted in the Congress excluding the operations of the Selective Service System from the requirements of the Administrative Procedure Act with the exception of section 3 of that act. The Congress appeared to be concerned that the vital function of raising and maintaining the Armed Forces not be subject to hindrance and delay through time-consuming procedures.

The courts have recognized the congressional intent that the function of raising and maintaining the Armed Forces must be free of the threat of long legal interruption and delay.

That concludes my statement.

Senator LONG. General, I need a little more information about your last paragraph there that attracts my attention. We realize the national importance of raising and maintaining an Army, but quite often in the past we have not been engaged in conflict, just maintaining, you might say, our standing Army, and there are very few people that feel that their rights are denied. Do you feel that, maybe this is asking you to put an interpretation on it that you aren't authorized to do, that a national emergency is of more importance than the right of the individual at that time?

Major General ADAMS. Certainly not. The right of the individual to us is always paramount. We do everything we can to see that the individual receives his rights.

Senator LONG. You heard the discussion a while ago, though, and that points up the concern that the committee has that where the individual is denied counsel, that the rights of an 18-year-old boy may not be protected. At least he would feel it wasn't protected. I am sure

that with 99 out of 100, the men that were assigned to him or the board themselves were doing what they would think was right to protect him, but it is those other cases that we become concerned about.

Major General ADAMS. I'd rather not comment on that, Senator. I feel that the boys have all the rights that they are due, they receive them, but a lawyer could argue against it. I'm not a lawyer so I had better not comment any further on that.

Senator LONG. We plan on having General Hershey before our committee. I will have that question to ask him.

Do you have any questions, Mr. Kass?

Mr. KASS. Thank you, Mr. Chairman.

I have a number of questions, but in the interest of time, perhaps the committee could send a letter outlining the questions to General Adams. We'll save space in the record and he could supply the answers, because some of the questions, he probably isn't familiar with the details.

Senator LONG. That is agreeable with me if that is agreeable with the general.

Major General ADAMS. Yes, sir.

(Subsequent to the hearings, Major General Adams, Jr., submitted the following answers to questions raised in Senator Long's letter of April 3, 1968.)

(The material follows:)

SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,

April 3, 1968.

Maj. Gen. LAURENCE B. ADAMS, JR.,
State Director, Selective Service System,
Jefferson City, Mo.

DEAR GENERAL ADAMS: During the course of the Subcommittee's hearings last week, you agreed to answer a number of questions which the Subcommittee would furnish your office. Accordingly, in order to complete the record of the Subcommittee, would appreciate answers to the following:

(1) Do all local Board members in Missouri have a current copy of the Selective Service regulations and other directives?

What does your office do to ensure that the members know about and follow all of the regulations?

(2) How many government appeal agents are there in Missouri?

How many Boards are presently without an appeal agent?

(3) Are appeal agents still required to forward to prosecutorial authorities all information concerning Selective Service law violations which they learned from talking with registrants?

(4) As State Director, how many times in the past year have you exercised your power to:

(a) Appeal from a local board's decision classifying a registrant in a higher class than you thought he should have?

(b) Ask an appeal board to reconsider its decision?

(c) Appeal an appeal board decision to the National Selective Service Appeal Board?

(d) Ask a local board to re-open a registrant's classification in order to classify him in a lower classification?

(5) With respect to local Missouri boards:

(a) How many are there in Missouri?

(b) How many members are on each one?

(c) Has any member served on the board for more than 25 years?

(d) Do all the members live in the county for which the board sits?

(6) With respect to appeal boards?

(a) How many are there in Missouri?

(b) How many members on each board?

(c) How often did each appeal board meet in the past year?

(d) How many classification decisions did they make in the past year?

(7) Does each local board in Missouri have a Medical adviser?

We would appreciate receiving your response at your earliest convenience so that we may prepare the hearing record for the other Members of the Subcommittee.

Kind regards,

Sincerely,

EDWARD V. LONG, *Chairman.*

SELECTIVE SERVICE SYSTEM,
MISSOURI STATE HEADQUARTERS,
Jefferson City, Mo., April 15, 1968.

HON. EDWARD V. LONG,
U.S. Senate.

DEAR SENATOR LONG: In replying to your letter of 3 April 1968, we shall use the system of numbers as found in your letter.

(1) Selective Service Regulations are available in all local boards for the use of the Executive Secretary, Board Members, Government Appeal Agents, Advisors to Registrants, or other persons having need of such directives. Additional sets of regulations are available to those persons who request them for their individual use.

There are a number of procedures and actions taken by this office to assure that all members of the system are aware of and follow regulations. Audits are conducted periodically of classifications to determine whether or not regulations or current policies are followed. National Headquarters publications are mailed directly to members of the Missouri Selective Service System to avoid delay otherwise encountered if distribution were to be made from the local board.

(2) At this writing there are 131 Government Appeal Agents in the State of Missouri. In the nine local boards not presently having a Government Appeal Agent the services required of and performed by such agents are provided by Advisors to Registrants. Applications for suitable replacements are in process.

(3) We have no knowledge of Government Appeal Agents reporting any circumstances to prosecuting authorities as a result of the individual registrant seeking the services of the Appeal Agent.

(4) In giving the number of times that a particular action has been taken it has been necessary for us to estimate the number shown below inasmuch as records are not kept concerning this phase of our operations.

(a) Appeal from a local board's decision.....	25
(b) Appeal board reconsiderations.....	20
(c) Appeals to Presidential Appeal Board.....	15
(d) Local Board re-opening requests.....	20
(5) (a) Missouri local boards.....	140
(b) Members per board.....	3 to 7
(c) There are a few Missouri Local Board Members who have a total of 25 years service in that capacity, including World War II service. However, there are no members with 25 years of service under the present Act.	
(6) (a) Appeal Boards in Missouri.....	2
(b) Appeal Board for Eastern District.....	2
Appeal Board Members for Western Dist.....	5
(c) Number of meetings for Eastern Dist.....	11
Number of meetings for Western Dist.....	8
(d) Number of decisions, Eastern Dist.....	1, 728
Number of decisions, Western Dist.....	913

(7) Currently six local boards in Missouri do not have a Medical Advisor. These appointments are in various stages of processing, and will be filled at the first opportunity.

It is trusted that the above answers will be of benefit to the Subcommittee.

Sincerely yours,

L. B. ADAMS, JR.,
Major General, State Director.

Mr. KASS. I just have a couple of questions, then. What is the procedure for informing the local board members of the selective service requirements and regulations? Do they have copies of the current regulations?

Major General ADAMS. Yes, sir. Each board has a file of selective service regulations about this thick (indicating), and then we have another one, local board memoranda, which are instructive in nature. The local board memoranda contain instructions that are not contained in the regulations and many times expand on the regulations. In addition to that, national headquarters issues operational bulletins which are temporary in nature which are not printed but rather mimeographed.

Mr. KASS. And they are circulated among the board members for their files and for their reading?

Major General ADAMS. They are in the local board office, and they are available to local board members. We presume they use them during local board meetings.

Mr. KASS. How many local boards are there in the State of Missouri?

Major General ADAMS. 140.

Mr. KASS. Mr. Skrainka made reference to the fact that some of the boards are presently without an appeal agent. Do you have any idea offhand, or perhaps you could answer this later if you don't know, how many boards do not currently have an appeal agent?

Major General ADAMS. I believe we only have about three. One board in Schuyler County, over in central Missouri, doesn't even have a lawyer within the county; and they do not have an appeal agent. In those cases, if we can find somebody who will agree to serve, he need not be a lawyer.

Mr. KASS. Do you have difficulty finding people to serve?

Major General ADAMS. Yes, sir; we do. As brought out awhile ago, we have difficulty here in St. Louis County.

Mr. KASS. These are unpaid volunteers?

Major General ADAMS. Yes, sir; unpaid.

Mr. KASS. Are they reimbursed in any way?

Major General ADAMS. No reimbursement whatever. In the extreme case, if a fellow lived a long way from the board office, we could pay him mileage to come from his home to the board office and back, but he doesn't draw a dime from the Government.

Senator LONG. Would you feel that's the reason that you have difficulty getting someone to serve, the lack of pay?

Major General ADAMS. No, sir; I don't think so. We have on our local boards, people who work for us that you couldn't pay enough money to come and do the job.

Senator LONG. That's the impression I have had. I wondered what the reluctance is to serve.

Major General ADAMS. Sir, the reluctance, I think, is the time that a lawyer has to spend on these cases. I know that's one reason why one or two lawyers that quit, they said, "Those people bother me all the time. I can't get my own work done."

Actually, this form we referred to where we make an appointment or tell the fellow he can have an appointment with the appeal agent, initially the form contained the lawyer's names. The boys all ran down to the lawyer's office and were taking all of his time and we had

so much static from the lawyers that we had to change the form. National headquarters changed the form so it did not list the appeal agent's name.

Now the boy comes into the local board office and says he wants to see the appeal agent. She calls him, makes a date, then tells him the agent's name and address. So the reluctance, I think, among the lawyers is the time that these cases take.

A point was made awhile ago about how many appeal agents a local board has. We have designated one appeal agent, but we may have any number of associate Government appeal agents. There, again, we can't get too many volunteers.

Mr. KASS. For each board, where you can get them?

Major General ADAMS. That is right.

Mr. KASS. Do you have a legal officer assigned to your office for the State?

Major General ADAMS. No, sir; not as such. We do have a lawyer in our employ; however, he has never practiced. He is a trained lawyer and formerly worked for the Internal Revenue Service here in St. Louis.

Mr. KASS. But he is assigned as a legal officer to the Selective Service?

Major General ADAMS. No, sir; he is assigned as a classification officer.

Mr. KASS. At the local board level, are the names of the board members made available?

Major General ADAMS. Yes, sir; they are on a bulletin board and are supposed to be published all the time on a bulletin board.

Mr. KASS. Publicly available for everybody?

Major General ADAMS. Yes, sir; but the addresses are not.

Mr. KASS. I understand that. Is this a recent development?

Major General ADAMS. Yes, sir; regarding board members. We have required the posting of names and addresses of advisers to registrants for the last 20 years.

Mr. KASS. Under the Freedom of Information Act, it was required that the local board in Philadelphia make available the names and addresses and jurisdictional boundaries of the board members. This is the reason I asked, Mr. Chairman.

Senator LONG. Practically everyone in every county in Missouri knows who his draft board is; don't they?

Major General ADAMS. That is right.

Mr. KASS. I have no further questions.

Senator LONG. Do you have any questions, Mr. Fensterwald?

Mr. FENSTERWALD. Are you familiar with the proposal for a pilot ombudsman project in the State of Missouri?

Major General ADAMS. Yes, sir.

Mr. FENSTERWALD. Do you think that if that office is established it would inhibit your operation?

Major General ADAMS. Yes, sir.

Mr. FENSTERWALD. To what extent?

Major General ADAMS. It depends, of course, on whatever rules the gentleman appointed will put out. As I read the bill, he can write his own rules, and I am fearful that perhaps the rules would extend the period it would take for us to process any number of people for induction.

Mr. FENSTERWALD. You realize that he would have no authority other than to recommend certain actions to you?

Major General ADAMS. That's what I'm in the dark on. I don't know exactly what he could or could not do and, of course, I'm fearful that in his consideration of a case he may slow our machinery of delivering people to the Armed Forces.

Mr. FENSTERWALD. Other than that possibility, you see no difficulty with it?

Major General ADAMS. I haven't thought of any other possibility.

Mr. FENSTERWALD. Thank you.

Senator LONG. Counsel asked me if you had difficulty with the Senators and Congressmen. The ombudsman would have about the same authority. This gentleman has been very cooperative any time this Senator has ever contacted him.

Mr. OHLHAUSEN. Assuming that you could not live with an ombudsman, do you think you could live with a provision for a counsel to appear before the various hearings?

Major General ADAMS. I'd rather not comment on that, sir. That, again, it seems to me, would slow down our operation. Presumably you could have a bunch of cases come in for personal appearance. The lawyers could argue all night long and the local board would never get anything done.

Senator LONG. But they still would be in some way protecting the rights of the individuals, though?

Major General ADAMS. Sir, there is no rule against a young man having a lawyer write his case and send it in to the local board to read.

Senator LONG. There is no way you can assure, though, it is going to be read?

Major General ADAMS. No, sir.

Senator LONG. Or understood even. I have read some of the stuff some of these lawyers write and it is very difficult to understand.

Major General ADAMS. You said it, I didn't.

Senator LONG. Whereas the board would inquire of him what he had. I think that is one thing the committee can discuss with General Hershey.

General, thank you so much for making the trip from Jefferson City this morning. Your information has been very helpful to us, and we do appreciate your presence.

Major General ADAMS. Thank you, sir.

Senator LONG. We have this morning Mr. Robert Hardy and Mrs. Koch from KMOX Radio. If they will come around, we will be happy to have their statement at this time.

Mrs. Koch did not come?

Mr. HARDY. No, sir; she is not here.

STATEMENT OF ROBERT HARDY, ASSISTANT NEWS DIRECTOR, KMOX RADIO

Senator LONG. For the record, would you state your name and state your position with KMOX?

Mr. HARDY. Robert Hardy, assistant news director of KMOX radio.

Senator, I come before you today to speak in favor of the pilot ombudsman program. While this may sound at the start to be some-

what of a plug for our radio station, I think you will understand as we go along exactly why we offer our position in this matter.

Senator LONG. We understand that KMOX has had an ombudsman-type program for over 8 years. It has been highly successful and there has been great interest in it.

Mr. HARDY. Yes, sir. We have been in the ombudsman business for about 8 years now, through the "At Your Service" program. We are on the air with "At Your Service" from noon to 7 o'clock weekdays and from 9 to noon on Saturdays.

As you know, we cover a number of fields, virtually all of them, aeronautics to zoology, and the format operates on a basic interview and then the invitation to our listeners to call with questions.

I think I have a couple of figures here that may be of importance to the committee. The 8 years we have been programming "At Your Service," we have received more than three and a quarter million telephone inquiries from citizens in the St. Louis metropolitan area.

Mr. KASS. Was that three and a quarter?

Mr. HARDY. Three and a quarter million.

Mr. KASS. How do you keep track of these?

Mr. HARDY. We have a counter attached to our incoming phone board which checks them off for us, sir.

A further statistic that would perhaps be of some value to these proceedings today, an estimated one-third of these calls have been for information regarding Government service.

Mr. KASS. Excuse me, Mr. Hardy. I hate to interrupt you, but is it for information only or grievances and complaints also?

Mr. HARDY. A little of both, sir, as you will hear as we progress.

This is where we say that KMOX radio has been in the ombudsman business.

The Government services, what are they asking about? On the local level they question zoning and traffic and police matters, schools, building codes, civil and criminal court procedures, medical and social services, taxes, assessments.

The State level of government is equally perplexing to Mr. and Mrs. Average Citizen. When the Governor or other State representative is at our microphone, he is likely to be asked about anything from the State agriculture service to the county's pension.

The gentleman who preceded me has been on the air a number of times from Jefferson City, via the long lines, to answer questions about the draft laws of the State of Missouri. He always gets plenty of calls, I might add.

The Federal Government matters touching on the individual citizens are also dealt with regularly, as you know, Senator. Internal Revenue spokesmen, Veteran's Administration, Social Security, draft problems, all are brought forth with an expert in one of these areas coming before our microphones.

The major point that we feel is made clear by this profusion of inquiry is that government has become so complex and bewildering and so intermixed between local, State, and Federal jurisdictions that citizens simply do not know where to go when they have a question or a problem.

Our "At Your Service" program, from planning to execution, absorbs 75 percent of the total staff personnel of KMOX radio in one

way or another, 75 percent. We feel this is one gauge of the need on the part of the public for this kind of referral service, but I think we have to hastily point out that any radio station, or any medium for that matter, can only go so far in its ombudsman role, because we can only refer our listeners to an agency or to an individual. We cannot in anyway help every single caller carry his problem through to a good, logical, sensible conclusion. Obviously, this would be beyond our scope and our function.

If I may, I will give you some examples of the types of guests we have had on KMOX.

Mr. KASS. You said 75 percent of your full staff. What are we talking about in numbers there?

Mr. HARDY. Thirty-eight to forty-two people, sir, every single day.

If you will permit a couple of examples of the kinds of guests we have had on the air in the past 12 months, in January we had the warden of the city jail who spoke about probation and parole; the director of the Missouri State Employment Service was a regular guest, as was the local head of the Veterans' Administration. Since the changes in the draft law, General Adams and his aide have been regular guests.

In February we scheduled the head of the metropolitan sewer district, and the audit division chief of the Internal Revenue Service. A State representative reviewed Missouri's welfare in March. The marriage counselor from the county court spelled out her agency's service in April.

The St. Louis traffic commissioner got more than a thousand calls last May in 1 hour, and the head of the Missouri Department of Corrections nearly topped him in the month of June.

There is really no point in going on, but each example underscores our basic feeling that there is a great and a growing need for the ombudsman function in the State of Missouri, specifically, and the Nation, in general. That's the way we feel about it.

On that point, we would like to point out that KMOX radio's "At Your Service" programs became the model for similar kinds of programming on more than 1,000 stations across the country. They call it information programming where listeners call in and ask questions. So the need for a liaison is obviously nationwide.

We would like to conclude with one other point. "At Your Service," we are convinced, has provided a pretty good safety valve for many strong emotions relating to government service. The draft may be one. The sounding board that enables citizens to express themselves fearlessly, thanks to the anonymity of the telephone, on general topics relating to government.

Obviously, the most sensitive area is in police relations with the citizens in our inner city. We have scheduled many programs featuring police community relations spokesmen and through them, giving the police an opportunity to deal with our listeners directly. We let the listeners state their grievances and problems. Many strong emotions are pretty well dissipated into thin air, broadcast air. The police have advised us also that a clear understanding of the protective role of the police to the citizen of the inner city is brought forth strongly in this kind of programming.

Again, I would close by saying KMOX radio is deeply committed to this community service approach to broadcasting, to being the elec-

tronic bridge between the people and the city, and the Nation and the world, the broadcast ombudsman, if you like.

As I said at the outset, Senator, we are delighted that this need for an ombudsman is being recognized by you through these hearings and pending legislation. If you care to discuss it, why, we have an opening tomorrow at 4:15 on "At Your Service."

Thank you.

Senator LONG. I would like to be there, but I am scheduled to be in Cape Girardeau tomorrow at 4:15. Certainly I will look forward to being on the program some time before too long. I'm sorry I couldn't on this trip.

You and Bob Hyland and other members of your staff have rendered a great service, I think, to the citizens of your listening area.

I was particularly impressed when you said that one of the services that your type of ombudsman renders—and I'm sure the type we propose would also render this service—is of being a safety valve.

Mr. HARDY. We think so, sir.

Senator LONG. We feel this is a very definite part of it.

Mr. Kass, do you have any questions?

Mr. KASS. Mr. Chairman, the only question I have is to ask Mr. Hardy if they have often felt the need for an ombudsman when people asked for information. You tell them where to go. Do they ever call back and say, "We thank you for telling us where to go, but when we went there, we didn't get the assistance we needed?"

Mr. HARDY. Yes, sir; this has happened frequently. On a personal basis almost, we will sometimes make a few phone calls to find where this particular case might be best directed.

Mr. KASS. Do you think if we give the ombudsman access to records and give him subpoena powers, it would be a much more successful office?

Mr. HARDY. Yes, sir.

Senator LONG. You can't aid in the conclusion?

Mr. HARDY. Right; we can only suggest, sir, and sometimes if the original caller or complainant is not able to get through and calls us back, maybe we might be able to try to make a connection between this person and the person they should see. Past that, we have little role to play. As I say in the statement, that is actually beyond our scope and function.

Senator LONG. But it does have some effect on the Federal bureaucrat to know that the white light of publicity of a radio station is looking at him. They are probably going to give a little more attention to their decisions, don't you think?

Mr. HARDY. That has happened sometimes.

Senator LONG. Mr. Fensterwald.

Mr. FENSTERWALD. I have no questions.

Senator LONG. Mr. Ohlhausen.

Mr. OHLHAUSEN. As Mr. Kass asked, if a complainant comes back to you and says he didn't receive any satisfaction, do you ever publicize this fact? Suppose he complains about a Federal agency, and you direct him to a certain party in that agency. Then he comes back and says, "Mr. So-and-So didn't help me at all. He was very discourteous and was just of no assistance."

Mr. HARDY. This happens every now and again when we get into the assessor's office, as an example, either in the city or the county,

where some taxpayer may feel that he has had a bum steer, and if we cannot handle it there, we will ask the assessor to come on. We have frequently promoted face-to-face situations on the air, where one may charge the other back and forth. But we have found in general practice when we interceded on the part of someone who has already tried on their own and can't do it, if we intercede and try to go through all the various red tape that sometimes becomes necessary, usually that resolves the whole thing; the answer is forthcoming. Again, we are the middleman or someone other than the basic complainant.

Senator LONG. You do find that there is an apprehension or lack of knowledge on the part of many citizens of all strata in dealing with the government, particularly the Federal Government?

Mr. HARDY. Yes, sir; I think so. I think that would be a safe statement. I think it is borne out by the requests and questions we get; yes.

Senator LONG. Are there any other questions?

Mr. KASS. No, Mr. Chairman. I only have to comment that I think perhaps the Riot Commission should have looked at some of the favorable aspects of media because you, in effect, fulfill that part of the gap between the citizen and his government or whatever he is complaining about.

Mr. HARDY. Sir, if I may offer it, our own police board chairman has suggested that this kind of relationship between the people and the police, through the use of the medium, may very well be the thing that kept St. Louis from becoming another riot situation, and it may go very far in keeping that situation from occurring in our own city again this summer. It is something to consider, certainly.

Senator LONG. That certainly is very commendable.

Thank you very much for being here. Will you give my good friend, Bob Hyland, my regards?

Mr. HARDY. I will be very happy to, sir.

Gentlemen, thank you for hearing me.

Senator LONG. Our next witness is Mr. Paul Fisher, director of the Freedom of Information Center, School of Journalism, University of Missouri.

We appreciate your being here. We regret very much that your good friend, Dean English, couldn't be with us today.

STATEMENT OF PROF. PAUL FISHER, DIRECTOR, FREEDOM OF INFORMATION CENTER, SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI

Professor FISHER. Thank you, Senator.

Senator LONG. For the record, will you give us your name and official position at the university?

Professor FISHER. My name is Paul Fisher, and I am Director of the Freedom of Information Center, School of Journalism, University of Missouri at Columbia.

A central office in Washington is headed by Mr. Samuel J. Archibald, formerly staff counsel for the House Subcommittee on Government Information.

The business of the Center, now in its 11th year, is to study and through its publications to report on controls of information by government, society, and media.

The Freedom of Information Center receives complaints—uninvited except for whatever invitation is read in its title—from individuals and organizations aggravated by the refusal of government officers to disclose records or to open meetings. We help as we can, usually by quoting law and past experience and suggesting approaches that might bring satisfaction. We also write a fair number of tough-luck letters; that is, sure there is a record but it is not available and there is no way to make it available.

It is this experience with this particular public grievance, the occasional silence of officials, that encourages me to be here. My knowledge of political science generally, and specifically of issues surrounding transferral of the ombudsman concept to the United States or to Missouri as under the provisions of the bill in question, would suggest that I am not in the right place at this moment.

I believe that as between the people and their government, all levels, on the matter of being informed, there has, on the people's part long been a growing sense of alienation and apathy. The citizen feels that he does not know what is going on, and that it would do him little good to inquire. I am sure this disenchantment predates the "credibility gap" and the earlier "news management" charge, I am sure, by a good many years, indeed. I am sure part of this proceeds from ignorance of how to initiate an inquiry. It strikes me that any office that might reverse in any way, however minor, directions of popular alienation and apathy growing out of the information policies of government would have to be counted as well conceived. These being my beliefs, I endorse S. 3123.

Senator LONG. If I may interrupt, you say first that this would be very helpful to us. My Freedom of Information bill, within itself, has been very helpful, has it not, in news media being able to get information from the agencies and get it to the people?

Professor FISHER. The news media seem not to have been using it as much as I think they should. It has been used by American business. Oddly, though, we'll go out on the limb and venture to say there is considerable ignorance of that law in the communications industry.

Senator LONG. We expect to have another hearing in Washington dealing with the Freedom of Information bill sometime before too long.

You may proceed.

Professor FISHER. As I understand the bill, the ombudsman would have complete access to all government records. A person or organization denied access could turn to the ombudsman for independent review of the agency's refusal. Should this measure succeed, the economy and simplicity of it are bound to bring rebuffed information seekers to the ombudsman's door.

Incidentally, it does seem that the 2-year trial period specified in the bill will give the ombudsman scant time to establish the prestige, the recognition of his ability that will be a decisive factor in obtaining more information from government.

It is true, as things stand, that the people are not without power to compel certain disclosures from government. There is, notably, the Federal records law championed by the Chairman of this Committee that has been in effect since last July.

However, the people are not using the law. American business, yes, and that within hours of its effective date, but not individuals, and not to any meaningful extent the press.

Since the records law became effective the upwards of 30 claims of illegal governmental suppression of records going to court find the press as plaintiff in no instance. It now seems that approximately one of every four appeals to agencies initially refusing information originate with the press.

One might argue from this that:

(1) Public officials cooperate with the press across the board;

(2) The press has more information now than time and newspaper print can handle so why seek to compound the problem by asking more; or, finally,

(3) The press, unlike American business, lacks people who know the law and how to make it work.

I suspect there is a little truth and a lot of something else in all these arguments; but it is to the point of the last one that I would speak. Some press units are big economic enterprises. I doubt that these ever needed the law, for such is the expertness of their reporters and the diversity of talents in those who advise them that they have capability of getting more information from government than the law allows.

However, the fact is that most papers and most broadcasting stations are small businesses, that both need the law and the services of an ombudsman to make it and similar legislation meet their intended purposes. For instance, here in Missouri, the State suggested for the ombudsman experiment, we have three large newspapers. We have maybe six more that might not hesitate to employ a lawyer to force open illegally withheld government information. That leaves approximately 350 papers that do not have that kind of money. Nor, for the most part, do they have staff expertness—most certainly they do not have the time—to maneuver around blocks to information public officials may throw up.

It is the dailies, the weeklies, and the broadcast stations of small cities that would, I suspect, greatly avail themselves of the services of an ombudsman in this State.

Finally, I endorse S. 3123 because I perceive values it would have for the Freedom of Information Center when questions come up relative to access to information that are beyond our knowledge. I think the Freedom of Information Center would be a constant petitioner of the ombudsman's office that may, hopefully will, be created in Missouri.

Thank you.

Senator LONG. Professor, thank you very much for your statement and your endorsement, certainly, for they add much to this proposal and the success of it.

Mr. Kass, any questions?

Mr. KASS. Thank you, Mr. Chairman.

I might add that I think the Freedom of Information Center has for years been an ombudsman, and we hope that they will continue to be an ombudsman in the area of Freedom of Information and access to records.

I think one difference ought to be pointed out, however, that the access to information on the part of the proposed ombudsman bill pilot project for Missouri would not be limited by the nine exemptions in the Freedom of Information Act. The ombudsman proposed by the Senator's bill would have complete access to records; and I think this might be more significant in getting to the root of problems.

I have no questions.

Senator LONG. Mr. Fensterwald?

Mr. FENSTERWALD. I have just one problem. I was interested in Mr. Fisher's statement that he thought that the 2-year period would not give the ombudsman a chance to really show what he was worth. Would you suggest a period of time that you think would be more reasonable?

Professor FISHER. May I first say why I say that?

Mr. FENSTERWALD. Certainly.

Professor FISHER. We have been an unofficial ombudsman for 11 years and have done a substantial amount of publication and have had a fair amount of publicity; but it is amazing the people who don't know we exist. It takes a long time sometimes for the news to get around that there is a service available. I would say at least double the period, perhaps even longer.

I know it is a trial; but I wonder the sort of man you would get to come in. This is going to have to be a very able person, and here he has but a 2-year guarantee, and barely time to get his feet wet, so to speak.

Mr. FENSTERWALD. I was initially inclined to have a 5-year period. Having heard a number of witnesses, I am inclined to go back to my own 5-year period for the very reasons you have stated.

Professor FISHER. I would agree with 5 years. I don't have any criteria for establishing the number of years. It seemed that 2 is a short period of time.

Mr. FENSTERWALD. My only problem, of course, is that we have committed more money to a pilot project than we would over a short period of time. That's the only difficulty.

Mr. KASS. Mr. Chairman, in light of the witnesses who have appeared both days before us, maybe we don't need the pilot project; maybe we need an actual ombudsman.

Senator LONG. We'll have to consider that as we look over the projects in Washington.

Are there any other questions?

Mr. KASS. No, sir.

Senator LONG. Thank you, Professor. We are grateful to you for appearing before us this morning.

Our next witness is Representative Kenneth L. Growney from the Second District. I believe that is around Kansas City. He came to talk to me at Springfield about being here.

Representative Growney introduced a bill and sponsored the legislation on a State level.

We appreciate your being here this morning.

**STATEMENT OF KENNETH L. GROWNEY, STATE REPRESENTATIVE,
SECOND DISTRICT OF MISSOURI, KANSAS CITY, MO.**

Senator LONG. For the record, would you state your name, and your official position?

State Representative GROWNEY. Yes, Senator.

My name is Kenneth L. Growney. I am the State representative from the Second District, Kansas City, Mo.

Mr. Chairman, members of the Subcommittee on Administrative Practice and Procedure, I am delighted to have this privileged opportunity to appear before this distinguished committee in support of establishing an administrative ombudsman for Missouri. Before I make some very brief comments on the proposal, I would like to acknowledge and commend the work and efforts of the chairman, Missouri's own distinguished Senator Long. I am confident many citizens of our great State are grateful for your tireless efforts in this area.

I wish to thank you personally, sir.

Senator LONG. Thank you, sir.

State Representative GROWNEY. Mr. Chairman, it was my privilege to sponsor and introduce in the Missouri House of Representatives two bills establishing the office of ombudsman. House bill 511, which would have established the office of ombudsman in Jackson County, passed the house of representatives by a large margin but failed to pass the senate due to a lack of time. House bill 489 was held in the house judiciary committee for further study. This was the first time bills of this nature had ever been introduced in the Missouri Legislature and, I am happy to say, the reaction of the members was highly favorable. However, it seemed to be the consensus of the members that they wanted to observe how the ombudsman performed in Jackson County before proceeding to establish the office on a statewide basis. I feel, perhaps, a similar situation exists in Congress, where some Members want to observe how a pilot project such as this will operate before establishing the office nationwide.

Mr. Chairman, I have read Senate bill 3123 carefully and generally agree with the provisions contained therein with one exception. However, I feel that perhaps a 2-year project might be too limited. I am not certain, should this bill be enacted into law, whether one could employ the best qualified person for such a short appointment. Personally, I would favor a 4-year appointment with annual reports on the activities of the office to the President, the Congress, and to the head of the Administrative Conference.

Mr. Chairman, I feel that due to the tremendous growth and expansion of the many boards, departments, bureaus, and commissions of the Federal Government, many citizens have become confused in their dealings with these agencies. I feel the citizen has no place to turn to voice a legitimate complaint, except to you gentlemen who, I am sure, are flooded with such complaints. I am particularly concerned that the Nation's economically deprived—namely the poor—have no one to turn to for redress of their complaints against administrative

agencies. On the other hand, the wealthy may use their influence, or merely employ attorneys, to seek redress of their complaints. Problems of poverty, ignorance, and prejudice will not be solved by establishing this office, but by bringing to light basic injustices committed by administrative agencies, the ombudsman can encourage improvement in good, honest, and sound government.

This concludes my statement, Mr. Chairman.

Senator LONG. Thank you, Ken. Your comment about extending it to 4 years is a further thought on what we discussed with the other witness, that there may be some need for that.

I can see the merit of that suggestion, that it will be very difficult to secure the type of man that I think we must have in a project of this kind and for him to assemble a staff, knowing that, by the time they were assembled, they would have but 18 months or a year left. I think there is a great deal of merit to that.

State Representative GROWNEY. Particularly at that level of compensation.

In my personal opinion, the ideal person for the office of ombudsman should be a mature person, say in the age category of 45 to 55, preferably if one could obtain a judge of a circuit court who, for one reason or another, decided not to be a judge any more, a person like that would make an excellent ombudsman. I think in Nassau County, for example, Judge Greason had those qualifications.

Senator LONG. Your Jackson County project was to be on a permanent basis?

State Representative GROWNEY. Yes; this was to be on a permanent basis, Senator, and there was one aspect of this particular bill that drew nationwide reaction or inquiry, so to speak. I had letters from all over the country, in that the selection process of the ombudsman, both for Jackson County and at the State level, would be under the nonpartisan Missouri court plan; that is, the selection of the person, and the Governor, of course, would make the appointment in both cases, but there was some concern that perhaps this would be just another political office. But under the nonpartisan court plan that we have here in Missouri, I think this would eliminate any of those fears.

Senator LONG. I think there is a great deal of merit to that, because certainly this can't be a political appointment; he must serve all the people, no matter what their political beliefs are.

Do you have any questions, Mr. Kass?

Mr. KASS. I have just one question of Representative Growney. That is, perhaps underlying all of the opposition, if there is opposition to the concept of the ombudsman, this is going to take from the responsibilities of the elected officials, whether State—at your level—Federal, or local. Here you are—a representative—supporting and working for the creation of the ombudsman.

Do you feel that in your personal opinion or in your activities the ombudsman will in any way interfere with or detract from your responsibilities to your constituents?

State Representative GROWNEY. No, sir; I don't, Mr. Kass. The reason is I feel this would complement such an office as a representative.

The reason I say this, let me cite an example. I represent what is termed as a poverty district in Kansas City, Mo. Poor people come to me, for example, with a welfare question. They want me to find out why

their application was not accepted; why it is not being processed. I call the welfare office and am informed that the only information they can give me is the name of the applicant and his or her address. They state this is a statutory provision. I looked at the statute, and this is true.

As a practical matter I went on up the line and talked to the director and he was happy to visit with me about this particular case, but the statute does provide that this is confidential information. I feel if we had an ombudsman, and they refused to give me information, I'd merely refer the case to the ombudsman, and he could certainly find out what is wrong.

MR. KASS. That is why I asked the question.

In Great Britain, as you know, they have adopted a modified concept for Parliament whereby only Members of Parliament can refer cases to the ombudsman who then fulfills all the requirements of the traditional concept.

Do you think this is as desirable a concept?

STATE REPRESENTATIVE GROWNEY. I'm not sure. I don't believe so, and I'll tell you why. I think there are so many people, particularly the people who aren't educated, who don't know who their State representative is. They perhaps don't even know who their Congressman is. I think they all know who their Senator is, Senator Long, but I'm talking about those types of people. I think that's why perhaps it would be better just to leave it that any citizen can complain.

SENATOR LONG. I'll bet the people in the Second District of Kansas City know who their representative is, too.

STATE REPRESENTATIVE GROWNEY. I hope you are right, Senator.

MR. KASS. I have no further questions. I want to thank Representative Growney for coming here.

SENATOR LONG. Are there any other questions?

MR. FENSTERWALD. Do you think there is any problem with overselling the office of Ombudsman?

STATE REPRESENTATIVE GROWNEY. No, sir; I don't. I am happy to report that when I introduced these bills, I think there were something like a dozen editorial endorsements of this plan, as well as my receiving letters from all over the State. In fact, there was some lady outside of Springfield, Mo., who is still writing me in support of these measures. So I don't think that we can oversell something like this.

MR. FENSTERWALD. The point I was trying to make is I think we should avoid giving the impression that the ombudsman will solve everyone's problems with relation to the Government.

STATE REPRESENTATIVE GROWNEY. I see what you mean.

MR. FENSTERWALD. That he is limited in the amount that he can do.

STATE REPRESENTATIVE GROWNEY. I think if we stress the fact that all he does is bring these matters to light and if there is, in his opinion, an injustice, bring it to light, I'm sure the public opinion will take care of straightening out that injustice.

MR. FENSTERWALD. Thank you.

SENATOR LONG. Any questions, Mr. Ohlhausen.

MR. OHLHAUSEN. I think we could all anticipate that an ombudsman, this particular ombudsman, is going to get a lot of complaints over which he really has no jurisdiction, particularly in areas where a State or local matter is involved.

Because you are involved in the State legislature, I wonder what you would suggest the ombudsman would tell these people. He can't just say, "I have no jurisdiction." What would you think of perhaps some arrangement of forwarding it to the attorney general of the State?

State Representative GROWNEY. Or the ombudsman could refer the person to his legislator, and perhaps the legislator, working with the State agency involved, could straighten it out or attempt to, or, as you suggested, send it along to the attorney general.

Incidentally, Senator I have to run for office every 2 years. That's why I'm for longer appointments. But should I be fortunate enough to go back to the legislature, I intend to pursue these bills once again.

Mr. OHLHAUSEN. That would be the best, of course, because one ombudsman could refer it to the other.

Senator LONG. Thank you, Representative Growney.

State Representative GROWNEY. Thank you, Senator Long. I hope that you have the opportunity, Senator and members, to come up to Kansas City and have similar hearings. I am personally inviting you. There are many people there interested in your proposals, Senator.

Senator LONG. Thank you very much. We plan to do that just as soon as we can get a date.

We have a number of editorials, including one from the Kansas City Star, supporting the concept of ombudsman, which, without objection, will be placed in the record at this time.

(The documents referred to follow:)

[From the Kansas City (Mo.) Times (the Morning Kansas City (Mo.) Star)]

THE SPREADING GOSPEL OF THE OMBUDSMAN

Our handy dictionary of political science terms does not include the word *ombudsman*. We trust that the editors of such volumes will, in the future, correct the oversight. An ombudsman by any other name is still an ombudsman, and we expect to hear much more of the matter.

In case you are not up on this fine old Swedish institution, the ombudsman is defined loosely as the government's official gripe-taker and more properly as the official charged with investigating and pressing citizens' complaints against the government and public officials. By now the British Labor government of Harold Wilson is well on the way to establishing a very British version of the ombudsman, as Brian Dunning of London reported on this page in *The Star* last Thursday. In London, the title will be Parliamentary Commissioner for Administration. In Sweden, the ombudsman—and the incumbent is the 31st to hold the office since 1809—receives complaints directly from the public. In Britain—to preserve the political contacts of members of Parliament—complaints will be funneled through the individual lawmakers. That's good politics, we would have to admit. In the end, the casework load of the M. P., with the Parliamentary Commissioner to investigate each complaint independently of Parliament, would be lightened.

We trust that the U.S. Congress will be watching the British experiment closely. In this country, griping is as American as the Fourth of July, and members of Congress are well aware of the high incidence of complaints against bureaucratic procedures, many unjustified, others quite justified. Nevertheless, it is a burden on the legislator to give proper attention and sympathy to such complaints. He feels, for political reasons, that he must. And thus a lot of time is devoted to a procedure that might be carried on by someone else in government.

Whether the U.S. is ready for an ombudsman, we couldn't say. Several bills establishing the institution (which, in Yankee terminology, would be the Administration Counsel of the Congress) have been introduced. They have thus far been pigeonholed. Should the British experiment prove successful, Congress might want to haul out these various proposals and consider them along with the gen-

eral subject of congressional reorganization that presumably will come up next year. A bureaucratic mess is a bureaucratic mess, wherever it may exist, and if an American-type ombudsman can help the citizen who must deal with bureaucracy, it would be worth the cost.

[From the Kansas City (Mo.) Star, Nov. 6, 1966]

DRAGON SLAYERS

An intriguing article in the November Holiday, (it's devoted to Scandinavia), describes a Scandinavian Ombudsman as a "collective conscience, a watch dog, a man whose function it is to protect the man on the street, a dragon slayer, a man who sees that private citizens get their rights or a reason why not." So you can see why we have concluded that the big difference between the Scandinavian Ombudsman and a Macy sales manager is that our sales managers wear white flowers to make them easy to find in the crowd. Macy's sales managers are the voice, the ears, the feet, the hands, the heart and conscience of Macy's. They are the living force that relates Macy's to you and vice versa. And like the Scandinavian Ombudsman, Macy's sales managers are your friends. Moral: when in Scandinavia, and you need a dragon slain, see the Ombudsman; when in Macy's and you need a dragon slain, just look for the man or woman wearing a white flower. They are always ready to go into fast action.

[From the Jefferson City (Mo.) Post Tribune]

ASSEMBLY SHOULD PASS OMBUDSMAN TRIAL BILL

As expected, a bill to create an Ombudsman's office has been introduced in the Missouri General Assembly.

The concept, we have noted before, is an inviting one.

Too often the average citizen, who may have a valid complaint against petty, abusive or unfair tactics of bureaucrats, has nowhere to turn.

An Ombudsman would fill this void.

Uninfluenced by political considerations, he would serve as a one-man complaint bureau, accepting and deciding complaints of individual citizens against the state or local government on their merits.

Under the bill introduced by Rep. Kenneth Growney (D-Kansas City), the Ombudsman would be appointed by the governor from a list of three names submitted by Missouri's non-partisan appellate judicial commission.

The office of Ombudsman has been in existence in Sweden for several centuries and has spread to several foreign countries. In the past few years, the idea has been widely discussed in the United States. Several states have enacted offices of the Ombudsman.

One safeguard is absolutely necessary, we believe. The office must have adequate powers. If not, an Ombudsman could become a captive of the bureaucrats or the party in power. If so, his effectiveness would be neutralized.

We hope the Missouri General Assembly will weigh and perfect the proposal for an Ombudsman office. At the minimum, the idea warrants a thorough trial.

[From the Jefferson City (Mo.) Daily Capital News, July 6, 1966]

MISSOURI CITIZENS COULD USE OMBUDSMAN

The office of Ombudsman, established in Sweden in 1809 to keep an eye on the king, his henchmen and the courts of law, has been taking some big jumps of late.

In the last century and a half, the idea spread to a number of other European and Far Eastern nations. It has been under consideration in recent months in Washington, a number of states and the City of New York. In recent weeks it has come up for discussion in Missouri.

In fact, two distinguished Missourians—Atty. Gen. Norman H. Anderson and Sidney L. Willens of the Kansas City Bar—believe Missouri is ripe for an Ombudsman.

The idea began receiving serious consideration in the United States earlier this year after Alfred Bexelius, a former judge who is the current Ombudsman in Sweden, testified before a U.S. Senate subcommittee in Washington. After hearing Bexelius, Sen. Edward V. Long expressed the belief the idea would be worth a trial in this country.

Unlike Swedish residents and those in other countries which have Ombudsmen, Americans, including Missourians, have virtually no place to turn to register complaints against the petty, sometimes abusive tactics of bureaucrats on the national, state or local level. And these are becoming more numerous yearly, especially on the national level.

Willens explains the job of an Ombudsman this way:

"In his 10 years in office, Bexelius has established a reputation as a kind of Missouri nonpartisan court plan all wrapped into one. Uninfluenced by political consideration he's a one-man complaint bureau accepting and deciding controversies on the merits."

Here's how the plan might work in Missouri.

Initially the Ombudsman would operate out of offices in St. Louis and Kansas City. If a Missourian felt he was held in jail too long, was being treated unfairly by a welfare worker, building commissioner or other officials or a government regulation seemed arbitrary, he could file a written complaint to the office of Ombudsman.

The Ombudsman would review the complaint. If he thought it was valid, he would investigate and act.

The prestige of an Ombudsman is such that administrators or other bureaucrats would not like to see him come in the door.

The Missouri Attorney General's office receives at least 25 complaints each week from puzzled, worried or irate citizens, who have been caught in the bureaucratic windmill. There undoubtedly are countless others, who have not written or complained.

We concur with Atty. Gen. Anderson that an Ombudsman would fill a need in Missouri—a need which is becoming increasingly obvious.

[From the Jefferson City (Mo.) Daily Capital News, Mar. 4, 1968]

U.S. SERIOUSLY NEEDS OFFICE OF OMBUDSMAN

Every community needs a Beadle Bumble Fund. So, too, it is becoming apparent that the nation must have a number of Ombudsmen.

The Beadle Bumble Fund, we noted earlier, was established by James Kilpatrick, editor of the Richmond, Va., News Leader. The Virginian, who is also a syndicated columnist, launched the fund to deflate an occasional overblown bureaucrat, to unstuff a few stuffed shirts and to promote the repeal of foolish and needless laws.

The fund has been highly successful in uprooting silly, petty regulations of snipping off bureaucratic red tape at the local level.

This privately financed fund of minute scope couldn't cope with an evil of far greater dimensions, which is growing in our federal bureaucracy.

It is intimidation by federal government. Or more specifically, the swarm of official investigators who are ready to harass the lowly or the high who challenge Uncle Sam.

That's where the Ombudsman comes in.

The Swedish word, which ought to gain popularity in the United States, simply means "one who represents someone."

More specifically in a growing number of countries, the concept of the Ombudsman signifies a "guardian of the people's rights against abuses and malfunctions by government, its programs and its officials."

The institution of Ombudsman originated in Sweden in 1809. Today the office also exists in Finland, Denmark, Norway and New Zealand. Great Britain is now considering instituting a similar office.

Significantly, a Swedish Ombudsman, Alfred Bexelius, is scheduled to appear before the U.S. Senate Subcommittee on Administrative Practice and Procedure. On March 7, he will explain the history and function of his office to the senators.

His visit to American shores will be most timely, because our government's time-honored outlook toward its citizens is being abused.

Since the founding of our Republic, the government's power of investigation has been used for the good of taxpayers. It was aimed at the dishonest, the disloyal.

But more and more this power is being turned against the citizens. As columnist Jack Anderson recently wrote: "It is being used to intimidate, coerce and strike back at persons who challenge the rulings or oppose the policies of the government."

Most government agencies do not follow such abusive practices. But examples are multiplying at an alarming pace.

Consider these:

A Taylor, Mo., farmer, whose funds were tied for four years after he refused to pay a \$570,000 tax claim. Although stoutly insisting he didn't owe anything, he finally agreed to a government plan to settle for 10 cents on the dollar in order to gain access to his bank account. The ordeal, he says, ruined his reputation, broke his health and cost him \$1 million in lost profits.

The case of the federal agent who barged into a Missouri bank to collect a \$2.35 assessment on a businessman's account. He could have collected the money by calling on the businessman a short distance away.

The Chattanooga, Tenn., resident, who exercised his constitutional right to call the President "tyrannical, dictatorial and domineering." He was promptly investigated by Secret Service agents.

A federal agency which made arrangements with the Washington Sanitation Department to turn in all the trash picked up at some 30 addresses in the nation's capital. Asked by a Congressman for an explanation, a sanitation department official contended the trash was segregated "to determine from typical household units the characteristics of refuse for statistical and design purposes."

But on one explained why trash for the study should come from people only under federal investigation.

Or the case of a high federal official who tried to use the Internal Revenue Service to take revenge on a driver who bumped his Cadillac. He took the license number of the other car, traced it to its owner and then ordered the investigation of his taxes.

The income tax harassment is a favorite approach of ruthless bureaucrats, even though the case may have little or no relationship to taxes. Fortunately, the IRS is aware of this tactic and tries to discourage it.

In theory, as Anderson points out, an innocent man has nothing to fear from the federal gumshoes.

But few Americans have the resources to stand up against relentless government prying or harassment. Moreover, once the federal gumshoes have questioned a citizen's neighbors or associates, he is surrounded by a cloud of suspicion that he can never fully dispel.

His reputation may be ruined, even though he is totally innocent.

The American citizen caught in this straight-jacket has no place to turn.

He has no Ombudsman like the citizens of Scandinavian countries and New Zealand.

The Office of the Ombudsman has become a speedy and accessible means for citizens to gain redress against unfair actions of their government.

More and more, it is becoming clear, American citizens also need Ombudsmen, who would have the power to guard their rights against the abuses of a Big Brother in Washington, who has, as one observer suggests, been developing an "alarming vindictive streak."

[From the Jefferson City (Mo.) Daily Capital News]

CITIZENS WOULD HAIL OMBUDSMAN IN STATE

In 1964 Massachusetts legislature rejected a proposal to establish an office of Ombudsman. A supporter lamented over the reason for its defeat: "It was such a foreign-sounding word."

True, the word and origin of the office of Ombudsman are Swedish.

Although the idea failed to get off the ground in Massachusetts, the Ombudsman idea is far from dead in the United States.

In fact, the Ombudsman, as one observer has suggested, is being heralded in many parts of the United States as the "Mr. Clean" of modern-day government. More and more Americans believe it is just the right vehicle to attack those hard-to-get-at abuses of public bureaucrats.

They concur there is a need, as has been demonstrated in Sweden and some other foreign nations, to establish a champion of the little man. An official, who is independent of the bureaucrats and who would serve as a form of citizens' defender against mal-administration and mis-administration of governmental agencies.

The idea is catching hold.

It is receiving increasing attention in New York City, where in the wake of the defeat of a civilian police review board last November, proponents and opponents of the board have suddenly found themselves in agreement. What New York City needs, most of them now reason, is a city-wide Ombudsman to scrutinize every area of the city government, including the police.

In California, the Ombudsman idea has picked up the support of Jesse Unruh, powerful speaker of the state assembly.

And offices of Ombudsman are being considered by other state legislatures, including Alaska, Illinois, Maryland, New Jersey, New York, Pennsylvania, Rhode Island and Utah. The idea also is being considered by the U.S. Congress for the District of Columbia.

Michigan claims to have the first state-wide Ombudsman. And Long Island's Nassau County, the first local Ombudsman. However, some observers believe these two Ombudsmen may be somewhat shackled because they are too much a part of a government administration.

To be effective, an Ombudsman must be free of all political consideration and his office secure enough so he is not afraid of any public official.

We are happy to note the Ombudsman idea is receiving increasing attention throughout the United States. We hope it will receive similar consideration in Missouri.

Here is how the plan might work in Missouri.

Initially, the Ombudsman would operate out of offices in St. Louis and Kansas City. If a Missouri resident felt he was held in jail too long, was being treated unfairly by a welfare officer, building commissioner or another public official, he could file a complaint with the office of Ombudsman.

The Ombudsman would review the complaint. If he thought it was valid, he would investigate and act.

The prestige of the Ombudsman is such (this has been demonstrated in Sweden and elsewhere) that bureaucrats don't like to see him come in their door.

So appealing is the Ombudsman idea that we would like to see it discussed at least informally, in the present session of the Missouri General Assembly. And implemented as quickly as possible.

Senator LONG. I notice that a very fine friend of mine and a very distinguished lawyer from Hannibal is in the courtroom now. I don't know whether he is here on official business or whether he is an authority on the ombudsman.

Mr. Harry, if you'd like to testify on the ombudsman, we will be glad to hear you this morning.

Mr. HARRY. I was over in the clerk's office, Senator, and when I'm over there, I kind of look around these courtrooms.

Senator LONG. Off the record.

(Discussion off the record.)

Senator LONG. Back on the record.

Our last witness this morning is Betti Green. Are you a Miss or a Mrs.?

Mrs. GREEN. Mrs.

Senator LONG. Will you give us your name for the record and your official position with any organization that you represent? Then, we will be happy to hear your statement at this time.

STATEMENT OF BETTI GREEN, CORRESPONDING SECRETARY, CIVIL RIGHTS ORGANIZATION, ACTION

Mrs. GREEN. I am Mrs. Betti Green. I am the corresponding secretary for the local civil rights organization, ACTION. The letters stand for Action Council to Improve Opportunities for Negroes. I'm afraid I must apologize. I only heard that I was supposed to be here yesterday, and I'm not sufficiently prepared.

Senator LONG. We are certainly delighted to have you here, and we appreciate your interest.

Mrs. GREEN. I did get a vague understanding that this was supposed to be about the redtape or the bureaucracy involved with governmental complaints.

Senator LONG. That's the general purpose of our hearings and that's the purpose of the ombudsman concept of the Government, to cut away this redtape and make our Government more available to the citizens.

Mrs. GREEN. Our organization, ACTION, has been chiefly involved with discrimination in employment against especially Negro men. We have found in the filing of complaints regarding mistreatment of Negro men and women in employment, we have been converged upon, I will say, by investigators who have taken word for word what we have said and have not followed through as far as enforcement is concerned. That seems to be the big problem with the filing of the complaints.

We feel that——

Senator LONG (interrupting). Are those Federal investigators?

Mrs. GREEN. Local, State, and Federal, yes.

There is always the problem of having to wait a period of time between the local, State, and Federal investigations before they can come about.

I would like to cite an example with the McDonnell Aircraft Corp. where the chairman of ACTION, Percy Green, was discriminatorily fired because he participated in a civil disobedience demonstration at the riverfront when he climbed the arch in protest of a lack of employment of Negro men in all job categories in the construction industry. As a result, he was laid off and he filed a complaint (against) the McDonnell Aircraft Corp. Investigators came out and we were told by word of mouth that they suspected he was discriminatorily fired, that he was unjustly fired, that his outside activities should have no effect on his employment.

Nothing happened from the complaint except the word of mouth. The letters all stated they could not find reason to believe that he was discriminatorily fired or unjustly fired.

Shortly thereafter, Mr. Green filed a complaint against McDonnell again after going out to enter an application when he found they were advertising for men in the category in which he is trained, electronics.

After he filed the complaint, investigators again came and they were convinced that he was not hired because of his involvement in civil rights activities. Now there are letters that state he was discriminatorily not hired, but they have not the power to do anything about it. They cannot force McDonnell Aircraft to give him a job.

He has to employ an attorney, but the Government has said they will pay a portion of the attorney's fees, and his case can be brought into court and a suit can be filed, but this is the problem. In addition to the aggravated hopelessness that is involved with complaints around discrimination in employment, there is the time involved when men have to talk with investigators and wait years and years before anything is done or before the case is finally resolved one way or another. This seems to be the big problem here.

When filing complaints, most people have complained about the notary public, that you have to have a stamp of approval, that many people don't understand and don't see the importance of that. Then

after they file the complaint with a notary public, the investigator comes and asks the same questions.

Senator LONG. What you are actually saying is that what you and your organization and your people need is someone that you have confidence in, someone that you can turn to that can help cut away some of this redtape and tell you whom to see or help you see them. You indicate perhaps you don't have confidence in these investigators. They don't get the job done for you.

Mrs. GREEN. No; I don't think I am saying that. We want enforcement power.

Senator LONG. But you want to see why it is not enforced. The ombudsman has no enforcement power of his own. He would investigate and make recommendations as to what they would do, but he would see that the various agencies would follow through with what power they have. They apparently have sufficient power under the law, and he would handle your complaint and see what could be done. Your complaint is typical of many complaints that we hear. He would see why the law had not been enforced.

Mrs. GREEN. Is there any reason why the ombudsman program could not incorporate a department that possibly could go into the enforcement after they have found—

Senator LONG (interrupting). The ombudsman would not have the authority to say to an agency, you do this or you do that, but he would have the authority to investigate and see why it had not been enforced and then report it to the Congress or the President and the other officials.

Mrs. GREEN. Are you saying in a case like this where a letter is sent from the office of compliance that they did find reasonable cause to suspect that discrimination existed, then he would say that?

Senator LONG. Actually your Congressmen and Senators don't have the authority to say to an agency, you do this. We can only check and see why they haven't done it, to see if they are inefficient or neglectful in their operation.

If the law doesn't give them sufficient power to do what the Congress intended them to do, then we can change the law, but we can expose that practice and the ombudsman theory would give you someone to go and talk to that you could have confidence in, that you would know wants to help you with your rights against the agency.

Mrs. GREEN. All right. But you spoke of confidence. If there is no enforcement power, do you think that will increase the confidence?

Senator LONG. Yes; I think if you had someone you could talk to and you knew that he was getting everything done that he could, or he was finding out why it wasn't enforced and turning the light of publicity on it, and perhaps getting it to be enforced that way, but he within himself wouldn't have the right to say, you enforce it like this.

Mrs. GREEN. Then that is an innovation, the publicity.

Senator LONG. Yes, that's one way to get the enforcement done.

Mrs. GREEN. That's right, because these offices are now working in secrecy.

Senator LONG. He could make recommendations to Congress.

Mrs. GREEN. I think overall the problem is enforcement.

Senator LONG. That's one thing that he would not have the direct power to say, do this or do that, but indirectly it would be a help.

Mrs. GREEN. In contrast now with public accommodations, there is an area where enforcement can be used, and I can't understand the difference. Why is it in employment we can't get a department that can enforce, but we can in public accommodations?

Senator LONG. This office we are trying to start here, this is something new, someone you can talk to, someone who can explain it to you. If something is improper, he can report it to the men in Congress and other Government officials.

Thank you very much for being here. We do appreciate your coming in this morning.

Mrs. GREEN. Thank you very much, Senator.

Senator LONG. We appreciate your testifying.

Let me thank all of you for being here and taking part in these 2 days of hearings. We are grateful to you.

(Following the hearing, Mrs. Green submitted the following letter, supplementing her testimony before the subcommittee.)

ACTION COUNCIL TO IMPROVE OPPORTUNITIES FOR NEGROES.

St. Louis, Mo., April 19, 1968.

Senator EDWARD V. LONG,
Chairman, Subcommittee, Ombudsman Hearings,
Washington, D.C.

DEAR SENATOR: I have read and corrected the enclosed copy of my remarks as you requested. I have also decided to add a few statements. (Same following)

I believe the Ombudsman would be beneficial to the total community in matters concerning the Metropolitan Police Department. In the last year both black and white citizens have increasingly complained of mistreatment by policemen.

Until 3-4 years ago Negro citizens did not avail themselves of the complaint department at police headquarters because we felt policemen could not and would not fairly and justly investigate themselves in complaints of misuse of police power.

3-4 years ago we began to file complaints with the police department in order to compile an official record of the kind and frequency of complaints of police abuse. I feel certain these documented police files of community complaints will prove useful to a sincere Ombudsman.

Thank you very much for the opportunity for the experience of appearing before a Senate Subcommittee at the Ombudsman Hearings. May I request that I be sent a copy of the final transcript of my statements? I would like to give a complete report on my participation in the hearings to a general meeting of ACTION.

Thank you very much.

BETTI R. GREEN.

At this time, this will conclude the hearings. The committee will be in recess at this time subject to the call of the chairman.

(Whereupon, at 12:15 p.m., the hearing was adjourned, subject to recall of the chairman.)

REGIONAL OMBUDSMAN PROPOSAL

FRIDAY, MAY 10, 1968

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,
Kansas City, Mo.

The subcommittee met, pursuant to call, at 10 o'clock, in Division No. 2, U.S. Courthouse and Post Office Building, Eighth and Grand Avenue, Senator Edward V. Long of Missouri (chairman), presiding.

Present: Senator Long of Missouri (chairman).

Also present: Bernard Fensterwald, Jr., chief counsel; Benny L. Kass, assistant counsel.

Senator LONG. The committee will be in order.

This morning the Senate Subcommittee on Administrative Practice and Procedure resumes hearings on S. 3123, my bill to create an ombudsman, for the residents of the State of Missouri. This bill is only a 2-year pilot proposal. The concept of ombudsman, the Swedish defender of the people's rights, works very well in many nations of the world. We do not know whether the ombudsman can work here in the United States. All my bill attempts to do is to find out whether it will work here.

There has been a lot of interest in the subject of ombudsman. Organizations such as the American Assembly and the American Bar Association have suggested that an ombudsman be created here in the United States. The Crime Commission report and the Riot Commission report both have suggested the need for an independent grievance procedure. My bill, if enacted, will experiment here in the United States with this novel concept.

The bill I have proposed would create a regional ombudsman with authority to investigate citizen complaints about Federal agencies acts or procedures. The regional ombudsman would assist any Missouri resident who has a grievance about the operations of any Federal agencies. The State of Missouri has within its boundaries almost all of the Federal agencies with which the ombudsman would be concerned. As we all know, Missouri is in many ways an almost perfect cross section of America, and, in my opinion, an excellent region for this 2-year pilot project.

We have many witnesses with us here today in the audience. We will certainly begin as quickly as we can.

Is Judge Curry in the audience yet?

Judge CURRY. Yes, Senator.

Senator LONG. We would be very happy to hear you first, Judge. We do appreciate your coming this morning.

I understand you don't have a prepared statement.

Judge CURRY. I do have a draft of a statement.

Senator LONG. Do you have copies that we could have?

Judge CURRY. Yes.

Senator LONG. Judge Curry is the presiding judge of the Jackson County court.

We are very grateful to you, Judge, for coming this morning.

Judge CURRY. I appreciate being invited to present a statement here, Senator Long.

STATEMENT OF CHARLES E. CURRY, PRESIDING JUDGE, JACKSON COUNTY COURT

Senator LONG. Would you have a seat back there; I think it might be very helpful, this is a very informal proceeding; we will be happy to hear you.

For the record, will you state your name and official position?

Judge CURRY. My name is Charles E. Curry. I am the presiding judge of the county court of Jackson County, Mo.

I want to thank you, Senator Long, for the opportunity to present a statement to this subcommittee.

I also would like to say that we here in Jackson County are very, very pleased that Senator Long has proposed a pilot ombudsman bill for a Federal ombudsman for Missouri and to serve Missouri residents. This has been a subject which has interested a number of our citizens here in this county as well as others in the rest of Missouri for some months now. We feel it is a rather new concept to most of us here but one which offers a great opportunity for protecting the rights of citizens. We want to congratulate Senator Long for taking the lead on this in Congress, in the U.S. Senate.

Senator LONG. Thank you, Judge. As you know, my committee held the first ombudsman hearing in the United States. We had as our witness, the Swedish ombudsman, Mr. Alfred Bexelius, who had been very successful in this field of government. He made the trip from Sweden to testify before our committee over 2 years ago. I actually didn't know how to pronounce the word, much less knew what it meant.

Judge CURRY. Some of us still have a little trouble. I know others here this morning have spent a great deal of time studying this concept in the last year or two and will have something very significant to say on it.

I would like to make a rather brief statement. Would you like for me to read this statement?

Senator LONG. Yes, the Chair will be glad to hear you.

Judge CURRY. Over the years, as the complexities of government increase, it has become more and more apparent that there is a need for a citizen's representative with clearly defined powers and duties.

In Jackson County, we recognize this need and one of our first projects was to present to the legislature a bill which would establish the office of ombudsman in Jackson County. Unfortunately, the legislature adjourned before the bill could come to a vote. We do plan, however, to introduce another such bill when the legislature reconvenes.

There is no question in my mind but that the office of ombudsman would perform a great service to the people who, at the present time,

have little recourse, except legal procedure, to redress grievances. This can be a costly and frequently frustrating experience for the average citizen.

If this is true on the level of county government, I cannot help but conclude it would be necessary and valuable on a Federal, regional level.

Every elected and appointed official serves the people and works for the common good. But no one is specifically charged with representing and protecting the individual in our society. The office of ombudsman would be a realistic attempt to forestall what our social scientists have referred to as "the impersonal, statistical community."

We have always tried to be representational in our governmental processes. It has been a source of national pride that the United States has so far succeeded so well. However, even though every document of our governmental history has been written with the altruistic view of protecting the minority, in practical terms this goal has become increasingly harder to sustain. We live in a world of explosion—population, technology, and general knowledge. Under these conditions, the voice of the "little man" is often barely audible. If the pace grows swifter, there is some danger that he will not be heard at all.

In my opinion, an ombudsman would provide the individual citizen with an objective hearing, meaningful representation, and would contribute to the United States careful tradition of checks and balances.

Senator LONG. Thank you, Judge, for a very fine statement.

We have the feeling that many people, especially the average citizen like we are, would have great difficulty—great hesitancy—in coming into a big Federal building and hunting up the proper Federal official. Do you have any feeling along that line, that there is a lack of communication between the Government agencies and the average citizen?

Judge CURRY. Well, yes, I do believe there might be that factor in it, Senator. I would think if an office or location for such an official could be in a place readily accessible, where it was perhaps not in the same building, in the same exact location, with the Federal courts and other offices, it would be helpful.

Senator LONG. We have, too, a problem of finding out, many times, what particular Federal agency is dealing with the subject or the problem that the citizen has. We have a staff to work at that all of the time, and they are experts in that field. I am sure you would agree it would be easy to understand how the average citizen would have great problems in knowing which office to go to to bring his complaint.

Judge CURRY. I know you are exactly right, Senator. We run into people all of the time over in the Jackson County Courthouse who want to know where the social security office is, and questions like that.

Senator LONG. I am sure you do.

Mr. Kass has suggested that perhaps the name "ombudsman" might be rather bothersome to them. Do you have any suggestion how it might be renamed?

Judge CURRY. I think the name "public protector" has been suggested, and that appeals to some people. I think there might be a better name.

Senator LONG. Of course "public protector," as someone has suggested, is a little bureaucratic and that is one of the things we want to get away from.

Mr. KASS, do you have any questions?

Mr. KASS. No, sir; I do not.

Senator LONG. Mr. Fensterwald.

Mr. FENSTERWALD. I wonder if, in connection with your attempts to set up a local ombudsman, what the attitude of your aldermen have been with respect to it.

Judge CURRY. We have some of the proposals for legislation in the State which have been discussed with the members of the city council here. I have heard no objection by members of that group to such an idea. I haven't heard of any strong feeling or intense interest in the idea of an ombudsman by the members of our city council. I don't know how thoroughly they have considered it. I think maybe one of the other witnesses this morning could tell you something.

Mr. FENSTERWALD. The reason I asked, Judge, is that at the Federal level, the only opposition we have seen to the concept will come from an occasional Congressman who will say that we are taking his job away from him. Most of them feel the job would be of considerable assistance, but there is some feeling on the part of certain Congressmen. I think it would be true of the aldermen at the local level who would like to have citizens come to them.

Judge CURRY. I suppose so, but I haven't had personal knowledge of that kind of objection being raised.

Mr. FENSTERWALD. Thank you.

Senator LONG. Thank you, Judge. I again want to tell you how grateful we are for your coming this morning.

Our next witness is the Honorable Kenneth L. Growney, State representative from Kansas City.

STATEMENT OF KENNETH L. GROWNEY, STATE REPRESENTATIVE, KANSAS CITY, MO.

Mr. GROWNEY. Senator, I have a prepared statement which I would like to forward to you.

Senator LONG. Mr. Growney, we are delighted to have you with us again as a witness. You and I have discussed the ombudsman concept a number of times, and you were in St. Louis when we had hearings there. You have introduced, I believe you told me, bills of this kind in St. Louis or in the State legislature. We are delighted to have you here this morning.

For the record, would you state your name and official position. We will be glad to hear your statement.

Mr. GROWNEY. Thank you, Senator.

My name is Kenneth L. Growney. I am a State representative of the second district of Kansas City, Mo.

Mr. Chairman, I want to thank you and members of your subcommittee for coming here to Kansas City. I did have the pleasure to testify before your committee in St. Louis. At that time, you didn't know if the committee would come to Kansas City. I am very pleased that you decided to come. The people want to hear more about this.

Senator LONG. We are delighted to be here, of course, and we are here because we have had numerous requests from people who were interested in this subject and wanted an opportunity to testify before the committee. We think it will be very helpful to us. It would be a hardship on those people to come to Washington; we thought it would be much better to bring the committee here to them.

Mr. GROWNEY. I think you are right, sir.

Mr. Chairman, gentlemen of the Subcommittee on Administrative Practice and Procedure, I am, once again, delighted and pleased to have this opportunity to appear before this distinguished subcommittee in support of establishing a pilot administrative ombudsman for Missouri. Before I make some very brief comments on the proposal, I would like to acknowledge and commend the work of this subcommittee and its distinguished chairman, Missouri's own U.S. Senator Long.

Mr. Chairman, I would like to state at the outset and repeat what you have stated many times, that by establishing this trial project of an ombudsman in Missouri one is not condemning all Federal agencies and all Federal employees. Rather most of these agencies and employees serve the public with a high degree of efficiency and competence. However, no matter how diligent these agencies and employees are with their dealings with the public, there are bound to be the inevitable complaints from citizens.

Mr. Chairman, I feel your committee was wise in selecting Missouri as the trial State for this project. I say this because Missouri is known nationally as the show me State. It is also geographically the center of this great Nation and is composed of the most diverse, but yet the finest people in the country. It is also known as the gateway to the West and has a fine diversified economy, from our great urban centers to our rich agricultural markets. Thus Missouri is an ideal State to establish a trial project of this nature.

Mr. Chairman, I have read Senate bill 3123 carefully and generally agree with the provisions contained therein, with one exception. That exception is that I think a 2-year project would be too limited. I do not think one could obtain the best qualified person for the position of ombudsman for such a short appointment. Personally, I would favor a 4-year appointment with the requirement that annual reports on the activities of the ombudsman be submitted to the President, the Congress, and the head of the Administrative Conference.

Mr. Chairman, as a State representative from this area, I have received numerous complaints not only on State agencies but on local and Federal agencies as well. I merely refer the complaints to the appropriate representatives, be he a Congressman or a city councilman. Due to the tremendous growth and complexity of the many boards, departments, bureaus, and commissions of the Federal Government, many citizens have become confused and perplexed in their dealings with these agencies. I feel the citizen has no place to turn to voice a legitimate complaint, except to elected representatives of the people, who, I am confident, are flooded with such complaints. I am particularly concerned that the poor, the uneducated, have no one to turn to for redress of their complaints against administrative agencies. Conversely, the wealthy may use their influence or merely employ attorneys to seek redress of their complaints. I think it is important

to stress that the ombudsman will not be in a position to reverse administrative laws; that is a matter for the Congress to ascertain.

In conclusion, I feel that the problems of poverty, ignorance, and prejudice will not be solved by establishing this office, but by bringing to light basic injustices committed by administrative agencies, the ombudsman can encourage improvement in good, honest, efficient, and sound government. It is my strong belief and fervent desire that Senate bill 3123 will accomplish these goals.

Thank you, Mr. Chairman and gentlemen of the subcommittee, for hearing me today.

Senator LONG. Thank you, Mr. Growney. Your suggestions are good, and we certainly will give some thought to trying to make those changes. We have hopes of reporting this bill out of this subcommittee to the full committee shortly.

Do you have any questions, Mr. Kass?

Mr. KASS. Thank you, Mr. Chairman.

Representative Growney, as a State representative, many people, I assume, feel you are the ombudsman for at least Kansas City, vis-a-vis the State of Missouri. Does it bother you, therefore, that you as a State representative are relinquishing any of your functions, any of your responsibilities, to your constituents?

Mr. GROWNEY. No; it doesn't, Mr. Kass. As a matter of fact, I feel it complements the representative or the Congressman. I would like to cite an example to this subcommittee.

There is a State statute on the books, and I think Senator Long probably was a member of our fine State senate when perhaps that statute was put on the books, relating to welfare. This statute states that information regarding the applicant is confidential. People come to me and they say, "Why wasn't I accepted for welfare?" I call the welfare office. The only information they have to give me is the name of the applicant and his address, nothing about the case. Now, this may be good. I am not saying that the laws should be changed. But what I am saying is that I cannot ascertain the facts for the constituent I am representing. If there is an ombudsman, I think he could, as a matter of fact, look into the case and report to the citizen.

Mr. KASS. You wouldn't feel this would be any lessening of your responsibility or obligation?

Mr. GROWNEY. No, sir; I do not.

Mr. KASS. Representative Growney, as one of the local spokesmen for ombudsman in the State of Missouri, have you encountered any opposition to the name ombudsman? Last night on television I heard an editorial saying they think it is a good concept, but maybe we ought to change the name. Do you have any comments on that?

Mr. GROWNEY. When I introduced these two bills in the Missouri House of Representatives, one for Jackson County and one a statewide bill, there were a number of people who couldn't get over this particular title. As a matter of fact, some of the representatives from St. Louis—as you all know, one of the greatest breweries in the United States is located in St. Louis, the Busch Brewery—one of the representatives, suggested rather than call it an ombudsman how about an omschlitzman. I think it has to be a different sounding title. I think if we had public defender or public protector, or something like that, as the Senator mentioned earlier, I feel maybe this would sound, once

again, like bureaucracy, whereas the ombudsman is a very different concept as far as the title. I think it is catching. So I would be in favor of keeping the title.

Senator LONG. It may become as American as spaghetti.

Mr. GROWNEY. That's right. [Laughter.]

Mr. KASS. Representative Growney, maybe this is an unfair question, but what are the possibilities of getting your particular bill through the State legislature?

Mr. GROWNEY. Mr. Kass, all I can tell you is what I learned during the last session with reference to the bills. It was the feeling of the House Judiciary Committee that they wanted to experiment with this local bill, the Jackson County bill, so the rest of the State could watch and see how it is going to operate, and then, if it is successful, they would go on a statewide basis. Right now I feel we would have difficulty in getting a statewide bill. They want to see, apparently, just like the U.S. Congress, how this thing works in Missouri before they go nationwide.

Mr. KASS. Representative Growney, one other question. As you well know, in Great Britain where they also have an ombudsman, the Members of Parliament only can refer matters to the ombudsman. The citizens cannot go directly to the ombudsman. I assume this was some sort of a compromise to avoid the problems we have talked about earlier. If such a compromise were necessary here in the United States at any level, whether at your level or the Federal level, do you think this would be doing as good a job or as adequate a job for the citizens?

Mr. GROWNEY. While I have no strong feeling against an ombudsman, say, on the State level, like they have in Parliament, where members of the legislature would refer complaints to the ombudsman, I really believe that this man ought to be separated from the legislature. For example, there may be citizens in my district who don't know I am the State representative; this happens. If they don't know how to get in touch with me, there should be some way for them to go directly to the ombudsman. I think I would favor the latter approach.

Mr. KASS. Do you agree with the basic concept that the ombudsman, although he should have full investigatory powers, should have very limited enforcement powers?

Mr. GROWNEY. That is correct.

Mr. KASS. In your bill, is it an arm of the legislative body that created them?

Mr. GROWNEY. No; that's not correct, sir.

Mr. KASS. How is it in your bill?

Mr. GROWNEY. Well, which bill do you want to talk about, the State or the Jackson County?

Mr. KASS. The counterpart to Senator Long's for Missouri, which, I assume, is a Jackson County bill.

Mr. GROWNEY. The selection process, first of all, we should talk about because the provisions in this bill are a very novel approach. We have here in Missouri the nonpartisan court plan whereby the selection of our circuit judges is under the nonpartisan judicial court plan. The selection process of the ombudsman would work the same way. The names would be submitted to the Governor and the Governor would pick a name from the panel. This man would not work for the

legislature; however, he would have to make annual reports to the legislature and the Governor.

Mr. KASS. But he is not an arm of the executive branch?

Mr. GROWNEY. That is right.

Mr. KASS. Isn't that the basic criteria of the ombudsman that we are talking about?

Mr. GROWNEY. That is correct.

Mr. KASS. I have no further questions.

Senator LONG. Mr. Fensterwald, do you have any questions?

Mr. FENSTERWALD. No, sir.

Senator LONG. Thank you, Representative Grownney; we appreciate your being here again. Your testimony in St. Louis as here is very helpful to us.

Mr. GROWNEY. Thank you, Senator Long, Mr. Kass, and Mr. Fensterwald.

Senator LONG. The committee will be in recess for 2 or 3 minutes. (Thereupon a short recess was had.)

Senator LONG. The committee will be in order.

At the conclusion of the hearing or when we break for lunch, there is substantial material in regard to ombudsman on these hearings at the press table that you are welcome to pick up.

Our next witness is Mr. Herman A. Johnson, president of the Metropolitan Council, National Association for the Advancement of Colored People. We appreciate your being here. Mr. Johnson and his wife, Dorothy, have been good friends of mine for many years. We are very delighted that you could come here this morning, Herman, to testify.

Now, do you have a prepared statement?

Mr. JOHNSON. I do not, Senator.

Senator LONG. Will you for the record, then, state your name and official position and then proceed with your statement.

STATEMENT OF HERMAN JOHNSON, PRESIDENT OF THE METROPOLITAN COUNCIL, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. JOHNSON. I am Herman A. Johnson, president of the Metropolitan Council, National Association for the Advancement of Colored People, Kansas City, Mo.

It is a pleasure to be before this committee this morning and have the opportunity of speaking in support of Senate bill 3123. As you may well know, our national office has already gone on record in support of your previous bill submitted as Senate bill 3123, and our local organization now wants to be recorded as also supporting this bill.

The prime motive and objective of our organization, of course, is to insure the rights of the black American. With the position I hold in the organization, I must speak about these particular rights. I fully realize the importance of the rights of all people, but as we are all acquainted, and I am sure the committee is well acquainted with the fact that the poor of this country are the people who find it most difficult to be properly represented and to have any type of redress to problems which confront them.

I feel that this bill will provide that type of vehicle for the poor. Of course, when we speak of the poor, we are speaking about a large percentage of the Negro population of this country, the Mexican Americans, and others.

We realize that only human beings and good Americans operate our Federal and governmental agencies, and they carry into those agencies and into the administration of those agencies and the interpretation of the policies of those agencies some of the same racial prejudices they have outside of the agencies; which is a perfectly natural action on the part of people. Of course, the Federal Government has established certain policies within agencies. When they are eventually interpreted, and in dealing with minority groups, the prejudices of the individuals who administer these laws and policies in many cases work to the disadvantage of the disadvantaged.

I am certainly hopeful that such a bill as the ombudsman bill—and I think I may take this opportunity now to say that I am one generation from the West Indies, and if my enunciation of this word differs, it is one reason why maybe we should consider making it something much easier for those—

Senator LONG (interrupting). Mr. Johnson, I don't think you have any more trouble with it than most of us do. Do you have any suggestions as to the change you might want?

Mr. JOHNSON. I don't have any right now, Senator, but I certainly think some consideration might be given to a change. While we are on this subject, I would just imagine some very poor people attempting to look for this office and after a while deciding that they could neither spell it nor pronounce it and would decide to give up, as they are now. I think we should make it easy enough for them so they could find it in the telephone book.

Federal, State, county, and city governments for numbers of years have dealt separately in opinion and ideas where minority groups are concerned. I think one of the places where we all realize it has been in our school system. The report of the National Advisory Commission on Civil Disorders found that there should be some kind of a grievance response mechanism, and that if we are to relieve the tensions of frustration in the ghetto, that certainly there should be some way of answering the grievances of the individual in the ghetto areas.

I wish to cite, for example, something that happened most recently in Kansas City, Mo. As you are aware, we had a racial disturbance here in Kansas City, our first, and I trust our last. During a night of these 2 nights of what we might consider "racial disturbance" rather than "riot," six persons were killed, four of whom, at least from all indications, were not involved in any criminal act. This, of course, is a matter of opinion. I look at the Watts riot which gained national notoriety because it was probably the worst riot that we have had, at least in recent years,, and during almost a week of daily rioting in Watts, 34 persons were killed and \$35 million of property destroyed. In Kansas City the top appraisal is about \$950,000 of damage. I am not here to say that this might not have been the best type of police work; I am here to say that we are not sure and we question it, and we have a right, I feel, to question, and we have a right to have an answer. Yet, when

one of the police commissioners submitted a resolution asking the police department to give an impartial investigation of the circumstances involved in these deaths and of other complaints that had been received, the police department or police board turned down such an impartial investigation for its own individual investigation, and such information is not available to anyone in the city but the police department.

I am not here at all to criticize the police department in terms of whether they did or did not do a better job here than they did in Watts. But the point is, I think that we have a right as individuals and as a part of the citizenry of Kansas City to know the facts. I feel that such a bill as you have introduced in the Senate and those that have been introduced at the State and county levels would give us, and afford us, this kind of an opportunity. This is one example of where this bill would be important to the minority groups, and I feel what is good for the minority groups is good for the city.

I trust that this bill passes and, therefore, is a forerunner of an ombudsman bill that will cover all Federal and State and municipal levels.

Senator LONG. Thank you, Mr. Johnson.

Let me ask you this. In these disturbed areas or areas where they have had these riots here and in other cities, do you think there is any merit to the feeling that there is a lack of communication between the people who live in those areas and their government.

We are particularly interested here in the Federal Government. Do they know where to go to talk to various governmental agencies about any complaints or problems they have, or is there a lack of communication that you think would be overcome by the use of the ombudsman principle?

Mr. JOHNSON. Senator, you are perfectly right, there is a lack of communication, and there is a lack of knowledge of where to go. Sometimes there is a real lack of knowledge, that you haven't been treated well.

As president of the NAACP, you would be really surprised at the number of complaints that we receive almost daily; the number of questions that people want us to answer with regard to their own problems within certain governmental agencies—the police department, the welfare department, health and welfare, hospitals, all of these things. They have no knowledge of where to go, and when you look into it, which takes a tremendous amount of time—and I think they should be screened before going to anyone else—you find that there has been some violation of their rights, although you cannot get all of the information that it actually takes to determine it. I think that it was found in the riot situation, and particularly by the Riot Study Commission, that possibly some of these riots or civil disorders seem to be spreading through the country. I would like to go on record as saying that our organization certainly doesn't want to burn down this country, but this could have been averted had there been more communication between the black ghetto and the city at large.

Senator LONG. We know there are a lot of just complaints and grievances, but don't you think it would have some value to this type of bill if there were this person, the ombudsman, to whom people could talk

about their problems? Couldn't this be a steam valve to relieve their pressures and maybe help to quiet down their feelings?

Mr. JOHNSON. You know, Senator, if a person thinks he has a grievance and doesn't, he is in the same shape as a person who has one.

Senator LONG. I think that is a very fair statement. This would give him a chance to express himself and discuss it with someone, and he perhaps would have a different feeling.

Mr. JOHNSON. And it gives him a feeling of belonging and a feeling that he, himself, is able to do something about his problem. He has some redress if he is not satisfied with the answer he gets or the treatment he gets from a particular agency.

Senator LONG. Many problems, of course, are petty problems, but they are important to the man who has them. If the ombudsman helps him solve those problems and little grievances, and little grievances can build into big ones, do you think it might be easier for him to discuss his problem with this ombudsman and maybe get a "no," or get a better understanding of it, than it would be just to get a cold "no" from a welfare agency or some Federal agency in some Federal building?

Mr. JOHNSON. I believe so. As a matter of fact, I am certain that it would be. Sometimes people like to feel, even when they really don't have a justified grievance, that if someone, an impartial agency, will sit down and talk with them and show them that they really don't have a grievance, they are pretty well satisfied. The manner in which they are treated and in which their case is handled in some agencies, leaves a lot to be desired as to whether or not they are being given fair and just treatment. Of course, we must realize that this is especially true with regard to minority groups. They already have experienced injustice, and they feel that they are not going to be given justice that some of the majority groups might receive. Therefore, they are skeptical, and 99 percent of the time they are right.

Senator LONG. Wouldn't there be a hesitancy on the part of some of the people about whom you are talking who have these problems to come down in the Federal court area or into the Federal building like we have in these cities and try to hunt up the Federal agency and get someone to talk to about their complaint?

Would there be a hesitancy on their part to do that, and if there is, would they just not come down to the Federal building, but stay out in their own areas and build up pressure about it?

Mr. JOHNSON. Senator, I am in the real estate business, as you know, and I have had occasions when I would have to send a veteran to the Veterans' Administration office in the Federal building, and I have had them call me back from the office because they can't find the office in the Federal building. Of course, there is a directory, an elevator, and all of these things, and the number is on the door, but it is a big building with a lot of people, and to find where they want to go, well they just have difficulty. After all, now, we are dealing with the poor, and they just have difficulty finding places, and if they can't explain when they get to a receptionist exactly what they want, the receptionist doesn't know where to send them. After they go to about five people in the agency and tell the same story in order to get to the right section to discuss their problem, they sometimes just give up.

Senator LONG. We have that same problem in Washington where we have trained staffs to try to find the source of the information we want and they find it very difficult, so we can imagine the problem that citizens without that help would have. With an ombudsman in an office that would be easily accessible to the people, it seems to me it would be much easier for them to go in and talk about their problems.

Do you have any questions, Mr. Kass?

Mr. KASS. Thank you, Mr. Chairman.

Mr. JOHNSON, although Senator Long's bill would not create an ombudsman for the city of Kansas City, just out of curiosity more than anything else, if there were to be an ombudsman for Kansas City—and I am not asking you to take a position if you don't want to because it is not relevant to this hearing—but if there were an ombudsman for Kansas City, where should he be located? Should he be located at the neighborhood level, should he be located at the central city level downtown, or just where? This has some relevance, of course, to where our ombudsman will be located if this one is created.

Mr. JOHNSON. I think it should be away from any governmental building and in an area where people would feel that they were not still dealing with an agency in a Federal building or city building, or something of that sort.

In the case of the poor, if it were possible at all, I would like to see a decentralization, at least an office close by that would be able to handle the complaints and grievances from the poor, who are not knowledgeable, who do not have transportation, who are not familiar with all of the things downtown. However, I still feel that if there was one office in Kansas City, they would find it.

Mr. KASS. Many people say, "Well, isn't this really just another bureaucracy?" Do you think if the ombudsman would start to solve some of the complaints and settle some of the grievances that the word would spread in the city, for example, here in Kansas City, that this man is your friend, he is representing you and is not the Federal Government and he will assist you in your problems and your complaints, or do you think that people will still say, "Well, he is just another part of the bureaucracy?"

Mr. JOHNSON. No, I don't think you would get that. Our people are so in need of help and assistance that in an agency, if they have one man in that agency who has been helping them, the word pretty much spreads and everyone is anxious to do business with that particular individual, because it has become known to the community that he is fair, just, and has been of assistance to someone.

You take in the Welfare Department, there are certain welfare workers who are generally known by the people in the community as being considerate people who have helped their friends. They also know those who have not been so helpful, and once they get into the case, right away they have trouble because they have already been oriented that this caseworker has not been as nice as some other caseworker on certain problems. I think that the minute they know that there is someone who will handle their problems and handle them with sincere consideration, they certainly will seek that assistance and help.

Mr. KASS. This is not a question, but I would like to just submit for the record, Mr. Chairman, a section from the recent Riot Commission's report, the President's Commission on the riots, where it talks about the establishment of effective grievance response mechanisms. If I may read just one paragraph where the whole Commission concluded:

We are convinced on the record before this Commission that the frustration reflected in the recent disorders results in part, at least, from the lack of accessible visible means of establishing the merits of grievances against the agencies of local and State government.

(An excerpt from the report follows:)

REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS MAR. 1, 1968

ESTABLISHMENT OF EFFECTIVE GRIEVANCE-RESPONSE MECHANISM

Effective implementation of the Neighborhood Action Task Forces will depend upon the continuing commitment of the city administration to their success. To ensure attention to many of the sources of tension identified above, we recommend that formal mechanisms for the processing of grievances, many of which will relate to the performance of the city government, be established independent of the local administration.

We are convinced, on the record before this Commission, that the frustration reflected in the recent disorders results, in part at least, from the lack of accessible and visible means of establishing the merits of grievances against the agencies of local and state government, including but not limited to, the police. Cities and states throughout the country now have under consideration various forms of grievance-response devices. While we are not prepared to specify the form which such a mechanism should take in any particular community, there are certain criteria which should be met. These include:

Independence.—This can be achieved by long-term appointment of the administrator, subject to City Council removal. The grievance agency should be separate from operating municipal agencies.

Adequate staff and funding.—Exact costs will vary depending on the size and needs of the city's population. It is most important that the agency have adequate funds and staff to discharge its responsibilities.

Comprehensive coverage of grievances against public agencies and authorities.—General jurisdiction will facilitate access by grievants. Moreover, unlike specialized complaint agencies, such as civilian review boards, all agencies would be brought equally under public scrutiny. This should facilitate its acceptance by public officials

Power to receive complaints, hold hearings, subpoena witnesses, make public recommendations for remedial action to local authorities and, in cases involving violation of law, bring suit.—These powers are the minimum necessary for the effective operation of the grievance mechanism. As we envision it, the agency's principal power derives from its authority to investigate and make public findings and recommendations. It should, of course, have a conciliation process whereby complaints could be resolved without full investigation and processing.

Accessibility.—In large cities, ready access to grievants may require setting up neighborhood offices in ghetto areas. In others, local resident aides could be empowered to receive complaints. It should be possible to file a grievance orally or in writing. If forms are used, they should be easily understood and widely available.

Participation in grievance process.—Grievants should be given full opportunity to take part in all proceedings and to be represented by counsel. They should receive prompt advice of action taken; results of investigations should be made public.

I believe this is, in effect, what you are stating here in Kansas City, also?

Mr. JOHNSON. That is correct.

Mr. KASS. They recommend that the ombudsman or a grievance procedure—they say, “We are not prepared to name the form that this is to take”—but it does recommend that it become independent of the agency. I take it you support this concept.

Mr. JOHNSON. I support that; yes.

Mr. KASS. I have no further questions.

Senator LONG. You know, Mr. Johnson, some of the agencies are attempting to be in better contact with our citizens. I believe the veterans bureau has a setup where they have telephones in certain locations in certain towns where they can pick that telephone up and call direct to Washington and some veteran can talk to someone there about his problem, person-to-person, but it is also an effort to relieve those tensions and give that service that our citizens desire.

Do you have any questions, Mr. Fensterwald?

Mr. FENSTERWALD. No, Senator.

Senator LONG. Thank you so much. It is good to see you, and we appreciate your being here.

Our next witness is an official ombudsman. He has probably never been called that, and he may have been called worse things than that. The last time I saw this gentleman was sometime after 1 o'clock after I finished being on his show. I have had the pleasure of being on this show a number of times. He listens to more complaints and more problems than the average fellow in Missouri. This gentleman is Mr. Walt Bodine, WHB Radio.

Walt, we appreciate your being here this morning. I have always enjoyed being on your show.

Mr. BODINE. Thank you, Senator.

Senator LONG. I am sure that you have a very fine statement, because you are a man with a great deal of experience along this line and have done a great service over the years in helping relieve tensions and solve problems.

Now for the record, would you state your name and your position and then proceed with your statement.

STATEMENT OF WALT BODINE, PRODUCER-MODERATOR OF “NIGHTBEAT,” WHB RADIO, KANSAS CITY, MO.

Mr. BODINE. I am Walt Bodine, producer-moderator of “Nightbeat,” WHB Radio, Kansas City, Mo.

Senator LONG. I am glad to have you on the stand where I can ask you questions.

Mr. BODINE. On the other hand, I can make a statement.

Well, sir, I have put down a few things in written form, because as you know, my normal office hours run from about 9 p.m. to 4 a.m., so I am up pretty early in the morning and am not very bright. I put this down while I was still thinking.

You know, even in the visitor's view of the U.S. Senate from up in the gallery, you can see that Americans are people who would rather talk than listen, and this is true; it carries over anywhere you want to go. In my job as moderator of “Nightbeat,” one of the oldest phone-in radio shows in the country, I encounter this, too. People ask lot of times, “How can you do this, talk to people for 3 hours every night?” Well, the talking is not so hard; it is the listening carefully

and respectfully and so that you will know when somebody calls later and asks what that guy said; you will know.

The ombudsman as described in your bill I think deserves a trial run, if only for the assurance that there would be one person in this country willing to listen—a professional listener, if you will—to anybody, especially people who feel they are nobody. The fact that an ombudsman besides listening would then have power to act on what he heard really holds great promise.

People have said to me when we have discussed the ombudsman idea on WHB something similar to what you said, "Well, your program practically functions as an ombudsman now." Well, this, I think, is mistaking the whistle for the locomotive; we can make noise, but that is about it. The talk show does give people who are confused and frustrated and embittered by redtape or the runaround, a place to sound off, but it is sort of like the chaplain's office in the army, you can be heard, but that is about it. We can't do much more. Unlike an ombudsman, we can't command access to Government files; we can't call on any officials or necessarily give any explanation of anything.

Senator LONG. Mr. Bodine, we hope you can, as a result of our Freedom of Information Act which I passed through the Congress about a year ago.

Mr. BODINE. Yes. I am talking here about other things. Maybe there are things, for instance, files in welfare and elsewhere that shouldn't be opened, but could be opened to a properly constituted official.

We don't have that sort of access, of course, so what it ends up is a talk show. You and I have discussed the similarities to an ombudsman, but we end up as, I think, sort of a doctor who can, along with the patient, identify the pain that is present, but beyond that can't diagnose the disease, much less cure it. At best, then, we generate heat sometimes, and sometimes that heat is enough. Since heat rises, it will waft the complaint all the way up to the head of the agency, and sometimes if the caller's complaint is justified, something will happen, and sometimes nothing will happen as a result of it.

The caller is usually calling us as a last resort, anyway. He has called everybody else, he has been from pillar to post and fireplugs in between. So when I sit and listen to people, it is all too apparent that a lot of people have just given up. The Government is too complex, it is too involved, it is too mysterious, and there are people today who can no longer distinguish between the Federal and local government. A man called the other day and said, "How is it that they can build a contraption that lands on the moon and picks up a bunch of rocks and can tell us about them, and they can't fix these chuckholes out on Euclid Avenue?" What I am saying here is that he needs Civics I, but Civics I also tells him that things happen properly, and they don't. You can look out and see the chuckholes, so his tax dollars are all green, none of them are marked "space buck, chuckhole buck," they all look alike going out, and coming back, all he can see is that hole in the street out there.

We tell these people, you know, to contact their district councilman, and in Federal matters to contact their Senator or Representative, and how often they say, "Oh, it wouldn't do any good," or the latest one is, "Oh, some computer will answer me," and in a few cases I think that is true. I would like to say, Senator, that as a rule when we refer

someone and they do contact you, you usually send a carbon copy to me, and I can see it is an actual reply to the question that was asked.

Senator LONG. I was going to suggest to you that we don't have a computer, but we get from a thousand to fifteen hundred letters a day, and there are over a thousand letters a day that go out.

Mr. BODINE. Again it is a dispersal.

Senator LONG. You are a distance from it, and it is very difficult to handle it. Our staff is trained to look at that, but they don't get a chance to talk to them on the local level where they can look out and see that chuckhole you are talking about.

Mr. BODINE. That, I can recognize, is a local problem. The point is, when confidence in government breaks down anywhere up and down the line, then we suffer a bigger loss, because maybe a great deal of what we saw on the east side not too long ago (the Holy Week riots) was a breakdown in faith, in the established order, and the government.

Senator LONG. Would you say it was lack of communication between people and government officials?

Mr. BODINE. Absolutely. I will give you a few examples.

Two or three nights ago I had a night called "Red Tape and Run Around." The purpose of this was to gather case histories that might illustrate this situation. I could have gone back through the files and found ones to match these a hundredfold, but here are a few, just quickly, and most of them are local.

One call was from a man in Overland Park who had been calling for 2 years. The city came out and dug a drainage ditch of some kind through his property and left it open. He has contacted everyone, maybe not the President, and he still has it there.

At the local level, a lady in Kansas City North, called on the same night and said, "I am at the end of a sewer line. When I moved into this house, in my yard was just this hole, and it is big enough for a kid to fall in or someone to break their leg." For 7 years she kept making this known to city hall. After 7 years a crew finally appeared one day and shored it up and put some rocks around it and completed it all except to put a manhole cover on. The man announced he would be back tomorrow to do that, and that was a year ago, and that is lot of tomorrows. So, for want of a 10-inch manhole, this lady's faith is gone as to whether it does any good to contact public officials.

[Mr. Bodine's comment: "2 days after the Senate hearing, she called to report 'manhole cover received'."]

In the Federal realm, we have had many complaints over the years about the fact that while Federal policy, on the one hand, encourages equality in housing, and so forth, that the Government mortgaging agencies of the Federal Government seem to have often had policies that encouraged just the reverse. An ombudsman might well have come into this very early in the game, but it is a little late now.

At the State level, a lady confessed that when she got absolutely nowhere in trying to place her retarded youngster in the State institution at Marshall, going through the proper channels, she finally reluctantly pulled some political strings and her child was admitted. Some people would brag about the fact that they have "connections", but she told this on the air feeling she was tainted. She had wanted to go the proper way, but she had to go through the back door and

she was not proud of it. I think an ombudsman, had he existed at that time, and if he existed now, might look into what is wrong there.

Some of the callers the other night had lost enough faith in the Government that they felt the ombudsman would just turn into a bureaucracy himself and that in 10 years or so, we would have to have a super ombudsman to handle the complaints about him.

I realize I am overdrawn on my time here, but I feel some people really have lost faith that they can get anything done, or have their complaint registered, or that anything will happen when they speak. I think the apex of that would be illustrated by the county collector who was on "Nightbeat" one night and was telling us how some people pay so little attention to government processes, that if they get a bill from any form of government, they pay it. The feel the government is just a thing that takes money. The county personal tax bill is sent out, the taxpayer writes a check and mails it back. The bill is then stamped paid, and one copy is mailed back to the taxpayer. This agency has a considerable number of people every year who then take that receipt and write another check and mail that in without any question. This is how little attention people pay. Why is this? I think it is because they have lost their interest, and I don't know whether they feel the government has left them or they have left the government.

Finally we come to the name. This is a difficult one. We are very close to the advertising field and names are everything with them, so I listened very carefully to people calling in and commenting. I read them portions of the bill, and they would comment on it. One fellow, by the way, called up and never got on the air. I asked if he knew what we were talking about and he said, "Ya, I want to comment on the —oh, the hell with it," and hung up. [Laughter.]

Mr. BODINE. Others called it the omnibus man, the ommisbud, and the whatchemecall it. Knowing how we love to alphabetize, as we always do in the government, we can't call him the "O" because that makes him a zero; we can't call him the "OB," even though we want him to deliver, we don't mean babies. I took it as far as the OBM and gave up. Anyway, by whatever name it will be known, Senator Long, I say God speed the concept and the bill to create the ombudsman. It will be a load off my program and even my conscience, because I think it is one thing to listen to people and refer them to what are the proper agencies, but it is another thing to know in your heart that some of those agencies will function properly and promptly and others won't. The only recourse I have found is to say to them when they call an agency, tell the agency that they have talked on "Nightbeat," so they will at least know the public is hearing their complaint.

Senator LONG. In other words, the publicity that your program or ombudsman can turn on these agencies will have a wholesome effect?

Mr. BODINE. I would pray so at the local level, the county level, and the city level.

Senator LONG. These problems, we find, are very important to the people who call in, for example, the man you told us about who recited the situation about that chuckhole.

I remember Lyndon Johnson telling me the first time I went into the Senate, when he was still the majority leader, that I was going to get complaints from people who had problems, and to remember

that they are very vital to those people. They will appreciate and understand what you do or try to do for them the rest of their lives; it is important to them and a part of your job. That is one of the reasons we have to set up an office on the theory of an ombudsman. Our staff is trained to give that service immediately and in every way we can to you or any other citizen who calls us.

It has certainly been delightful having you here this morning and hearing your testimony. It will be very helpful to the committee.

Mr. BODINE. Thank you for the equal time.

Senator LONG. You didn't last that 3 hours, thank you, but you let me off a little short.

Mr. KASS, do you have any questions?

Mr. KASS. Just one question, Senator Long.

Mr. Bodine, when you said on the air that you were going to talk about the ombudsman, the people knew what you were talking about; didn't they?

Mr. BODINE. You never say anything on the air and fail to explain what it is.

Mr. KASS. That is the question.

Mr. BODINE. In print, also, you wouldn't just start talking about the ombudsman without a paragraph somewhere in the story that explains what an ombudsman is.

Mr. KASS. The reason I asked is that when the Senator first started to hold the hearings 2 years ago, nobody knew what we were talking about. Now every day in the paper people are saying "let's create an ombudsman," or "we need an ombudsman for this or that." I think people are beginning to understand it, and they do understand that in the latest Webster dictionary the word is now there.

Senator LONG. As I understand it, some of the large department stores, instead of having a complaint department, have an ombudsman.

Mr. KASS. And some of the "Action Line" columns of the newspapers now call themselves ombudsman.

I think people are beginning to understand the concept. Do you think the name really bothers people, even though they can't pronounce it?

Mr. BODINE. Doesn't it bother you when you can't pronounce something that you have to say?

Mr. KASS. Except that I know that is the man to whom I must go. I think maybe the best alternative we have heard today is "public listener."

Mr. BODINE. I think that implies, perhaps, one of those psychiatrists who just listens to you and his only action is to send you a bill.

Mr. KASS. We are not concerned about the name, really, because "public defender," "citizens' protector," seems to be so loaded with bureaucracy in and of itself.

We would welcome any suggestion of names. When we get down to it, even though the people may not know what it is or how to pronounce it or spell it, I think they will finally begin to understand that this is the man who will help them or try to help them.

Mr. BODINE. Thank you, Senator Long.

Senator LONG. Are there any other questions of Mr. Bodine?

Mr. FENSTERWALD. No.

Senator LONG. Our next witness, Mr. Overbay, as I understand it, is the TV ombudsman as compared to Walt's radio ombudsman.

Mr. OVERBAY. Some of this may sound like a video replay.

Senator LONG. Mr. Overbay, we are happy to have you here this morning. Please state your name and position, and we will be happy to hear your statement.

STATEMENT OF JIM OVERBAY, ACTION REPORTER FOR KMBC-TV NEWS

Mr. OVERBAY. Senator Long and gentlemen, my name is Jim Overbay. I reside in Kansas City, Mo., and I am employed by Metro-Media Inc., a company operating KMBC-TV in Kansas City, Mo. As a part of my duties as a newsman for KMBC-TV, I supervise a regular news feature called "Action Reporter." Briefly, this is what the "Action Reporter" is, and how it operates.

Our station invites viewers to write to the "Action Reporter," should they have a problem they are unable to solve for themselves. Our role is that of an unofficial ombudsman. In other words, we help them fight city hall, or any other target, if we find evidence their problem is a real one and is beyond their means to remedy.

Some of these problems, if they seem typical of difficulties our viewers might encounter, are dealt with on the air. During our 6 o'clock and 10 o'clock newscasts, we will discuss the problem on the air and inform the audience of the results of our investigation into the problem. Our aim, of course, is to be able to report to the public that the situation in question has been resolved.

Obviously, there is not time on the air to deal with each of the problems that come to our attention. In fact, it is not possible for us to give more than passing attention to the majority of letters and telephone calls we receive. However, rather than allow our viewer to feel his problem has fallen on another deaf ear, we attempt to forward each letter to what we determine the proper agency, office, or individual. The viewers' letter is sent with one of our own, informing that office or individual we are trying to help a citizen solve a problem and asking the recipient of the letter to do what he can toward that end.

So much for the operation of the "Action Reporter." Here is a breakdown of the type of complaints we receive which might be of some interest to the committee.

We began this news feature in October of 1967. Up to the present we have received 827 letters. The telephone calls we try to discourage, but we would estimate those at being roughly 2,000. Very briefly, these are the most frequent complaints that we receive from the public. Topping the list is traffic control and traffic safety. Then following, in order, road repairs and street maintenance; public utilities, primarily water and sewage problems; complaints about business practices; education and school busing problems; police administration and practices, vacant land, and vacant buildings. Then we come to welfare complaints, various requests for information, tax complaints, littering and burning, animals, justice or the lack thereof, government waste, sidewalks, public health, ambulance service, juvenile prob-

lems, mail delivery, insurance, urban renewal; and, of course, television.

I might cite two cases as examples in which we feel the "Action Reporter" was able to get desperately needed results when the viewer felt he had exhausted all possible sources.

One of the first letters we received was from the superintendent of a school for the blind. This problem, by the way, was not in Kansas City, Mo., but in a neighboring community. He pointed out the existence of a lake very near the school grounds. It was located at the bottom of a steep embankment, adjacent to a sidewalk often used by blind youngsters walking in the area. He had requested the city install a cable, fence, or some form of barricade along the sidewalk, perhaps 200 feet in length, to prevent a child from tumbling into the water. Toward this end, he had carried on correspondence and telephone conversations with various city officials for almost a year. He obtained promises, but no results. We used the story on the air and asked city officials why this project could not be undertaken. Four days after the report was on the air, a cable was installed.

More recently, the president of an elementary school PTA wrote to us with a problem. A contractor, as a part of the construction of several homes in an area adjacent to the school, had built a large drainage ditch. It was 5- to 6-feet deep, paved with concrete; and, at times, ran bankful with water. The ditch followed a course along the edge of the school playground, used daily by more than 900 children. There was no fence, no barrier to prevent a child from falling into the ditch. One youngster did fall into the ditch, breaking an arm and a leg.

The PTA had talked with the contractor, the city, and the school district, asking that something be done to correct this hazard. Nothing was. When we looked into it, this is what we were told. The contractor said he had satisfied all requirements of the Federal Housing Authority and the city's building code and, therefore, was not responsible for any additional cost involved in building a fence. The city confirmed this, and pointed out there did not appear to be grounds to go to court under provisions of the city's public health or general nuisance ordinances. The school board said the district should not be required to pay for a fence because the playground was there before the ditch was constructed. They reasoned that the contractor created the hazard and the city allowed such hazard to be created. Therefore, one or the other should be liable.

After three reports on the problem, the city and the school district began working on a compromise. Funds have now been earmarked for the project and the playground will be fenced during the summer vacation.

Those are just two cases. Unfortunately, we are not always so successful.

Generally, we find most local government offices quite responsive to our program. Specifically, we would single out the city administration of Kansas City, Mo., and the Kansas City, Mo., police department. Each of these appears to make a sincere effort in getting an answer to many problems we send their way. In most cases, I am sent a copy of their reply to the viewer. The reply spells out what has been done in the way of investigation and, if applicable, what action

has been taken. Both the city and the police department have set up offices to process complaints and problems received from the public. Obviously, what we do not know, is whether this favorable action is a result of good intentions and good administration or whether some of it is prompted out of a fear of so-called bad press.

I am not a lawyer and I am not a sociologist. The brief closing comments that follow represent nothing more than the personal opinion of an individual who has listened to more people's problems than the neighborhood bartender.

The rapid growth of the urban complex has created problems faster than our cities and States can learn how to deal with them. The clerk in the city hall and the cop on the beat are further and further removed from the public they serve. It's the nature of society, it would seem, that we as individuals grow further apart and not closer together. More often than not, the other guy's problem doesn't seem very real or very important. In many cases, this attitude applies to government as well as to individuals. It is unfortunate that some officials may be inspired to act only when pressure comes into play. The press, in forms such as our "Action Reporter," is capable of exerting pressure. So are those persons who possess wealth or power. But unfortunately, Mr. Average American, and especially Mr. Poor American, is not in a position to pressure anyone, at least not acting as an individual. If his problem falls on the deaf ears of our public servants and elected officials, we have proved him right in his assumption that "you can't fight city hall."

Senator LONG. Thank you, Mr. Overbay. I believe your testimony sums up the fact that the white light of publicity you can create through your department, or the ombudsman can through his department, has a very wholesome effect on any agency.

Mr. OVERBAY. It also depends on your point of view, I suppose, but you can say it has more effect——

Senator LONG (interrupting). If it makes them perform their duties better and be more responsive to the needs of the citizen, it might be wholesome.

Do you have any questions, Mr. Kass?

Mr. KASS. Yes; I do, Mr. Chairman.

Mr. Overbay, do you investigate complaints on your own motion, in other words, when you hear of something or you go somewhere and you decide there is a problem, or do you limit yourself to investigating complaints where people have called in or written?

Mr. OVERBAY. We do both. Primarily, the investigations are made based on letters or telephone calls we receive from the public, but anything we might hear, even in passing conversation, a situation that would seem to be unfair and would seem to bear some correction, we will look into it.

Mr. KASS. You made an interesting comment, and I would like you to elaborate on it. You said whether the government acts out of just good graces or because of their fear of the spotlight you may throw on them, sometimes they respond. Is this the only way that government sometimes acts? Is this your opinion, but for that spotlight——

Mr. OVERBAY (interrupting). No; not at all. I think perhaps we are kicking various government agencies around a little too much here today. As I pointed out, specifically the cases to which I referred in

Kansas City, the city and police department have offices and have ways of processing these complaints and problems. I am sure many other cities in the area do as well. No; I don't think it is necessary in every case that the threat of publicity be brought to bear before action is taken, but quite obviously, it makes a difference. It makes a difference whether Mr. Nobody calls a public official and asks for help or whether we do with, of course, the implied threat of publicity.

Mr. KASS. Do you find that in many instances, perhaps more than the majority, the complaints are not founded or are founded?

Mr. OVERBAY. In many cases they are not.

Mr. KASS. They are not.

Mr. OVERBAY. This is quite true. I would hesitate to say in how many cases, but I am sure, let's say, perhaps in a quarter of the cases the complaint, perhaps, is not justified, it may be based on misunderstanding.

Mr. KASS. But it nevertheless is a legitimate grievance?

Mr. OVERBAY. They thought it was real at the time they raised it.

Mr. KASS. You say perhaps we are picking on Government agencies. As the Senator said in the opening statement of our first hearing, if Government were poor or bad, we wouldn't be talking about an ombudsman; we would be trying to change the system. In the history of all of the ombudsman countries, Sweden and all of the other Scandinavian countries, Great Britain, and New Zealand, 80 percent of the complaints that the public sends to the ombudsman turn out to be unfounded. They are legitimate grievances of people who feel they have problems. The only reason the Government just for one reason or another hasn't told the party why they have not acted, and we don't, of course, know whether this same situation will occur in the United States, and that is the purpose of the pilot project, I don't think it is fair to say that we are picking on the Government agencies necessarily. There are certainly areas where Government agencies are at fault, but you would say that 25 percent of the cases, at least, are unfounded?

Mr. OVERBAY. Probably at least that many.

Senator LONG. Mr. Fensterwald, do you have any questions?

Mr. FENSTERWALD. I have nothing.

Senator LONG. Thank you, Mr. Overbay, for your testimony. It has been very helpful to us and we appreciate your being here.

Our next witness is Mr. Irving Achtenberg, president of the American Civil Liberties Union.

Mr. Achtenberg, we appreciate your being here. For the record, would you state your name and position and then proceed with your statement?

STATEMENT OF IRVING ACHTENBERG, PRESIDENT OF THE AMERICAN CIVIL LIBERTIES UNION OF WESTERN MISSOURI

Mr. ACHTENBERG. My name is Irving Achtenberg. I am a practicing attorney in Kansas City, Mo., and serve as the president of the American Civil Liberties Union of Western Missouri. I appear in both capacities, in both of which I strongly endorse the proposal of your committee for the institution of an ombudsman system.

In this day when the democratic process is threatened by the proliferation of administrative agencies, one of the critical problems of

Government is the failure, because of its great size and the multiplicity of its functions, to keep in touch with the people whom it serves. Because of this, in Government, as well as in other areas of our national life, we now constantly hear the terms "communication," "police-community relations," "human relations" and other terms. It is becoming critical that we find out how to relate to each other.

The institution of a national ombudsman system would uniquely achieve the function of establishing good communications between the average citizen and his Government.

True, to some extent, this function is now performed by other agencies. For example, the average Congressman spends much of his time handling complaints of his constituents. Official and nonofficial information and service agencies have been established. However, none of these would serve these objectives as well as would an ombudsman agency, with its sole function being to maintain communications between Government and the people. Because it would solely be directed to this objective, this type of governmental agency would do what none of the others can well perform. That is to not only aid the citizen in his complaints against Government in a case-by-case approach, but secondly and perhaps equally or more important, this agency due to its single objective would be able to pinpoint and evaluate the various areas of discontent. Then by illuminating the problem through its analysis and reporting function, it would be able to highlight the need for change or reform and to recommend specific action which would not only serve the individual complainant, but the entire country.

In my contacts with the problem it has seemed to me that the largest areas of citizen contact with Government have been in such areas as internal revenue, selective service, social security, and welfare agencies. Significantly it is in these areas where we find the greatest discontent, the greatest discussion with regard to reform and the least action being taken.

It is our hope that the institution of the ombudsman, which we again strongly endorse, would result in major improvements in these functionings of our Government and in better serving its citizens in these other critical areas.

I note in reading through my prepared remarks that I omitted what I think is a very important, and perhaps the most important area of citizen discontent, and that is that of the Federal employee. The Federal Government today is the country's largest employer. In its relations with its own employees we constantly find that the employee has problems, has complained against his employer. Although there is, of course, the Civil Service Commission, and other agencies to comply with this, we find that the same concerns, the same failures of communications exist in this area.

Perhaps one might ask why my organization, the American Civil Liberties Union, is concerned and interested in this subject. I think that it is very simple. As the Senator knows, our organization is concerned with interpreting and defending the Bill of Rights. As we see it, the role of the ombudsman would be in the first amendment area of the right of petition. I think the ombudsman would give the citizen an effective vehicle for petitioning his Government. Secondly, most of the problems which seem to be presented in this area are due

process problems, problems of having a procedural right, of having the right to rules by which the complaint may be heard and judged. This, of course, relates to the fifth and 14th amendments' provisions with regard to due process and equal protection of the laws.

I have heard apparently the concern expressed by the committee as to a name for the agency. I can suggest some others, such as people's grievance commission, people's confidant, people's adviser, peoples' tribune, and in the discussion of letters, maybe just big "O". The ombudsman in Chicago, which is actually the mayor's referral and information committee, I am told is called in the minority community of the city, the mayor's man. I think that is probably a bad word, because it should not be the President's man. It would be the people's man.

If it is a problem of identification, if the people whose needs can be served realize that this is the place where they can go, I am not sure that the name, once established, is material. I think much more critical is the quality and character of the leadership of this agency.

Mr. Kass and I had the very pleasant experience of sitting in on a seminar in St. Louis in which we met the ombudsman for the Province of Alberta, Canada. That man, in his demeanor, in his appearance, in his understanding of the problem, was so impressive that you could just see what you need to have in an ombudsman agency.

Mr. KASS. He was the former chief of the Canadian Mounties.

Mr. ACHTENBERG. Interestingly enough, we lawyers, I think, have perhaps assumed that we are the all-purpose experts and that probably an ombudsman should be a lawyer. After meeting and talking with him, I completely changed my viewpoint, and I would fully accept an experienced police executive.

In any event, I think the agency should be above the ballot. It shouldn't be so selected, so operated, that the charge of politics could enter into it. It must be above that. The structuring must be such that the people know that here is not an avenue into politics, but here is a legitimate procedure by which they can complain.

Senator LONG. I was very much impressed with that man. You remember I spoke to that group, and he was seated immediately to my right. I had a very pleasant visit with him.

Mr. ACHTENBERG. I think one illustration of the problem and the need is this hearing this morning. If the people who could be served by an ombudsman in Kansas City knew and were aware and could be reached by other means, this courtroom would be overflowing, but I see very few people in the courtroom who would be in need of the services. The people who are here are those who are concerned with the problem, either as scholars or people concerned with the governmental process. Communication does not exist and the first function and the difficult problem of the ombudsman would be to reach the community, to reach out and get the people who need the services to know that it exists.

Senator LONG. I have already had two complaints since I got here at 10 o'clock that we are going to solve without the benefit of an ombudsman, so there are a few people here who have complaints.

Mr. ACHTENBERG. I think that covers my remarks. I would like, as a point of personal privilege, to take this opportunity to thank Mr. Fensterwald. He may have forgotten me, but some years ago he pre-

sented me to the Supreme Court of the United States when I was admitted. I am very grateful for his service, and delighted for this opportunity to say hello.

Mr. FENSTERWALD. I have not forgotten, and I just hope you haven't disgraced us since then.

Senator LONG. Mr. Fensterwald tells me he has never lost a motion in the U.S. Supreme Court so far. He has made those motions to admit them, and so far, the Court sustained him on every one.

Mr. FENSTERWALD. I might add, I came as close as you could ever come, because I got confused by the names of the two gentlemen I was introducing, but the Chief Justice was not aware of this, so I didn't lose the question.

Senator LONG. Let me say this while we are talking about the Supreme Court. I didn't think I was going to get admitted there. This was when President Truman was President. In those days the man who made the motion had to look over your papers. They gave them back to the clerk and they called your name. This man was going to present me from Congressman Cannon's office. They called all their names and swore them in and went on. The Court stood up and started to leave and my man got up and said, "Mr. Long's name wasn't called." The clerk said, "Well, we don't have his application." My man looked around and found it down in his pocket where he had put it. Chief Justice Vincent, who was there, just smiled and said, "The Court will be seated and we will hear the gentleman." So I was that close to not getting in.

Mr. FENSTERWALD. I just want to ask you if we have a problem here in separating the normal function of an ombudsman which is to handle complaints, with the equally big problem of dissemination of information. There has been much discussion this morning, and at our hearings in St. Louis, about how people can find out to whom in the government they should go.

This is not the traditional role of the ombudsman. I think there is great need to improve Federal information availability. In other words, if you call up a Federal building, there should be one central person who can tell you to whom in the Social Security Administration, for instance, you should talk, but it is my thought that this function has to be kept separate from the ombudsman.

I wonder if you would comment on that.

Mr. ACHTENBERG. Well, I think it is important that he not be burdened with this type of obligation. If another agency is established, it would be able to relieve the ombudsman of this function.

I think in our discussions we came to the conclusion that perhaps the first step in the interview would be for someone to screen out the informational requests and to guide them to the proper agency, and that once these were weeded out, then the real complaint could be processed. I think it would be desirable, certainly, to have an agency which would act as an informational and referral agency. I would like to suggest that I don't think that that function is fully performed by the internal referral agencies or complaint agencies which are set up in various governmental agencies of the Government. It seems to me they have a built-in problem.

First of all, I think the normal tendency is to support your subordinates. This is important for loyal service, and it is normal to accept

and believe the people who work for you. So it is difficult internally to get a good hearing, a fair hearing on complaints against a subordinate. When it goes to the next level, and it is really a complaint about the system being operated by the agency, then, I think, it is hopeless, because the agency itself is just not ready, in most cases, to accept the fact that it is not doing things right. The internal complaint vehicle really doesn't function in most cases. It may be effective in a small area, it may be good window dressing, but I don't see is as in any way replacing the very need for an ombudsman.

Mr. FENSTERWALD. It has been my thought for a long time that the Congress should take some positive action on the subject of availability of Federal information. There should be a desk in the lobby of all Federal buildings where people, as soon as they walk in the door, can find somebody that will answer their questions. There should be a telephone number listed in all phone books where you can call and get an answer to your question of "to whom do I talk about the problem?" I think this, plus the ombudsman, would get rid of a great amount of criticism against Federal agencies; because people then would know to whom to go to get some action, and if they didn't, who could review the problem outside of the agency.

I think if you could get these two things done, the Federal Government might be a lot more popular throughout the country.

Mr. ACHTENBERG. I think so. I think Professor Gelhorn pointed out in his article, and I think it should be borne in mind by the committee, that there are many things an ombudsman won't and can't and shouldn't do. I think those of us who hope for all problems to be solved overnight should not be carried away and should not be disappointed if it doesn't become all things to all people.

If I may, I just realized there is one area that I would like to take a moment with, and it relates to the Selective Service system. I know that the Senator is disturbed, and if I am correct, has proposed a bill to require that Selective Service registrants have the right to be represented by counsel in their hearings before the local boards.

Senator LONG. That is a result of our ombudsman hearing in St. Louis. The bill has been introduced, and we will have a hearing in Washington next Thursday where General Hershey will testify.

Mr. ACHTENBERG. If I might, since I can't come to Washington, I will make my comments on that.

Really, I am not relating to the appointment of counsel of that bill, but to an area in which the ombudsman should be involved. The Selective Service system, if you think about it, is the area in which more men are affected and more serious rights of individuals are affected. The truth is that we have less administrative due process there than in any other administrative procedure in the Government. You are dealing with a person who is under age, not a mature person. He may not have a lawyer, and the body which hears his concerns, complaints, his problems, is not a professional body. It is a group of his fellow citizens who may or may not be well informed in this very complex field. The rights of appeal are very limited, and adding it all up, I would say that any scholar in the field of administrative tribunals and administrative rights, would say they are relatively nonexistent in this field. Because of that, I would think that the Selective Service field, the area of this concern, would be a very important function for the ombudsman.

Senator LONG. Thank you, sir.

Incidentally, we have a bill also in the hopper creating an ombudsman which will deal entirely with the Selective Service, and General Hershey will also testify in regard to that proposal next Thursday.

Mr. KASS. Mr. Chairman, with the Chair's permission, and Mr. Achtenberg's permission, if we could excerpt the last part of your testimony, in addition to putting it in our record, and put it in the hearing record for the Selective Service Commission, to be held on May 16 in Washington, it would be very helpful to the committee.

Senator LONG. Thank you, sir, for being here.

Our next witness is Mr. Sidney Willens, an attorney from Kansas City.

Mr. Willens, we understand your son is around here. How about bringing him up to the stand with you?

STATEMENT OF SIDNEY L. WILLENS, ATTORNEY

Mr. WILLENS. Senator Long.

Senator LONG. For the record, will you state your name?

Mr. WILLENS. My name is Sidney L. Willens. I am a Kansas City lawyer, with the firm of Tucker, Charno, Willens, Jouras, and Tucker.

I thank you for inviting me to appear to speak on the subject of the ombudsman committee, and more particularly Senate bill 3123.

At the outset, I wish to emphasize that I describe myself as a student of the ombudsman, not a salesman for it. My romance with the ombudsman began more than 3 years ago when the feature editor of the Kansas City Star asked me if I understood the Nordic term. Not knowing whether it was animal, vegetable, or mineral I dug into it and wrote a feature story for the editorial page. The article was widely circulated and before I knew it I was corresponding with ombudsman experts around the world, as you have, Senator Long.

Mr. KASS. Excuse me, Mr. Willens, but could you submit that article so we could put it in the record?

[The article appears in the appendix of this volume. It was reprinted in the Missouri Bar Journal.]

Mr. WILLENS. Yes.

Mr. KASS. Also I have another article which you just wrote for the April 23, 1968, issue of the Kansas City Star on "Consensus the Goal at Arden House," and we have a number of editorials commenting favorably on the legislation which you drafted for Missouri, which we would also like to put into the record.

Senator LONG. That is in order.

Mr. WILLENS. Thank you.

[From the Kansas City Times, Apr. 23, 1968]

CONSENSUS THE GOAL AT ARDEN HOUSE

(By Sidney L. Willens)

"I consider the American Assembly the most important step I have taken as president of Columbia University"—Dwight D. Eisenhower, 1950.

When the most famous general of World War II became a college president in June, 1950, he was convinced the United States needed a forum where a group of citizens could come together, define a national problem, grapple with it, and come up with findings and recommendations for all Americans to ponder.

"Soldiers are more efficient if they know their objectives," Gen. Dwight D. Eisenhower said. "Civilians should clarify their aims too."

Because of this conviction he toured the nation, raising money for his plan. He sought the assistance of Dean Philip Young of Columbia university who had been considering the establishment of an executive training program away from the university.

FOR SEPARATE LOCATION

"I was with General Eisenhower during those days and he recognized it would not be necessarily practical to have such a forum at Columbia university which was only 20 minutes away from busy Times Square," Gen. Robert L. Schulz wrote me recently. Schulz is General Eisenhower's executive assistant.

"General Eisenhower wanted a place where a cross-section of American citizens come together away from the pressures and care of everyday life," General Schulz added.

W. Averell Harriman, then a United States special representative in Europe, offered Columbia university Arden House, a 96-room family mansion 50 miles north of Manhattan on the west side of the Hudson river in Harriman, N.Y. The gift was accepted by university trustees and paved the way for Eisenhower and Harriman to make plans for Arden House to become the home of the American Assembly. The big house stood on land bought at an auction in 1885 by Averell's father, Edward H. Harriman. The sellers were the Parrott family, old friends of Harriman. Arden was the name of Mrs. Parrott's family. In 1909, E. H. Harriman, built Arden House. He died shortly thereafter. Unoccupied most of the time since the death of Mrs. E. H. Harriman in 1937, the house was used as a Navy convalescent home during World War II.

A letter dated November 30, 1949, from Eisenhower to Averell Harriman is in the Eisenhower library. It tells of interest of the men in the American Assembly project.

"Dear Averell: Since I saw you last there has been scarcely a day in which I have not had a conference with some individual concerning the possibility of Columbia university's use of Arden House * * * I have become convinced that if we are to start at an early date in the productive utilization of that property, it must be for a combination of uses which would, however gradually, see the place develop into a great center of conferences, study and research on the broad political and related problems that are today so much troubling our people and the world . . . As I see it the virtue of the plan so far developed by our scientists and scholars is a worthwhile use of the property while we work toward the major objective.

"Incidentally, the name they have selected, "Harriman Campus of Columbia University" strikes me as being particularly fitting.

"Cordially,

"IKE."

In early 1950 Harriman and his brother, E. Roland, began the task of refurbishing the whole arden estate. The Columbia graduate school of business helped raise \$500,000 for working capital. Living and dining facilities were created in Arden House for groups up to 125 persons. On May 21, 1951, Arden House opened its doors to 70 participants who arrived to discuss the assembly's first topic: United States and Western Europe.

Arden House is perched on a 1,300-foot Ramapo mountain peak amidst 100 acres of wooded land. It is reached by a 3½-mile winding road up a thickly forested mountainside. On the grounds are two lakes and 40 miles of bridle paths. The granite walls of the massive house are covered by ivy. Statuary decorates a vast front terrace near a swimming pool. On the inside, soaring vaulted ceilings, a huge fireplace and a circular staircase rising continuously for three stories are a few of the mansion's overpowering attractions.

USED BY OTHERS

Besides the American Assembly, Arden House is used by a great many other groups. About 40 staff members under the management of Treadway Inns serve the guests and maintain the enormous marble-floored rooms.

The American Assembly encourages regional conferences across the country following the two programs a year initiated at Arden House. It brings together in all conferences representatives of business, labor, the professions, government, and the universities to examine and shed impartial light on all sides of a major public question. Participants represent a wide variety of experience, some being or having been involved in a problem at working levels, some at an academic level, and others having only a layman's contact.

The function of the assembly method is to bring disparate groups into a working relationship not for debate but for discussion and not to highlight differences of opinion but to reach the highest measure of agreement. The assembly has joined more than 95 institutions in sponsoring regional conferences.

OMBUDSMAN A TOPIC

To stimulate and encourage study among participants before an American Assembly conference a research staff explores the topic. The results are mailed to participants in the form of a workbook before an assembly opens.

I was a guest at Arden House last October for the 32d American Assembly. I had been invited to discuss a subject of long interest to me, "The Ombudsman and American Government." Professors Walter Gelhorn of Columbia university and William Angus of Buffalo university had read some of my writings on the subject and had submitted my name to assembly officers who individually invite persons from a list suggested by specialists in the field to be covered.

Upon arrival at Arden House on a Thursday afternoon participants are given a single agenda to insure everyone covers the same subject at about the same time. Conferees are divided into three groups of about 20 each and directed to separate rooms with large oval conference tables. Each group is assigned a leader and a rapporteur whose function is to write down areas of agreement during the discussion.

As I sat in my large comfortable chair at the huge walnut table I looked at my list of participants and matched names and occupations. An array of beautifully printed place cards permitted quick identification. In my group were two newspaper editors, the army inspector general, a state senator and representative, a Harriman scholar, a labor specialist, a philanthropist, a city councilman, a radio executive, several public administration experts and Mrs. Walter Gelhorn, wife of the man leading the American ombudsman movement. The discussion began promptly at 2:45 o'clock Thursday afternoon.

"You are asked to take part actively," said our group leader, a law school dean. "Silence may be golden but not in this instance." He added that the assembly process "is not a debate which seeks to win its point; rather it is a discussion which makes its point and seeks to get things done."

The first session was a spirited give-and-take. It ended in the late afternoon with some participants still questioning whether an ombudsman is really necessary in the United States. A social hour and dinner followed. The evening lecture was given by Professor Gelhorn. The assembly invites specialists in the field under discussion to lecture. Rep. Jesse Unruh of California and Rep. Henry S. Reuss of Wisconsin spoke on succeeding nights.

By Friday evening, my group had concluded an ombudsman was adaptable to state and local governments. It was felt the federal government was simply too big for an ombudsman experiment at this time.

Group sessions ended Saturday noon. Participants were free to roam the estate or attend a football game at nearby West Point. Meanwhile a committee consisting of Stanley Anderson, editor of the ombudsman workbook, discussion leaders, rapporteurs and assembly officers worked the afternoon and most of the night to blend the highest factors of agreement. At 6 o'clock Sunday morning an integrated draft report was slipped under bedroom doors for study.

The most important session began at 9 o'clock that day. The draft report was placed before the entire group and reviewed section by section—and amended where necessary. Where there was disagreement over wording Clifford Nelson, full-time president of the American Assembly, assigned a 2-man committee the job of working out a recommendation. The technique was used in parliamentary fashion and the session moved on.

At noon a statement was approved recommending an ombudsman for state and local governments only. It was concluded more experience was necessary before the ombudsman could be tried at the federal level. The statement carried the preface that it represented general agreement and that nobody was asked to sign it. By Tuesday 150,000 copies were printed for distribution around the world.

INTO REGIONAL SESSIONS

Until 1955 The American Assembly held meetings only at Arden House. Regional, state and municipal assemblies began in early 1956. No fewer than three regional assemblies follow an Arden House meeting on the same subject. Four years ago, 17 regional conferences were held on the topic of over-population. The assembly supports regional meetings with grants so long as some local money is

available and assembly procedures are strictly followed. The Assembly publishes background books marketed by Prentice-Hall. Average sale is 30,000 copies with a high of 93,000. Are there practical results flowing from the American Assembly? I asked Clifford Nelson the question.

"We are an educational organization and not a lobby," Nelson replied. "What we offer is not bread, but yeast, or, as I am fond of putting it, we deal in atmosphere."

It is possible to take any program topic covered by the Assembly and find that within five years at least some recommendations have been put into national or local policy. An assembly on arms control suggested a government agency study the subject. Within a year the United States Arms Control and Disarmament Agency was formed. Nobody would claim the assembly did it. But it formed a climate of opinion.

An assembly on outer space suggested banning orbital bombs. They have been banned. When the assembly began a program on population, birth control was almost a dirty word. The assembly urged the United States to do more. And now more is being done.

NATIONAL GOALS SET

The American Assembly was the official administrator of the President's commission on national goals which reported to President Eisenhower in 1960. The whole project was privately supported. The book, "Goals for Americans" sold over a quarter of a million copies. As a result of the conference the assembly helped the mayor of Dallas in a program called Goals for Dallas. Assembly techniques were used and it is setting a precedent for other cities.

The American Assembly is privately supported by individual and corporate gifts and sometimes by large foundation money. It has no endowment worthy of the name and is on a constant financial diet. It has not received a cent of government money.

TAFT BROADCASTING COMPANY,
Kansas City, Mo., May 9, 1968.

A WDAF EDITORIAL

The public hearing Senator Long of Missouri will hold tomorrow in the U.S. Courthouse here is of particular interest for two reasons.

First, it gives each of us the opportunity to see one of the first steps in legislation. And it gives anyone the chance to express his views on the bill.

The bill would create a 2-year pilot project in Missouri called a regional ombudsman. The man who fights City Hall, only in this case the Federal Government. Any Missouri resident could present a complaint to him about the operation of any Federal agency.

Secondly, it's of interest because, it seems to us, the ombudsman would be doing the work of our congressmen who are saying they can't handle all the complaints. That they need a screening area and that the ombudsman could provide this. (Campaigning does take a lot of time.)

One long-range goal of the bill would be to establish an ombudsman at every level of government.

Whatever the outcome, we have one view on the bill—change the name of ombudsman or umbudsman or however you pronounce it—to something you can say.

[From the St. Louis Globe Democrat, Mar. 29, 1968]

OMBUDESMAN BUREAU NEXT?

There are two proposals for ombudsmen—one for a regional official to help citizens in their dealings with the federal government and another to investigate complaints against city departments.

The city ombudsman bill was killed. The regional proposal is being sponsored by Senator Edward V. Long who has introduced a bill for a two-year pilot ombudsman project in Missouri at a cost of \$125,000. The federal ombudsman would be paid \$20,000 a year and have a deputy at \$17,500.

That these proposals have been given some serious consideration seems to suggest only one thing: Our elected and appointed public officials aren't properly serving the people.

If the federal government wants to aid people in their dealings with its multitude of agencies, let it use some of the thousands of employees presently on the payroll to set up this new service.

If the ombudsman office is established, it is a certainty that it soon will become another full-fledged federal bureau. Its staff and budget requests will grow like all the other federal agencies until eventually there will be a request for an ombudsman to deal with the ombudsmen.

Mr. WILLENS. The one article which I spoke of was introduced by Henry Reuss of Wisconsin and was put into the Congressional Record.

I do want to confess that my romance has now blossomed into a full-grown love affair. Last October I participated in the Thirty-second American Assembly, which, as you know, seriously considered how the ombudsman could take its rightful place in American Government.

The 60 of us who attended the conference decided, after 4 days of deliberation, that the ombudsman should be tried first at the State and local level. We felt the Federal Government was simply too big for an experiment at this time.

Your interest in the ombudsman, Senator, enthused all of us at the conference, and I personally want to thank you for performing a significant public service in helping to educate the American public to the concept.

Now, with this background in mind the subcommittee should understand that my statements here should be taken in the light of a jealous lover who zealously guards the object of his romance for fear that her purity will be maligned. It was for this reason that I wrote Mr. Kass last week, after I had received my invitation, asking him if I would be considered an ungracious guest of this committee if I endorsed your bill in principle but voiced serious objections to its specifics. Mr. Kass replied that the purpose of the hearing was to get opinions candidly and forthrightly in order to make a full and complete record.

Mr. KASS. Mr. Willens, for the record, we wish that we could get the opposition to come and testify. The opposition, we think, is there because legislators across the country endorse the concept locally but they just haven't really come out and testified to it.

Mr. WILLENS. I endorse it, as I said, in principle. But I assume that what you are concerned with is the bill that you sent us 10 days ago. You are primarily concerned with the language of the bill and the intent behind the language. That is what I would like to discuss here.

I recognize that the pilot project will cover only a population of four and a half million persons, and that this takes it out of the category of what the American assembly was talking about when they concluded an experiment should not be started at this time on the Federal level with 200 million persons.

Now for consideration of the specifics.

Section 3(b) provides for an ombudsman appointed by the President to be paid \$20,000 per year and a deputy ombudsman to be paid \$17,500 per year.

For the record, I should like briefly to describe what I believe should be the American approach to the selection of an ombudsman on all levels of government, Federal, State, and local. I am persuaded we cannot follow the traditional Scandinavian approach that makes the ombudsman a creature of the legislative arm of government. Last year I authored two bills to create an ombudsman for Jackson County and the State of Missouri. They were introduced by Kenneth Growney. I

tied the ombudsman to the judiciary, which I believe possesses unique prestige among Missourians and an aura of impartiality.

For the record, I should like to read three paragraphs describing my plan which appear in the most up-to-date and authoritative source of the ombudsman and American Government. It is a recently published book by The American Assembly and Prentice-Hall, and it is an outgrowth of our recent national conference. It is called the Kansas City plan.

Serious efforts to establish a local government Ombudsman have been made in Jackson County, Missouri, which includes Kansas City; Bill No. 511, introduced in the Missouri House of Representatives on February 21, 1967, by Representative Ken Growney, passed the House only to die in the Missouri Senate when its session expired on June 30, 1967. It proposed the establishment of an Ombudsman on the county government level. Its companion bill, No. 386, proposing a state Ombudsman remained in the House Judiciary Committee.

Perhaps the most interesting feature of both bills was the insertion of a procedure for choosing an Ombudsman based on the merit selection plan for judges, pioneered by the State of Missouri in 1940 and widely known as the Missouri Plan. Its primary objective is the removal of partisan politics from the selection process. The bills would require appointment of Ombudsman from a list of three persons nominated by the appropriate non-partisan judicial commission established under the constitution of Missouri for selection of judges. In the case of a county Ombudsman the appointment would be made by the appropriate county court from nominations proposed by the non-partisan Circuit Judicial Commission.

Another feature of the Missouri Plan, known as the Retention Ballot, was included in Bill No. 511. Under this provision the name of the Ombudsman will be inserted in the judicial ballot at the next county general election following his selection to determine whether the voters wish to retain or reject them.

Insertion of a non-partisan nominating commission and retention ballot is a novel approach to the Ombudsman selection question and worthy of serious consideration. Its drawback may well be that the Ombudsman has traditionally been a creature of the legislative arm of government. Whether a selection procedure designed for the judiciary would be satisfactory, therefore, is a legitimate issue.

At Arden House, several men came to me including Professor Gelhorn, who thought the idea was a worthy one.

As a practicing lawyer of 17 years in Kansas City I have observed our nonpartisan selected Missouri judges in action. They are wonderfully capable watchmen but they are not ombudsmen only because they cannot act until summoned. They correct abuses of administrative decisions if the decisions are unsupported by evidence. But their correction of abuses is dependent upon the willingness and financial ability of clients to take the case to litigation. My point is that the ombudsman must be selected in a manner so as to make him completely immune from political pressures, as we all discussed here this morning, so that he may maintain full public confidence at all times. And I submit to you that throughout the country there is no better selection plan devised by anyone than the Missouri nonpartisan selection plan. I think people go into court in Missouri and Jackson County and feel they get a fair shake.

Mr. KASS. Mr. Willens, at the Federal level, the General Accounting Office has a fairly good reputation of being diligent, hard working, the watchdog of the Congress in the fiscal affairs, and yet shares a reputation of being totally independent. It is an arm of the Congress, as is the Library of Congress, and yet it is considered a nonpolitical, non-partisan operation. Tenure is very long. The Comptroller General has a 15-year term. As we envision, at least, the pilot project of the om-

budsman proposed for Missouri would be a creature just like the Comptroller General. Would this fit in with your idea although the selection is different, the ultimate concept is the same; in other words, he is non-partisan, he is nonpolitical?

Mr. WILLENS. Yes, I agree with you. If it should come to pass that we have an American ombudsman for all of this country, we must give him the dignity, the security, and the salary of a Federal judge, at least. A Federal judge who sits in this courtroom is an arm of the Government to some extent. When you come in and file suit against the Government, you feel you are getting a fair shake. It is this concept that I want to emphasize. We have used the word, "agency" quite consistently. I think that we must not consider the ombudsman an agency. He is an individual. When we get into that term "agency," we then get back to the very thing we are trying to fight. We don't want to establish another layer of bureaucratic fat. I think that is what we fear. I agree that the General Accounting Office would be a good example. I think we should not give an ombudsman a lifetime appointment like a Federal judge. I think it is an energetic job. I think perhaps 10 or 15 years is enough. I do recognize your pilot project did not envision this.

Getting back to section 3(b) with its \$20,000-a-year salary for the ombudsman and his 2-year employment. We should take into consideration section 10, which provides for an appropriation of \$125,000 to carry out the 2-year project. It would seem to me this appropriation would put the kiss of death on the project. We know that size is the single most important factor in considering whether an ombudsman should be transplanted to America. The countries that now have it range from New Zealand, with 2½ million to 3 million, to Sweden with 8 million. So Missouri with its 4½ million fits neatly into place.

It is not only a question of handling that many people but it is also a question as to the kind of person an ombudsman must be. We know Mr. Bexelius, and we know Dr. Herwitz. We know they depend entirely on their standing and prestige and the general recognition of his integrity in the community. The question here is whether we could get any individual in Missouri who could meet these qualifications for \$20,000 per year and particularly for temporary employment. The New York Legislature provided for an ombudsman salary of \$35,000 per year.

Mr. KASS. Mr. Willens, the temporariness of the 2-year project certainly bothers me personally. But what is the salary of the Missouri judge?

Mr. WILLENS. The Missouri judges on the circuit level get \$23,500. The Federal judges get \$35,000.

Mr. KASS. The Federal judges I understand.

Would there be any problem of an ombudsman—certainly it has nothing to do with local problems or State problems; would come in and receive more money than, for example, the supreme court judges of Missouri, or somebody like that?

Mr. WILLENS. I think it would be wonderful.

Mr. KASS. It wouldn't be a problem because they are two separate—

Mr. WILLENS. Yes. If we give a man more money, presumably, we are going to get a better man. Of course when you talk about 2 years, you are talking about such a short time. My point is also that we must

consider that in 2 years it would be difficult for a man to get well known in Missouri. And an ombudsman to be successful must be well known.

Senator LONG. We agree with you for 2 years. We think it should be 4 or 5.

Mr. WILLENS. Let's talk now about your budget of \$125,000 for 2 years. It seems pitifully inadequate. Even if you do find an outstanding individual who will accept the temporary employment, I am convinced that he can't hire enough personnel to carry out the duties of his office. Just look at the mathematics of it. We know the primary function of an ombudsman is investigation.

Now I would like to give you one example, which you may know about. Sam Greason, who used to be the ombudsman of Nassau County, wrote me on December 23, 1966. He said that the budget for 1967 was \$90,173. His staff consisted of two lawyers and two secretaries. My question is, how could a Missouri ombudsman envisioned by this pilot project satisfy the complaints of $4\frac{1}{2}$ million persons. Nassau County has a million persons. How could we do it with a budget of \$125,000 for 2 years or \$62,500 per year? If you give the ombudsman \$20,000 and you give the deputy \$17,500, you have \$37,500 already. So you have \$25,000 left. I seriously consider whether you could meet even the Nassau requirements; that is, hire two lawyers and two secretaries. You only have \$25,000 left. You have an additional factor, travel expenses. The man has to get out of his office and travel the State unlike our Nassau County ombudsman.

Senator LONG. We agree with you entirely on this feature, but there is a practical matter in the introduction of these bills; we don't want to scare them away.

Mr. WILLENS. This, I think, is another question.

Senator LONG. You have heard that Congress just suggested a \$6 billion reduction, and the President says it must be \$4 billion so we will have a little problem getting started with the project.

Mr. WILLENS. There is another question, and that is how do you cover the State adequately? It is my opinion that you ought to have an ombudsman in St. Louis because that is the largest metropolitan area and presumably that is where there is a concentration of Federal agencies. Your deputy ombudsman should be in Kansas City. If you need two lawyers for each city, you are talking about four lawyers, so you are talking about \$40,000, if you pay the lawyers \$10,000 each. You are talking also about four secretaries. If you give them \$6,000 a year, that is \$24,000. I suggest you give an ombudsman \$35,000 dollars, if he is only going to be hired for 2 years. His deputy should get \$25,000. So you are talking about \$124,000 just in salaries. And so I propose a budget of \$150,000 a year instead of your \$62,500.

Now, the point I am trying to make is this—if we are to embark on a project new to Americans, and which we know has worked effectively elsewhere for 159 years, we must get the best man for the job—this is essential, we know that—and give him a desirably high prestige with good salary and equip him with the best tools. We know why the ombudsman is successful in Sweden and Denmark, because Dr. Herwitz and Mr. Bexelius possess a catalog of human virtues.

Senator, I suggest that we cannot afford to tinker with the ombudsman institution unless we are prepared to pay for it and get it off the ground right; otherwise the whole idea will grow sour before it gets ripe in America. More money and longer tenure must be added to this bill, in my judgment.

I have a few other important points. Section 4(a) provides for the ombudsman "to exercise his powers under this act without regard to the finality of any administrative act." This has been a sticky area among all of us. We know the ombudsman must not attempt to be a super-administrator—an added layer of bureaucratic fat. We don't want him to do over again what specialized administrators have already done. We don't want him to substitute his judgment for theirs. The ombudsman, like an appellate judge, should not regard as "arbitrary" anything and everything with which he disagrees. I am a firm believer we must restrict his activity more to procedural questions than substantive ones. Only if the superiors of the administration against whom the complaint is made or appellate commissions are insufficiently attentive, or if the appeal requirements are unduly burdensome or arbitrary for the amount in question, should the ombudsman become involved. In this section it seems you have opened a Pandora's box in that you have made a rather positive statement allowing him to intercede at any stage of an administrative proceeding, or at least suggesting so, all of which will give rise to complaints against the ombudsman if he rejects a complaint on the basis the citizen hasn't exhausted his remedies. I prefer it be omitted and the language which you included in section 4(b)(4) cover the subject: "The ombudsman shall investigate any complaint filed with his office unless he believes that (1) there is presently available an adequate remedy for the grievance stated in the complaint." The key word is "adequate" which gives him the option, whereas your language seems to make him vulnerable to criticism and gives rise to the thought he is a super-administrator.

Section 4(b) approves an oral complaint. Since you have given the ombudsman authority to investigate "upon his own motion," I believe written complaints should be required. If a person is illiterate, he'll have a friend who can write for him or go to the ombudsman personally, who will, as Mr. Bexelius does, write out the complaint. "Oral" complaints will give rise to an excessive number of unjustified complaints made in the heat of passion. Virtually all State bills which I have examined require a complaint to be in writing.

Section 4(b)(4) says the ombudsman will investigate a complaint unless, in his opinion, "the complainant has had knowledge of the action complained of for 'too long' a period before the complaint was submitted." The words "too long" are open to interpretation. I prefer a 1-year limitation period. Why not give the ombudsman an option to reject a complaint more than a year old? After all, the ombudsman can take up any matter on his own motion and beyond the 1-year period if he so desires.

Section 4(c) requires the ombudsman to give notice before an on-the-spot inspection. If procedures of other countries are followed no notice should be required. The quick unexpected visit by the om-

budsman to a hospital or mental or penal institution seems to have advantages. Why should an administrator sit back in comfort, knowing he can "clean up things" before the ombudsman arrives on the scene? Keep in mind that in Sweden 20 percent of the complaints come from mental and penal institutions—and we do have in Missouri one Federal detention center and many VA hospitals. The ombudsman would be a man of judgment, I am sure, and he would not interrupt an administrator's business. My point is that a ombudsman's staff is limited but this threat should not be. Let us use him as the public's sword of Damocles.

Section 6(c) requires the ombudsman to transmit copies of his views and recommendations to the agency, the chairman of the Administrative Conference of the United States, and to appropriate committees of the Senate and the House. If we keep in mind that the ombudsman will write a minimum of three letters on any kind of complaint—one to the citizen acknowledging his letter of complaint; one to the agency requesting an explanation; and one back to the citizen—then it would seem all these extra copies required by the act would add to his stenographic burden. Perhaps this is necessary for the purpose of keeping everyone advised of a pilot project but it does seem like a mountain of paperwork for each complaint.

Gentlemen, those are my comments on the bill itself. I would like now, if I may, to make one final comment.

I should like to say that as a native Kansas Citian I am convinced there is a dire and pressing need for ombudsman legislation. Our society has emphasized the importance of public defenders for indigents who cannot afford lawyers. But no one seems to have considered not only the poor but the common, ordinary man—the sober, law-abiding citizen who is not represented in cases of arbitrary action, abuse of power on the part of government law enforcement officers and administrative agencies. That is why I am hopeful this committee will push on to perfect this bill.

I am further convinced that grievances of Missouri citizens, and other Americans, against ever-growing bureaucracy are increasing at a greater rate than the growth of bureaucracy itself. The gap between the intensification of the problems of bureaucracy and the response of all citizens to it is getting wider all the time. We are not going to reduce government; we might as well make it better.

We've simply sprouted a fourth branch of government in these United States. It's called administrative agencies and I'm sure the Founding Fathers and the framers of our State constitutions never thought about it when they considered checks and balances. And I think it's about time the public gives the problem serious consideration.

Thank you.

Senator LONG. Thank you, Mr. Willens. Your statement has been unusually helpful.

Senator LONG. Mr. Fensterwald, do you have any questions?

Mr. FENSTERWALD. I would like to say that we will probably be in touch with Mr. Willens from time to time, either by phone or in Washington, as we do perfect the bill; because I think the comments he has made have been quite practical.

Senator LONG. You have been very helpful. Thank you very much.

Does your son have any additional comments he would care to add?

Mr. WILLENS. I don't believe so.

Senator LONG. Thank you very much.

There will now be a 10-minute recess.

There are only three or four more witnesses. After a 10-minute recess I want to come back and finish. I think we can be through by 1:15 or 1:30 at the outside.

The committee will stand in recess.

(Thereupon a short recess was taken.)

Senator LONG. The committee will be in order.

Our first witness is Mr. Chester Stovall of the Human Resources Corp.

Mr. Stovall, I apologize to you for this delay. I didn't think it was going to take us quite that long to finish the commitment I had, but we do appreciate your waiting.

STATEMENT OF CHESTER E. STOVALL, HUMAN RESOURCES CORP.

Mr. STOVALL. Senator Long, I am Chester Stovall, executive director of the three counties, Clay, Platte, and Jackson Counties, Human Resources Corp. I reside at 5805 Wayne.

I consider it a privilege to come over and support your bill, Senator Long, and I do it primarily for two reasons:

There are a hundred thousand people who live below the poverty guideline in this Kansas City area, and they don't think anyone cares, especially the Federal Government.

They think the Federal Government is too big, is concerned only with big problems. We tend to feel that the people we are talking about have many problems. Many times they are little problems. They don't feel the big Federal Government really cares, and I think basically this is the major reason I support this bill.

I would hope that if it is passed, and we establish this staff, that we can make available some of this staff out where people are, where they have problems, move the services around to the people. It would tend to match our concept of establishing multi-purpose neighborhood centers and move and take the services out where people are.

Everybody wants them to come downtown where they have to spend carfare. They can't walk, but I think basically this bill would add another dimension indicating to the people who feel no one cares that someone does.

Senator LONG. Incidentally, I just spoke on television a moment ago and said I favored this neighborhood concept of having our men in those areas to serve the people.

Mr. STOVALL. Another reason I support this bill is based on the fact that Federal agencies have become an integral part of our everyday life. There are more of them. They are bigger. They are spending more and more of our Federal funds.

While you spoke a minute ago about St. Louis being the center of the Federal agencies in Missouri, let me point out the fact that at the present time the Federal agencies in Kansas City employ some 22,000 people, about 31½ percent of the total labor force.

At my request about a year ago, because I serve on the Federal executives advisory board, a survey was made of where we stand on

minority employment, nonwhite employment, in these Federal agencies. They found that 89 of the job categories in the Federal agencies in Kansas City have at least a token number of nonwhites employed. We are talking about a year ago now, but 133 of these job categories didn't have one single nonwhite employed, so we started out to make certain that the Federal agencies that are spending our tax funds do a better job of offering employment and opportunity to nonwhites before going out and asking the private sector, private business and industry, to do it.

Since that time I think there has been an upgrading in the number of Negroes and Mexicans who have gotten employment.

On top of the fact that the poor feel that no one really cares, they have an extra feeling, a negative feeling, about the Federal agencies. That has been the place that you don't go to get a job. I guess some of them are afraid to go down and put in an application in the big new Federal building. They feel that is not the place that a poor boy, and especially if you are black, goes to get a job.

I think many of the Federal agencies are coming, Senator, to the realization that they have to change their image. I think at this particular time a number of them would welcome this kind of a program that would tend to get from the people the problems that they have and the negative things that they believe. I think most of our Federal agencies at least want to do a better job and want to spend the money for all the people and in the ways for which it was intended to be spent.

I think this bill would provide the funds in the program concept to make it possible for the people to express themselves and have the feeling that we do care, and at the same time help us to make certain that the Federal agency in which we are putting more and more of our tax funds, and which is getting bigger and bigger, has not become so big that it doesn't care. My colleagues called a meeting at the Muehlebach Hotel not long ago. We invited the 53 largest employers in Kansas City. They, together, employ 103,000 people, 52 percent of the total labor force. Six of the 53 employers were Federal agencies. Federal agencies are big business. They do employ a lot of our people in this Nation and they spend a lot of our money. Anything that we can do to better explain to the public what they are supposed to do and to point out the problems that might still exist, I think the time is past due for this.

The cities, our urban centers, that have the kinds of problems and the riot that we just experienced recently in Kansas City would give more reason, I think, for the adoption of this kind of a special effort, to give an opportunity for the people to be heard.

For these two reasons, Senator Long, I certainly support the intent of your bill.

Senator LONG. Mr. Stovall, we certainly appreciate your comments. They have been very fine and very helpful to us and make a fine addition to our record.

Mr. KASS. I just wanted to comment, Senator. When Mr. Bexelius, the ombudsman of Sweden, testified before the subcommittee, he did say the net result of his office, the ombudsman office, is to increase the citizen's confidence in his government. Perhaps this is what we are looking for; what we need.

Mr. Stovall, I don't know whether you have a ready answer, but maybe you could ask around in HRC to see whether the word "ombudsman" would bother people, or do you think once they understand it they could—

Mr. STOVALL (interrupting). You know, there is a funny thing about the people we serve. They sometimes like these big words that are difficult. I think the word bothers most people. It is not a common word that you hear. The very fact that they don't know what it means may be an advantage because it gives you an opportunity to try to explain it, what it is, what it is about. They may become expert by having to get involved in an uncommon usage word. We may not pay any attention to the common programs, but something that may have to take some time to explain might be an asset instead of a negative fact.

Mr. KASS. Mr. Stovall, we recognize there certainly are serious basic problems at all levels of government, especially in the area that you serve.

One of the things that the ombudsman certainly can do is correct those faults or assist in correction of those faults that do exist.

There is another aspect of the ombudsman that sometimes is overlooked and that is the steam-valve function, the release of frustration by writing your ombudsman or talking to him. Is this something to be considered or is this something that we shouldn't really be concerned about?

Mr. STOVALL. I think we should. I think sometimes people who have problems and no one will listen to them, trouble comes because no one does listen. There is no one around to listen. Also, a lot of the people we are dealing with have problems they think are big, but we're so busy and we have so many things to do we have no time to listen to the things that we consider small and little, but to the people they are big and important.

I think most of the things people complain about are small. Maybe there is sometimes no justification for their feeling they have been treated wrong, but the very fact we don't have the kind of a system where people can come and sit down and talk is one of our problems, and I think sometimes the letting off of steam, the steam valve where people can come and get some satisfaction is justification in itself for this kind of a program.

Mr. KASS. I am glad you raised that because I think many people seem to feel that the ombudsman can solve all problems. I think Mr. Achtenberg said earlier the ombudsman is not the panacea for all of our problems and all the other ombudsmen keep repeating that. This record should be clear that the ombudsman is not the major solver of all the problems in the world.

Some of the problems which are brought to the ombudsman may, as you suggest, be very, very petty problems. Yet to the people with these problems, they are the most important thing in the world and these people want some assistance. If there is no assistance but only a person who can act as a steam valve to relieve the emotions of people, is that in itself a valuable function or must you carry through with the assistance where possible?

Mr. STOVALL. If we continue to make promises and don't attempt to fulfill, then I think that we're in trouble, and I think part of our

trouble comes from that right now. We have made too many promises and have not set up the necessary machinery to follow through. I would imagine with the kind of a sensitive and well-trained staff that you would have in this proposed program that they would be very quick to try to get to the source, to try to solve problems, to not let people down, and get letters and communication back to them.

A lot of the people, you know, unless they write the Senators and Congressmen, they never hear from them. I think that the Senators and Congressmen have learned that regardless of how little the problem people may have in a letter, they have a staff to try to answer. We every now and then get a flow of letters that come through Washington and through OEO, and some from Senator Long, about a problem of somebody, and we immediately get on it and chase it down. Sometimes we find there is not much of a problem there, but sometimes it is a very important problem. Don't set up a program just to let off steam but try to satisfy people—I would take it one of the purposes of this bill would be to put the trained executive staff out there to listen to people and follow up as quickly as possible and give satisfaction to people regardless of how small their problems might be. I take it this would be part of what you want.

Mr. KASS. Certainly it is. We want him to be as effective as possible but I do want to emphasize that the ombudsman is not going to solve the major problems of the world but will solve the petty problems.

Mr. STOVALL. If somehow or other the staff can be moved out where people are, get it away from maybe a courtroom downtown and out where the people are, this to me has great merit. This can give people satisfaction sometimes, if you come to them instead of their always having to come to you.

Senator LONG. Thank you, Mr. Stovall. We appreciate your being here.

Mr. STOVALL. And I thank you.

Senator LONG. Mr. Keith Wilson, Jr.

STATEMENT OF KEITH WILSON, JR., ATTORNEY, INDEPENDENCE, MO.

Mr. WILSON. Senator, my name is Keith Wilson, Jr. I reside in Independence, Mo. I am admitted to practice before the U.S. Supreme Court, Missouri and Kansas Supreme Courts, the eighth and 10th Federal circuits, and U.S. Tax Court. I am appearing in support of Senate bill 3123 and should like to offer some actual examples of instances where an ombudsman would have been of tremendous value to the smaller citizen in his relationship with the crushing weight of Federal agencies and bureaucracy as it expands into the space age.

As Government bureaus in this year enter the computer age, I think, it is absolutely mandatory that someone in Government represent the perspective that the citizen is a human being and is not merely an electronic microdot in some machine's memory bank.

I might add that there is one facet of Federal Government that does have this type of activity. Professor Hess, I think, will testify in detail to it. In the Army there is the "I.G.," and I might say that during the hearing this morning, I have heard some comment on the name. I think ombudsman is a good name, but if you do choose to change it, I might recommend to you that you give thought to the name "Inspec-

tor General of the United States," because speaking for about 8 million Army veterans they all know who the inspector general is, and they know he is there to hear complaints and hear grievances.

Getting back to the problem of the individual in the space age facing the crushing weight of bureaucracy, I feel it is absolutely imperative that we do have this type of agency. I think the key phrase which appears in section 5(a) of your bill is "that it shall be the activity of the ombudsman to assist the citizen where the act of a Federal agency is unreasonable, unfair, and oppressive."

We do not mean to indicate that Federal agencies purposely act unfairly, but due to the grotesque weight of huge agencies sometimes a little man's complaint gets lost in the shuffle.

Mr. Achtenberg stated as president of the American Civil Liberties Union that the most frequent complaints that they have involve the Internal Revenue Service. I would like to cite some actual examples. These are instances where the citizen gets lost in the legalities of Form 1040 and Form 1040A and is absolutely terrorized by the idea that he might not be paying his due to the Government. As a consequence, there is panic which the little man gets when he reads all of the fine print of these forms.

Senator LONG. He is not only terrorized by that Form 1040, he is terrified of the Service itself.

Mr. WILSON. Precisely.

Mr. Chairman, if I may, I looked through my files, and I think I have a good example of where an ombudsman would aid a citizen in his continuing difficulty with the IRS. I have about 20 actual cases of this. I will just take one.

There is a device, as the Senator knows, in the Internal Revenue regulations whereby the Commissioner can either acquiesce or not acquiesce in the rulings of the courts. What this means is that if a man wants to take a deduction and the court says that he can take the deduction, the Commissioner of Internal Revenue may not acquiesce with this ruling of the court.

Here sits this little man. Here sits the actual case. This man is a man of about 45 years of age. He is an industrial worker. He makes a gross income of \$6,605 a year and has five children. During the year that his return was audited his mother-in-law lived with him. At that time you were entitled to take as a deduction a relative for whom you provided 51 percent of the support. At the particular time that this audit occurred, in four of the Federal circuits the courts had held that in figuring out whether you were entitled to take your mother-in-law you were entitled to consider the fair rental value of the room that you gave to the mother-in-law, but the Commissioner of Internal Revenue at that time nonacquiesced in this decision.

Here is a man making \$6,600. He takes his mother-in-law as a dependent deduction. His return is audited and they say to him, "We are not going to allow you to consider the rental value of the room for mother-in-law, so we are going to throw mother-in-law out and you owe us \$272 in income taxes."

The man came to me. He is not a charity case. We review the situation and I have to tell the client, "If you take your case to court you will win, but it will cost you at least \$350 to present your brief and go to court in an effort to win back your \$272."

Mr. KASS. He can, of course, deduct the \$150 loss.

Mr. WILSON. Here's a gentleman working in a refinery. So what does the man do? He shakes his head. He goes out and borrows \$272. He pays his taxes, and to add a sad ending to a sad story, 3 years later the Commissioner of Internal Revenue acquiesced in what the courts had already found; but the man has lost his \$272.

Senator LONG. That is typical of them; and the Senate, for example, is very concerned about it. We have introduced a bill setting up a small tax court, a tax ombudsman, which 60-some-odd Senators have joined with me, and we hope to have action on that one of these days; but that is typical of the arrogance of power that the internal agencies operate with.

Mr. WILSON. I think that is a wonderful bill, Senator, because it strikes the conscience of anyone practicing law to have to say to a man, "You will win your case if you go to court, but you are going to spend \$350 to get back \$272. However, you can deduct everything from now on out."

Senator LONG. They had a rule at one time that a lawyer here tried a case before the U.S. Supreme Court, the highest court of the land, and then he couldn't walk across the street and go into the Internal Revenue Service and appear before their agency unless they gave him their examination and gave him a card allowing him to appear before them as a lawyer. You had to hire someone that they suggested through one of their bars, but Congress changed that in the bill, I believe, about 2 years ago. A man can have his own lawyer up there if he wants.

Mr. WILSON. I was one of the guys who went over and took their examination, but I feel it was an imposition because, as you say, you can be admitted to practice before the U.S. Supreme Court and be denied the right to deal with a field agent.

Senator LONG. You can try a case before the Supreme Court and still walk across the street as soon as it is through and get thrown out of the tax bureau.

Mr. WILSON. I do feel this—that an ombudsman, or an inspector general, or whatever—that the little man could go and say to him, "I am not a charity case, but what our agency is doing is wrong, I am aggrieved." I do feel that this type of thing has worked well in the Army—where a man can walk in to the inspector general and say, "By golly, the commanding officer of this post has it in for me, he is really putting the blocks to me," and you know that you have an ear that will listen sympathetically.

I think this is especially needed in Internal Revenue matters, where the little man has such a currency of myth about the tax laws of this country. So many people say: "Well, I don't want to raise the point because then they will audit me. I don't want my name to be known because they will get my number on that big computer up in Washington."

I think if we did have a friendly ear for this little guy who is terrified by the whole complexity of tax matters, it would be of tremendous benefit.

Senator LONG. They already have your name on that computer. They have mine.

Mr. WILSON. Thank you.

Mr. KASS. Mr. Wilson, with all respect to your case, I don't quite see how that case would be handled by the pilot project ombudsman. I do think it would be definitely handled by the Small Claims Commissioner that is presently pending before the Finance Committee.

Mr. WILSON. I think it could be handled in this instance. I feel that it is bizarre, if I may use the phrase, that the Commissioner here in Missouri—when several Federal district courts and courts of appeal have ruled that a deduction is deductible—that due to this rather Byzantine situation where the Commissioner can nonacquiesce—that a little guy can get tagged for \$200 or \$300.

I feel that the ombudsman could bring the power of the press, so to speak, on the position and maybe cause the Commissioner to reverse his stand. I think it is absolutely helpless for an attorney to say to a man, "You can win your case in court, but it is going to cost you double the amount to do so."

Mr. KASS. I guess you are right in that case.

Senator LONG. Any other questions?

Mr. FENSTERWALD. No.

Senator LONG. Thank you, Mr. Wilson. We appreciate your being here.

Senator LONG. Our next witness is Mr. Willard F. Hicks, president of Local 1102 of the International Union of Electrical, Radio and Machine Workers in St. Louis.

Mr. Hicks, we appreciate your coming from St. Louis today to testify. May we have a copy of your statement?

For the record, would you give your name and official position, then proceed with your statement.

Mr. HICKS. First of all, I will have to apologize for my voice. I am in very poor voice and just recovering from a devastating cold. Just bear with me, please.

STATEMENT OF WILLARD F. HICKS, INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO-CLC

Mr. HICKS. My name is Willard F. Hicks. I am president of Local 1102, International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC, which represents the production and maintenance employees at the Emerson Electric Co. facility in St. Louis, Mo.

I am also vice president of District 11 of the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC. District 11 encompasses five States, namely, Minnesota, Iowa, Missouri, Arkansas, and Louisiana.

I am pleased to have this opportunity to appear before this subcommittee to present in behalf of the I.U.E., AFL-CIO-CLC, my views on Senate bill 3123.

I speak in favor of this bill. My testimony will concern only one Federal agency, full well realizing the application and the instances in which the ombudsman's services in connection with other agencies would be invaluable are several.

I have had the opportunity in my capacity as president of Local 1102, IUE, to observe firsthand the mechanics of applying for perma-

ment and total disability covered by provisions of the Social Security Act, under the Department of Health, Education, and Welfare.

In applying for permanent and total disability, the claimant has an awesome amount of paperwork and evidence to produce; it remains the responsibility of the individual to prove his or her claim. I have found in at least two incidents involving members of Local 1102 who had applied for permanent and total disability, who felt themselves so ill-equipped to present their case and produce the evidence required by the Social Security Commission, they failed to respond to the inquiries and were subsequently denied the benefits to which they were rightfully entitled.

Mr. Chairman, if time permits, I would like to address myself to two specific cases of employees at the Emerson Electric Co. who had applied for permanent and total disability and whose claims were denied. Both of these cases are a matter of record and are available for scrutiny if necessary.

The first case has to do with Mr. Lawrence Scanlan. Mr. Scanlan became disabled on March 14, 1964, with arteriosclerotic heart disease, duodenitis, arthritis, hypertension, et cetera, and made application for permanent and total disability to the Social Security Commission on May 7, 1964. A hearing was conducted by an examiner appointed by the Social Security Commission and Mr. Scanlan's claim was denied. Subsequently, he requested a rehearing and again the claim was denied. It was at this time I became involved in his case from a plea by Mr. Scanlan at a meeting of the Emerson Electric retirees.

Mr. Scanlan informed me he despaired of receiving any payments for himself because he knew of nothing else that could be done in his case, but thought that if something could be done, it may help someone else in the future. He also informed me that he had contacted an attorney about the possibility of representation by him in a rehearing before the hearing examiner. The suggested fee by the attorney was not acceptable and Mr. Scanlan dropped the issue.

After discussing the case with Mr. Scanlan, I agreed to look into the problem, little knowing what was involved or the necessary steps to take.

I requested a rehearing before the hearing examiner and it was granted. Before being allowed to proceed with the case, I was required to sift through all of the evidence that had been introduced up to this time, and was informed by the hearing examiner that unless I had additional evidence, it would be a waste of time to proceed with the rehearing.

Nevertheless, I requested permission to proceed with the hearing and I introduced what I felt was sufficient evidence to justify Mr. Scanlan's claim for permanent and total disability. Among the evidence submitted were Mr. Scanlan's personal physician's reports, hospital records and records of Dr. Culbertson, Emerson Electric's examining doctor, together with employment and medical records authorizing permanent and total disability payments by Travelers Insurance Co., then carrier for Emerson Electric employees.

The hearing examiner produced a vocational consultant to testify in behalf of the Social Security Commission to introduce into evi-

dence, his opinion as to the availability of jobs in the St. Louis area that could be performed by a person with Mr. Scanlan's degree of debility. After a considerable length of time after the hearing, we were informed Mr. Scanlan's claim was again denied.

I became incensed at the thought of a person in Mr. Scanlan's physical state not being able to benefit from the provisions of the Social Security Act, and was determined to see the case through all steps and appeals, and until all efforts were exhausted.

I made a final appeal to the Board of Appeals, Department of Health, Education, and Welfare, Social Security Administration in Washington, D.C.

To sum it all up, the Board of Appeals reversed the previous rulings and Mr. Scanlan was placed on permanent and total disability, with payments dating back to date of onset, minus 6 months waiting period. Mind you, the reversal was based on the same evidence presented initially; there was no greater degree of debility at this time.

In this case the claimant was successful, albeit he had to do without funds for months on end, which in itself proved to be near disastrous. Had the services of the ombudsman been available, this claim, I am sure, would have been resolved very quickly to the satisfaction of all concerned.

I want very briefly to cite one other case, wherein one Helen Dawson, an employee of Emerson Electric Co., and member of Local 1102, I.U.E., AFL-CIO-CLC, sought unsuccessfully for a period of 5 years to be placed on permanent and total disability. Mrs. Dawson suffered from many ailments, including but not limited to diabetes, arthritis, hypertension, and so forth, and here again, upon the recommendation of her personal physician and the examining doctor for the Emerson Electric Co., Dr. Culbertson, Mrs. Dawson made application for permanent and total disability and her claim was repeatedly denied.

Mrs. Dawson contacted me and asked me if I would please look into her case and try to determine if anything could be done to help her be placed on disability under the provisions of the Social Security Act, as amended in 1965.

Through many requests for rehearings, we were successful, in part, in obtaining relief for Mrs. Dawson. She was placed on permanent and total disability effective January 1, 1968:

If the services of the ombudsman had been available in this case, Mrs. Dawson would have undoubtedly been able to have established the date of onset of her disability to May 1, 1963, and would have been entitled to benefits from that time. Based on the amount of her award, \$104.90 per month, the total payments she lost amounts to \$5,874.40. I might add she lost this total amount because of failure to apply for a rehearing within 6 months of the previous hearing, and here again I want to say an ombudsman could have advised her of her rights and privileges, and this need not have happened.

These are not isolated cases. At present, we have three more requests for permanent and total disability before the Social Security Commission, and undoubtedly there will be many more in the future. I sincerely hope there will be an ombudsman available to advise them. These are but two cases. I am sure there are many more we have not heard of that concerns only this one Federal agency. I am sure all of

the remaining Federal agencies have problems equally, if not more perplexing than those mentioned by me.

In summary, it is obvious that with the multiplicity of Federal agencies, the average citizen must have someone to whom he can register complaints of abuse of power and/or authority of various Federal agencies. I feel the ombudsman system would be a worthwhile experiment, and could become an effective instrument for the constructive criticism of administrative functions and actions of Federal agencies.

The lack of knowledge or the fear of reprisal in most cases leads the individual to either maintain silence, or to relinquish claims that are otherwise justified.

Thank you, Mr. Chairman, for allowing me this opportunity to appear before your committee and voice my opinions and testify in behalf of International Union of Electrical, Radio, and Machine Workers, AFL-CIO-CLC, for Senate bill 3123.

Senator LONG. Thank you, Mr. Hicks. We appreciate your statement. Mr. Kass.

Mr. KASS. Thank you, Mr. Chairman. I have just one question.

Mr. Hicks, you mentioned that the attorney's fee in this particular case that you cited was prohibitive. Have you come across any situations where the attorney just didn't want to handle the case because he couldn't get enough money from the Social Security Agency?

Mr. HICKS. Yes, this has happened. We have had two people that I know of, Mr. Kass, who have contacted an attorney, and they just simply did not want to handle the case, with no fee involved or with a fee involved, because of the redtape that is involved.

Mr. KASS. The restrictions on an attorney's fee that exists in the Social Security Agency—I am asking about this because Senator Long has a bill that passed the Senate twice, is presently pending before the House, which would remove the arbitrary limitations on attorneys' fees so that attorneys could receive a reasonable value for their services and maybe this would solve the problem.

I am not suggesting this in lieu of an ombudsman, but it is an additional remedy.

Mr. HICKS. It would probably help. At least they could.

Mr. KASS. Any support for the bill in the House of Representatives would be appreciated.

Senator LONG. Any other questions?

Mr. KASS. No, sir.

Senator LONG. Thank you again, Mr. Hicks.

Our next witness is Prof. Frederick W. Hess.

Professor, we are running somewhat late, as you know, and I see your statement here. I wonder if it would be possible for us to put the entire statement in the record and then you summarize it in your comments.

Mr. HESS. Senator, thank you very much.

Senator LONG. Without objection your entire statement will be included in the record.

STATEMENT OF PROF. FREDERICK W. HESS, UNIVERSITY OF
MISSOURI AT KANSAS CITY SCHOOL OF LAW

Mr. HESS. I would like to, first of all, thank the committee for giving me the opportunity to appear.

Senator LONG. Professor, for the record, may we have your name and official position?

Mr. HESS. Mr. Chairman, my name is Frederick W. Hess. I am a professor at the University of Missouri at Kansas City School of Law.

Mr. Chairman, I appear here in support of Senate bill 3123 with some very minor exceptions which I believe are of a clerical nature, which I shall reserve for later correction.

I find the bill very commendable, very well-conceived, and I am confident that it will pass. I also am confident that the ombudsman system will be adopted in the entire country because it has to be. This is undoubtedly the trend of our society. Everything seems to drift toward the acceptance of this remedy.

The very factor that Professor Gellhorn brought out that 47 out of 50 legislatures have spontaneously proposed such a bill, that the national commissioners are considering a uniform act, is evidence of this trend, and whether it is going to be this year or perhaps 10 years from now is perhaps a small matter in the light of history, but it will happen, and I hope it will happen sooner rather than later.

I am very much indebted to Keith Wilson for having laid the foundation for some of the remarks that I would like to make.

Mr. Chairman, I happen to be a retired officer of the Army of the United States who in his later years became a law professor. I have had some experience with the system of the inspector general, not principally as a member of that department but simply as part of the experience that every member of the Armed Forces has. I would like to make one observation.

As was brought out by many witnesses here this morning, what we are going through is a crisis of confidence in our society today in the impartiality of higher authority. But in the military service we do not have this basic dissension that exists in the civilian sector.

If we ask ourselves why that is, I think we have two reasons. First of all, the standards of fairness which are required in the administration of the system, and this means that if you want to have an efficient military organization you have to have a confident and content organization. If there are grievances or gripes, then you are not going to have an efficient organization. So, therefore, the military is of necessity compelled to mete out justice where justice is due.

Now, Mr. Chairman, if I may impose upon you to look at the very back page of my testimony, you will see in what I call footnote No. 2, that I have quoted from the Journals of the Continental Congress, December 1777.

Senator LONG. I have already looked at that.

Mr. HESS. I would like to say, therefore, that the institution of the ombudsman—I am not speaking of the name but merely the concept—

is as American as apple pie. We do not have to go to any foreign country for a model. We have had it here and it has worked fine for 191 years. The complaints that are brought before the inspector general are not purely military complaints. They are complaints that range across the daily lives of servicemen.

When a soldier's wife goes to the dispensary because she is pregnant, and she feels she doesn't get the right attention, she can go to the inspector general. I am merely trying to show that problems that are nonmilitary in nature but are in this sphere of Military Establishment come within the cognizance of the inspector general.

Senator LONG. That is a very fine statement. That is the first time it has been called to my attention. I looked back a moment ago and read the references that you made.

Mr. HESS. Thank you, Mr. Chairman.

Mr. Chairman, I do not want to belabor the committee's time. I would like to confine myself to a few points in the regulations which govern the activities of the inspector general where I believe the inspector general system offers some points which perhaps deserve consideration if the bill which was brought out earlier is to be perfected.

The first point I would like to make is publicity. In the Military Establishment it is an absolute "mortal sin" if every company-size unit does not conspicuously publish the location, the office hours, and the availability of the inspector general so that every soldier every place knows where to go. Now, I can imagine that by your rulemaking procedure the ombudsman could perhaps do this by rule, but I have my doubts that this would require the various agencies to comply and post such notices conspicuously in every public building. For this reason it is my recommendation that the statute spell out that notices of the availability and office hours and other appropriate details of the nearest ombudsman office be displayed conspicuously in every public building. And, furthermore, when the ombudsman goes, as was brought out this morning, on circuit and sets up temporary shop in the neighborhood offices and other centers, that this be brought to public notice by appropriate means.

The second point, Mr. Chairman, that I would like to make is promptness. Now, this word is absent from your bill. I am not trying to be critical. I believe the drafters probably took this for granted. But in going over the various reports of experiences in foreign jurisdictions sometimes it has taken a long, long time until an answer was given to the original complainant. It is my opinion that a delayed remedy is worse than no remedy at all. It is, therefore, my second recommendation that the word "promptness," in addition to thoroughness, be one of the guiding standards of the inspection or ombudsman system.

Mr. KASS. Professor Hess, I think we did take it for granted, and I think it is a point well taken. Perhaps we ought to include the word "promptness" in the bill.

Mr. HESS. As far as the comment that was made earlier about oral complaints, I think if we address ourselves to the poverty sector it speaks for itself, that we should not be too technical and require written statements. Perhaps the ombudsman can assist the complainants to reduce their statements to writing as is provided in the Army

regulations when a soldier who is not particularly literate comes in and vents his complaint.

The next point, Mr. Chairman, that I would like to make is that of immunity. A soldier may go over the head of his commanding officer and complain about some grievances, and it is provided in the Army regulations that if any reprisal or adverse action were attempted against him that such reprisal would become a punishable offense. It is prohibited. I do not find any provision in your bill which says that anyone who goes to the ombudsman shall enjoy immunity for the fact that he goes forward, so long as he does so in good faith. If he goes there and makes false statements, I think your bill covers the situation, but, if it is done in good faith, my recommendation would be that an immunity provision be put into the statute.

I further would like to address myself to the comments on assistance and advice. I feel that the citizen is absolutely horrified by the so-called runaround. It is my opinion that it would be very little trouble for any Government agency if a complaint or request for information were misdirected, to send it to the right agency and impose the duty on the recipient agency to act as though it had been originally addressed to them.

Mr. Chairman, when the ombudsman system will have been established all over the United States, and a citizen not familiar with the technicalities of Federal, State, and municipal agency jurisdictions has addressed his request to the wrong ombudsman, my recommendation is that the statute from its very beginning require that his complaint, if another ombudsman exists by statute in the appropriate jurisdiction, be forwarded to the ombudsman having jurisdiction. The important thing is that it remain a "live" complaint so that both the forwarder and the recipient as well as the complainant know that some action is ultimately going to be taken.

I also foresee, that the Federal ombudsman will be stationed in Washington where many of the agencies to be investigated are located, and that field personnel will be stationed in Missouri and in other States once the bill becomes nationally expanded.

In the Army's inspector general system, if a soldier is dissatisfied with the reaction of the inspector general to whom he has addressed his complaint originally, he may appeal to an inspector general at a higher command level, all the way up to the Department of the Army. I recommend that some appellate procedure be made available in your bill as well.

I would like to close my remarks by saying that the inspector general is of necessity an agent of the commander of a unit higher than the one to whom a complainant is assigned. Therefore, if one of my men had with justification complained about what I as a unit commander had done, it would have been my general to whom the inspector general would have recommended what corrective action should be taken. The general would have taken it very, very quickly, and I assure you I would have very promptly complied.

I have no recommendation to make that the inspector general or the ombudsman not be a part of the legislative branch or that it be independent of the executive branch, because I am perfectly satisfied that the manner in which your bill is framed in this respect will be sufficient to insure its success.

My final observation refers to what appears to be a clerical mistake on page 3, line 7 of the bill (Section 2(c)(8) of the bill): I believe line 7 should read "1743, and 1744 of title 12; chapter 2 of title 41; or sections 1622, 1884," I believe the words "of title 12; chapter 2" were inadvertently omitted.

Mr. Chairman, I thank you for giving me the opportunity to express these comments.

Senator LONG. Professor, the committee is grateful to you for your presence here and for your statement, which I want to read in detail at the first opportunity. Your comments have been very helpful to us. It indicates a great deal of thought. In discussing your statement with my staff a while ago, there are two or three things you mentioned that we think are very fine suggestions and certainly will have the attention of the committee.

Mr. KASS, do you have any questions?

Mr. KASS. Yes.

Professor HESS, I think your parallel of the ombudsman and inspector general is quite apropos. In fact, it is nice to know that the concept perhaps came out of an American tradition and not the Swedish tradition after all.

I think one thing that does bother me is that, when I was an airman basic in the Air Force, although we did have the inspector general—and I did know that I could go to him around my sergeant and all the other people above me—nevertheless, he still represented authority, and he still represented part of the tradition, part of the military, and I was always afraid that he really wasn't as independent as he should have been. Maybe there were situations where I would be turned down because he wanted to get his extra stripe or his extra star. I think the ombudsman ought to be more independent of the branch that it is investigating than the inspector general. Maybe the times have changed and the army is a much more rigid structure than the rest of the Federal Government. Perhaps you can comment on that.

Mr. HESS. Mr. Kass, I retired in 1961 and a lot of changes may have happened, but I would say that the inspector general receives a substantial number of complaints. At the local level they are more in the nature of gripes, which turn out to be matters of "communication" where a soldier doesn't understand why he is on K.P. again. He finds out, and then he says, "All right, I understand it now." However, there are types of complaints that cannot be resolved at the lower level. They then reach the Department of the Army. There is a higher percentage, as I understand, of legitimate complaints that are ultimately sustained than are found in the various ombudsman statistics that I have read in the literature which your committee so very capably has published. So I would say the fact that the inspector general system is being utilized extensively and that a considerable amount of relief is obtained through it would indicate that it works.

I apologize for taking a parochial attitude. I was in the U.S. Army, and I regret that I am not as familiar with the U.S. Navy and Air Force system as I am with that of the U.S. Army.

Mr. KASS. I don't think there is much of a difference except as an airman basic I could never understand why they gave me K.P. again.

I have no further questions.

Senator LONG. Thank you, Professor.

(The statement by Professor Frederick W. Hess is as follows:)

Mr. Chairman, I consider it a great privilege to appear before your Subcommittee and to be permitted to set forth my comments on the Ombudsman concept.

Mr. Chairman, if we look at the state of our society today it is quite obvious that we are going through a period of extreme stress. Some elements among our citizens complain about their treatment at the hands of the authorities, and regardless of whether or not these complaints are in fact justified, until your legislative purpose is accomplished, regrettably it remains generally true that no forum exists where the citizen may vent his grievances and be assured of an impartial inquiry in the outcome of which not only he may have complete confidence, but also with which the authorities concerned would willingly cooperate.

It is gratifying that, as Professor Gellhorn recently wrote in the American Bar Association Journal,¹ an Ombudsman has been proposed not only by your Committee on the Federal level, but also in 47 of the 50 state legislatures and in numerous cities and counties, although this movement has as yet not attained universal legislative success, let alone produced experience on which its effectiveness as a grievance remedy in this country could be gauged. Nevertheless, in view of so many spontaneous efforts in nearly every legislative forum of the United States it may be safely said that the Ombudsman concept is gaining wide acceptance. This is further borne out by the fact that the National Conference of Commissioners on Uniform State Laws, as Professor Gellhorn indicated in his article, has begun consideration of a model law on this subject.

It is also gratifying to see that sister democracies have created a remedy for their citizens to vent their grievances through the institution of the Ombudsman, and that the experience gained by these democracies, as brought out in the hearings before and the learned materials published by your Subcommittee, has encouraged the widespread belief that the Ombudsman has indeed been effective to accomplish the legislative purpose anticipated in those countries.

I was greatly impressed by the testimony before your Subcommittee by the Swedish Ombudsman who traced the history of his office back to its creation by the Swedish Parliament in 1809. I may be forgiven, Mr. Chairman, if as a retired officer of the Army of the United States, who in his later years became a law professor, I cannot resist the temptation to point out that the U.S. Army has had an institution comparable to that of the Ombudsman since 1777 when the Congress created the office of The Inspector General of the Army. From its inception the inspector general system embraced the receiving of complaints from soldiers for violations of their rights.² The first Inspector General, whose appointment was approved by the Congress in 1778, was Baron von Steuben upon whom was conferred the rank and pay of a Major-General for this purpose, and there is an uninterrupted chain of holders of this office down to the present day.

¹ Gellhorn, The Ombudsman's Relevance to American Municipal Affairs, 54 ABA Journal 134 (Feb. 1968).

² "Resolved, That the inspectors general shall make these reviews in the beginning and at the latter end of every campaign, and at such other times as the commander in chief shall direct, or as they themselves shall severally judge proper, or shall receive orders for that purpose from the Board of War, first giving notice thereof to the commander in chief, and obtaining his leave for reviewing the said troops.

"Resolved, That the inspectors general, respectively, shall make this review minutely, man by man, attending to the complaints and representations of both soldier and officer, and transmitting to Congress what petitions and grievances he shall think worthy of notice: that not depending solely upon the accounts and characters of officers as given him by the colonels of regiments, the inspectors general shall examine the said officers in person, direct them to command different maneuvers, and take such measures as shall enable him to give an exact account to Congress.

"Resolved, That these reviews, when closed, be transmitted to Congress by the inspector general making the review, who is to furnish the major of the respective regiments with a copy of the same, and to keep another for his own government and assistance in proceeding to the next reviews.

"Resolved, That the inspectors general shall examine, from time to time, the pay-books of the respective regiments, which are to be kept in an uniform manner, agreeable to such regulations as may be established for that purpose, giving immediate notice to Congress of any malversation or mismanagement which he may discover."

(IX, Journals of the Continental Congress 1025, December, 1777.)

It is perhaps noteworthy, that within as conservative a body as the U.S. Army and the other military services of the United States, this crisis of confidence in the impartiality of higher authority does not exist. Two factors contribute to this phenomenon: First, the complete integration of Negro and non-Negro elements in the armed forces, which was first ordered by President Truman soon after the end of World War II, demanded and generally assured equal treatment for all military personnel; and, second, the inspector general complaint system which provides a means for registering grievances by those who feel that they are not receiving the just treatment to which they are entitled. Of course, the complaint system is by no means confined to racial problems,³ nor is it the only instrument through which the Department of the Army has striven to accomplish a solution of racial problems. The complaint system has been established for the basic purpose of correcting injustices affecting individuals and of eliminating conditions determined to be detrimental to the efficiency or reputation of the Army.⁴

The provisions of S. 3123, if enacted into law and ultimately made applicable to the entire nation, are well conceived and merit general support. However, Mr. Chairman, I would like to discuss some facets of the inspector general complaints system which in my opinion would strengthen the Bill, and have general applicability to the Ombudsman concept.

Mr. Chairman, at this time may I be permitted to emphasize that the opinions expressed in my testimony are entirely my own, and do not necessarily reflect those of the University of Missouri nor of the Department of the Army. My own active service with the U.S. Army which lasted for a little over 20 years, and on which I look back with great satisfaction, was not devoted to inspector general duties, except for a very brief period.

In those early days the duties of the inspector general were, in the main, "to muster the troops monthly, noting the number and condition of the men, their discipline and drill, state of arms and equipment, clothing, ration, et cetera, to reject all unserviceable recruits and to discharge or transfer to the invalid corps all men disabled in the service, and to report all abuses, neglect and deficiencies, to the commander-in-chief, the commander of the organization, and to the board of war."

During the critical period of 1798, when trouble threatened with France, Congress authorized a provisional Army, the organization of which was similar to that in existence toward the end of the Revolution. Washington was again made Commander in Chief and Alexander Hamilton was appointed Inspector General with the rank of Major General.

During the War of 1812, the country was divided into nine military districts, each with a district staff which included an inspector. This system was similar to that of the corps areas of recent years.

The act of 3 March 1813, which reorganized the staff of the Army, established the Inspector General's Department. In addition to an Inspector General, the act provided for eight inspectors general and sixteen assistant inspectors general. No change occurred in the number of inspectors general between 1842 and 1861, but in the latter year Congress added seven. Armies, army corps, divisions, brigades, geographical divisions, and departments had inspectors general, or acting inspectors general selected by the several commanders, and all parts of the Army were subject to frequent inspection. The number of geographical departments in 1865 was twenty-nine, grouped into five divisions and a number of districts. Shortly thereafter the War Department published an order defining the duties of the Inspector General's Department to include, in summation, "all matters pertaining to the military art or having interest in a military point of view." It is thus seen that the sphere of inquiry was made to include every branch of military affairs and was limited only by orders issued in specific cases.

By the act of 1874, the inspection of disbursements was required, and it was directed "that officers detailed for this duty should not be in any way connected with the department or corps making the disbursements." Under this act inspectors were made responsible for any defalcation or misapplication of public monies or property which "an act of vigilance on their part might have detected."

In April 1876, the Secretary of War directed the Inspectors General to report to the General of the Army and to be under him in all subjects pertaining to

³ Although it has in recent years been utilized to give military personnel a means of registering their grievances concerning discriminatory off-post housing practices. See 32 CFR §§ 300.7, 886.12 (1968).

⁴ Par. 28, Army Regulation 20-1, Department of the Army, 27 May 1966.

military control and discipline. Reports of inspectors general were to be forwarded through regular channels to the Inspector General's office and inspectors general were ordered to note on such reports the remedies applied and all superior officers to endorse on them their action "for the information of the General of the Army."

With the division of the country into six inspection districts in 1895, an inspector general was assigned to each district under the control of the Inspector General of the Army and he was required to make three periodic tours of inspection each year to such of the places as the Inspector General of the Army might designate. These officers were independent of the department commanders but were directed to confer with them before and after each tour of inspection. Department commanders also made an annual inspection accompanied by such staff officers as they might select.

The act of 2 February 1901 provided for 17 inspectors general in addition to a detail system in all staff departments. No change in the number of inspectors general was authorized until the Act of 3 June 1916, when 29 inspectors general were authorized in the Department, which was charged by this same Act with making inspection of the National Guard.

There were 215 officers detailed in the Inspector General's Department in World War I. Under the Reorganization Act of 4 June 1920 the Department consisted of The Inspector General and 61 other officers, which number could be increased or decreased 15 per cent at the discretion of the President. From 1920 to 1939 the strength of the Department changed but little and the mission remained the same.

By 1940 all subordinate commanders down to and including divisions were each allotted an inspector general to conduct inspections and investigations as needed within their respective commands. These inspectors general were under the immediate and direct control of the commander on whose staff they were assigned. During World War II the Inspector General's Department expanded from 60 officers in 1939 to 1,449 in 1945. Also during World War II there was organized an Overseas Inspections Division whose members were dispatched to all parts of the world for the purpose of inquiring into complaints which had come to the attention of the War Department. Because of the specialized nature of inspections relating to procurement activities, and construction operation on a cost-plus-a-fixed-fee basis throughout the Army, the bulk of this class of inspections was allocated to the Office of The Inspector General and performed by the Procurement and Construction Inspections Division.

Public Law 581, Eighty-first Congress, "Army Organization Act of 1950" did not provide for an Inspector General's "Department" or "Branch," however, Section 306(c) provided that, "Under such regulations as the Secretary of the Army may prescribe, commissioned officers of the Army may be detailed as general staff officers and as inspectors general." Accordingly, the use of the term "Inspector General's Department" was discontinued and in its stead the term "inspector general" is used when referring to officers detailed as inspectors general.

At the present time, Title 10, United States Code, Sections 3039 and 3040, provide for The Inspector General of the Army, his mission, and his deputies and assistants. Title 10, United States Code, subsection 3065(a), provides for the detail of commissioned officers as inspectors general.

The Inspector General of the Army will be a general officer detailed to that position for a tour of duty not to exceed four years, except that such tour may be extended beyond four years upon a finding by the Secretary of the Army that the extension is necessary in the public interest. The Inspector General will have such deputies and assistants as may be prescribed by the Secretary of the Army, who will be officers selected and detailed to those positions by the Secretary of the Army for tours not to exceed four years.⁵

The Inspector General of the Army and inspectors general on his staff are confidential agents of the Secretary of the Army and the Chief of Staff. Likewise, other inspectors general are confidential agents of the head of a Headquarters Department of the Army agency or commander on whose staff they serve.

The mission of The Inspector General is to inquire into and report upon matters which pertain to the performance of mission and the state of discipline, efficiency, and economy of the Department of the Army and to perform such other duties

⁵ 10 U.S.C. §§ 3039 (c) and 3040 (a) (1964).

as may be prescribed by the Secretary of the Army or the Chief of Staff or as required by law.⁶

The mission of other inspectors general is to inquire into and report upon matters which pertain to the performance of mission and the state of discipline, efficiency, and economy of the command, installation, or activity in which they serve. They will perform such other duties as are required by law and regulations and those which are directed by their commanders.

The sphere of activity of The Inspector General embraces every phase of activity of the Department of the Army. In the accomplishment of his mission The Inspector General should make full utilization of technical examinations such as audits, including the U.S. Army Audit Agency reports, management and manpower surveys, cost and performance reports, review and analysis reports, and technical and procurement inspections conducted by the Department of the Army and external agencies. He will determine the appropriateness of corrective action taken on recommendations contained therein, and, where appropriate, evaluate the effectiveness of such examinations.

The sphere of activity of all other inspectors general embraces every phase of activity which is within the sphere of responsibility of their respective commanders or heads of the Headquarters, Department of the Army agencies on whose staff they serve.⁷ Inspectors general have authority to administer oaths necessary in the performance of their duties under the provision of Article 136 (b), Uniform Code of Military Justice, and paragraph 113, Manual for Courts-Martial, United States 1951. This provision does not confer authority to perform general notarial acts or administer oaths for administrative purposes.⁸

The Secretary of the Army has promulgated, as the basic regulation governing the operations of The Inspector General, Army Regulation 20-1, whose current version was published on May 27, 1966; technical guidance for inspector general activities which are relevant to the subject matter of this hearing, are contained in Department of the Army Technical Bulletin IG 4, whose current version was published on August 29, 1967. I understand that both the Army Regulation and the Technical Bulletin are presently undergoing revision by the Department of the Army.

The inspector general is responsible for three types of activities: (1) inspections, (2) the inspector general complaints system and (3) investigations. Because of the subject matter of this hearing, Mr. Chairman, I shall confine my remarks mainly to the complaints system, although I shall touch upon a few collateral points in other areas also.

Examples of the type of problems which an inspector general might deal with in the complaints system might encompass: Discrepancies in a soldier's pay or the allotments thereof sent to his family while he is stationed overseas; inequitable denial of fringe benefits such as medical facilities to soldiers and members of their families; inequities of promotion, selection for service schools, leaves and other personnel policies; unfairness of military justice and disciplinary policies, including less-than-honorable discharges; in short, these complaints range across the entire spectrum of all matters of daily concern to soldiers, many of which are not strictly military in nature although they are part of the fabric of military life.

Inherent in the military inspector general system is the fact that an inspector general is a representative of a commander at a level higher than the unit to which the complainant is assigned. It is not required that a complainant discuss the subject matter with his own commander. He thus may go over the head of his own commander.⁹ The inspector general upon ascertaining all of the facts pertinent to the complaint, investigates the matter and makes a report to the next higher commander who will redress a justified grievance if it is within his power, and, if not, forward it to an even higher commander who does have the necessary authority.

Great stress is laid in the army inspector general complaints system on providing the opportunity to submit a complaint.¹⁰ At installations where an inspector general is stationed, information as to the location and hours of operation of his office and the fact that personnel may submit complaints in that office

⁶ 10 U.S.C. § 3039 (a) (1964).

⁷ Par. 6, Army Regulation 20-1, supra.

⁸ 10 U.S.C. § 936 (b) (1964).

⁹ Par. 8c, Army Regulation 20-1, supra.

¹⁰ Par. 39, Army Regulation 20-1, supra; par. 63, Tech. Bulletin IG 4, Department of the Army, 29 August 1967.

must be published on all bulletin boards; the inspector general's office hours must be so scheduled that complaints may be submitted during duty as well as non-duty hours; at installations where no inspector general is stationed, an inspector general must either visit the installation once each quarter for the purpose of receiving complaints during previously announced times, or where this is not possible, apprise personnel that they may submit complaints by mail at any time. Inspectors general are also required to visit hospitals and stockades for the purpose of receiving complaints. In my opinion the availability of the services of the Ombudsman must be similarly published, and this matter should not be left entirely to the discretion of the Ombudsman or the cooperation of other government agencies, but the statute should provide that a notice setting forth the nearest Ombudsman office and its office hours, or other appropriate particulars, be conspicuously displayed in every government building.

Once a complaint is lodged with an inspector general, he is required to dispose of it "promptly."¹¹ I believe in this respect the military complaints system goes beyond the requirements of the Bill. In my opinion the legislative purpose of requiring "promptness" should be spelled out, because it goes to the essence of the matter since a delayed grievance forum is as bad as none at all, and promptness is therefore as important as thoroughness in dealing with a complaint.

One other provision which has made the inspector general complaints system so effective is the fact that "any type of disciplinary or other adverse action against an individual for registering a complaint * * * is prohibited."¹² Therefore, a soldier may avail himself of the military complaints system without fear of reprisals on the part of his commander or anyone superior to him, for such reprisal would be punishable under Article 92 of the Uniform Code of Military Justice as "failure to obey order or regulation." This immunity does not extend to complaints made in bad faith.¹³ As I believe the legislative intent would provide that citizens should be able to lodge their complaints with the Ombudsman similarly without fear of reprisals, I suggest that an immunity provision, similar to the military provision, be given consideration.

It is significant that the inspector general, when warranted to protect the interests of the government, is required to act on anonymous complaints in the same manner as on any other type of complaint.¹⁴ An ombudsman may receive anonymous complaints from people who are afraid to come forward; until such time as confidence in the immunity which I have just discussed is established, the Ombudsman should not dismiss complaints only because they are anonymous.

The inspector general is available not only for complaints but also for requests for assistance, advice, or information.¹⁵ While I am aware that the primary purpose of the Ombudsman is to receive citizens' grievances, I feel that he should refer a request for information to the appropriate agency for reply to the citizen, or refer the inquiry to a citizens' information bureau where one exists.

The inspector general is required, under the complaints system, to receive allegations of deficiencies, irregularities, waste, and fraud, although such allegations may relate to a matter in which the complainant does not have a sufficient personal interest.¹⁶ The provisions of Section 5(b) of the Bill appear to cover the same ground as the inspector general's inquiry of allegations of this type, but I would hope that this would not be prevented by too strict a construction of Section 4(b) (3).

In a number of situations enumerated in the Army Regulations,¹⁷ where specific remedies are available to complainants, the inspector general will not normally accept the complaint. Section 4(b) (1) of the bill provides for the same rejection of a complaint by the Ombudsman; however, the inspector general is required to accept a complaint and make inquiry in situations where the complainant has availed himself of an available remedy in the prescribed manner but where his rights have not been protected as intended by law and regulation.¹⁸ I submit that Section 4(b) (1) be broadened so as to provide for situations such as those which permit inquiry by the inspector general.

¹¹ Par. 34, Army Regulation 20-1, *supra*.

¹² Par. 30d, Army Regulation 20-1, *supra*.

¹³ Par. 31, Army Regulation 20-1, *supra*.

¹⁴ Par. 32, Army Regulation 20-1, *supra*.

¹⁵ Par. 33, Army Regulation 20-1, *supra*.

¹⁶ Par. 35, Army Regulation 20-1, *supra*.

¹⁷ Par. 37a, Army Regulation 20-1, *supra*.

¹⁸ Par. 37b, Army Regulation 20-1, *supra*.

Complainants who are dissatisfied with the action by an inspector general in the field have the privilege of appeal to the inspector general at a higher level of command, up and including to the Department of the Army.¹⁹ It is recommended that in the scope of section 3(f) consideration be given to the availability of appeals from decisions of field employees to the Deputy or the Ombudsman himself.

A final comment pertains to the jurisdiction of inspectors general while conducting investigations. When an inspector general determines that the accomplishment of his mission requires investigative activity in a command which is under the jurisdiction of a commander other than his own, he may, when authorized by all commanders concerned, extend his investigative activity accordingly,²⁰ or refer the matter to a higher commander. I recommend that in situations, where the citizen has addressed his complaint to the federal Ombudsman, when in reality another complaints agency, or a state or local government Ombudsman should have been approached, the federal Ombudsman not simply reject the inquiry, as relating to a matter outside his jurisdiction, but refer the inquiry to complaints agency or the right Ombudsman, provided there is one established by statute in the appropriate jurisdiction. I would further recommend that the complaint remain "alive" until final answer has been made to the original complainant by the Ombudsman having jurisdiction. In this manner, the confidence of the public in the Ombudsman system as a whole can only be enhanced, and a citizen who from ignorance of jurisdictional delimitations addressed the wrong Ombudsman would still receive satisfaction. Conversely, the same principle should be applied where an inquiry is forwarded by another complaints agency or by a state to a federal Ombudsman.

In discussing some of the provisions of the inspector general complaints system of the Army, I am well aware that the U.S. Navy and U.S. Air Force also have effective inspector general systems. However, these systems differ somewhat from that of the Army, although they accomplish the same over-all results.

As to the inspector general complaints system of the Army, as indicated above, by correcting injustices it is an essential morale factor and thus contributes to the effectiveness of a command. While the confidence of military personnel in the inspector general complaints system is borne out by the considerable numbers of complaints processed by inspectors general, the experience of the inspector general has shown that—as with the Swedish Ombudsman—only a portion of the complaints lodged are well founded. But the existence of the complaints system, which is held in wholesome respect throughout all echelons of the Army, is a strong protection of the soldier against unfair command action. On the other hand, the inspector general is required to observe scrupulously the rights of those under investigation and make sure that not even a semblance of injustice is attributable to his own carelessness or neglect. He must not assume that an allegation necessarily indicates wrongdoing.²¹ It is not in the least because of this fairness to all sides involved, and not only because of the power behind his office, that inspectors general succeed in obtaining the willing cooperation of all military authorities whom they must investigate pursuant to complaints.

Mr. Chairman, I wish to conclude by thanking the Subcommittee for giving me the opportunity of appearing before you.

Senator LONG. Our last witnesses are Mr. Robert Brewer and Mr. Dick Williams, research assistants on State legislatures.

Mrs. Davis, you are with the League of Women Voters, aren't you?

Mrs. DAVIS. I am not here officially, if this is what is necessary.

Senator LONG. Well, do you have a prepared statement?

Mrs. DAVIS. I have something; yes.

Senator LONG. As soon as we finish with this, I think there are some other witnesses we may not be able to hear. If they have statements we will try to get them in the record.

You are Mr. Brewer or Mr. Williams?

Mr. BREWER. Mr. Brewer, sir.

¹⁹ Par. 38, Army Regulation 20-1, *supra*.

²⁰ Par. 6b, Tech. Bulletin IG 4, *supra*.

²¹ Par. 15, Tech. Bulletin IG 4, *supra*.

Senator LONG. As I understand it, the both of you are not going to testify.

Mr. BREWER. Yes, we're both testifying.

Senator LONG. Let's make the statements very short. To have two people from the same group is taking more time than we have.

Mr. BREWER. We have diverging testimony.

Senator LONG. Do you have copies of your statement?

Mr. BREWER. Yes, sir.

Senator LONG. Could you expedite that as much as you can? We will put your entire statement in the record. I am now running past the time for other commitments.

STATEMENT OF ROBERT BREWER, RESEARCH ASSISTANT, CITIZENS CONFERENCE ON STATE LEGISLATURES

Mr. BREWER. Thank you, Mr. Chairman, for the opportunity of appearing in front of your subcommittee. My name is Robert Brewer and I am a research assistant for the Citizens Conference on State Legislatures.

The Citizens Conference is a national, nonpartisan, educational organization which is headquartered in Kansas City. We are the response of the private sector—business, labor, agriculture and academic—to the self-evident needs of strengthening State legislatures.

Our program is designed to mobilize public support for meaningful change. Our primary vehicles are citizen commissions composed of the civic and business leadership that reflects the diversity of interests in each State. We assist in the organization of these commissions, supply them with information and studies conducted by similar groups, and feed the momentum of change by keeping their members in contact with the nationwide movement for legislative strengthening.

Our efforts, as well as the work and concern of many State legislators and civic leaders, and the programs of other national groups on behalf of State government, have been capitalizing on and trying to advance the nationwide interest in favor of the improvement of State legislatures. Much needs to be done. The job requires the harnessing of all available sources of support.

We are working for the day when every State legislator will have the time, information, and staffing necessary for informed decision-making. We are working for the day when every legislator has an office, a secretary, staff assistance, and a salary commensurate with the responsibilities of public office. We are working for the day when the States have no limiting constitutional provisions that stand in the way of the legislature's assumption of its position as a full and equal partner in State government.

There is much interest evident in the Nation for improvement of State legislatures. Not since the Congressional Reorganization Act of 1945 has public concern about the health and well-being of their governmental system been at such a high level. This concern on the part of the public is vital. Public involvement in government lies at the heart of our political system. Yet, the justification of public interest requires the implementation of proposals that change the system in a positive manner. There is reason to believe, in our opinion,

that the establishment of the office of ombudsman would be a step in this direction.

The Honorable Jesse M. Unruh, Speaker of the California Assembly, and one of the members of our board of trustees, has twice introduced a bill to create the office of ombudsman in California.

Senator LONG. He was here in Kansas City last night, wasn't he?

Mr. BREWER. Yes, sir

Speaker Unruh had this to say:

We need to find some bridge between the citizen and his government, some way to clear away the complexities and frustrations. It is for this reason that I have become interested in an office of Ombudsman for California. What is disparagingly called big government is going to get bigger, but it can also become more responsive. The alternative is increasing citizen frustration.

We share Speaker Unruh's concern for more responsive government as do the honorable members of this committee. The achievement of this goal constitutes the main thrust of our program. I would like to comment briefly on the part an ombudsman could play in the total effort directed toward more responsive government.

The ombudsman, by his investigation and reporting, may be a partial answer to those who feel that government is unresponsive and uncaring.

The ombudsman, by compiling the kinds of requests for his services, becomes a valuable source of information about the daily workings of government. As patterns of complaints become apparent, corrective action can be taken. The ombudsman then becomes one who can provide valuable information for legislative oversight of administrative agencies. The kind of information that his office can provide is useful to anyone who is interested in seeing that the average citizen is treated equally in all his dealings with his government.

Let me, though, raise a question. To whom does the ombudsman report? Who accepts the responsibility of seeing that legislation is enacted to alter possible situations that adversely affect the public? In many States, the legislature meets biennially once every 2 years and for a limited period of time. In many States, Missouri, for example, the agenda for special sessions is limited by the Governor. There are few States in the Nation whose legislature has staff available to analyze and prepare recommendations for legislative action. In many States, the public's business is transacted behind closed doors without adequate public notice or public access to the proceedings.

Optimally, when a bill is passed, only the first step has been taken by the legislature. There is need to oversee the actual workings of that law. There is need to evaluate the executive translation of the legislative intent. For a legislature to do this properly, there is need to rely on professional staff who are trained for the job. Fiscal oversight by the legislature is becoming increasingly accepted. The ombudsman can perform an important role in administrative oversight through the handlings of citizen grievances.

The office of ombudsman would have an unique opportunity to perform this function for the legislature as a pattern of complaints become visible. The ombudsman, then, can be viewed as one of the number of steps that could be taken to strengthen the legislature and to make government more adequate to deal with contemporary problems.

Yet, for the ombudsman to be effective at the State level, there is need to strengthen the legislature. There is need to provide for the legislature the tools and time to enable that deliberative body to deal effectively not only with the ombudsman's proposals but the entire scope of the States' business.

The ombudsman does not represent a final solution to the problems of government but, rather, one of the thought-through suggestions for improvement that should be explored. The ombudsman is not a substitute for legislative casework but a supplement.

While I do not speak for the board of trustees of the citizens conference, it seems clear to me that the office of ombudsman is in harmony with the movement to make State government, indeed all levels of government, responsive to the people of this Nation. I feel that the creation of a Federal ombudsman for the State of Missouri on a pilot basis would be a sound move toward the exploration of all feasible avenues to obtain a governmental structure that maximizes public service.

I also feel that the potential upswing in public interest resulting from the establishment of a Federal ombudsman for the State of Missouri, could become a gain for government at all levels.

Thank you, Senator.

Senator LONG. Thank you. We appreciate your statement. We are certainly grateful to you for your comments.

Does your association represent all the various State legislatures?

Mr. BREWER. Yes, sir; we are working actively in about 15 States at this point in time.

Senator LONG. We certainly would be glad to work with any of your people or your department or any of the State legislatures in assisting them in any way we can with their efforts to create.

Mr. Williams.

Mr. WILLIAMS. I have a brief statement, Senator.

Senator LONG. You don't have copies of it?

Mr. WILLIAMS. No, but I will furnish some if you require them.

STATEMENT OF DICK WILLIAMS, RESEARCH ASSISTANT, CITIZENS CONFERENCE ON STATE LEGISLATURES

Mr. WILLIAMS. My name is Dick Williams. I am a research assistant for the Citizens Conference on State Legislatures. I am representing myself solely.

First, let me express my appreciation for this opportunity and privilege of presenting my views to this Senate subcommittee. It is particularly gratifying since the subject matter, a proposed ombudsman office, absorbed a good deal of my studies and interests.

I believe that the subject we are discussing here is one of the most important issues of recent years. Certainly, it is a complex issue, as anyone who has wrestled with its various social implications will testify. It is in regard to some of these social implications that I will address my remarks. The views expressed are solely my own, but tempered with a keen realization of my obligations as a social scientist.

Since the ombudsman idea began to have wide circulation in this country we have not wanted for public debate in the form of lectures,

seminars, books, and articles. The prospects and problems of such an office have been freely aired.

I would like to offer, for your consideration, a slightly different view; one that does not deal so much with political, administrative, and legal implications as much as with what I think the ombudsman idea signifies in terms of the spirit and mood of the times.

I would like to offer the following proposition: That the very structure of our modern society, its countless agencies and bureaus, has become a major ingredient in the production of unhappiness and unrest. Social scientists have known for years that increasing organizational complexity encourages the growth of bureaucracy. In most instances, there is a direct relationship between a bureaucratic structure and feelings of isolation and social impotence. Moreover, as we continue to advance technologically with our amazing computers and their coldly objective operations, most individuals have no choice except to become passive recipients of a decisionmaking process which is beyond comprehension and, therefore, shielded from dispute.

Let me emphasize a point. Whenever people refer to the presence of power in social organization, they are usually talking about some type of open coercion of administrative directive. But there are other forms of power, less visible but extremely decisive. In particular, I am referring to those subtle psychological forces which lead a person to relinquish his right to participate because the arena for participation is too unfamiliar, threatening, and frustrating. Let us ask ourselves how many people in the United States have relinquished their right to participate in democracy because they don't believe in their own significance? Is it true, we have the ballot box, the press, and the backyard fence, but beneath all this there is an alarming tendency to view one's own actions as impotent and irrelevant. Despite all our pleas to the contrary—register! go to the polls! be active!—I would guess that most people don't believe that their action really matters.

I said that a kind of power was involved in this. It is not, however, a power which results from intention or design. Rather, it is a byproduct of the industrial society. It feeds upon ignorance and mistrust and nurtures a class of technocrats and bureaucrats to whom decisionmaking must be delegated because few others know how. To those who can only watch and wait falls the luckless task of either complying with a decision or risking the Pandora's box of appeal. Yes; one can appeal. It is guaranteed by the Constitution. But then our forefathers never envisioned the cobweb of redundancy and frustration which awaits anyone presuming to superimpose his flesh and blood upon an actuarial table.

It is hardly surprising when psychiatrists tell us about the prevalence of paranoia in the United States. In fact, despite the major diagnosis, most patients suffer from fears of persecution and pursuit.

One of the most popular complaints psychiatrists hear is that "the FBI is after me," or frequently, the marines. In less severe cases, the executive ulcer is frequently associated with chronic attempts to satisfy some vague expectations being voiced by departments or offices which appear to be real, living entities. And who among us can honestly say that he has never experienced the uncertainty and dread of an "it" somewhere which will pounce upon our tax return and roast us in the juice of our own mathematical incompetence.

What I am suggesting is that feelings of bewilderment, isolation, and impotence are real and widespread. In fact, it is my opinion that urban riots have less to do with protests over civil rights and poverty than with something much more fundamental and vital. They are attempts to experience, however briefly, what it is like to have an effect upon something, to make oneself felt, to be significant.

To be assured, this is criminal behavior. But, it also is a source of perverted satisfaction to engage in activities which plow a path right through the front yard of the "establishment." It could well be that the brick and the rifle are becoming tools of assertion, assertions in the face of an everyday pale of indifference. Riots in our cities are not insurrections. Neither are they hints of revolution. They are rebellions against a world which seems to say, what you are has been determined, where you are has been determined, and somewhere, someone is now determining the adequacy of how you play the role.

For many people, riot is an immediate means of relief. It is costly and short lived, but it does provide relief. Alcohol works, too. With it, a person can pretend to importance. Also LSD; for a few hours one can feed upon the illusion that a universal jigsaw has been solved, that one's individuality does have significance in a larger scheme of things. But violence is especially effective. In committing injury there is an illusion of power, and from Richard Speck to Adolph Hitler power has been sought as a cure for loneliness.

By this time I might appear to have taken a circuitous route to the point I wish to make. I do not think that ombudsmen at any level can solve the kinds of problems I have been discussing. If this were the case we might have reason to expect a lower suicide rate in Sweden. The point is that the proliferation of the ombudsman idea indicates an awareness of a need in our country, the need to promote the importance of the individual. What a giant step this is in our thinking.

If for no other reason than this, I will support ombudsman legislation. Not because it would be cure-all, but because it is a beginning. It is also a way of keeping this sort of thinking alive. We humans tend to be fickle creatures and given to fads. I think that the climate for creating an ombudsman office is temporary. What we do with our advantage is a matter of serious concern.

We should all be fully aware of the problems which must be solved if the ombudsman idea is to work in our country. How many will we need? Should there be various levels of ombudsman? Who should they be? How should we define their powers? I think we can answer such questions eventually. However, we should not let the weight of these questions restrain our present efforts. Everyday medical men utilize some techniques that serve a good purpose without fully understanding how they work or why. In some cases they must be tried despite risks to the patient. I have faith, however, that if a technique works, human curiosity will focus upon explanations, and in the course of the search refine the thing being studied.

I said before that an ombudsman cannot solve all our problems, certainly not the problem of loneliness, nor even most of the problems that exist in bureaucratic structures. Such an innovation, however, could bridge some of the gaps which exist between the individual and the rest of society. Neither the Wizard of Oz nor the U.S. Congress

can put a heart in a tin casing, but maybe we could legislate a little understanding.

I think this is the principal importance of the ombudsman, a dispenser of understanding. Many times that's all we want. In most cases, however, the direct benefit to an individual would not derive from actually soliciting the aid of an ombudsman, but rather from knowing that solicitation is possible, that there is recourse to a decision mysteriously finalized in the awesome pattern of IBM holes.

This is an exciting idea and its fruition will be difficult, but the alternative of an unchecked, increasing bureaucracy is repugnant. More importantly, there is a promise here of nourishing a concept of democracy we tend to neglect. I am referring to the right of an individual to be represented. Traditionally, we take this to mean having a voice at the seat of government. But the modern world has need for a broader definition. Now we find ourselves in danger of having no representation in agencies and bureaus. If we are seen as numbers we are treated as numbers. Perhaps the least an ombudsman could do would be to remind us that numbers refer to people.

Senator LONG. Thank you, Mr. Williams. We appreciate your very thought-provoking statement, and I am sorry we didn't have time to have you and Mr. Brewer testify earlier when we could have given your statement more attention, which certainly it deserves. Thank you, both of you, very much.

Mrs. Davis, do you have a statement?

Mrs. DAVIS. I have nothing written.

Senator LONG. Can you make it just very, very brief?

Mrs. DAVIS. It probably would be better just to write what I have to say.

Senator LONG. Would you care to submit a written statement?

Mrs. DAVIS. Yes, thank you.

Senator LONG. We didn't know for sure you were going to be here. Are there other witnesses who have written us?

Mrs. DAVIS. I did write and got a telegram and was told to get a hold of Mr. Kass, and I was unable to reach him.

Mr. McALLISTER. My name is Newman McAllister. I am an attorney in Kansas City and associated with Mr. Achtenberg in the practice of law. Mr. Ben Hatcher has asked me to submit a statement which he has typed out in his behalf.

Senator LONG. Without objection, that will be included in the record at this time.

Mr. McALLISTER. He has some comments about the Selective Service System that might be relevant.

(The document above referred to is as follows:)

The Honorable Senator Edward V. Long and committee members, my name is T. Ben Hatcher. I reside in Merriam, Kansas, and am employed at the University of Kansas Medical Center in Kansas City, Kansas.

The concern brought to this committee is related to my work as a draft counselor as part of the efforts of the Vietnam '68 Information Center and Draft Counseling Service, and American Friends Service Committee Project, which serves the Greater Kansas City area.

It is my understanding that a person functioning as an Ombudsman could be of great assistance to registrants experiencing difficulties with the selective service system. Perhaps corrective action would be appropriate in instances such

as the following taken from both recent and long-term dealings with the selective service system :

A registrant used to see his Government Appeal Agent for help in securing a desired classification. The agent said words to the effect that he could not get involved, he had to remain completely neutral, he had no power within the system, the local board wouldn't listen to him, if he would get involved and took sides, the local board would tell him he was overstepping his bounds and to mind his own business. The agent also said that the registrant could not secure the desired classification because of the registrant's religious affiliation. In this particular instance this last statement was definitely contrary to selective service system regulations.

After filing claims and also appearing before their local boards, registrants have had apparently legitimate claims denied and have been unable to learn why. The same problem exists at the State Appeal Board level.

Local boards have been very arbitrary in their treatment of registrants appearing before them. Severe limitations have been placed on the registrant's time in which to explain his case and witnesses have been denied the opportunity to appear.

The law under which the selective service system operates has changed but old forms with obsolete sections are still used ; Form 150, for example.

I hope this material will be of help to you in your efforts to eliminate the bad practices of some of our Governmental agencies.

Respectfully yours,

T. BEN HATCHER,

Coordinator, Kansas City Metropolitan Area Committee of Draft Counselors.

Senator LONG. Were there any other witnesses?

Mr. CROW. Yes.

Senator LONG. Do you have a prepared statement?

Mr. CROW. Senator Long, my name is Robert W. Crow, and I am an employee of the Federal Aviation Agency. I am here at the permission of my physician. I am a victim of heart disease, and I am most, most weary.

I sent you a telegram and received a letter from you yesterday afternoon. I am very disappointed, sir, that time ran out on us.

Senator LONG. If you have a statement, we will be glad to include it in the record for you.

Mr. CROW. I am very appreciative of what the great Senator is doing.

Senator LONG. I understand. If you have some problem, if you would talk to Mr. Kass or Mr. Fensterwald, they will certainly try to help you with it.

Mr. CROW. I would like to submit these two documents, sir, as my statement. They speak for themselves very well.

Senator LONG. We will be glad to include those in the record.

If we can help you any further with your problem, we certainly will be glad to do it.

Mr. CROW. I know you will, sir; and I am sorry the Hatch Act doesn't permit the engaging in a little activity on your behalf.

(The documents referred to by Mr. Crow are as follows:)

5729 Laurel, Jackson County, Raytown, Missouri, 64133, May 8, 1968.

Robert I. Gale, Department of Transportation, Federal Aviation Administration, 4747 Troost Avenue, Kansas City, Missouri.

DEAR Mr. GALE:

I. I write in regard to my letter through you to the Regional Director dated November 17, 1967, Subject: The Merit Promotion Program, and your letter to me dated November 24, 1967, Subject: Merit Promotion Program.

I assume you are aware that I was called upon four times to join, "That innumerable caravan that moves to that mysterious realm where each shall take his chamber in the silent halls of death," on December 1-2, 1967; that I spent

a most terrifying and horrible six weeks in the Intensive Heart Care Unit of Research Hospital; and that I have since been under the very close supervision, care, and direction of my great family physician.

You once said to me, "we are friends", and I appreciate the cards of good cheer and best wishes that I received from the Robert I. Gale family. I have sent many cards in my time, but I never really knew what they meant to the recipients—but now I do. I did not receive cards from several persons in the FAA from whom I hopefully looked forward for encouragement. I am left with the notion that they are false bosom friends, but I fervently hope they never have occasion to find out how much such cards mean to a person.

II. Now, Mr. Gale before I get down to the business at hand I wish to state without any mental reservation whatsoever based on my experience, noted heart specialists and authorities such as Keith H. Averill, M.D., my family physician, Jeremiah Stamler, M.D., the case histories within the United States Department of Labor, and other competent sources of expert witnesses that the Federal Aviation Administration and its predecessors in concert with a number of its so-called managers did, in fact, perpetuate a conspiracy which said conspiracy directly caused to be imposed upon me a continuing condition of stress and strain which caused me to contract heart disease, and has directly caused me to have to live the remainder of my life under apprehension of premature death by direct heart failure, death by accident where medical attention would not be immediately available due to my heart disease, a substantial loss of lost earnings, a loss of future income, that I am considered to be "unemployable" by the private sector, that I am denied the privilege of certain activities that bring pleasure and happiness to me, and that said conspiracy caused me to lay out some \$2000.00 in addition to my medical insurance.

Further, I wish to state that the dictatorial hierarchy by which the Federal Aviation Agency has been administered in concert with the acquiescence and negligence of the United States Civil Service Commission, and the usurpation of the Federal Aviation Administration of the Civil Service Commission as set forth in the Civil Service Act of the Congress of the United States of America in direct violation of the Constitution and Bill of Rights of the United States of America has been a direct contributing factor to the continuing undue stresses and strains to which I have been subjected by the Federal Aviation Administration in concert with its so-called managers.

(NOTE.—This is not the first time I have appealed to you for relief and as a result of my efforts received as a reward a "whitewash" job, and accused of "exaggeration" by you as related to me by James E. Carl, Chief, Airway Facilities Branch if he is a man of honesty who speaks the truth which may not be evident later on.)

I say to you, Mr. Gale, that my mother celebrated her 83rd birthday anniversary on April 25, 1968, and I am willing to be denied the right to ever see her again alive if I have distorted by exaggeration to you in the past. Further, I say to you that I write based on unexaggerated facts, documents that stand on their merits, and statements of persons who are willing to testify under oath to support my allegations, and persons who may be required by command to testify under oath subject to perjury. Incidentally, April 25 is an extremely important date to me aside from the fact that it is my mother's birthday anniversary which will become evident later on in this letter.

I wish to state that personnel management regulations as set forth in the 3000 series and other places in the FAA Directives System is nothing more than, "window dressing" in the administration of the FAA. Conversely, the so-called managers in FAA are actively engaged in what Jerzy Hauptmann, Phd. terms "Position Management Through Controlled Dissatisfaction" and the "Situation Management Concept" promulgated and adopted at a seminar sponsored by the St. Louis Civil Service Region and attended by the so-called FAA management personnel.

I hold the opinion and I am by no means alone in the opinion that the FAA did in fact murder or at least cause Mr. Alvin "Skinny" Bollman to meet with premature death within the "little CIA", CS-90, William King, Chief, of the FAA.

"The merit system—a good investment in good Government"—What a lie—what a farce in FAA. Who can honestly say that the FAA has a merit promotion system, a career development program, a democratic grievance and appeals system, a genuine equal employment opportunity program, a recognition and awards system just to name a few?

I know the true reasons why Negro William Woody quit the Kansas City Area Office of which you, Mr. Gale, are Area Manager;

I know why Negro Ted Lockhart among others quit CS-90 the "little CIA" in the Central Regional Office; and I know the true reason why Negro Leonard Carper is dissatisfied with his employment in PT-10 in the Central Regional Office of FAA.

I invite you, Mr. Gale to read the book, "The Invisible Government" by authors David Wise and Thomas B. Ross. The New York Times said the book "Forces attention on a painful and perilous dilemma we have been avoiding too long." The Chicago Tribune said the book is "Startling . . . Disturbing . . . Highly Informative."

I feel certain that if a democratic vote were taken within FAA a high percentage of its employees would vote overwhelmingly against the proposition that the FAA is a good place to work. I know many FAA people and I know employee morale is at a very low level. Employees have serious doubts about the honesty and integrity of the so-called managers of FAA. By way of explanation my term "so-called managers" literally means mismanagers.

There is a startling similarity between the book, "The Invisible Government," and the management of the FAA. There is quite an accurate description of the monster that has grown up in the FAA since enactment of the Federal Aviation Act of 1958 contained in the Book of Revelation Chapter 13 of the Holy Bible. Why don't you read it? I challenge you to read the aforementioned book and Revelation Chapter 13.

III. By now it could be readily apparent to you that my life with the FAA bears a parallel resemblance to the life of Jeremiah in several respects as related in the Old Testament, and that I have assumed and accepted the position of ombudsman. You had better take due notice thereof and govern yourself accordingly because I intend to ascend Nebo's lonely mountain if necessary. I am prepared to go to the "Brink."

IV. Now, Mr. Gale I address myself to the official memorandum you signed dated November 24, 1967, subject: Merit Promotion Program. I shall discuss the letter in two parts. First, I shall analyze the letter, and secondly, I will present you with certain facts on which, "a final decision will be rendered in the case", if you have the capacity of rendering said final decision.

a. I have no doubt that my memorandum dated November 17, 1967 was carefully reviewed in context. You state that the review does not fall into the category of referral to the Regional Director for action, and that you did not participate as a member in making the selection in accordance with 3330.1 paragraph 508 a. Now, Mr. Gale how do you account for the fact that James E. Carl, Chief Airway Facilities Branch, MKC-400 stated in so many words to several of the personnel in the Airway Facilities Branch that a preliminary selection had been reached and was lying in your office awaiting your final approval. I can only conclude that someone is not telling the truth.

You state that all contingencies relating to vacancy announcement No. FPP-CE-MKC-67-140, Supervisory Airways Engineer, appear to have been properly administered in accordance with Order 3330.1. This Mr. Gale could not be further from the truth. In fact it is an outright falsehood and an attempt to "whitewash" my relief to the continuing undue stress and strain by malpractice and malfeasance that exists in the Kansas City Area Office by a number of your "me too" "yes men" and disciples of conformity personnel that are on your staff. I don't think you wrote the letter, but you signed it. The writer obviously didn't even have the broadness of concept or common sense to refer to the dictionary for enlightenment of the word contingency. "A complete review . . . appears to have been properly administered," is a dead give away of a "whitewash" job. Why, even in the little effective writing classes conducted in FAA the word "appears" is considered to be a weak word that labels the writer as one who is "beating around the bush". In all fairness I must say that you did leave the door open to me in your letter and I appreciate your patience during my illness and during the period when I was heavily under the influence of drugs. Why, Mr. Gale don't you read the special addition of intercom dated December 30, 1965 129 govern yourself accordingly, or is it also "window dressing."

B. Now, Mr. Gale I have made some very serious allegations and statements heretofore in this letter. I propose to take you back in time to 1958 and bring you forth to the present to show you just how the conspiracy against me developed and how the infant monster within FAA was born and developed into "The Great Red Dragon having seven heads and ten horns"; to show you how the continuing

undue stresses and strains imposed upon me developed and how which undue stresses and strains caused me to contract heart disease and almost cost me my life; to show you the utter disregard of Agency Regulations and the reign of malefaction, malfeasance, and malpractice by the so called managers of FAA; to show you that the United States Civil Service Commission is not the "watch-dog" Agency over the Administrative wing of Government, but is nothing more than a "rubber stamp" agency which merely serves the Agencies as an employing office and performs the mechanics of employee exits from Government Service; To show you that the way of the very nature of the FAA Grievance and Appeals system is not in harmony with the law of the land. How in the name of Heaven can an official render a fair and impartial judgment when that same official is serving as judge, jury, prosecuting attorney, and defense counsel for the appellant? How, Mr. Gale? The atrocities by the so called managers against me is by no means an isolated situation but rather is substantial in number. In the role of Jeremiah I say to you the time will come when they too will rise up and step forward to be heard.

1. Sometime after Congress enacted the Federal Aviation Act of 1958 I detected a calm come over the FAA like the approach of a tornado. Mr. William L. Higgason then Chief of the Maintenance Branch was called to Washington for a two week period. When he returned I asked him how things went in Washington—I knew from his expressions that my inquiry had "hit a nerve." It was not long after that incident that Mr. Higgason announced that he was going into retirement.

I firmly believe that Mr. Higgason was contacted by the "Great Red Dragon" in Washington and being a man of unquestioned honesty and integrity retired rather than support the rapidly growing dictatorship in the FAA.

(A man whom I respect for his honesty told me that Allen Dean told him the only way to keep employees in line was to keep them shook up and frustrated through reorganizations, rumors of reorganizations, etc. Remember Jerzy Hauptmann, Phd., "Position Management Through Controlled Dissatisfaction?")

2. The day in March or April of 1961 was certainly a "Black Day" for FAA when one Nelson F. Barritt came to the Central Region to take over Mr Higgasons position. I have asked myself many many times, "How could the Merit Promotion System have selected Nelson F. Barritt who had little formal education and had never held a position of substantial responsibility in his entire Government Service. I ultimately came to the conclusion that he was one of the "heads" of the "Great Red Dragon". I am now quoting from "An Inventory of Evaluation" conducted in the Central Region, "Systems Maintenance Division" by R. L. Gingles, Chairman, J. L. Bispo, E. P. Fernsten, and J. R. Vrooman dated April 7, 1965. Quote In an effort to keep abreast of all major trouble areas, both technical and human, the Division Chief periodically calls upon all personnel to freely communicate with him directly, anonymously or otherwise concerning any problem areas seen by SM personnel at any level. This represents an open invitation to address problems directly to the Division Chief, bypassing normal lines of supervision. Last year the response to this poll was about 20 per cent. Informally, the Division Chief evaluates the Branches by close and frequent face-to-face observations of operations. This process appears to be strictly subjective. Unquote.

Mr. Gale don't you forget the word "anonymously" above because you have heard it from me in the past and you are going to hear it again.

Why did and what were the circumstances surrounding the fact that Mr. William Ralph Turpin was driven out of his mind and spent some time in a straight jacket?

Why did Frank W. Spader retire?

Was and is Mr. Barritt an epileptic and a paranoia?

"The Merit System—A Good Investment in Good Government."

3. In December of 1962 John A. Hargrave who presently holds the highly responsible position of Executive Officer in the Department of Transportation, Federal Aviation Administration, Central Regional Office told a person that a reorganization was being planned for implementation in 1962-1963 and that he was making practically all the decisions and selections for the upcoming Systems Maintenance Division since Mr. Barritt was new in the region and didn't know very many of the FAA personnel. John A Hargrave stated that the number of Districts would be eventually reduced from 14 to 9 in the new Systems Maintenance Division and that you can rest assured, "We are going to take care of Bob Crow down at the Kansas City District Office." The person

asked John A. Hargrave what he meant. John A. Hargrave said, "He will no longer be District Supervisor when I get through with him." That person is perfectly willing to testify under oath in a Court of Law or before a Congressional Committee that the conversation did in fact take place.

4. In April or May of 1962 I was relieved of my position as District Supervisor by James E. Carl and reassigned to serve as Assistant District Supervisor. Then I knew that the conversation between a person presently unnamed and John A. Hargrave, who James E. Carl has said many times, "is my friend", was true and did in fact take place.

5. Now, let me tell you something about the calibre of the same James E. Carl who is now your Chief, Airway Facilities Branch, MKC-400, and who is receiving a salary of some \$18,000 a year of the taxpayers money. In June or July of 1962 Mr. L. H. Mijares told James E. Carl in my presence and within hearing distance of two other witnesses. "Mr. Carl you are nothing more than a god damned son-of-a-bitch and a liar." I immediately stated to Mr. Carl and Mr. Mijares that such language was improper and unbecoming of a Government employee. I then and there recommended that charges be brought immediately against Mr. Mijares and that I would support the charges to the Supreme Court of the United States of America if necessary. The reaction of James E. Carl was something like this: He almost broke out in tears and stated in so many words that he wanted to avoid any trouble at any cost. If you know me you know that I almost exploded.

6. In late June of 1963 right on the eve of another reorganization James E. Carl handed me two special forms to evaluate the performance and promotional suitability of Orville L. Corley then Chief of the Kansas City Sector and Robert E. Shadoin then Chief of the Olathe, Kansas ARTCC Sector. He asked me to "SHADE" the form of Orville L. Corley so that he didn't look too good because he is not a very good Sector Chief and we don't want to select him in the reorganization next month. He asked me to "SHADE" the form for Robert E. Shadoin so that he neither looked too good nor too bad. This time I'll bet my blood pressure hit the 400 mark. I took the forms and in the capacity of Assistant District Supervisor and fill them out according to the dictates of my conscience, and based strictly on the facts and knowledge that I knew to be true of these two men.

Mr. Gale I believe my action "labeled" me and I became a "Marked Man" for the "Great Red Dragon" and the conspirators in FAA.

7. What was my fate in the reorganization? Well I landed as the Program Management Officer in the reorganized Systems Maintenance Division District Office, SMDO-6, and Paul M. McMullen came from the Aeronautical Center as Assistant District Supervisor to James E. Carl, District Supervisor with a promotion. I remained status quo—Don't you forget the conspiracy—Don't forget Revelation Chapter 13—and don't forget the undue stresses and strains to which I was being subjected—and don't forget Paragraphs II and III above.

8. Now in 1963 I held the classification of GS-855-13, Electronic Engineer, and the Kansas City Sector position was advertized as a GS-855-14, Electronic Engineer, prior to the filling of the reorganizational vacancy in July of 1963. Who was selected? Mr. Glenn L. Allen a GS-856-13. Technician, was promoted to a GS-856-14 in lieu of a GS-855-14 Electronic Engineer. Now it is a fact that Mr. Glenn L. Allen was a subordinate of mine when I was the Kansas City Sector Chief from 1949 to 1956 during which time I administered a screening examination to him to attend the ILS/VOR school at the Aeronautical Center at Oklahoma City, and he made a grade of 15 per cent out of a possible 100 per cent. Now it is a fact that I instructed him among many others many and many an hour after regular duty hours and ultimately developed him so that he did pass the screening examination and successfully attended the ILS/VOR school at the Aeronautical Center. Again, don't forget the continuing undue stresses and strains to which I was subjected and don't forget Paragraphs II and III above.

9. Now, Mr. Gale, I firmly believe that it is a fact that the FAA in concert with a group of conspirators carefully planned the organizational structure in FAA prior to July of 1963 and preselected the employees to fill the positions. The conspirators I believe then set upon an insidious project to develop Employee Promotional Appraisal forms and other forms and data to fit the FPP (Friends Previously Picked) to accomplish the conspirators predetermined plan. Then in July of 1963 the conspirators among others assembled in what has been called many times by many people "The Slave Market" or the "Horse Betting

Room" and formalized the reorganization of the Systems Maintenance Division in the Central Region, Nelson F. Barritt Division Chief. People have called it the "FAA Blood Bath". Now, Mr. Gale, that after a reasonably safe period the conspirators methodically in concert with E. J. Thomas of the Central Region personnel Division proceeded to destroy the evidence. But you had better believe that testimony under oath can still prove that these facts are true.

I used to think an employees personnel file was a sacred trust, but I don't anymore because I am aware of the periodic "purging" of Official Personnel Files by FAA wherein lies the possibility that anything can be placed in or taken out of my personnel file without my knowledge. Think that one over—and don't you forget Paragraphs II and III above—and don't you forget the undue stresses and strains to which I have been subjected.

10. I related to you, Mr. Gale, in considerable detail the handy work of the conspirators and the "invisible Government" after I asked you for a review of FPP-CE-MKC-67-87, and during subsequent interviews with you between 4:30 P.M. and 5:55 P.M. on August 14, 1967 and again on August 18, 1967 during which times you "whitewashed" the whole deal and through James E. Carl accused me of exaggeration. I have in my possession depositions of the whole transaction, but I do not intend to go into those details at the time. Don't you forget the word "anonymously" in paragraph B. 2. above in the Gingles report. You are going to hear it again later on you had better believe. Don't you forget Paragraphs II and III above—and the undue stresses and strains to which I have been subjected.

11. On June 23, 1965 at 3:30 P.M. I received an urgent call from James E. Carl who was in the Regional Office on my PMO telephone in SMDO-6 office at the Fairfax Airport during which conversation James E. Carl directed me to prepare an Outstanding Performance Rating for Paul N. McMullen the then Assistant Chief of SMDO-6 which incidentally was on the even of the so called Area decentralization reorganization. (Can you believe an employee of lesser rank writing up such a document). I did prepare said document and delivered it into the hands of James E. Carl at the Regional Office post haste. I developed a paraphrased verbage document based on my personal knowledge of Paul N. McMullen which said document would not hold water under the test of FAA Directives relating to the Recognition and Awards Program with reference to specific examples, etc. He did receive an Outstanding Performance Rating as a result thereof. I have in my possession the notes from which I prepared the document and from which I dictated the final report to a secretary who knows full well that the foregoing is a fact. Also, I have in my possession the feeble attempt that James E. Carl previous to the aforementioned telephone call made in an attempt to write up the outstanding performance report for Paul N. McMullen.

12. I have in my possession a copy of a letter wherein James E. Carl recommended certain persons in SMDO-6 for participation in a career development program—my name was not included. You will hear more about this one later on, but don't you forget Paragraphs II and III above—and don't you forget the undue stresses and strains to which I have been subjected.

13. I have in my possession a copy of a letter dated March 27, 1964 Subject: Performance Rating Annual Report which was dictated by James E. Carl to Coleen Miller on 3/27/64, signed by J. E. Carl, chief, and sent to the Chief Systems Maintenance Division, CE-800. Quote This is to certify that the performances of all employees of Systems Maintenance District #6 during the period ending January 31, 1964 have been evaluated and their performances have been discussed with them. Unquote. Mr. Gale, This is an outright lie—a premeditated lie. James E. Carl absolutely did not discuss my performance with me during the period ending January 31, 1964, or any other time until you forced him to do so which will be discussed in detail later on in this letter. Don't you forget Paragraphs II and III above, and the undue stresses and strains to which I have been subjected.

14. I received a letter of July 28, 1965 stating that my position in SMDO-6 as Supervisory Electronic Engineer, GS-855-13 was thereby abolished and that I would be separated from Government Service on 10/8/65, but if I elected to remain with FAA I would be reassigned to a position of Airways Engineer, GS-801-13 effective 10/10/65. I accepted the position on 8/4/65, and thereafter became a subordinate of one Curtis M. Shew in the Airway Facilities Branch, Appraisal Section, MCK-405. Don't you forget Paragraphs II and III above. Oh! how much I wish I could have known the undue stresses and strains to which I was destined to be subjected.

15. The "Recognition and Awards Program of FAA"—what a farce! In a private conversation with a friend of mine in my private life—a person from the United Nations Organization UNESCO I was told how greatly my activities were appreciated in regard to the organization, and to show appreciation the person had written a letter to my employer, the FAA. I know a letter was received by the Kansas City Area Office, but do you know something? The great "window Dressing Directive" on the subject of Recognition and awards Programs in FAA did not acknowledge in any form my civic activities. What a sad and sick Personnel Management Program the FAA conducts if it can even be dignified by the term Personnel Management.

16. Now, Mr. Gale, on April 13, 1966 my annual EAR form FAA-3693 came due the deadline of 10 days prior to my anniversary date of April 25, and finally during the early part of May 1966 Curtis M. Shew and I sat down and discussed and executed said form much to my satisfaction in regard to my promotional potential and career development. Almost immediately thereafter Curtis M. Shew contacted Mr. Jack H. McClesky the training officer in the Program Section, MKC-430 and enrolled me in the Phase II management class and the Middle Management school at Norman, Oklahoma. Just as soon as James E. Carl became aware of Curtis M. Shew's action he caused my name to be removed from the training schedule assignments. (Career Development in FAA—what a farce—among other Personnel Management Directives.) Don't you forget Paragraphs II and III above—and don't forget the undue stresses and strains to which I have been a victim on a continuing basis.

17. Now, it came to pass that the so called managers of FAA decided that the Appraisal Section, MKC-405 was not necessary and I was temporarily assigned to the Program Section, MKC-430 under the supervision of Mr. Paul Watkins in August of 1966. Further, it came to pass that Mr. Paul Watkins transferred to the Alaska Region in December of 1966 and Curtis M. Shew was designated as Acting Chief of the Program Section, MKC-430. A person can not hold a temporary assignment for more than six months, so it came to pass that the personnel action form on which I had been temporarily assigned was altered or tampered with in February of 1967 to extend my temporary assignment. I became a man without a country. Don't forget Paragraphs II and III above, and don't forget the undue stresses and strains to which I was subjected.

18. Now, it is a fact that during January, February, and March of 1967 that I noted a considerable change in the attitude of Curtis M. Shew toward me. In fact, Mr. Elmer C. Cottle and I discussed many times the attitude of Curtis M. Shew. It was most disturbing to both of us and placed considerable undue stress and strain upon me. Curtis M. Shew was on the verge of being actually hostile toward me in particular. The reason for his attitude and actions toward me will become very evident later on in this letter. Don't you forget Paragraphs II and III above.

19. Now, Mr. Gale it is a fact and I can prove that James E. Carl came into the Program Section, MKC-430 the week prior to the "All Chiefs Conference" you held at the Glenwood Manor in a very frustrated condition and directed me and others in the Section to write up some Outstanding Performance Awards, Letters of Commendation and Appreciation because, "Mr. Gale was on a high horse" to have some presentations to make at a banquet during the "All Chiefs Conference" the following week. I hand wrote and had typed an Outstanding Performance Rating for Mr. Roland Warden, Sector Chief, at Garden City, Kansas based on a paraphrased, flowered up version of the Management Evaluation Report that James A. Todd, Leo W. Knaust, and I had prepared before the Appraisal Staff, MKC-405 was discontinued. I say again the outstanding Performance Rating will not hold water under the test of the Recognition and Awards Directive in regard to specific examples, etc. Yet, James E. Carl signed it as first line supervisor and you approved it and presented the award at the banquet. Furthermore, I wrote a rehashed a safe driving citation for the Columbia, Mo. Sector Chief in the form of a letter of commendation, and wrote a letter of appreciation to the Kansas City Sector Chief. They were signed and you presented them at the banquet. Don't you forget Paragraphs II and III above—and don't you forget the undue stresses and strains to which I was subjected. By the way how much money did the "All Chiefs Conference" cost the FAA and the taxpayers? I note with considerable interest that you did not print a transcript of Jerzy Hauptmann's luncheon address in the proceedings of the "All Chiefs Conference". I heard his address and possess a summary. He in so many words made it very clear that the FAA was an ultracentralized Agency and that the decentralization drums the so called FAA

managers have been beating for the last few years is a farce. Neither did you include the address of the great Negro guest speaker at the banquet. It hurt a little didn't it? Why don't you find out about the backgrounds of other presentations you made at the banquet.

I invite you to read the article, "The High Cost of Hierarach" in the January-March 1967 Civil Service Journal page 17-22. I don't deny the CSC does a little good but they are strictly staff with no authority. It's a defunct Government function.

Sometime I may write an article entitled, "The Mythology of the Civil Service Commission."

20. Mr. Gale permit me to regress and tell you how hopefully I looked forward to my 25 year pin. I was so proud of the prospect that I had made arrangements for a solid gold ring with a black onyx background to have the pin mounted. One Tuesday morning after returning from an authorized Toastmaster meeting I discovered a note on my desk requesting that Mr. Leo W. Knaust and I come to MKC-400 whereon Mr. Knaust and I went to the office of James E. Carl where we discovered that a staff meeting was in progress. Mr. James never took his eyes off an IBM run and informed Mr. Knaust and I that we were scheduled to receive 25 year pins. He unceremonially handed Mr. Knaust and me our 25 year pins with the casual remark, "well we can't talk back to you now." Do you know of anyone who would like to have a spare 25 year pin? I cancelled my ring order. I know how I felt. I was sick at heart. What a GAUCHE presentation. I also know how Mr. Knaust felt, and I also know how Mr. Keith Dannefer felt when he was invited to retire when he received his GROSS 25 year pin presentation later that same day. Don't forget Paragraphs II and III above. What is FAA policy in this regard? I know. Why don't you look it up? It is nothing more than "window Dressing". I think James E. Carl is one of the best Engineers the FAA has, but he is certainly not a supervisor or a manager. What do you think?

21. I wish to call your attention to Monday morning April 3, 1967. James E. Carl called a conference of all the "GS-13's" in upstairs conference room of the Kansas City Area Office and talked for about an hour. Oh! he is one of the poorest—the worst—the weakest speakers to whom I have ever listened—when I hear him give a speech I almost want to cry I'm so uncomfortable—but he did manage to make the announcement that Mr. Donald J. Patrick had been selected for the new planning section Chief position. He made two points:

a. That none of the "GS-13's" in the Area Office were selected because all of their backgrounds were limited as compared to Donald J. Patrick. (Now, Mr. Gale, that is a damned lie. I know of several people there present me included whose backgrounds exceeds that of Mr. Patrick and I am not degrading Mr. Patrick in any sense.)

b. That none of the "GS-13's" in the Area Office were selected because none had did nothing toward self-improvement. (Now, Mr. Gale, that is another damned lie.)

Don't you forget Paragraphs II and III above, and don't you forget the undue stresses and strains to which I have been subjected.

21. Now, Mr. Gale, I knew perhaps a week prior to 4/3/67 who got the MKC-410 job, but I'll never tell how I found out. Why, in the Phase I management course in FAA of which I'm a graduate and have taught the class several times, we teach that once an idea is known it is no longer a secret.

Nevertheless, I took a FARE Form FAA 3639 to Paul N. McMullen in preparation for obtaining a foreign assignment. The form provides for evaluation of the applicant by two line supervisors. (I by-passed Curtis M. Shew because of his almost open hostility toward me.) Paul N. McMullen and James E. Carl completed Part B of the form, signed the form, and I air mailed the form with my own postage stamp to PT-1 in Washington, D.C. that afternoon. I cannot emphasize too strongly the laudatory recommendation that I received on Part B of the form by Paul N. McMullen and James E. Carl. If you, Mr. Gale think I am exaggerating why don't you send to PT-1, or the Office of International Aviation Affairs for a copy. I have a Xerox copy and so does Paul N. McMullen, but I will not part with my copy at this time. Now, Mr. Gale, it is a fact and I have letters between the Washington Office and myself where I bid in grade on a position in South Vietnam, but soon thereafter Curtis M. Shew went to the Washington Office for two weeks, and I never heard anything more from PT-1. Why? What were my objectives?

a. I felt that I could better serve my Country and the FAA prompted by a statement once made by President John F. Kennedy. That was my prime objective.

b. I wanted to escape from the continuing undue stresses and strains to which I was being subjected in the Kansas City Area Office.

Don't you forget Paragraphs II and III above.

22. Now, Mr. Gale, comes the significance of my mother's birthday anniversary, April 25, 1967. FAA Directive plainly states that an FAA Form 3693, EAR, shall be prepared not later than 10 days prior to the anniversary date of an employees last pay action. April 25 is my anniversary date. The Directive further states that an EAR shall be prepared no earlier than 50 days prior to the employee anniversary date. April 15, 1967 came and went. On May 8, 1967 I handed to Curtis M. Shew an original and a carbon copy of Form FAA 3693 with Part I duly executed by me.

23. Now, Mr. Gale, comes the payoff. I wish to inform you that I have duly executed an Official Deposition of every incident relating to the personnel malpractice to which I have been subjected by the so called managers in the Kansas City FAA Area Office which placed undue stresses and strains upon me and almost cost me my life on December 1-2, 1967. I have attached the meat of copies of said depositions which cover the period of May through November 1967. I say to you, Mr. Gale, that the attachments hereto attached is only part of the material that I have in my possession for possible future use. I say to you that I tried unsuccessfully to get relief from you. I say to you that I took a day of annual leave and at my own expense attempted to get relief from the United States Civil Service Commission only to discover that to my horror that the Civil Service Commission could care less what a Government Agency does to its' employees. I was told that the only relief to my problems was an appeal to my Agency managers. I am telling you there is relief, but it is not in the FAA. Mr. Gale would you and could you defend the actions of the FAA and its' so called managers before an impartial Tribunal. The FAA Appeals and Grievance systems are certainly not impartial by their very nature. Again, I say how can a person act as judge, jury, prosecuting attorney, defense counsel over one's own actions.

You had better believe me when I tell you that your staff has openly stated that the FAA rules and regulations are only used when they serve best our purpose—that we do not have to abide by them unless we want to abide by them. I can prove this statement.

Mr. Gale, I hope you point your finger at yourself in the same manner you pointed your finger at someone in regard to the David Clark case and say to yourself, "You had better believe that I'll look into this matter" and do something about it.

Kindly be advised that I have not yet labeled you a mismanager, but I'll say this you have certainly been taken in by several of them.

Very truly yours,

ROBERT W. CROW.

JULY 29, 1966.

I hereby state that the following is a true and accurate statement of facts. Last evening July 28, 1966 my wife and I attended a party for Mr. G. G. Garrett who is transferring to FAA Washington office. The party was held at the Hotel Bellerive. Shortly after my wife and I arrived, 7:00 p.m., Mr. Edward C. Marsh engaged me in conversation. During our conversation and in the presence of my wife, Ellen Crow, Mr. Marsh strongly indicated a concern for the FAA and the welfare of the FAA employees. He stated things really looked bright in regard to FAA employee Job Security. He stated that he was concerned with the "Happiness of our People." Mr. Marsh, Director of FAA central Region, said to me, "Bob I am particularly concerned with your happiness. I want to make you happy. Will you please go to Bob Gale (Kansas City Area Manager) and come with him to my office in the next two or three days." My only explanation for this unprecedented conversation is that either a telephone tap has been made on my residence telephone or on the telephone of another FAA employee whom I shall designate as five one and whom I can positively identify at any future time during which telephone conversations with him have been monitored and recorded by someone against my will and knowledge.

ROBERT W. CROW.

JUNE 15, 1967.

STATEMENT

I hereby certify that on or about April 25, 1967, the anniversary date of my last regular pay action, an Employee Appraisal Record (FAA Form 3693) had not been executed in accordance with FAA Order CE-3430.2 dated 1/4/67. Subsequent to 4/25/67 during the week of May 1, 1967, Mr. Curtis M. Shew my Acting Supervisor asked me if I didn't care for money. On inquiry he clarified his question by telling me that a 3693 form had to be initiated before I would receive my periodic stip pay increase. Thereafter during the week of May 1, 1967 I obtained the FAA Form 3693, executed Part I of the form, and submitted the original and a carbon copy to Mr. Shew. During the latter part of May 1967 I received a "Payroll Change Sli-Employee's Copy" Standard Form No. 1126A notifying me that I had received a periodic pay increase with a notation that the pay increase was to be made, "Retroactive due to administrative error." I have absolutely no knowledge of the disposition of the FAA Form 3693 that I initiated and submitted to Mr. Shew during the first week of May 1967, nor have I discussed the form or any part thereof with anyone as of this date of June 15, 1967.

During the week of May 29-June 2, 1967 I became aware of Promotion Plan Announcement, No. RO-54 dated May 24, 1967 wherein a Supervisory Electronic Engineer, GS-855-14, vacancy existed for which I was vitally interested. I hold the opinion that I was a qualified candidate for the position. However, I withheld the submission of a bid for the position until the closing date of June 14, 1967 in blind hope that the aforementioned Employee Appraisal Record would be completed for without a current FAA Form 3693 my bid would not be considered. Furthermore, I felt that I was in an arbitrary and capricious situation and in absolutely no position to insist that the FAA Form 3693 be completed by my Acting Supervisor for to do so, I felt, could result into nothing favorable to me.

I feel fully justified based upon my experiences, knowledge, observations, and close associations that an "Administrative Error" is not the reason for the delay in the FAA Form 3693 that I initiated the first part of May 1967. Conversely, I will bet and give odds based on my knowledge of "Communications" that something far more sinister than a mere delay is in the making for me. At this point in time I feel that I, too, am going to become an "Official Victim" of the Agency malpractice and malefaction as related in the Agency Personnel Management Program. The FAA has a very fine Personnel Management Program on paper—but that is about as far as it goes.

I became very enchanted with the agency Personnel Management Program last May 1966 even though my anniversary date had passed. I initiated an FAA Form 3693 and thereafter my supervisor Mr. Curtis M. Shew sat down with me and discussed my performance, career development, promotion potential, etc. I thought that Mr. Shew was very constructive and evaluated my inherent qualities and characteristics accurately. I was very elated over the prospects of training toward my career development—but most of all I was extremely happy over the fact that this was the first time in over eight years that anyone had discussed my career with me. This is a terrible record indeed. It did not do any good. Mr. Shew enrolled me in Phase II Management Course a prerequisite to attend the Middle Management Course at Norman, Oklahoma, but someone disapproved the enrollment.

I certify that the foregoing statement is an accurate and truthful statement.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the signature appearing above at 8:15 A.M. on this date June 16, 1967.

(Signed) LOUIS E. OBERKROM.

My Commission Expires May 12, 1970.
July 25, 1967.

I certify that on the morning of Thursday July 13, 1967 I briefed Mr. Curtis M. Shew in considerable detail on my visit to the Salina, Kansas Sector on July 12, 1967. Mr. Shew asked me if I would prepare a report for the Branch to be filed in the Sector management file. I told him the report was in progress.

After the briefing session Mr. Shew stated that he had something to discuss with me and closed the door to his office. I had the notion that at last my Employment Appraisal Record form FAA-3693 was going to be completed. At no time during the discussion that took place for the ensuing almost three hours did Mr. Shew

state that the basis for the discussion was my FAA-3693 form that I submitted to him back in the early part of May this year.

My summary of the discussion is as follows: Based on the way in which Mr. Shew lead the discussion, the type of questions he asked, and the subtle implications in his questions and comments I feel in his mind that he was discussing my FAA-3693 form. Following are the major questions that he posed for discussion:

1. Did I feel that I am doing a productive job in my present position?
2. Do I feel that my position is a challenge?
3. Mr. Shew stated that he felt that I had a much greater potential than could be demonstrated in my present position. He asked me what my objectives were in regard to moving upward in the organization. Where did I want to go? What kind of position appealed to me most?
4. Why I had submitted an application for an overseas assignment?
5. Mr. Shew observed that I had been "Passed Over" a number of times in the last few reorganizations and promotions, and asked me what I thought had impeded my progress the most?
6. Mr. Shew asked me what I thought he could do as my supervisor to help me in my career development.
7. Mr. Shew asked me how I thought the functions of the Program Operations Section, MKC-430, could be improved.

Briefly, my comments to the foregoing questions were:

1. I do not consider myself to be in a nonproductive status. I was nominated to the CSC Interagency Board membership and as a result I have had an additional workload in the evaluation of Applications for Federal Employment.

2. I feel a tremendous challenge in my present position. The recently published functional statement for the Program Operations Section and my Job Description most certainly represent a challenge to me. Also, I feel a tremendous challenge and responsibility as a CSC Interagency Board member because my activities determine the type of FAA employee we will be hiring from the register.

3. I stated that I too felt that I have the potential for greater responsibility in the agency. I told Mr. Shew that objectively I would like to have his position, Chief of the Planning Section, MKC-410, Assistant Chief, AFB, MKC-401, and eventually Chief Airway Facilities Branch, MKC-400.

4. I stated that all of the available GS-13 incumbents in the Kansas City Area office AFB were called together on April 3, 1967 and informed by Mr. James E. Carl, Chief, AFB, MKC-400 that none had been selected for the GS-14 Chief, Planning Section, MKC-410 because (1) none had done enough in the area of self-development, and (2) were selected because of their limited backgrounds. I stated to Mr. Shew that I had absolutely no criticism of Mr. D. J. Patrick, conversely I believe Mr. Patrick to be a man of principles, integrity, and competency—but, when a comparison of the backgrounds of Mr. Patrick and I are made the statement on April 3, 1967 is unfair and in fact untrue. I stated that the statement of a Great American thereafter dwelled upon my mind and I asked myself what can I do to best serve the FAA and my country. As a result of my thinking I submitted an application for a foreign assignment.

5. In response to this question, I told Mr. Shew this question was, in my judgment, a very complex question, but if I were to select the most important aspect that had impeded my career development then I would say I had reason to believe there is derogatory information in my personnel file and/or in a Compliance and Security file, and if so it is there without my consent or knowledge. I cited several instances where a person or persons unknown to me had involved me through anonymous telephone calls, anonymous letters, or other media in highly defamatory situations which even placing me under suspect reflected adversely upon my character, principles, reliability, etc. I told Mr. Shew I felt like Dr. Sheppard. Even though he stands acquitted many people think him guilty. I told Mr. Shew I felt that there is a person or persons in FAA unknown to me that hate me, and that I have been the victim of warped minds in the past few years.

6. I told Mr. Shew how pleased I was when he and I sat down together in May 1966 and discussed my Employee Appraisal Record Form FAA-3693. I told Mr. Shew that that was the first time in a number of years that anyone had discussed my performance with me much less my career development. I told Mr. Shew that I appreciated very much the fact that he agreed to get me enrolled in Phase II Management Class as a prerequisite to the Middle Management

School at Norman, Oklahoma, but I was aware that his efforts to so enroll me were stopped by someone.

7. I gave Mr. Shew the benefit of my ideas on how management of the Program Operations Section, MKC-430, could be improved.

Briefly, I place in summary the comments of Mr. Curtis M. Shew during the discussion:

1. Mr. Shew stated that he thought I was an extremely valuable employee; that I had a fabulous background in technology and management; and that I had the potential for a far higher position than I presently held.

2. Mr. Shew stated that it was fantastic that anyone would hate me. He said that he had asked many people to comment about me, and that he had received nothing but favorable comments.

3. Mr. Shew stated that the only criticism he had for me was that perhaps I might be "employee orientated" as opposed to management support. (We discussed this a considerable length.)

I state on my honor that the foregoing is a reasonably accurate summary of the discussion that took place between Mr. Curtis M. Shew and me on July 13, 1967. Furthermore, I am vitally concerned with the fact that Mr. Curtis M. Shew has not seen fit to complete the Employee Appraisal Record Form FAA-3693 that I initiated early in May this year. I stand deprived of the opportunity to bid on the Supervisory Electronic Engineer, GS-833-14, advertised under Promotion Plan Announcement No. RO-71 dated July 7, 1967 because I do not have on file FAA Form 3693 in accordance with Order CE 3430.5 I feel very strongly that I am qualified to fill the position and that it would be an opportunity to serve the FAA and my country, but to bid would be a waste of time since I do not enjoy the status accorded to me by the FAA rules and regulations.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the signature of Robert W. Crow appearing above on this date July 26, 1967.

(Signed) LOUIS E. OBERKROM.

My Commission Expires May 12, 1970.

STATEMENT

This is to certify that at 4:20 P.M. on August 14, 1967 Mr. Robert I. Gale's office called me and asked if I could come to the Kansas City Area Manager's Office at 4:45 P.M. I presented myself to Mr. Gale's Secretary at 4:45 P.M. and conferred privately with Mr. Gale in his office until 5:55 P.M. Mr. Gale stated he wished to discuss the letter that I submitted to him at 8:00 A.M. on August 14, 1967, subject: Merit Promotion Program, under date of August 14, 1967. Mr. Gale stated that he had been very busy and had had no time to consider the letter, however he asked me to define the problem—what had caused me to write the letter. I told Mr. Gale that I hesitated to discuss the letter because I did not desire to bias him in my favor. Mr. Gale said, "Let's lay our cards on the table and see where we stand." Briefly, a summary of the conversation follows:

1. I outlined in detail the situation pertaining to my Form FAA 3693 which is described in previously documented statements.

2. I outlined my Government Service with particular detail in regard to the harassment to which I had been subjected since 1960 in regard to my suspect by Compliance and Security, anonymous letters, anonymous telephone calls, etc. In other words, I told Mr. Gale the story of my Government Service life.

I do not know if Mr. Gale served on the Promotion Board in regard to my letter of August 14, 1967, i.e., competent to review in accordance with 3330.1. I was very favorably impressed that Mr. Gale was intent on getting all of the facts related to the letter I submitted. What his subsequent actions are—well I'll wait and see.

I briefed Mr. Gale on the Springfield Airport situation and strongly recommended to him that he look into the matter post haste due to the very unfavorable situation in which I thought the FAA had been placed.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnesses the above signature on 8-15-67 at 9 o'clock.

(Signed) WM. RATCLIFF, *Notary Public.*

4-4-68.

STATEMENT

This is to certify that at 8:10 A.M. on August 14, 1967 I contacted Mr. Lambert J. Perina, Chief, Personnel and Training Branch, MKC-10 and requested a copy of the current Form FAA 3693 in my Official Personnel Folder. Mr. Perina referred me to Grace Fisher who removed the FAA-3693 that had been executed in April of 1966. She gave it to me to take to the reproduction room, but on inspection I returned the form to her and stated to her that I already had a copy of said form.

Now, I was horrified to discover that the supplemental sheets relating to Part I that I attached to the FAA-3693 in April of 1966 were not attached to the form. Again, I was horrified because throughout my career in Government Service I have been deeply impressed that an employee's Official Personnel Folder is a matter of sacred trust—that nothing can be added to or taken away from an employee's Official Personnel Folder—without the knowledge of the employee. I am now reasonably sure that Mr. Curtis M. Shew spoke the truth when in late April or early May of 1966 he told me that he had reviewed my Official Personnel Folder in advance of the execution of my FAA-3693 in 1966 and had seen an evaluation of me prepared by John A. Hargrave that was not very complementary according to Mr. Shew. I now state that I had no knowledge that an evaluation of me had been prepared by John A. Hargrave and subsequently placed in my Official Personnel Folder. I assume that said evaluation was probably prepared in preparation for the "reorganization of 1963."

I now state that I have in my possession a Xerox copy of Part I and Part II of the Form FAA-3693 that I submitted to Mr. Curtis M. Shew in May 1967. I further state that I saw with my own eyes that Mr. Curtis M. Shew had signed the form in the space provided for signature of supervisor, and that Mr. Paul N. McMullen had signed the form in the space provided for the second level supervisory review. Again, I state that said FAA-3693 that I submitted to Mr. Curtis M. Shew in good faith in May 1967 has never been discussed with me and that I have no official knowledge of the disposition thereof after I submitted the form to Mr. Shew in May 1967 after having prepared Part I of the form. On the basis of the partial XEROX copy in my possession I categorically state that it is "an instrument of destruction based on malpractice and malfeasance." Furthermore, I find it most difficult to believe these two men would do such a thing—especially Mr. Paul N. McMullen. I wonder based on previous experiences if they were acting under direct orders from higher authority.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-15-67 at 9 o'clock.

(Signed) WM. RATCLIFF, *Notary Public.*

4-4-68.

STATEMENT

This is to certify that after having attended a 3-day Advanced Executive Development Program seminar in the FAA Central Region office on August 15, 16, and 17, 1967 I returned to my regular duty place in the Kansas City Area office on August 18, 1967. My supervisor, Mr. Curtis M. Shew, appeared to be in good spirits and was quite friendly toward me. He invited me into his office at 9:30 A.M. and without fanfare told me that I had been given top priority to attend the next Middle Management School at Norman, Oklahoma. Further, he told me that I would have the opportunity to attend the next Phase II Management class as a prerequisite to the Middle Management School.

Later on during the day I suggested to Mr. Jack H. McCleskey that I understood that I had been enrolled in the Middle Management School for the second time in a little over a year. Mr. McCleskey told me that my understanding was correct. He told me that Mr. James E. Carl had said that I was to be placed on the top of the list. I suggested to Mr. McCleskey that he had received an enrollment request from Mr. Shew for me to attend the Phase II and Middle Management schools last year but that Mr. Carl subsequently canceled the enrollment. Mr. McCleskey told me I was correct and remarked, "I guess he (Mr. Carl) changed his mind."

Now, I observe that the foregoing is directly related to the meeting I had with the Kansas City Area Manager, Mr. Robert I. Gale, last Monday evening,

August 14, 1967. In that meeting among other things I outlined in detail the circumstances relating to the execution of my EAR Form FAA 3693 by Mr. Curtis M. Shew wherein regard to career development Mr. Shew agreed to my attendance in Phase II Management class and the Middle Management school at Norman, Oklahoma. Thereafter, in May of 1966, Mr. Shew enrolled me in the two schools through the Training Officer, Mr. J. H. McCleskey, however, Mr. Shew informed me at some later date in 1966 that Mr. James E. Carl, Chief, Airway Facilities Branch had overruled my attendance and had cancelled the enrollment. My experience with Mr. Shew and the execution of my EAR form in May of 1966 was very encouraging to me and I had hopes for the future and faith in the FAA Career Development Program. My disappointment was great when I was informed that Mr. Carl had cancelled the career development program mutually agreed upon by Mr. Shew and myself.

In regard to the conversation I had with Mr. McCleskey in the second paragraph above, Mr. McCleskey told me that the Middle Management School at Norman, Oklahoma had been cancelled until further notice. He said he did not expect the FAA to schedule the course again for possibly 6 months to a year. I thought to myself at the time, "The dove of peace has a black heart."

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-21 at 5 p.m.

Mary C. Ratcliff, *Notary Public*.

My commission expires July 6, 1969.

STATEMENT

I certify that Mr. James E. Carl stopped by my desk at 12:30 P.M. on August 21, 1967 and told me that Mr. Gale had asked him to talk with me. Mr. Carl said that he could talk to me from 1:00 P.M. to 2:30 P.M. or from 4:30 P.M. on since he had a staff meeting from 2:30-4:30 P.M. I elected to go to his office at 1:00 P.M. where we conferred until 3:00 P.M.

Mr. Carl began the conference by stating that he didn't know what to say. He said that he had worried about this conference throughout the preceding weekend, and was still at a loss as to where to begin. Mr. Carl said that as a starting place he would discuss the selection process used in selecting Paul's job. (Assistant Branch Chief FPP-CE-MKC-67-87.) Mr. Carl stated that he considered my background, experience, knowledge, support of the Agency, and judgment to be outstanding. He said that he could think of no one more competent to come to than me for advice. Further, he said that in case of an emergency, hot project, or anything that required expert action that I could be relied upon to serve the FAA well. But he said that of the some 25 bids for Paul's job that I ranked about 15th from the top due to my performance. I asked him how he arrived at this determination. Mr. Carl stated that he had talked to about 10 of my friends about my performance and they all agreed that:

1. I did not get things done.
2. I did only the jobs that I liked or wanted to do.
3. I did not have the ability to carry through on projects over a long period of time.

I told Mr. Carl that this evaluation of my performance sounded like a "party line" since I had a conversation with Mr. Shew wherein he used questions like, "Are you interested in your present assignment", etc. Also, that in my discussion with Mr. Gale he too had used the same "party line" indicated in the three items above.

I questioned Mr. Carl on the type of performance interviews he had conducted with "10 of my friends." Mr. Carl stated that he talked to my friends rather than my enemies to give me the benefit of the doubt. He said I could have talked to a person in the Regional Office that hates you, but I didn't. Mr. Carl admitted that the people with whom he talked were unaware that he was discussing my performance. Mr. Carl stated in so many words that he used leading questions and suggestive questions to obtain information to evaluate my performance and that the people with whom he talked would probably not remember having talked with him about me. I told him this is like having cancer and not knowing I had the disease. Mr. Carl stated that he wasn't saying that I did poor work. He said I did good work. I just didn't do outstanding work. Mr. Carl stated that he had discussed my performance with me a number of times. I told Mr. Carl that I had absolutely no knowledge of but one performance interview since about 1958, and the only time that one was con-

ducted was in May 1966 conducted by Mr. Curtis M. Shew. I asked Mr. Carl to specifically name one time when he had sat down with me and discussed my performance. Mr. Carl could not recall such an occurrence. He merely passed it off as a lack of communications on his part. I told Mr. Carl that this type of situation had cost me in terms of my career.

I told Mr. Carl that I was very much concerned over the fact that I had not received my EAR Form FAA-3693. I told him that I had submitted the form in good faith to Mr. Shew in early May 1967 and had heard absolutely nothing official from Mr. Shew in this matter. Mr. Carl stated that he would see to it that another FAA-3693 was prepared and that he would act as the reviewing official. I told Mr. Carl that I had unofficially seen the form that I submitted in early May 1967 and that it had been completed and signed by both Mr. Shew and Paul N. McMullen as the reviewing official. I stated that the promotional potential evaluation was most uncomplimentary to me. I further stated that I could not understand why these two men would do such a thing to me unless it was directed from above. Mr. Carl stated that he had not directed such a thing and asked me where I got such an idea. I reminded Mr. Carl that I remembered when he had tried to influence me in executing the special personnel evaluation forms for Robert E. Shadoin and Orville L. Corley prior to the 1963 reorganization when he was Chief, SMDO-6 and I was his Assistant Chief, SMDO-6. Mr. Carl did not deny to me that this was true.

I told Mr. Carl that the way in which I had been mismanaged was gross violation of our FAA Personnel Rules, Regulations, and Policy. I stated further that I had been deprived of the opportunity to bid on position vacancies because there was no current FAA-3693 to submit by Personnel along with my bids. Mr. Carl asked me if he could have time to check into these matters. I told him that I had the "patience of Job" but even Job reached the end of his patience.

We reminisced about the Barritt Regime. Mr. Carl remarked that Nelson Barritt had once threatened him with the statement that he could start a rumor and ruin Mr. Carl if he (Mr. Barritt) took the notion. I told Mr. Carl that I was appalled at the malpractice and malfaction that existed during Barritt's time. I told him that I hoped that I was not seeing some of the same practices. Mr. Carl did not comment.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-22-67 at 5 p.m.

MARY C. RATCLIFF, *Notary Public*.

My Commission Expires July 6, 1969.

STATEMENT

I certify that at the request of the Kansas City Area Manager, Mr. Robert I. Gale, I went to his office at 4:25 P.M. on August 18, 1967 and conferred with him until 5:00 P.M. Following is a chronological summary of the conference:

1. Mr. Gale stated that he had spent considerable time during the week in conducting a review of the selection resulting from Position Vacancy No. FPP-CE-MKC-67-87. He handed me a memorandum, Subject: Merit Promotion Program; your memo of August 14, 1967, undated, and signed by Robert I. Gale, MKC-1.

2. Mr. Gale went into considerable detail on his investigation of the harassment to which I had been subjected during the last few years of which I partially outlined to him on August 14, 1967. He stated that he could find nothing in Compliance and Security files or my Official Personnel folder to indicate that I was not an ideal employee in this respect.

3. Mr. Gale in a paternal sort of way stated that he had talked with people that had been associated with me and had the impression that I was not a high production employee; I was only challenged by the assignments in which I was interested; and I was an employee that strongly supported and promoted FAA policy.

4. I again emphasized to Mr. Gale that the Employee Appraisal Record, FAA-3693 discussion held between Mr. Curtis M. Shew and I in May of 1966 was the only time my performance had been discussed with me during the period 1958 to the present time of August 18, 1967.

5. Mr. Gale said he would see to it that I was informed where I stood. He called James E. Carl and told him he wanted to talk to him. Mr. Carl was waiting in Mr. Gale's outer office when I left at 5:00 P.M.

Now, I am reasonably sure that Mr. Gale participated in the initial selection and was therefore not a competent person to conduct the review. This in my opinion is clearly a situation where a person acts as judge and jury over one's own actions. If true, how could this review be fair and impartial? Also, Mr. Gale stated that he had not discussed my performance with Mr. Shew, however I noted a striking similarity between his comments and some of the conversational questions posed to me by Mr. Shew on July 25, 1967.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-21 at 5 p.m.

MARY C. RATCLIFF,
Notary Public.

My Commission Expires July 6, 1969.

STATEMENT

This is to certify that I had the responsibility for representing the FAA and the Airway Facilities Branch in regard to the planning and establishment of temporary Air Traffic Control Towers at Jefferson City, Mo. and Linn Creek Grand Glaize Airports in conjunction with the Midwest Governors Conference August 25-30, 1967. In this regard I briefed Mr. H. F. Wakefield on my activities on Monday August 7, 1967 and asked him to make arrangements for equipment, crystals, etc., due to the fact that I was going on a field trip and these items had a high priority.

Mr. Lang called Mr. Leo Knaust in MKC-410 from the Columbia, Mo. AFS on August 22, 1967, and I was invited to come to MKC-410 and participate in the telephone conversation. Mr. Lang reported that only one crystal had been received for the TRU-2 transceiver for operation on 240.8 MHZ and that two crystals were required. I told Mr. Lang that I would take action to get the necessary crystal.

I went to our Contract and Material Section, MKC-420, and determined that only one crystal had been ordered. Next I went to our Engineering Section MKC-470, and obtained an instruction book for the TRU-2 transceiver, obtained the data for the crystal requirements, and went back to MKC-420 and requested that immediate action be taken to have the necessary crystal manufactured. I briefed Mr. Curtis M. Shew at this point in time on my activities in this regard.

I was advised by MKC-420 at 2:15 P.M. on August 23, 1967 that the crystal was ready for pickup. Again, I coordinated with Mr. Shew and went in my personal car to Electronic Crystals, 2835 Washington St. I paid for the crystal out of personal funds and picked up the crystal. In my coordination with Mr. Shew I emphasized that the crystal must get to Jefferson City before Friday and requested that if he heard of anyone going to the Columbia AFS or Jefferson City Airport to let me know, otherwise I would hand carry it to Jefferson City if necessary.

I was extremely busy all day on August 24, 1967 in the CSC Interagency Board meeting and had no time for action on the crystal project.

I called Mr. Curtis M. Shew at his residence at 7:10 A.M. on August 25, 1967 and explained the urgency of the crystal situation. I suggested to Mr. Shew that I was ready to start to Jefferson City immediately in my personal car and estimated arrival by 9:30 A.M. (The temporary tower was scheduled to open at 11:00 A.M.) Mr. Shew gave me a flat no for an answer. He went into a tirade on how he had tried every means possible to get in touch with me yesterday and couldn't locate me. He said that he had made definite arrangements with Mr. John Knoell and Mr. Carroll White to take the crystal to Jefferson City and suggested that I get in touch with John Knoell immediately. I called John Knoell at his residence. Mr. Knoell stated that the only thing he knew about the Jefferson City crystal was that Curtis Shew had contacted him yesterday and told him that he might have something to take home with him and asked him if Carroll White lived near him. Mr. Knoell said that is all I know about it and that was all I heard about it.

I immediately made arrangements with Ozark Airlines to take the crystal in the pilots pouch to Jefferson City and proceeded to work from my residence to the Kansas City Area Office.

I arrived at work at exactly 8:00 A.M. and went immediately to Mr. Shew who I found in conference with Mr. Patrick the new Assistant Airway Facilities

Branch Chief, Mr. Shew was obviously under a state of hypertension. He made a statement to the effect that I had the Agency in serious trouble. I calmly assured Mr. Shew in the presence of Mr. Patrick that such was not the case. I told him that I had made arrangements with Ozark Airline to deliver the Crystal to Jefferson City and give to an FAA official. Mr. Shew instructed me to take a Government Vehicle and proceed immediately to the Kansas City Municipal Airport and deliver the crystal to Ozark Airline.

I asked a secretary at 8:05 A.M. to place a call to Columbia, Mo. AFS, and that I would talk to anyone who answered the telephone. Before she could place the call Mr. William R. Dallam, Chief, AFS Columbia called Mr. Shew in regard to the crystal. Mr. Shew told Mr. Dallam that arrangements had been made for Ozark Airline to deliver the crystal to Jefferson City. Mr. Shew told him that if this failed the crystal would be dispatched to him at the Jefferson City Airport in a Government Car. During the telephone conversation Mr. Shew stated and I could not help but overhear, "I gave the project to Bob Crow but he did not do anything", "As a last resort Wakefield took over but he doesn't know enough to read an instruction book."

I departed the Kansas City Area Office at 8:15 A.M. and delivered the crystal to Mr. Jerry Brown and Capt. Shannon of Ozark Flight 360 at Municipal Airport at about 8:40 A.M. The Flight was scheduled to depart for Jefferson City at 9:35 A.M.

Later on during the day on August 25, 1967 Mr. Leo Knaust told me that he had arrived at work that morning at 7:45 A.M. Mr. Shew came in at about 7:50 A.M. and was "frothing at the mouth." He said that Mr. Shew paced the floor until Mr. Patrick arrived whereon they both went into Mr. Patrick's office. Mr. Knaust said that he took a couple of letters to Mr. Patrick and on arrival at Mr. Patrick's office walked into a conversation wherein Mr. Shew stated to Mr. Patrick that "He had sent Bob Crow to get a crystal two days ago and had not heard from him since."

(This is a rank misrepresentation of the facts and an outright false statement by Mr. Shew.)

I document the foregoing as an example of the malpractice, deceit, and malfeasance which I have observed to be typical of Mr. Curtis M. Shew.

Mr. Shew knew full well of my whereabouts on August 24, 1967 and could have easily contacted me by telephone or messenger. Furthermore, my whereabouts were known at all times during the evening of August 24, 1967 but at no time did Mr. Shew attempt to contact me at my home.

Mr. Shew did not "send Bob Crow to get a crystal two days ago and had not heard from him since." I initiated the action and coordinated it with him. It is a falsehood because it was made at 7:55 A.M. on August 25, 1967, and I had talked with Mr. Shew about the crystal situation on the telephone at 7:10 A.M. on August 25, 1967.

I do not know, neither am I competent to determine, the mental processes of Mr. Shew. However, based on my observations I am reasonable sure that had I not had the foresight to have made arrangements with Ozark Airline to deliver the crystal that Mr. Shew would have made me the "Official Victim" of a "frame job." I am reasonable sure that Mr. Shew has used his position and will continue to use his position to do me harm through his actions of malfeasance.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-27-67 at 2 p.m.

MARY C. RATCLIFF, *Notary public.*

My Commission Expires July 6, 1969.

STATEMENT

This is to certify that Mr. James E. Carl, Chief, Airway Facilities Branch came to my desk at 11:00 A.M. on August 28, 1967, and in a confidential manner told me that he wanted clarification on our previous conversation regarding my EAR before he talked to Paul N. McMullen. I asked him what he had in mind. Mr. Carl indicated that he vaguely remembered signing my EAR sometime in the past few months and that it should be on file in my Official Personnel Folder. I told Mr. Carl that I had checked with Personnel & Training, MKC-10 about two weeks ago and such was not the case at that time. Mr. Carl then stated that

he had also checked and found that it was not on file. Mr. Carl stated further that someone in MKC-10 had told him that numerous inquiries had been made of the Airways Facilities Branch on the whereabouts of my EAR. Mr. Carl speculated that the original had been sent to Washington, D.C. and Personnel and Training, MKC-10 had neglected to make a copy for my file. I suggested to Mr. Carl that he was confused over the fact that I had initiated a FARE Form FAA 3639, and he had signed it back in April of 1967, but this was not an EAR form. Mr. Carl stated that in substance it was the same thing and if necessary he would send to Washington to get me a copy.

Mr. Carl asked me about the CSC Interagency Board meeting that I attended on August 24, 1967. I filled him in on the details of the double SF-57 submission by an applicant and the double evaluation that resulted in considerable embarrassment.

Mr. Carl on concluding our conversation remarked in an apparent spirit of levity that he had worried so much about my EAR last week that he broke down and bought a color TV set against his better judgment last Friday night.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 8-28-67 at 6 p.m.

MARY C. RATCLIFF, *Notary Public*.

My Commission Expires July 6, 1969.

STATEMENT

This is to certify that at 1:00 P.M. on August 31, 1967 I went to Mr. Curtis M. Shew's office to discuss a project on which I had been assigned. We briefly discussed the project for about 15 minutes, and then as Mr. Shew put it, let's have an eyeball-to-eyeball discussion of my EAR form that was due the latter part of April 1967.

Mr. Shew handed me my EAR that he had signed and dated 5-17-67 and reviewed and signed by Paul N. McMullen dated May 18, 1967. Mr. Shew asked me to look it over and see if I agreed with the evaluation. I told Mr. Shew that I had previously seen the EAR form by accident lying on James E. Carl's desk and that on the basis of what I had seen I didn't think I could successfully bid on a downgrade. I further stated that I could not understand why he and Mr. McMullen would downgrade me so much. I reminded Mr. Shew that I was extremely pleased with the objective manner in which he and I had discussed my EAR in May 1966 and the fair and objective manner in which he had evaluated my performance with me and I really knew where I stood, and (2) That I was very encouraged over the fact that he had enrolled me in Phase II and Middle Management schools as a result of our EAR discussion and agreement. I told Mr. Shew that I was very disappointed when I learned that Mr. James E. Carl had overruled and cancelled the enrollments.

Mr. Shew commented that he had recently enrolled me in the Middle Management school at Norman, Oklahoma. I asked Mr. Shew on whose advice or by whose direction he had enrolled me. Mr. Shew stated that he had done so on his own initiative since he thought I would benefit from the school and due to the fact that I wanted to attend so badly. I told Mr. Shew that I had serious doubts because within the last 3 weeks I had specifically discussed my situation with respect to my enrollment and attendance in the Middle Management school with Robert I. Gale, Area Manager, and James E. Carl, Chief, Airway Facilities Branch.

I told Mr. Shew, in regard to his suggestion that I look over the EAR and see if I agreed, that I didn't think it would do any good because I had long since arrived at the conclusion that—it is useless to bore Mr. Shew with details—his mind is made up.

Mr. Shew stated that he was very concerned about me and had extensively discussed my EAR with Paul McMullen. Mr. Shew stated that the aspects were discussed:

1. My performance productivity was below my capability.
2. My present position did not offer a challenge to me.
3. My energy is directed toward the things I like to do and not toward the things in which I am not interested.

I asked Mr. Shew on what basis in fact he arrived at these conclusions. I did not receive an objective answer. I suggested to Mr. Shew that emotionally based opinions are far different than the facts. I told Mr. Shew that these three items or similarities had developed into a "party line" that greatly concerned my career.

I told Mr. Shew that in my discussions with Mr. Gale he had used a very similar "party line". Mr. Shew interrupted and stated that he had never discussed my performance and potential with Mr. Gale. I told Mr. Shew that I had also conferred with Mr. Carl and he too used the same "party line" and that I knew that Mr. Gale and Mr. Carl had discussed my performance and potential since I had asked for a review of the selection of the Assistant Chief, Airway Facilities Branch position.

Mr. Shew told me that in his discussions with Mr. McMullen that Paul McMullen told him that I had asked Paul McMullen and James E. Carl to fill out a foreign assignment application, and that I stated to Paul McMullen that I did not desire to work for Mr. Shew anymore. Mr. Shew stated that he had asked himself many times how he had failed, but when I gave MKC-430 as 1st priority when MKC-430 and MKC-410 were organized in April 1967 he was really floored.

I explained to Mr. Shew that back in January 1967 when he was assigned Acting Chief, MKC-430, after Paul Watkins transferred to Alaska that I noticed a definite change in his attitude toward me and that his attitude appeared to get progressively worse.

Mr. Shew stated that he was very concerned and frustrated at that time because he knew nothing about the functions of MKC-430. Mr. Shew stated that he thought I was trying to take over the Program Section and for that reason he called Mr. Cottle and me into conference and made it plain that I was working under the direction of Mr. Cottle. I asked Mr. Shew to name one time when I had by action or inference indicated that I wanted to take over MKC-430. Mr. Shew could supply no such action or indication. I told Mr. Shew that I was still at a loss as to the reason for his attitude change toward me.

(Mr. Elmer C. Cottle and I discussed several times during January to March 1967 the possibility that Mr. Shew was trying to promote a rift between Mr. Cottle and myself and the possible motivations of Mr. Shew.)

Near the conclusion of our discussion Mr. Shew asked me if I thought I was better qualified than Mr. Patrick for MKC-401. I told Mr. Shew that I thought Mr. Patrick was a man of principles and that I didn't care to comment further. Mr. Shew asked me if I thought that I was better qualified than he for MKC-401. I didn't answer and Mr. Shew apologized for the line of questioning. Mr. Shew positively inferred that he was very disappointed that he had not been selected for MKC-401 and stated that he felt that he had reached his peak in the FAA.

Mr. Shew asked me if I thought that I had reached my peak in the organization. I told Mr. Shew that I had never lost hope and that I had bid for promotion on several positions in the past and had wanted to bid on a GS-855-14 position in Viet Nam but didn't because I did not have a current FAA-3693.

Mr. Shew suggested that I take up my performance evaluation, FAA-3693, with Mr. James E. Carl if I so desired. Mr. Shew stated that he would change any part or change the whole FAA-3693 if Mr. Carl wanted him to do so.

Mr. Shew gave me a copy of my long overdue FAA-3693 for 1967 at the conclusion of our discussion and suggested that I think about it over the long Labor Day weekend and that we would discuss it again on Tuesday September 5, 1967. I was not asked to sign the FAA-3693 on August 31, 1967 and I did not sign the EAR form. I would not have signed the form had I been asked because part of the form was blank and has the implication of the analogy of signing a blank check.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 9-8-67 at 10:30.

MARY C. RATCLIFF, *Notary Public.*

My Commission Expires July 6, 1969.

STATEMENT

This is to certify that the following incidents occurred during the week of September 5-8, 1967 as related to my Employee Appraisal Record Form 3693.

1. Mr. James E. Carl, Chief, Airway Facilities Branch stopped briefly at my desk during the morning of September 6, 1967 and told me that he had talked with Mr. Paul N. McMullen during the preceding weekend, and he wanted to talk to me about what he and Paul McMullen had discussed later that day or during our August 31, 1967 EAR discussion.

2. Mr. Carl came to me on Friday afternoon September 8, 1967 at 3:15 P.M. and without fanfare told me that a person in the International Region had been selected for an in-grade reassignment to South Vietnam. Mr. Carl told me the person had been stationed in Panama. We discussed briefly a comparison of the north parallel running through Panama and Vietnam and then the conversation was concluded.

3. I visited Mr. Curtis M. Shew's office several times during the week and passed the time of day, but Mr. Shew did not take the opportunity to reopen the discussion of my EAR form which he promised to on September 5, 1967 during our August 31, 1967, EAR discussion.

4. I contacted Mr. Keith Burk, MKC-10, and requested copies of the Civil Service Commission Optional Form 6 at 4:00 P.M. on September 8, 1967. A girl from MKC-10 brought me some XEROX copies of the form about 4:20 P.M.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on Sept. 11, 1967 at 8:45 A.M.

(Signed) LOUIS E. OBERKROM.

My Commission Expires May 12, 1970.

STATEMENT

This is to certify that at 3:00 P.M. on September 29, 1967 I took a piece of correspondence and placed it in Mr. Curtis M. Shew's incoming mail basket due to the importance of the correspondence. Mr. Shew asked me if I planned to be at work next Monday. I told Mr. Shew that as far as I knew I would be at work. Mr. Shew without fanfare told me that he had changed his mind about my performance rating—that he was very well pleased with the work that I was doing—that I had taken almost nothing and did a 'fabulous job' on the Program Operations Section personnel function statements. Mr. Shew stated that he wanted to get with me next Monday, October 2, 1967, and prepare a new form (FAA-3693) to reflect his current thinking.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 9-29-67 at 5:45 P.M.

MARY C. RATCLIFF, *Notary Public*.

My Commission Expires July 6, 1969.

STATEMENT

This is to certify that at 9:30 A.M. on this date October 4, 1967 Mr. Leo W. Knaust came to me and told me that he was worried. I asked him what he meant. Mr. Knaust told me that he had just concluded a conference with Mr. James C. Ray wherein his official record with FAA was discussed. Mr. Knaust stated that Mr. Ray was serving on the promotion board panel to make a selection for the vacant Planning Section Chief position (PPP-CE-MKC-67-140) and wanted to clarify some of the schools that Mr. Knaust had attended. Mr. Knaust stated that he saw the position vacancy panel and observed that my name was not on the panel whereon he stated that he commented to Mr. Ray that he did not understand why my name was not on the panel. Mr. Ray said to Mr. Knaust, and I quote Mr. Knaust, "I guess he didn't bid on it."

I asked Mr. Knaust at the conclusion of our conversation if he would make it a point to remember the above incident in specific detail. Mr. Knaust assured me that my point was well taken, and that I could depend on him not to forget.

(Signed) Robert W. Crow,
ROBERT W. CROW.

I certify that I witnessed the above signature on 10-4-67 at 10:45 A.M.

(Signed) KATHRYN A. VAN PELT.

My Commission Expires Feb. 25, 1970.

Senator LONG. Do you have a statement?

Mr. LEE. My name is Paul Lee, and I have a statement to submit regarding complaints against the Federal Aviation Agency.

Senator LONG. Would you file that report. Without objection, it will be included in the record.

(The statement above referred to is as follows:)

TO EDWARD V. LONG, *Chairman*:

It is my firm conviction that elimination of duplicity, discrimination, unequal opportunity, waste of government resources and apathy on the part of federal agency management and supervisory personnel should be the objective of all government employees. In fact I have been pursuing this objective since 1961 but have encountered many obstacles and have been discriminated against by the Federal Aviation Administration area and regional offices—and probably by the Washington office. My agency personnel records have been falsified to defame my character in an attempt to lay the groundwork for dismissal from the agency.

In the early part of 1961 I felt it my duty as an FAA employee to suggest corrective actions for the FAA regional office in the interest of the common good, the safety of the airways and efficiency. I went to supervision and management, including meetings with the regional Administrator, but they all chose to close their eyes and deny any irregularities. In assuming my responsibility as an American citizen to seek remedial action, on May 4, 1963 I wrote to the Administrator, FAA Washington office. (copy is attached.) However, I met with the same attitude as shown by the regional office.

Those FAA employees who have accepted the status quo have been promoted, are content, and have accepted the existing manipulation of the present promotion system. FAA employees are aware of the irregularities and violations of regulations, but many are in fear of the consequences if they complain to supervision. Therefore, to confirm my allegations I must use my personal experiences and records.

In the FAA Central Region there exists gross waste of resources, misuse of government funds, duplicity, unequal opportunity, discrimination and apathy—all of which promote an unhealthy climate of discontent and insecurity. These are byproducts of the present promotion system—a system which, being inherently prone to human frailties, encourages cronyism, nepotism, inefficiency, waste and apathy. As one of my supervisors remarked during one of our discussions when I accused him of discrimination and unequal opportunity: "It is only natural to take care of the one you like." This breach of public trust and irresponsible attitude is reflected from top management down through the ranks to low-level supervision. That the FAA is an agency created to serve the public as capably and unselfishly as possible seems to be ignored or forgotten. This needs to be investigated thoroughly. (A Congressional Investigation) Management and supervision should be awakened to their over-all responsibilities, and set on the track to diligently and efficiently perform their duties for the good of the government and the public.

While my efforts started out as somewhat a matter of self-preservation, when I found the attitude of the entire organization to be "you can't fight city hall", it became a matter of deep concern to me as to the fate of our nation if public service organizations become so negligent and corrupt. Someone must have the power to investigate and direct corrective action.

To go outside one agency by making an appeal to another agency for fair and just investigations and determinations is almost fruitless. Since collusion exists between the regional FAA office and the local and St. Louis offices of the Civil Service Commission, this precludes any thoroughness of investigation of fairness in decisions on complaints or appeals to CSC local and St. Louis offices by regional FAA personnel.

All complaints to agency supervision or management are met by long delays in response. The duplicity of replies and actions and the decisions made necessitate repeated complaints and appeals through the various levels of supervision and management.

The FAA has responded to my efforts and complaints by duplicity in actions and statements by supervision and management even from the Washington office. Acts of discrimination against me because of national origin (I am Italian-American) have increased and spread insidiously throughout the agency. False, fraudulent derogatory documents have been made a part of my personnel file

in the effort to build a justification for my discharge. Management and supervision deny discrimination against me since this would reflect against them. This has resulted in encouraging and perpetrating this breach of my constitutional rights and violations of FAA and CSC regulations. Increasing acts of discrimination, reprisals and harassment on the part of management and supervision have caused me such long standing anxiety, frustration and resentments that I suffered a mild heart attack in 1966 which hospitalized me and caused irreparable damage. My physician, after repeated warnings that this was deteriorating my health to such an extent that I would not recover from injuries sustained in an auto accident in March of 1967 as long as I remained in the agency, insisted that I get out of the agency. Therefore, I had no alternative but to apply for disability retirement. I have been unable to return to active duty since March 1967.

In my opinion the corruption in the FAA parallels that of the "untouchables" and the "Mafia". Yes, even to the point of attempted premeditated murder. After receipt of a letter of reprimand (detailed in the attachments) I became sick and suffered a mild heart attack. I was hospitalized as a result. I was again hospitalized after the March 1967 auto accident. The FAA was aware of both instances and the cause for my heart attack but their discriminatory practices, their reprisals and harassments continued. They wouldn't have cared if I had died. In fact, since they not discontinue their acts of discrimination, reprisals and harassment, it is obvious they did, in fact, aggravate my condition with the hope it would result in my death. In my opinion this constitutes attempted murder. I know of two co-workers who also suffered heart attacks because of abusive treatment by the agency. One of them has been compelled to apply for disability retirement.

To illustrate and substantiate my statements and allegations, I submit the attached documentary evidence with further detailed information.

An ombudsman, as proposed by your bill, is a much needed independent, unbiased means of fair and just investigations and determinations on complaints and appeals. This would eliminate much of the "red tape" under present procedures. His decisions would be outside the internal influence presently reflected in agency and inter-agency investigations and decisions.

(Signed) PAUL F. LEE,
6705 West Eighty-second Street.

Attachments.

Letter to President Johnson, dated September 19, 1964 with brochure (exhibits of evidence) EEO-F-2 Complaint Form dated October 12, 1967 regarding complaint of discrimination "Record of Discussion" August 1, 1966:

March 4, 1966 "Official Reprimand" with appeal, decision, and Informal Complaint of 2/1/66 Decision.

1966 Invasion of privacy to obtain personal medical records; Failure to regard personal physician's written request to refrain from specific physical duties.

File on denial of within-grade salary increase. (Copy to be mailed as soon as made.)

10/3/67 Appeal to Board of Appeals & Review, US CSC, re discrimination decisions: 1/19/68 Decision by Wm. A. King, Regional EEO Officer; 3/29/68 Decision by James V. Nielsen, Washington FAA EEO Officer.

May 10, 1968 Appeal on discrimination decisions to Richard F. Lally, Director of Equal Opportunity, Department of Transportation. (This is still in typing but copy will be mailed.)

NOTE.—Due to the limited time for preparation of data for this Hearing, copies of material from the two files (as mentioned above) are not available at this time but will be furnished soon along with any other material that may have been omitted.

(Some of the above-referred to attachments are as follows:)

RECORD OF DISCUSSION

We wish to propose means and methods whereby we may come to a common understanding, where items of dissention may be resolved to the benefit of both sides.

You contend that we (your supervisors and the entire Agency) employ practices that are discriminatory of improper management. You have left us with

the feeling that we are specifically discriminating against you, while extending special favors toward others.

We believe we have treated you with propriety and fairness equal to that extended all others. We believe the Agency has conscientiously examined each of your complaints of discrimination or mismanagement and has provided you an unbiased answer to your charges.

Recognizing that there are two different opinions or feelings still existent, we firmly believe that all of us must attempt to rectify any problem.

We are assigning you a new field supervisor, with the hopes this will promote better working relationships.

We believe a set of definitive guidelines are in order so you will know what we expect of you and vice versa. Your input to this will be appreciated, in order to establish the guidelines that will assist you. Enumerated here are some items. These items are not all-inclusive.

1. *Job Duty Assignments.*—You have expressed two views on duty assignments to you by Project Supervisors. On occasion, you have asserted that you have been assigned duties of the level required by a GS-9, and you didn't think this was fair and proper. On other occasions, you stated that Project Supervisors assign you work below that level, and you felt that you should be allowed to do the more complicated work.

Your new Project Supervisor is being directed to assign you duties commensurate with your grade level. In the event both GS-9 and GS-7s are working on the project, he should assign the more complicated work to the GS-9 and assign the GS-7 to assist. He should make certain that the GS-7 participates and is permitted to assist in the various stages of the project so he may receive on-the-job training. Although the GS-9 is not a supervisor, he would be regarded as the senior technician under these conditions. The project supervisor should continually supervise all personnel on the project. Where there are only GS-7s on the project, the supervisor should make assignments in line with that expected of a GS-7. He should more closely supervise a GS-7 for the purpose of proper training and assisting. Whenever the work or performance of an employee does not, in the judgment of supervisor, meet that expected of him, corrective counseling and action should be taken immediately. It behooves any employee to accept corrective criticism and assistance. Whenever the work or performance exceeds that normally expected of him, special recognition should be extended.

To sum this up, your supervisor is directed to assign you duties in line with that expected of a GS-7 ET (Installation) and recognizing any above-average abilities you exemplify. He is further directed to employ corrective action where necessary, and to extend recognition where warranted.

2. *Attendance and Leave.*—Without specifically recounting events of the past, this is to remind you that your supervisor is responsible for your attendance and leave habits. Any absences from duty should be fully coordinated with, and have the concurrence of your supervisor. He is being directed to document and report any inconsistencies or violations to this. All leave should have prior authorization, excepting emergency leave. He has the authority to approve leave up to 24 hours. Anything in excess of this should be applied for on an SF-71, to your Area Office Supervisor. These applications should be sent through him for initialing before submitting to the Area Office.

3. *Conduct.*—You, as well as all others of this Agency, are expected to adhere to the policies of part 199 of the Federal Aviation Regulations.

In addition, other Agency regulations relating to Employee Conduct are applicable. We feel it necessary to remind you of this, because of past reports concerning statements and charges you have made. Specifically, any use of profanity or other language considered abusive toward coworkers, supervisors, or management personnel, will not be tolerated. Your supervisor is directed to document, together with statements of witnesses, any such outbursts. You are hereby advised that any reports of malicious statements or unfounded charges will be appropriately dealt with.

4. *Training.*—You have requested the opportunity to attend schools at the FAA Academy, Oklahoma City, Oklahoma. If you will show us your sincere desire to attend these schools by meeting the entrance requirements, we will assign you to a class.

To explain this, we must remind you of your previous experience at the Academy. You were assigned to Transistor Electronics at the Academy, but failed to pass the course. The Region assigned to you this class, realizing your

request for attendance. The Academy reviewed your records while in attendance of this class, and reported to you that your major weaknesses was mathematics. They further reported to you, that as a prerequisite for readmittance to this course, you should take their correspondence course in mathematics. They further reported to you, that as a prerequisite for readmittance to this course, you should take their correspondence course in mathematics. We have received no information that you completed or attempted to take this correspondence course. In summation, if you will qualify yourself, we will assign you to an available course at the Academy.

5. *Improving Employee/Supervisor Relationships.*—Your supervisor is being requested to hold a discussion period with you, at least once a week. At these meetings, the two of you should openly discuss any problems or special items. A resumé of these meetings should be prepared, signed by both of you, and submitted to MKC-476. They may be written out and need not be typed. Unless open channels of communication can be maintained between the two of you, these meetings would be futile. Therefore, you are both encouraged to "lay your cards on the table", openly discuss items, and resolve any that can be locally done. Do not ask your supervisor to rule on something over which he has no control or jurisdiction. It is hoped that this approach will help to understand and solve the problems that the other has.

You are encouraged to discuss your problem with your immediate supervisor. Oftentimes, an honest and frank discussion will reduce what appears to be an insurmountable problem to an understandable situation, where, with a little understanding, the problem can be resolved.

Your supervisor should assign you duties and accord you supervision in line with your job position requirements and abilities. This does not preclude him assigning duties to the person he believes most qualified. On occasions of critical time and emergencies, it is necessary to assign duties commensurate with what the recipient can handle.

If a problem does exist, we are willing to do that necessary to alleviate or correct it, but we are expecting something from you in the same light. We will expect your conduct and performance to reflect favorably upon yourself and the Agency. This should eliminate reports and statements to this office that reflects unfavorably toward you or your performance.

We are advising your supervisor not to extend to you any privileges above and beyond those normally extended your co-workers. On decisions that he is unable to make because of unavailability of directives or interpretations of directives, he is being asked to call the Area Office immediately.

The above is intended to assist you wherever possible so we may work together as Government employees within the framework of our jurisdiction and accomplish our goal.

The above items were discussed with Mr. Lee and the Original Copy given to Mr. Lee on August 1, 1966.

(Signed) PAUL F. LEE,
KEITH D. BURT, MKC-13
HERBERT A. TECKENBROCK,
MKC-476.

JOHN C. ROY.

Mr. KASS. For the record, the ombudsman thanks you.

The proposal does not exclude Federal employees. They certainly are covered by the jurisdiction.

Mr. Crow. You have no idea how much the ombudsman would mean to the Federal employees. You have no idea what is going on in the Federal Aviation Administration. It is horrible. They darn near killed me.

Senator LONG. Is that all of the witnesses?

Let me thank you.

Did you have a statement?

Mrs. TAYLOR. Senator, may I leave this (indicating)? It is in the form of a complaint. It is not very formal. It is very informal; but I would like to leave it.

Senator LONG. May I have your name?

Mrs. TAYLOR. Cecelia Taylor.

Senator LONG. Mrs. Taylor, would you submit your statement for the record.

(Statement of Cecelia Taylor [Mrs. Ned Taylor] above referred to is as follows:)

Will all our Freedom perish? American citizens supposedly with rights—none of which can be acted upon, when neighbors, merchants, and professional people can be sold untruths, some blinded by native loyalty or kinship, or coercion.

How much taxpayers money is used for infamy, will never be reported. Slander is used as a weapon. We cannot purchase merchandise from reputable firms in this city, without substitution. Our home has no privacy, all this can be proven. We are law abiding people, we vote, pay taxes, pay all our bills, help others when we are physically able. Have never harmed anyone or their property. Yet the Law agencies, in this City manage to present a criminal image. They tell neighbors that we are being investigated. Because I have always been proud of my good name, and reputation. They made me sick. (That is a true horror story). Their influence is so powerful that I could not get help from the clergy, I only approached my own denomination, that was a mistake. Other professional people were approached before I could see them, when I told them that I was helpless because I did not want to embarrass others.

(Signed) Mrs. Ned Taylor,
Mrs. NED TAYLOR.

608 East 59th Street, Kansas City, Mo. 64110.

Senator LONG. I think the record should show our appreciation for Judge Culbertson giving us permission to use his courtroom and his chambers and to all the U.S. Marshals and for all who assisted in this hearing. The news media have been very kind for publicizing this hearing so our witnesses would know about it and could be here.

If there is nothing further, the committee will stand in recess subject to the call of the chairman.

(Whereupon, at 2:03 o'clock p.m., the hearing was adjourned, subject to recall of the chairman.)

APPENDIX

HIGHLIGHTS OF SENATOR LONG'S OMBUDSMAN PILOT PROJECT BILL S. 3123

Establishes a two-year pilot project of the Office of Administrative Ombudsman. Pilot project to be conducted in Missouri to aid citizens in Federal matters. Provides for an Ombudsman appointed by the President to be paid \$20,000 per year, and a Deputy Ombudsman, \$17,500 per year.

Ombudsman must be a lawyer, of good moral character and professional competence, who has not, within a 5-year period preceding his appointment, served as a member of Congress or as an appointed officer of any Federal agency.

Ombudsman to have authority to investigate Federal agency acts of procedures on his own motion or upon written complaint of any Missouri resident.

Ombudsman can investigate any complaint, unless he finds that there is presently available an adequate remedy; that the matter is outside his jurisdiction; that the complainant does not have a personal interest in the subject matter of the complaint; or that the complaint is trivial or not made in good faith.

Upon completion of his investigation the Ombudsman may direct the agency to reconsider, modify, or cancel its action. The agency must comply with the Ombudsman's requests.

Ombudsman must submit a written report of his activities to the President, Congress, and the Administrative Conference of the United States.

No proceeding, decision, or report of the Ombudsman can be challenged, quashed, or called into question in court.

\$125,000 to be appropriated to carry out the two-year pilot project.

NATIONAL HEADQUARTERS,
SELECTIVE SERVICE SYSTEM,
Washington, D.C., June 6, 1968.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: As requested in your letters of March 14, 1968, I am pleased to furnish herewith my comments and views on S. 3123, a bill "To establish a two-year study of the Office of Administrative Ombudsman" and also S. 1195, a bill "To establish the Office of Administrative Ombudsman to investigate administrative practices and procedures of selected agencies of the United States."

Insofar as these bills would apply to the operation of the Selective Service System, I would oppose favorable consideration.

The function of the Selective Service System is unique in that the Congress has placed upon each male person within applicable ages an obligation to serve in the armed forces and has left to the local boards of the Selective Service System the limited function of determining whether this obligation must be performed by the individual registrant when he is reached in a prescribed order, or whether it is necessary to delay his service to maintain the national health, safety or interest. Of paramount consideration to the Congress and the country has been the ability to promptly respond to unpredictable needs to supply to the armed forces a sufficient number of men when they are needed to insure forces adequate to meet national defense needs. The whole thrust of compulsory military service legislation is to accomplish this end with a minimum of mechanics and formal procedures which can obstruct or hinder the accomplishment of this purpose.

To insure that the national interest receives full consideration, the law requires individuals to promptly and currently inform local boards of their whereabouts

and status, and procedures have been established whereby the determinations of the local boards as to an individual's time to serve may be reviewed by state boards of appeal and, in proper cases, by the Presidential Appeal Board.

In addition to simple appeal procedures available to the registrant, employers and dependents, an individual seeking a delay for hardship to dependents, occupation, or other reasons, has available to him the counsel and assistance of a person designated in each local board area as the Government Appeal Agent. This unpaid official is charged with not only verifying that procedures are followed, but with determining whether the national interest is adequately considered. To this end he may make recommendations or take appeals in favor of or in opposition to a deferment.

The concern of the Congress that the vital function of raising and maintaining armed forces not be subject to threats of hindrance and delay through inapplicable and lengthy procedures is reflected in those provisions of the law excluding the operations of the Selective Service System from the requirements of the Administrative Procedure Act except section 3 of that Act; and those provisions making the classification determinations of local and appeal boards and the President final.

The courts have held that these provisions prohibit courts from questioning the processing or classification of a registrant except after he has been completely processed for induction. The courts have recognized the Congressional intent that the function of raising and maintaining armed forces must be free of the threat of litigious interruption and delay.

In the recent extension of the selective service act, the Congress took further action to insure that the delays in processing persons for military service would be minimized, not only by spelling out in the statute existing law on the finality of local and appeal board determinations, but, in the case of conscientious objectors, deleting provisions of former law providing for a hearing and recommendation in individual cases by the Department of Justice.

The need to avoid delay in raising and maintaining armed forces is also paramount among various considerations which form the basis for the historic prohibition in regulations against representation by counsel before local boards.

In summary, I believe that to superimpose on the present proven machinery of the Selective Service System any additional administrative device that may in any way slow down or obstruct its orderly and speedy processes in raising armies would not be compatible with the successful accomplishment of the vital function for which it was established.

The Bureau of the Budget has advised that it has no objection to the submission of this report to your Committee.

Sincerely yours,

LEWIS B. HERSHEY, *Director.*

[From the Washington Daily News, June 19, 1968]

A SENATOR'S NOTEBOOK—REQUEST FOR AN OMBUDSMAN

(By Everett McKinley Dirksen)

Americans have been hearing something now and again in recent months about a public office holder in some European countries whose title is "ombudsman." He helps citizens in trouble.

Is the draft board giving you a bad time? Is Social Security shortchanging you on your monthly payment from the government? Is the Internal Revenue Service attempting to collect from you more income taxes than you really owe? Is one of your relatives in prison as a result of an unfair trial?

Well, keep your cool. It may be that an answer to solving your problems that arise out of troubles with the government will take shape. There is a bill in the United States Senate that would create a pilot project for an Administrative Ombudsman.

In Sweden, Great Britain and in some other countries the ombudsman is a sort of official complaint department where the average citizen who has a complaint or problem with a government agency, can go and get help. A counterpart office in the U.S., for example, would try to help the otherwise voiceless citizen, the citizen who might not be able to get anybody in government to listen and to relieve what is troubling him.

Senator Edward Long of Missouri introduced the bill to create the project. It would be a test operation to run for two years only in the State of Missouri, where

virtually every Federal agency is represented with an operating office and where there are 63,000 Federal employees.

The idea back of the bill is this: The Federal establishment has become such a huge, sprawling operation that the ordinary citizen scarcely knows where to go or to whom when he's in trouble or outraged by what he is convinced is an injustice to him. Under the provisions of the bill, the troubled citizen could go to the office of Administrative Ombudsman. That official, who would be a presidential appointee, or his deputy, would assemble all the facts to determine whether the complaint had merit. If it did, the Ombudsman's office would cause an investigation to be made. His powers would be extremely broad.

If there were no adequate remedy in existing law for the problem presented, or if the matter were outside the jurisdiction of the Ombudsman's office, or if the complaint were trivial, the Ombudsman's office would not pursue the matter. If he did decide, however, that the circumstances of the complaint merited action, the Ombudsman would act with vigor.

The real force of the office would come from the fact that the Administrative Ombudsman could direct any Federal agency to reconsider or modify or cancel whatever action it had taken with respect to the complaining citizen, and the agency would be directed to comply with the order.

There is still another reservoir of power in the bill as drafted. That is that none of the proceedings or the decisions or the report of the Ombudsman can be challenged or quashed or called into question in any court.

Certain it is that, if the bill reaches the stage of consideration in the full Senate judiciary committee, and if it then reaches the floor of the Senate, such a broad grant of power will be examined with the utmost care.

It is interesting to learn that the office of Ombudsman is not an easy answer to any complaint. Not in Sweden, for example, where as many as 80 per cent of the complaints made to that Ombudsman have been found over the many years to have no merit. In Great Britain there is a safeguard against abuse of the right to complain to the Ombudsman—the complainer must first present his complaint to a member of Parliament, who may in turn refer it to the Ombudsman.

It is still a bill, so don't be impatient. I fancy, however, that if and when it is enacted into law, the Administrative Ombudsman will be a very busy person.

[Congressional Record insertions, May 8, 1968]

OMBUDSMAN

Mr. LONG of Missouri. Mr. President, from March 28 through March 31, 1968, the St. Louis University School of Law and the American Assembly of Columbia University cosponsored the Mid-America meeting on "The Ombudsman."

At the conclusion of the assembly meeting, a statement representing general agreement between participants was issued. The statement deserves the attention of the Senate. Therefore, I ask unanimous consent that the report be printed in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

THE OMBUDSMAN

(Report of the Mid-American Assembly sponsored by St. Louis University School of Law and the American Assembly, Columbia University, Mar. 28-31, 1968)

(NOTE.—At the close of their discussions the participants in the Mid-American Assembly on The Ombudsman reviewed as a group the following statement. The statement represents general agreement; however, no one was asked to sign it, and it should not be assumed that every participant necessarily subscribes to every recommendation.)

THE PROBLEM

The present-day American has ever-increasing contacts with government at all levels. The contacts are sometimes unsatisfactory, and complaints are presented with great regularity.

The doctrine that government exists to serve the people is fundamental to American political theory. It is important to the preservation of this principle that citizens have the means for protesting against governmental action or inaction which operates unfairly or prejudicially toward them.

EXISTING MEANS OF PROCESSING COMPLAINTS

1. The media of mass communication

The press has had an historic role in protecting individuals who have dealings with government, and never media have come to share this role to a degree. The media have the advantage of being independent of the governmental structure and have a tradition of mistrust of government. The threat of adverse publicity is a powerful one, for government officials pay careful attention to the complaints of newsmen.

The media, however, have their limitations. The very independence which facilitates challenge to government agencies also has its disadvantages. A newspaper or a broadcasting station is essentially a private enterprise which may reflect the interests and prejudices of its proprietors. Also, because of economic considerations, the press sometimes restrains itself from looking into areas that require investigation. Penetrating inquiry and follow-up are often hindered by staff limitations. The media, however, are governed by a sense of newsworthiness. They may launch inquiries, only to abandon or de-emphasize them in favor of items of more current interest.

2. The courts

American courts have exercised control over legislative, executive and administrative actions to a greater extent than the judiciary in any other part of the world. Americans who try to contain governmental action within proper bounds necessarily look to the judicial system.

Yet it is apparent that judicial remedies furnish an incomplete answer to the problems of citizen grievances and complaints. A court acts only on the cases that are brought before it. Litigants seldom can proceed effectively without the services of lawyers, which many cannot afford. Even those able to pay counsel may have problems with government agencies in which the rights appear clear but which do not have dollar value sufficient to justify legal proceedings. Many courts, moreover, cannot dispose of their judicial business within a reasonable time.

A grand jury may sometimes proceed effectively against oppressive or unlawful conduct on the part of administrators. However, some factors limiting effectiveness of the grand jury are: lack of continuity and expertise, limited authority, and excessive dependence on prosecuting attorneys. It is unusual for a grand jury to initiate independent investigations.

Much can be done to improve the functioning of the judicial system in protecting individual rights. Legal aid can be provided for those who have no means of hiring their own lawyers to protect important rights. Those who are successful in challenging government agencies might be reimbursed for their own expenses (which is almost never done at the present time). Even with these measures, however, much of the solution to the problem of citizens' complaints lies outside of the judicial system.

Many complaints, for example, deal with government action which is within the letter of the law but which may still be unfeeling or unnecessarily rigid. The courts show great deference to the administrative agencies and sustain their actions which are not clearly unlawful. Citizens may need assistance with respect to the discretionary aspects of government action which courts cannot give.

3. Internal processing of grievances

Where an agency, following investigation of a complaint, finds that its action was justified, the citizen is entitled to a prompt explanation and to advice as to the method for seeking relief. Some agencies have a reputation for courtesy, fairness and thoroughness in receiving and processing citizens' complaints, while the practices of others leave much to be desired.

The members of the public, however may not have confidence in self-policing by agencies. If a complaint is ultimately referred to the person whose action is being protested, there can be little expectation of redress. This lack of confidence is all the more likely when the agency's work is necessarily unpleasant to many citizens, as is the case with police and tax-collecting agencies. There is also understandable fear of retaliation if the complainant has frequent dealings with the agency.

Where complaints go to the agency involved, there may be problems of politics. There may be suspicion that all citizens do not receive equal treatment at the hands of the agency, and that it is necessary to seek the intervention of one who reputedly has political influence.

4. *The role of the legislator*

Legislators at federal, state, and local levels have traditionally concerned themselves with the problems of their constituents in dealing with the executive and administrative agencies of government. In addition to voting on bills, the legislator is expected to be the representative of his people before agencies of the government. In this respect, he affords an important humanizing function.

Legislators have often been of great assistance to their constituents in the handling of complaints. As complaints increase in number and complexity, however, legislative casework appears as only a partial solution. The legislator seldom has the time or the staff to give detailed attention to individual items. He may simply refer a complaint to the agency involved, and this will then present the self-policing situation with disadvantages as discussed above. A legislator's effectiveness may vary with his experience and prominence. Although legislators normally receive and handle complaints of all their constituents, a citizen may not have confidence in the casework of one he has consistently opposed.

Legislative handling of complaints might be improved by providing additional and more efficient staff assistance, but here there is a disadvantage of increasing the distance between the citizen and his representative. There is a danger that this may reproduce some of the very problems of bureaucracy for which legislative casework is intended to be a corrective. Furthermore, it does not seem realistic to expect the legislator to handle the ever-increasing volume of complaints.

5. *Other agencies*

Clergymen, social and community workers, politicians, lawyers, service organizations, and others, have frequently helped people with complaints. Their assistance is often valuable, but has wide variation in effectiveness.

DEMONSTRATED NEED FOR THE "OMBUDSMAN"

There was consensus that an independent office for the receiving and processing of complaints about governmental action or inaction could be of great value. The word "Ombudsman" has found its way into the English language and, although its use is not without problems, it appears to be an appropriate descriptive term for the officer performing the functions just described.

Possible advantages of an Ombudsman are as follows: (1) familiarity with government in its several aspects and skill in dealing with government officials and employees; (2) independence, both of the incumbent administration and of the general political process; (3) accessibility to the members of the public so that they may present complaints in confidence and without fear of reprisal; (4) a reputation for efficiency, integrity, and impartiality; (5) the manifestation to the public of concern with the problems of every individual, so that he receives the consideration he deserves in his business with the government; (6) the provision of a safety valve or catharsis for irremediable complaints; (7) identification of recurring patterns of complaints indicating the need for remedial action.

The Ombudsman should not be limited to the handling of the complaints which are brought to him. He should have the authority to initiate investigations where he has reason to believe that there are just enough grounds for public complaint. Many people are uninformed about facilities for receiving complaints, or are unable or afraid to present their own complaints. Those in disadvantaged circumstances, in particular, are often unable to present their own problems in such a way as to obtain effective assistance.

The very contemplation of the Ombudsman's office shows the need for a person of great insight and ability. Those who argue for self-policing may say that only one who is thoroughly familiar with agency work is able to deal with complaints in a way which is fair to the individual and to the general public. At times, however, an intelligent and experienced outsider versed in administrative methods may be able to make suggestions which are helpful to an agency which has become steeped in its own procedures. The office of Ombudsman could provide a valuable auxiliary to the self-policing process.

There is also the problem of size of the Ombudsman operation. The Ombudsman of tradition is a single individual. No such individual could possibly function in a government of any size without assistance. The office would serve little purpose and would quickly lose public confidence if it had so much work that complaints were not handled with reasonable dispatch. Yet, as with the legislator,

if the staff becomes too large, the problems inherent in a bureaucracy may appear. There is a dilemma of size with no complete solution.

The Ombudsman's efforts should be designed to supplement the existing methods of redress of complaints, as listed above. Each of these techniques has its proper sphere for which there is no adequate substitute.

PROBLEMS IN ESTABLISHING THE OMBUDSMAN

1. Problems in initiating the office

The need for an Ombudsman can be sensed at all levels—federal, state and local. There was a preference for beginning with a project at the local level. In order to present a fair test, the office should not be confronted with overwhelming problems and responsibilities from its very inception. A trial at one place, however, would not necessarily preclude a trial elsewhere.

There was some interest in a federal Ombudsman project for a particular state, as an experimental matter. The State of Missouri seemed to be one of several appropriate choices.

The trial should not be for a specifically limited period, for this might weaken the effectiveness and prestige of the office. Simultaneous programs in several locations, with no definite time limits, would be highly desirable.

2. Appointment and qualifications

All discussion indicated that the Ombudsman would have to be a very exceptional person, both in his background and in his personal qualities. It is desirable that he be conversant with the processes of law and government, but he would not necessarily have to be a member of the legal profession.

The initial selection should be the ultimate responsibility of the legislative authority of the area. The compensation would have to be sufficient to attract a person of great ability.

The Ombudsman should have a term extending over a number of years and should have protection against capricious removal prior to the expiration of his term. The term should not end at the same time as those of the legislative and executive officials within the jurisdiction. There should be a prescribed retirement age.

3. Jurisdiction

There was general agreement that the jurisdiction of the Ombudsman should not include the legislative and judicial branches of government. The duties of the office should be defined by law.

4. Office organization and operation

The incumbent should be afforded broad discretion in establishing and organizing the office. Much experimentation will be necessary at the outset in the structuring of the office. The legislative authority must provide funds adequate to permit the office to do its work.

Experience indicates that many complaints may be expected over which the office has no jurisdiction. The complainants should not be simply turned away, but should be referred to the proper agency.

The office will normally refer people to an operating agency if that agency has not had the opportunity to deal with the matter itself. The Ombudsman should generally be available only where the citizen and the government agency have been unable to reach an understanding.

Where a proper complaint within the Ombudsman's jurisdiction is received, it should be processed quickly and thoroughly. The citizen should, if possible, have access to the Ombudsman himself. A screening process is necessary, however, so that the Ombudsman will be able to focus on complaints which should have his personal attention. But care should be taken not to develop a bureaucracy which would eliminate the humanizing factor of the office.

5. Powers

It is essential that the Ombudsman have access to agency files and that he have subpoena power over witnesses and documents. Officers and employees who fail to cooperate with the Ombudsman should be subject to discipline or discharge.

The Ombudsman should have the power to make recommendations but not to overrule administrative decisions. He normally should proceed within the agency concerned. If the problem is not solved there, a report should be made to the superior administrative authority. In some cases, the Ombudsman may find it necessary to make a report to the prosecuting authorities.

The ultimate recourse is through publicity, by reporting to the legislature and by release of information to the news media. The authority to make public disclosure is important, but it should be exercised only after careful consideration and with due attention to the interests of all concerned.

At times there may be a difference of opinion between the administrative agency and the Ombudsman, in which each side maintains its position with sincerity. Agency personnel should not be subject to retaliation for taking a position opposed to that of the Ombudsman.

The Ombudsman should make periodic reports to the appointing authority. These reports should contain recommendations for the appropriate legislative action, the need for which has been indicated by cases he has handled.

LIMITATIONS ON THE OMBUDSMAN'S FUNCTION

As has been said earlier, the Ombudsman's office would not displace existing avenues of redress, but rather would furnish the opportunity for correction of some of their demonstrated inadequacies. The restricted scope of the Ombudsman's function should be publicized, and the public should be made aware of needs which will remain even when the Ombudsman is established.

1. *Legal aid*

The Ombudsman is not a substitute for a legal aid program. The theory behind free legal aid is that any citizen should be entitled to judicial determination of issues in which he has a legally demonstrable interest. He should be able to proceed with the assistance of his own lawyer, whose responsibility is to him alone.

2. *"Little Hoover Commission"*

It is not contemplated that the Ombudsman would be a substitute for "Little Hoover Commissions". He would have no responsibility for recommending overall reorganization of agencies.

3. *Offices of Information and Referral*

The public information function is important in modern government. This is so, at least partially, by reason of the very size and complexity of the modern governmental structure.

It may be expected that the Ombudsman's office will have to perform a public information function. Many people will not find their way to the appropriate agency simply because they lack information about where they should go. The Ombudsman will necessarily have to operate a referral system. The Ombudsman is not a public information officer, nor is he a substitute for such a person. His duties and responsibilities are such that he should not spend an inordinate amount of time on public information work.

CONCLUSION

With all the problems of working out the specific details indicated above, there is a strong consensus that there is need for pragmatic experimentation with the Office of Ombudsman in the American context.

[Congressional Record insertions, May 15, 1968]

LAW AND THE CHANGING SOCIETY

Mr. LONG of Missouri. Mr. President, the American Bar Association and the American Assembly of Columbia University held an American Assembly on Law and the Changing Society in Chicago on March 14-17, 1968.

The consensus statement issued at the conclusion of these discussions deserves the attention of all Americans. A number of concrete suggestions have been presented, and all must be considered by the Congress of the United States. All must be considered by lawyers, educators, and others dealing with the problem of our changing society.

One paragraph is of especial interest to me as chairman of the Administrative Practice and Procedure Subcommittee. That paragraph recommends that:

Consideration should be given to the introduction of the Ombudsman system as a supplemental method of assuring fairness and regularity in governmental processes. Legal services—through private lawyers and legal aid—are themselves

an important method of checking on government. The ombudsman system, however, seems especially promising to deal with abuses in administrative agencies where the cost of intervention by other means may be prohibitive.

Additionally, the report suggests that "access to legal services must be recognized as a matter of legal right." I deem this of importance to the consideration my subcommittee will give on May 16 to S. 3303—a bill to extend the right of counsel to the Selective Service System. To paraphrase the American assembly report, access to legal services must be recognized as a matter of legal right—even to the Selective Service System.

I ask unanimous consent that the consensus statement of the American Assembly on Law and the Changing Society be printed in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD as follows:

CONSENSUS STATEMENT OF THE AMERICAN ASSEMBLY ON LAW AND THE CHANGING SOCIETY, CO-SPONSORED BY THE AMERICAN BAR ASSOCIATION AND THE AMERICAN ASSEMBLY OF COLUMBIA UNIVERSITY

At the close of their discussions the participants in The American Assembly on Law and the Changing Society reviewed as a group the following statement. The statement represents general agreement; however no one was asked to sign it, and it should not be assumed that every participant necessarily subscribes to every recommendation.

Our changing society now faces challenge to public order and to the realization of American ideals greater than any since the Civil War—the cluster of problems known as the urban crisis.

Legal institutions provide a network of relationships for cooperation and for reconciling conflict in society, and so are inconspicuous when society is at peace. Their inadequacies as well as the importance of their functions become clear in times of trouble. Central to the crisis of our time are the recurring violations of the human dignity of people who live in the cities. These violations take many forms—race discrimination, crime, inadequacy of education and employment. They have many causes—public indifference, archaic government institutions, and insufficiency of tax resources. Our complex society is pervaded by similar if less evident problems.

The legal profession is especially concerned with these problems. The law seeks fair-dealing, equity and redress of grievance—these are the benefits of legal order. For many, our institutions have proved inadequate to secure the benefits of equal justice. We must overcome this failure.

Beyond this, the systematic re-examination and evaluation of the substance of our law, with a view to its continuous improvement is essential to the legal order and especially important in a period of sweeping social change. It is a professional responsibility of lawyers to create and support the institutions necessary to achieve that end. The lawyer contributes to enhancement of respect for law by assuring that law is truly worthy of respect.

THE INSTITUTIONS OF SOCIETY

Our problems arise partly from basic weakness in social, economic and political institutions and partly from weakness in the machinery of justice itself. Lawyers, who traditionally have acknowledged responsibility for the machinery of justice, must assume an important share of the responsibility for the reform of these other institutions in our society.

To achieve social justice will require far-reaching institutional changes. For example, our welfare system must do more than support persons in a state of dependency. Union rules and practices that restrict job opportunities must be abated. Building codes and practices must be modernized to reduce housing costs. Political boundaries must be adapted so that they accomplish their role of keeping government close to people without obstructing better education, more effective law enforcement, and more equitable distribution of welfare burdens.

Lawyers have special skills—as advocates, planners, negotiators and organizers—needed in achieving such objectives. They must help provide leadership in both the public and private sectors. The profession should promptly create devices for placing these matters high on its agenda and moving forward rapidly with them.

Greater responsibility must be assumed through legislation for dealing with society's current problems and changing needs. Lawyers must help to create

understanding of the need for legislative changes; they must draft appropriate legislation. They must press for its enactment, as individuals, as members of the organized bar, and as legislators.

At the same time the bar must meet society's needs and demands for legal services. In increasing volume and variety, the law and the legal profession are called on to perform new tasks, for new clientele, in relation to new problems, and in new context. The legal profession must adapt itself accordingly.

LEGAL SERVICES

Access to legal services must be recognized as a matter of legal right. Legal services provided through conventional law office and lawyer-client relationships are beyond the means of many citizens.

Innovations are needed in legal services offered all segments of the community. These should include law offices to serve lower income groups; greater utilization of services of law students; training and employment of sub-professionals and paraprofessionals acting, where appropriate, under the supervision and upon the responsibility of fully qualified lawyers; standardization of routine legal transactions; and elimination of needlessly complicated and costly legal procedures. We make the following recommendations:

1. Civil legal services for persons without sufficient means should be further expanded. Criminal defense services, both public and private, should be made adequate to defend indigent persons accused of crime. Federal, state and local government support of the activities of legal aid and defender facilities deserves to be a permanent element of public policy. These agencies should be expected and encouraged to deal not only with emergency and short-term matters but with fundamental legal problems—such as legislative programs, constitutional questions and the legality of agency and executive actions. They should be expected and encouraged to participate in the development and enactment of new legislation that is of interest to their clients.

2. Group legal service arrangements should be encouraged, subject to safeguards that will assure independence of professional judgment and fidelity in the lawyer-client relation. Properly administered, they should reduce the cost of needed legal services, ease the problem of finding a lawyer, and provide the client with a lawyer in whom he has reason to have confidence.

3. Lawyer referral services should be improved and expanded so that all persons seeking access to a lawyer can find one. Effective measures must be adopted in lawyer referral services to assure that the client receives competent service. Such measures should include identification of areas of special competence of lawyers on referral panels.

4. Bar associations have a continuing responsibility to study the extent to which legal services in the communities are being adequately coordinated.

5. Remedial justice in civil controversies involving small amounts must be made available more swiftly and economically to all citizens. Arbitration and mediation should be used more widely, perhaps in cooperation with such private organizations as the American Arbitration Association, consumer organizations, better business bureaus, and Chambers of Commerce. Rapid procedure at the neighborhood level should be developed to adjudicate disputes over simple transactions.

6. Consideration should be given to the introduction of the ombudsman system as a supplemental method of assuring fairness and regularity in governmental processes. Legal services—through private lawyers and legal aid—are themselves an important method of checking on government. The ombudsman system, however, seems especially promising to deal with abuses in administrative agencies where the cost of intervention by other means may be prohibitive.

7. We commend the efforts of the American Bar Association to create legal cost insurance arrangements in cooperation with state and local bars. Although there will be difficulties of cost, schedules of charges, eligibility standards and administration, the prospects are sufficiently promising to warrant the attempt.

8. Law offices should use all available means to reduce operating costs and to make available legal services at reasonable cost. Important savings are possible through reorganization of small law offices, use of modern equipment, standardization of legal instruments and improvements in office procedures.

9. The American Bar Association should continue to explore the feasibility of certifying specialists as a means of aiding the public to secure competent legal services for particularized needs.

EDUCATION

The changes in society's expectation for the legal profession require corresponding changes in legal education:

1. Financial sources now available to law schools are inadequate. Additional financial support is required from government, foundations, corporations, the legal profession and other sources.

2. The cost of going to law school, when added to the cost of college, makes the cost of a legal education prohibitive for many persons in our society. The question of the required duration of legal education and prelegal education should be reappraised from this perspective. Pending such inquiry, substantial scholarship assistance ought to be made available to students who cannot otherwise afford to go to law school.

3. The legal profession should attract to its ranks members from all segments of our society. Experience indicates that this can be accomplished only if a special effort is made to overcome barriers imposed by poverty and cultural differences. Lawyers and law firms must take affirmative action to provide career opportunities or lawyers who are members of minority ethnic groups. We commend establishments of the Council on Legal Education Opportunities by the American Bar Association, the National Bar Association and the Association of American Law Schools, and the training and scholarship program the Council is organizing to encourage Negroes, Mexican-American and members of other disadvantaged groups to become lawyers.

4. The involvement of predominantly Negro law schools, regardless of the circumstances surrounding their origin, must now be recognized as a reality and as a needed education resource. Many Negro students attend these schools. We encourage their strengthening and expansion. At the same time, the right of all minority group students is now assured to be considered for admission to all law schools without discrimination on account of race. We urge all law schools to facilitate admission of students from disadvantaged groups.

5. Law schools cannot be identical in their curricula. Each law school should be encouraged to determine whether its program of legal education responds to the needs of the bar and the society it serves. In this reevaluation, each school should weigh the need for professional preparation, for clinical work, education in the lawyer's role in legal and social planning, and research, including interdisciplinary research. While recognizing the relevance of the explosion of specialized knowledge in the behavioral sciences, law schools should keep in view their obligation to prepare lawyers for their roles as generalists.

6. Law schools should seek closer relationships with other parts of their universities and with each other to profit by and contribute to the advancement of knowledge. Law schools, in cooperation with the organized bar, should consider the development of programs of education and training for subprofessional and paraprofessional personnel.

7. The necessary growth of continuing legal education depends upon the support of the bar, the law schools and the judiciary. Greater cooperation among participating organizations, improved efficiency, and higher quality should be the aim. Continuing legal education can contribute to instruction in the law schools, and the law schools can in turn improve the quality of continuing legal education, if the relationships between the two are extended and strengthened. Judges should assist in education programs designed for the bar and participate in programs designed especially for them. Programs of continuing education for judges should be strengthened, and similar programs should be established for adjudicative officials in administrative agencies.

8. The value and nature of bar examinations should be reassessed, particularly in the light of the influence they may have on law school curricula. The bar should consider developing alternative means to verify the competence of a new lawyer.

RESEARCH AND TECHNOLOGY

1. Research is important to the rational analysis and evaluation of legal services and institutions. There is need for detailed study of the effects of particular legal arrangements, and for basic and applied research into law. The conduct of such research will require closer connection between law and the behavioral sciences. Increases in the currently miniscule level of funding for such studies would generate important interdisciplinary work. We urge Congress to support agencies authorized to provide for research on the law, and to enact pending legislation to establish and fund a national law foundation.

2. The profession should increase its efforts to take advantage of the developing technology of electronic data processing. Possible uses for the computer range from the storage and systematic retrieval of legal materials, to the employment of simulation techniques and linear programming, to calculate the consequences of legally significant events. At the same time, the profession should seek to develop the law necessary to deal with computer technology.

JUSTICE AND RESPECT FOR LAW

1. The improvement in the organization and administration of our courts and the methods of selecting our judges remains a pressing necessity, in part because of rapid increases and changes in the work of the courts. We reaffirm that necessity. We make no recommendations on these subjects because the American Bar Association and the Twenty-Seventh American Assembly, *The Courts, the Public and the Law Explosion*, have spoken specifically to them. We urge implementation of the proposals for improvement of judicial administration contained in those recommendations, except that which concerns automobile accident cases, a matter we refer to below.

2. Equal access to the legal system requires not only the availability of counselors and advocates but also public subsidization of the other expenses of litigation for those who cannot afford them. These expenses include court fees, transcripts, deposition costs, supersedeas bonds and similar expenses often incurred in the defense or assertion of claims. Each jurisdiction should provide for waiver or public subsidization of all such expenses for persons who are otherwise unable to utilize the legal system.

3. Automobile accident claims are of vital concern to the public, the court and the bar. We commend the American Bar Association's determination to give objective and urgent study to the problem.

4. Instruction in law and legal processes, should be a part of primary, secondary and college education. The legal profession should encourage programs of such instruction. As part of its responsibility regarding education of the public, lawyers should seek to explain court decisions, especially where unpopular, and to help the public understand that a lawyer's duty includes representation of unpopular clients.

5. Law enforcement must be provided the resources to carry out its responsibilities firmly, capably and with sensitivity. Security in our daily lives depends upon this capability. The tranquility of our cities may depend upon the ability of law enforcement to demonstrate to the community that it deals justly both with the troubles of persons and with the troubles created by persons whose lives are touched by it.

Lawyers administering justice must take responsibility for assuring not only that these procedures are fair to the individual and the community but that they appear to be fair, to the end that justice be done and be known to be done. We urge that the institutions involved in law enforcement and prosecution, many of which are unduly fragmented, should be organized and financed on a scale sufficient to enable them to perform the tasks demanded of them.

PROGRESSIVE BLIND OF MISSOURI, INC.,
Kansas City, Mo., May 3, 1968.

Hon. EDWARD V. LONG,
U.S. Senator from Missouri,
Kansas City, Mo.

DEAR SENATOR LONG: Our organization, the Progressive Blind of Mo., Inc. wishes to be listed as those who will be on hand at the hearing here by the subcommittee on constitutional rights in support of S. 3123. Since we have already made our testimony before the committee in the person of John F. Nagle for the National Federation and the Progressive Blind at St. Louis on March 27, we do not feel it necessary to duplicate that testimony here. We do want to be listed as being present at the hearing here and to be in full support of S. 3123. Some of our members will be present that day.

Cordially yours,

(MRS.) GWEN RITTEGERS,
Corresponding Secretary.

SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,
May 6, 1968.

Mrs. GWEN RITTGERS,
Corresponding Secretary, Progressive Blind of Missouri, Inc.,
Kansas City, Mo.

DEAR MRS. RITTGERS: Thank you very much for your letter informing me of your support of S. 3123, my proposed Ombudsman bill for the State of Missouri. Mr. John Nagle appeared in St. Louis at our hearings on March 27th, and made a most impressive statement.

Certainly appreciate your support and look forward to meeting you at the hearing in Kansas City on May 10th. The hearing will be held in Courtroom No. 2, 4th Floor, United States Courthouse and Post Office Building, and will begin at 10:00 a.m.

Kind regards.

Sincerely,

EDWARD V. LONG, *Chairman.*

TED B. TAYLOR,
Kansas City, Mo., May 7, 1968.

HON. EDWARD V. LONG,
New Senate Office Building, Washington D.C.

MY DEAR SENATOR LONG: I would like very much to appear at your hearing May 10 here in Kansas City. I would like for you to see some documents I have regarding actions taken by the Veterans Administration. I am enclosing a copy of one that is representative of their arbitrary decisions. Although I have written to them about this they still maintain that their figures are correct. This is a very small matter and I would not take the time to write on this alone; but I have been refused admittance to the V.A. Hospital on many occasions. This in spite of the fact that I served my country honorably and with some distinction for four years, eight months and eleven days, February 7, 1947 to October eighteenth 1945. I was Honorably discharged with a Service connected disability. Recently I was refused admittance when in the opinion of the O.D. my case was an emergency, the result of a fall on icy streets. As a result I have had an expensive operation and hospital bill and may never regain full use of my right arm. I will not belabor you with more details at this time, but will come fully prepared if you can see fit to allow me to appear at your hearing.

Very truly yours,

TED B. TAYLOR.

VETERANS' ADMINISTRATION,
St. Louis, Mo., May 5, 1967.

Claim No. C11954983.

TED B. TAYLOR,
Kansas City, Mo.

DEAR Mr. TAYLOR: The following award has been made to you: Monthly amount \$21.00; beginning date, February 1, 1967.

It is most important that you note the contents of the attachments which may affect your right to continue to receive these payments.

Very truly yours,

I. ZVEITEL, *Adjudication Officer.*

Reports from the Chief, Operations and Input Section disclosed that the veteran was paid pension at the rate of \$105 per month from October 1, 1966, to January 31, 1967, and at the rate of \$80 monthly from February 1 to March 31, 1967, for a total of \$580; but was due only \$80 a month for the period from October 1, 1966, to January 31, 1967, for a total of \$320. The overpayment of pension amounted to \$260 and as of November 30, 1967, it was reported the overpayment had been reduced to \$50 by withholding \$21 monthly compensation entitlement.

There are also on file a letter dated October 1, 1967, addressed to the Administrator by the veteran, and a letter dated November 22, 1967, by H. M. Engle, M.D., Chief Medical Director written in reply thereto. At the hearing held on appeal in December 1967, the veteran testified to the effect that the income limitation of \$1,000 was exceeded by reason of his being paid for the full month of September 1966 although he had not been hired by the county assessor's office

until September 8, that projecting his earnings forward from the date he was hired reflected total wages of only \$950 and, therefore, he did not notify the Veterans' Administration, that when he received a full check at the end of September he notified the secretary who said she would look into it, and that when no deduction was made in the subsequent months he talked to the assessor shortly before Christmas and was told "Go ahead and keep it. You earned it. We don't pay you enough anyway." He further testified that the last check he received was on February 2, 1967, and was for \$80; and furnished information as to his financial circumstances. A statement dated February 15, 1968, by the veteran is also of record.

THE LAW AND REGULATIONS

Prior to October 1, 1967, pension was payable to a veteran with one dependent at the rate of \$105 per month if his annual income was less than \$1,000, and at the rate of \$80 monthly if his annual income was more than \$1,000 but less than \$2,000. Pension benefits may not be authorized where the veteran's annual income is more than \$3,000. (38 U.S.C. 521)

A veteran who is receiving pension benefits must notify the Veterans' Administration of any material change or expected change in his income or other circumstances which would affect his entitlement to receive or the rate of, the benefit being paid. Such notice must be furnished when he acquires knowledge that he will begin to receive additional income at a rate which, if continued, would cause his income to exceed the income limitation or increment applicable to the rate of the benefit being paid. The award will be reduced or discontinued effective the last day of the month in which the rate of income increased. Overpayments created by retroactive discontinuance of benefits will be subject to recovery if not waived (38 U.S.C. 3.660).

SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,

May 14, 1968.

Mr. TED B. TAYLOR,
Kansas City, Mo.

DEAR MR. TAYLOR: Your letter arrived in Washington about the same time as I was in Kansas City holding our Ombudsman hearing.

Certainly regret we were unable to take testimony from you. If you care to submit any material for the record, would be delighted to include it. If you wish, we can place your May 7th letter into the record also.

Look forward to hearing from you.

Kind regards,

Sincerely,

EDWARD V. LONG, *Chairman.*

TED B. TAYLOR,
Kansas City, Mo., May 18, 1968.

Hon. EDWARD V. LONG,
U.S. Senate,
Washington, D.C.

DEAR SENATOR LONG: I was very much encouraged and pleased to receive your reply to my letter of May 7, 1968. I was almost certain that I had waited too long to write to be able to appear before your group in Kansas City. I would like very much for you to place my letter in the record. I will try, as possible to outline my grievances.

I was inducted into the U.S. Army at Ft. Leavenworth, Kansas on February 7, 1941. I was assigned to D Company, 140th Infantry and sent to Camp Joseph T. Robinson, Little Rock, Arkansas. After completing my basis training, I was assigned to the 30 caliber water-cooled machine gun platoon. Late in March of 1941, were were practicing a "Mounted Carry". It was my assignment as Number 1 Gunner to leap from my position along with the Squad Leader and the Ammunition Carrier and grab the left leg of the tripod as the Squad Leader grabbed the right leg and the Ammunition Carrier grabbed the tail spade. Corporal Nations, the Squad Leader, was about six feet four inches in height and weighed about 230 pounds; I am five-five and weighed at that time 125 pounds. My side of the gun was mired in heavy clay and as a result I could not lift it free on the run. This tripped Corporal Nations and he fell with much

force and my back, and right hip were badly twisted. Corporal Nations was winded but otherwise uninjured. Captain Williams, the Company Commander sent me to the Base Dispensary. The Medical Officer, a 1st Lieutenant, whose name I have never been able to learn, was very drunk. He ask what the nature of my injury was and was told what had occurred. Without any kind of examination, he handed me 5 white tablets and told me to take them and go to my tent and lie down. When I ask him how I should take the tablets, he replied "swallow them. G-d D—— it." I did and about 30 minutes later I became violently ill. I was sent to the Base Hospital and was very ill for several days. I later learned that the Medical Officer had give me 30 grains of Sodium-salicylate. When I was released from the hospital, I weighed 113 pounds. I have had gastro-intestinal trouble ever since.

On May 8, 1941 I was given a "Short Term Discharge" and enlisted in the Regular Army Air Corps. My service was continuous. I was assigned to the Cadre of the 42nd Bomb Group(M) at Fort Douglass Utah. From there I was assigned to the 77th Bomb Squadron at Gowen Field, Boise Idaho. On December 24 at midnight, I boarded the troop transport, St. Mihiel at Seattle, Washington bound for APO 942. This Elmendorf Field, Anchorage, Alaska. Our Squadron was attached to the 28th Composite Group. I served at APO 980, and APO 986 in the Aleutian Islands. My health was never good and I could not maintain flying status. I spent much time in Base and Field hospitals. I finally resigned myself to the fact that I could not fly and I was assigned to Supply. I became a Technical Supply Sergeant. Throughout my entire service I had a Superior or Excellent efficiency rating. The records will bear me out on this point. I cannot say that my conduct was exemplary although I never was accused of anything other than just plain onerious. I never had a day that I was not uncomfortable, and at times was in pain. I was not a very pleasant person. I returned to the States July 12, 1943. I was told that I would be sent to Barnes General Hospital for treatment and ultimate discharge. Instead I was sent to the 18th Replacement Wing at Salt Lake City Utah. After a 30 day leave, I was assigned to the Base Supply at Geiger Field, Spokane, Washington. After several other assignments, I was given an Honorable Discharge at Gowen Field, Boise, Idaho on October 18, 1945.

At the time of my discharge the Medical Officer who gave me my final physical examination, wanted to send me to an Army General Hospital for treatment and compensation evaluation. I requested that I be released immediately. I was told that I would have to waive compensation at that time, but if I later became unable to work that I would be evaluated for Service Connected Compensation. I was given a letter stating that I was discharged with a Service Connected Disability and was entitled to full hospitalization and rehabilitation services. In spite of this, I have been refused hospitalization or treatment on many occasions and was never admitted until Dr. J. P. Weber of Mountain Home, Idaho, personally took me to the Veterans Hospital in Boise, Idaho and demanded that I be admitted. I applied for compensation and was denied. Finally on May 29, 1959 I was awarded 10% Service Connected Disability. On November 9, 1961, I was awarded 100% non-service connected disability for the same complaint with no explanation as to why it was 100% if I would accept non-service connected pension but just 10% if I demanded Service Connected compensation.

As for the treatment I have received since my return to my home in Kansas City, I was first admitted to the V.A. Regional Hospital in September 1962. I was passing blood and suffering repeated spells of syncope. Dr. Yeomans, who was my doctor ordered several examinations and said that I was diabetic. He put me on a strict diabetic diet (my mess-hall pass is in my file), but when I ask him to give a report to my private doctor, he said he treated me for hemorrhoids. He never even examined me for hemorrhoids, must less treated me for them until a few hours before he released me.

I was admitted again December 1964. I was given many examinations but no treatment other than tranquilizers.

In November 1967 I was again admitted to the V. A. Regional Hospital in Kansas City, Mo. I was again given examinations including G-I Series, Cardiograms, Brain-wave and Scan. When I visited the Eye-clinic, a very fine Ophthalmologist, Dr. Young diagnosed open angle glaucoma. He prescribed 2% Pilocarpine 2 drops in each eye four times daily. When I was released he put me on PHC and I saw him 3 or four times after my release. Later Dr. Young was removed and a Dr. (I believe his name was Black) who replaced Dr. Young refused to examine me or give me a prescription for my medication.

I reported this to the assistant administrator, Mr. Washington. He went up to the eye clinic and made them give me a prescription but took no action against this doctor. This Doctor even tore up my PHC appoint-card. When I was admitted, I was put in Ward 4 East, a general medicine ward. After 3 days, I was routed out of bed late at night and told I would have to be moved to 8NW. I was still Dr. Conrad's patient but was boarded out to the new Ward. I spent 9 days up there without ever seeing Dr. Conrad once. When I finally went to the office to see Mr. Washington he came up and told me I was a trouble-maker. He released me the following day. Although they took many examinations, he did not even look at them or order specialists to evaluate them as he is supposed to do. I was having severe headaches and he did nothing to give me relief. As this became unbearable, I went out to the hospital again for my appointment and another Ophthalmologist saw me. He examined my eyes and when I told him of my headaches, he sent me to the ENT Clinic. Dr. Knaup the chief of the ENT Clinic immediately ordered me admitted. They began giving me massive doses of penicillin (4 million units per day). After about 5 days they reduced my dosage and the 10th day they performed a Sinus-otomy. On the next day I was discharged. If all the Doctors were as conscientious as Dr. Knaup and Dr. Springer and Dr. Young, there would never be any reason to complain. Unfortunately this is far from the true picture.

Had Doctor Conrad been reasonably competent or concerned with the patients welfare, I could have avoided those six or seven weeks of agony. The sinus X-Rays were over exposed and should have been rejected. Even so they showed massive infection.

After treating me for Glaucoma for several months, a new Ophthalmologist, Dr. Heurter, has stopped by treatment and said I did not have Glaucoma. My eyes have bothered me continually since.

On January 12th, 1968, the day I was last released from the Hospital, the streets were a solid glare of ice. They did not furnish me transportation so I took a bus home. I was rather weak and unsteady and a block from my home I slipped on the ice and injured my shoulder. I called a taxi and after about an hour's wait I went back to the hospital. I was in intense pain and my right arm was completely immobilized. I had to wait for about 2 hours before a Doctor even looked at me.

Doctor Hughes who was O.D. that night called Dr. Evanson who was supposed to be the Orthopedic Doctor on call, and told him he thought he (Dr. Evanson) should come and examine me. Dr. Evanson refused to come and said he would be in at 9:00 A.M. Dr. Hughes then called Dr. Springer as I had been his patient and was still officially a patient, having been discharged the same day on PHC. Dr. Springer came down and examined me but said he was not qualified as an Orthopedic doctor. However he or Dr. Hughes, I am not sure which, placed my arm in a sling and gave me some pain pills. They put me to bed in the Orthopedic Ward SSE. Dr. Evanson showed up at about 2 PM the following day. He looked at the X-Rays briefly and without even touching me told me I was not hurt badly only a little sprain. I went back the following 2 weeks and then after two weeks saw him once more. I had an appointment for the following week and waited from 8:00 AM until 1:00 PM and he never showed up. I was in constant pain and my right arm was completely immobile. I did not wait for Dr. Evanson as I learned he was in Colorado skiing. Furthermore in all this time he had offered no relief or treatment other than telling me to exercise my arm, which was impossible as it was completely immobile.

Shortly thereafter I went to the bank and borrowed \$600.00 and went to Dr. C. C. McCullough an orthopedic surgeon with a very fine reputation. He examined me and found that I had suffered a ruptured tendon which through not being placed in an airplane splint had severed. He placed me in St. Josephs Hospital on March 10 and operated on me March 11, 1968. I was immediately relieved of much pain and now I am regaining some mobility in my arm. I am to begin a series of physical-therapy treatments Monday, May 20, 1968. To date I am in debt more than \$1200.00 and the end is some distance off. This should all have been taken care of by the V.A.

I have written to Mr. Driver and he ordered a thorough check to be made. Dr. Engle wrote and ask the local V.A. Hospital if this were true, they said no. Investigation closed. I would appreciate it if you could contact Mr. Driver and ask him to furnish you my letter Dated October 1, 1967.

I wish you much success in August and in November I think you know my associates and me will be working for you. The Veterans especially, and to my way of thinking all the people of Missouri can ill afford to lose such a staunch friend and most capable Senator. Thank you.

Very truly yours,

TED B. TAYLOR.

SENATE SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE,

May 23, 1968.

Mr. TED B. TAYLOR,
Kansas City, Mo.

DEAR MR. TAYLOR: Have received your recent letter, and am inserting the material you submitted into the record of the hearing my Subcommittee held in Kansas City on the Ombudsman.

Thank you for your support.

Kind regards.

Sincerely,

EDWARD V. LONG, *Chairman.*

(Missouri Ombudsman Proposal)

AN ACT To select an Ombudsman (Public Protector) under a Non-Partisan Plan to investigate administrative decisions and acts of certain governmental institutions in counties of the first class not having a charter form of government; to define the Ombudsman's powers and duties

Be it enacted by the General Assembly of the State of Missouri, as follows:
Section 1. In construing this Act the following definitions shall apply:

- (1) "Person" means and includes any person, firm or corporation.
- (2) "Agency" means and includes any department, agency, authority, commission, board or other unit of government, and such units as hereafter may be established, situated within counties of the first class not having a charter form of government, including the government of such counties.
- (3) "Officer" means and includes any officer of an agency.
- (4) "Employee" means and includes any employee of an agency.
- (5) "Administrative Action" means and includes any rule, regulation, interpretation, advisory opinion, policy, practice, release, ruling, order, decision, licensing, suspension of a license, revocation of a license, rate or service establishment, penalty or any other similar action taken by an agency with regard to the enforcement of the laws of this State and ordinances of municipalities within counties of the first class not having a charter form of government.
- (6) "Operation" means the organization and the internal administration of agencies.
- (7) "Omission" means any failure or refusal of an agency to take any administrative action.

Section 2. There shall be appointed by the county court of counties of the first class not having a charter form of government, a commissioner of administrative investigation to be known as The Ombudsman, Public Protector. He shall be selected from one of three persons possessing the qualifications for such office, who shall be nominated and whose names shall be submitted to the county court by the non-partisan circuit judicial commission created by Article V, Section 29(d) of the Constitution of Missouri, located within the counties of the first class not having a charter form of government. The Ombudsman, Public Protector, appointed pursuant to the provision of this section shall hold office in the manner specified in Article V, Section 29(c) of the Constitution of Missouri. If a declaration of candidacy, as provided in Article V, Section 29(c) of the Constitution of Missouri is filed, his name shall be submitted at the next general election to the voters eligible to vote within the geographical jurisdictional limit of his county on the judicial ballot used in the selection of judges of this state, without party designation, reading: "Shall The Ombudsman, Public Protector ----- (Here the name of The Ombudsman, Public Protector, shall be inserted) be retained in office? Yes No." (Scratch one). The Ombudsman, Public Protector, shall be selected for terms of four years, but may not serve more than four terms.

Section 3. The Ombudsman, Public Protector, shall have the qualifications of circuit judges as specified in Article V, Section 25 of the Constitution of Missouri. The Ombudsman, Public Protector, shall not continue to hold office after attaining sixty-five years of age. He shall receive as salary a sum equal to a judge of

the circuit court in which his geographical jurisdiction is situated. His salary shall not be diminished during his term of office. He shall not receive any other or additional compensation for any public service or practice of law. He shall not be a candidate for any other public office. He may receive reasonable traveling and other expenses incurred in the performance of his duties under this Act.

Section 4. The legislature by a two-thirds vote in each house may remove or suspend The Ombudsman, Public Protector, from office, but only for neglect of duty, misconduct or disability. In the event of disability, he shall receive the same disability compensation as a circuit court judge.

Section 5. It shall be the duty of The Ombudsman, Public Protector, and he shall have power, jurisdiction and authority

(1) to investigate, at his discretion any administrative action or omission of an agency affecting any person upon the complaint filed with The Ombudsman, Public Protector, of the person so affected.

(2) to initiate, at his discretion, an investigation of any administrative action or omission or operations of any agency.

(3) to report any breach of duty or misconduct of any officer or employee discovered in the course of an investigation to such agency, and to make any recommendations in regard to any administrative action or operation of any agency that The Ombudsman, Public Protector, deems advisable.

(4) to report any breach of duty or misconduct of any officer or employee discovered in the course of an investigation to the governing body of the political subdivision involved. Whenever The Ombudsman, Public Protector, determines that the agency has failed to take adequate action within a reasonable time after the filing of a report with the agency, as provided in Paragraph 3 of this section, and to issue any report or recommendation to the governing body of the political subdivision involved concerning any administrative action, omission or operations of any agency, or the laws relating to any agency, that The Ombudsman, Public Protector, deems advisable.

(5) to make public all reports and recommendations issued under the provisions of this section, but only after allowing the officer, employee or agency adversely affected by the public announcement to be heard, and attaching to such report or recommendation made public a complete and accurate copy of any comments made by or on behalf of such officer, employee or agency.

(6) to apply to any circuit court for a declaratory judgment whenever a question arises as to the authority of The Ombudsman, Public Protector, to conduct an investigation or issue any report or recommendation under the provisions of this Act.

(7) to adopt, promulgate, amend and rescind any necessary rules and regulations not inconsistent with the provisions of this Act and the Laws of Missouri.

Section 6. The Ombudsman, Public Protector, may, from time to time, delegate to any person appointed by him any of his powers under this Act, except the power of delegation and the power to make reports. Any delegation under this section may be made to a specified person or to the holder of a specified office or to the holders of offices of a specified class. Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by The Ombudsman, Public Protector. Any such delegation may be made subject to such restrictions and conditions as The Ombudsman, Public Protector, deems advisable, and may be either a general or a specific delegation in relation to any particular case or class of cases. Until any such delegation is revoked, it shall continue in force according to its tenor until revoked by The Ombudsman, Public Protector, making the delegation or his successor. Any person purporting to exercise any power of The Ombudsman, Public Protector, by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

Section 7. Every complaint to The Ombudsman, Public Protector, shall be made in writing and should contain information sufficient to inform The Ombudsman, Public Protector, of the nature of the administrative action or omission that forms the basis of the complaint. The Ombudsman, Public Protector, may require such complaints to be made under oath. No fee shall be levied for the submission or investigation of any complaint.

Section 8. The Ombudsman, Public Protector, shall appoint a first assistant and such other officers and employees as may be necessary. In the event The Ombudsman, Public Protector, dies, resigns, becomes ineligible to serve or is suspended or removed from office, the first assistant shall become the Acting

Ombudsman, Public Protector, until a new Ombudsman, Public Protector, is appointed, as provided in Article V, Section 29(a) and 29(d) of the Constitution of Missouri.

Section 9. Any letter addressed to The Ombudsman, Public Protector, and written by any person in custody on a charge of, or after conviction of, any state offense, or municipal ordinance violation where the venue of such offense or violation is within the geographic jurisdiction of The Ombudsman, Public Protector, or by any state, county or municipal institution, shall be immediately forwarded, unopened, to The Ombudsman, Public Protector, by the institution where the writer of the letter is detained or of which he is an inmate.

Section 10. When initiating any investigation of the complaint filed under this Act, The Ombudsman, Public Protector, shall inform the chief officer of any agency affected of his intention to make the investigation. When, during or after any investigation, The Ombudsman, Public Protector, is of the opinion that there is any evidence of any breach of duty or misconduct on the part of any officer or employee of any agency, he shall refer the matter to the appropriate authority. If The Ombudsman, Public Protector, decides not to investigate the complaint, or to dismiss the complaint after such investigation has been initiated he shall so notify the person filing the complaint and state the reasons therefor. When the chief officer of any agency concerned with an investigation so requests, or in any case where an investigation relates to any recommendation made to the chief officer of an agency, The Ombudsman, Public Protector, shall consult with that officer after making the investigation and before forming a final opinion of any of the matters referred to in the report. The Ombudsman, Public Protector, shall attach to every report sent or made under the provisions of this Act a copy of any comments made by or on behalf of the scheduled body affected. The Ombudsman, Public Protector, may hear or obtain information from such persons, and may make such inquiries as he deems advisable. Every investigation by The Ombudsman, Public Protector, under the provisions of this Act may be conducted in private. It shall not be necessary for The Ombudsman, Public Protector, to hold any hearing, and no person shall be entitled as of right to be heard by him, except that if, during the course of an investigation, it appears to The Ombudsman, Public Protector, that there may be sufficient grounds for his making any report or recommendation that may adversely affect any agency, officer or employee, he shall give to the chief officer of such agency, or such officer or employee, an opportunity to be heard.

Section 11. The Ombudsman, Public Protector, may issue subpoenas to require any person to furnish any information and to produce any documents, papers or other evidence which in his opinion relate to any matter under investigation and which may be in the possession or under the control of that person, and may administer oaths and affirmations. This section shall apply whether or not the person is an officer or employee of any agency and whether or not such documents, papers, or other evidence are in the custody or under the control of such agencies.

Section 12. The Ombudsman, Public Protector, may enter without notice to inspect the premises of an agency.

Section 13. If any person who has been properly served, refuses or neglects to appear and testify or to produce the documents, papers or other evidence requested, The Ombudsman, Public Protector, may petition the circuit court in the county in which the hearing or investigation is being conducted for an order requiring the person to obey the subpoena. The court may compel obedience to its order by attachment as for contempt.

Section 14. Except in the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that, or any other person, in the course of any inquiry by or any proceedings before The Ombudsman, Public Protector, shall be admissible in evidence against any person in any court or at any inquiry or in any other proceedings, and no evidence in respect to proceedings before The Ombudsman, Public Protector, shall be given against any person. No person shall be liable to prosecution for an offense against any enactment, other than this Act, by reason of his compliance with any requirement of The Ombudsman, Public Protector, under this section. Any information supplied or any document, paper, or other evidence produced by any person in the course of any inquiry by, or proceedings before, The Ombudsman, Public Protector, under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in court.

Section 15. Where the attorney general of this state certifies that the giving of any information, or the answering of any question, or the production of any document or paper or thing, might prejudice the security or defense of the state, the various states or the United States, The Ombudsman, Public Protector,

shall not require the information or answer to be given, or as the case may be, the document or paper or other evidence to be produced.

Section 16. After making the reports and recommendations to the agency as provided in this Act, The Ombudsman, Public Protector, shall allow the agency a reasonable period of time to take the necessary or appropriate action indicated in such reports and recommendations, and shall, if no appropriate action is taken, report to the governing body of the political subdivision involved. All such reports and recommendations shall be made public by The Ombudsman, Public Protector, simultaneously with their transmission to the governing body of the political subdivision involved. In addition to any reports or recommendations The Ombudsman, Public Protector, shall make from time to time as provided in this section, The Ombudsman, Public Protector, shall make an annual report to the governing body of the political subdivision involved regarding the work of his office and the disposition of all complaints for the previous year.

Section 17. No proceeding or report of The Ombudsman, Public Protector, shall be reviewed or quashed in any court unless it exceeds his jurisdiction or contravenes this Act. No proceedings, civil or criminal, shall lie against The Ombudsman, Public Protector, or against any person holding any office or appointment under him, for anything such person may do, report or say in the course of the exercise or intended exercise of their function under this Act, unless it is shown that they acted in bad faith. The Ombudsman, Public Protector, and any such person, as aforesaid, shall not be called to give evidence in any court, or in any proceedings of a judicial investigation of his functions.

Section 18. Any person who, without lawful justification or excuse, willfully obstructs, hinders, or resists The Ombudsman, Public Protector, in the exercise of his powers under this Act, refuses or willfully fails to comply with any lawful requirement of The Ombudsman, Public Protector, or any other person under this Act or willfully makes any false statement to or misleads or attempts to mislead The Ombudsman, Public Protector, in the exercise of his powers under this Act, shall be fined not more than One Thousand (\$1,000.00) Dollars.

Section 19. The provisions of this Act are in addition to the provisions of any other enactment under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Act shall limit or affect any such remedy, right of appeal or procedure. The Powers conferred on The Ombudsman, Public Protector, by this Act may be exercised notwithstanding any provision in any enactment to the effect that any administrative action or omission shall be final, or that no appeal shall lie in respect thereof.

Section 20. If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of this Act or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

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(Recently American attention has been drawn to a 157-year-old Swedish institution designed to protect citizens against abuses of ever-expanding bureaucracy in government affairs. In the following article the author says the time is ripe for Missouri to accept it)

AN OMBUDSMAN FOR MISSOURI?

(By Sidney L. Willens¹)

In Missouri, or for that matter, anywhere in the United States, if a client feels that a policeman, building commissioner, tax board, license bureau or any public agency has treated him rudely, unfairly or illegally, he has a choice: complain to

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He received an LL.B. degree from the University of Missouri at Kansas City in 1950. From 1950 to 1953, he was chief attorney-investigator for the Department of Liquor Control for the City of Kansas City, Missouri, following revelations of the Kefauver Crime Committee hearings.

During World War II he was editor of the Daily Pacifican, army newspaper of the Western Pacific. He is contributor of nationally recognized articles to the editorial page of the Kansas City Star.

Mr. Willens is a member of the Missouri Bar and the Kansas City Bar Association. On May 13, 1966, he received the Patrick Murphy Malin award, presented by the Greater Kansas City Civil Liberties Union for his outstanding contribution to the cause of civil liberties.

a superior, write a letter to an editor, scribble a message to a legislator or—go to a lawyer.

If he chooses a lawyer, you will advise him the law doesn't prescribe remedies for rudeness or unfairness in day-to-day dealings with public officials—only for illegality. And to prove illegality, you say, you must seek a hearing before the official or his superiors and, if necessary, appeal to the courts—a costly, tedious and lengthy process.

If your client favors an appeal, you hit him with a fundamental rule of administrative law—that courts seldom overturn an administrative decision. And if they do, you add, it must be clearly wrong, or in legal terms, "unsupported by the evidence."

Furthermore, you advise him that he's stuck with the evidence heard by the administrative official who is usually the prosecutor, judge and jury rolled into one.

"But I want a regular trial in a courtroom," your client insists.

"Sorry, you've had your 'day in court' when you testified at the original hearing," you reply. "You're lucky the statute gave you the right to appeal. Sometimes you're stopped dead with the agency."

"Even if you appeal it's the cold print that gets the 'hearing,'" you add. "Your appeal consists of forwarding the stenographer's transcript of the administrative proceedings to a court which determines if the evidence is sufficient."

Is a complaint to a lawmaker your client's remedy for bureaucratic rudeness or unfairness? Probably not. A congressman, state legislator or city councilman, burdened by ever-increasing duties involved in lawmaking, probably will answer his plight with a letter or call of sympathy.

And you have already said you're sorry—that you're handcuffed by the law.

"But the inspector is enforcing a regulation against me and not the others and it's killing me," your client insists bewilderedly.

"It's unfortunate," you repeat ruefully, "but a lawyer can only complain for you. Administrative agencies are a sort of law to themselves."

Your answer is virtually the same whether a policeman used brutal tactics or held your client too long in jail, or red tape continually delayed his welfare check or license, or a government regulation seemed arbitrary.

Now if you were a Swedish citizen you would simply head for the ombudsman (pronounced AAM-boodsmahn). He's been around Sweden since 1809 when Parliament appointed an agent ("umboo" in Swedish) to keep an eye on the king and his henchmen and the courts of law.

His job: To ferret out injustice and pettifoggery in government affairs so a citizen's rights won't be accidentally crushed in the vast juggernaut of bureaucratic machinery.

Today the Swedish ombudsman is Alfred Bexelius, the country's 31st. He is called by the initials, J.O., an abbreviation for justitieombudsman, meaning the power to act in justice for another.

Presently, the J.O. heads a staff of nine lawyers and three secretaries. It's small on purpose—to avoid criticism that it, too, is bureaucratic. It serves Sweden's 7½ million persons.

Bexelius was hired, as were his predecessors, by a special act of Parliament. But neither it nor anybody else tells him what to do. The public is his master. Nobody fires a J.O. Parliament can but never has.

Bexelius is a former judge (most J. O.'s are), a top-notch administrator with diplomatic *savoir faire*, and an older man uninspired by new job opportunities.

In his 10 years in office Bexelius has established a reputation as a kind of Missouri nonpartisan court plan all wrapped into one. Uninfluenced by political considerations he's a one-man complaint bureau accepting and deciding controversies on the merits.

How does the ombudsman idea work? First, he receives a complaint. It must be in writing and signed. The J. O. is the sole judge of whether he wants to act upon it. On 90% of the complaints he doesn't.

If he believes a complaint is justified Bexelius requests the official to explain his action. In 85% of the cases the official's reply closes the file after the J. O. writes the complainant supplying him a reason why—and agreeing with him.

The complainant is satisfied. The official is too. He's been cleared. But in the future the official had better give reasons for his decisions.

In the remaining 15% of the cases pursued, the J. O. goes to work. He may visit the official, subpoena information or attend the agency's hearings and deliberations.

But the J. O. can't interfere with decision-making. Although he has broad discretion to investigate agencies under his jurisdiction he can only suggest and persuade. He's not a court of appeals.

What's his weapon? It's the prestige of his employer. Parliament, the dignity and impeccable honesty which Swedish citizens attach to the office—and publicity. A recalcitrant administrator doesn't want his name in the newspaper.

Frequently newspapers sniff out injustices for the public watchdog. If no action is forthcoming soon the newspapers ask in headlines. "Is the J. O. asleep?"

The J. O.'s biggest weapon is a book—his annual report to Parliament. Each year he lists all important cases and their disposition. He may propose new legislation or changes in administrative regulations to cure injustices he's come across during the year. The book is distributed to all courts and government agencies.

Twenty per cent of the complaints originate from inmates of mental and penal institutions alleging unlawful commitment or improper treatment. Usually, the J. O. secures the patient's history, reviews it, and advises him the law has been complied with. If it's improper treatment, the J. O. may visit the institution to size up the situation. His visit isn't taken lightly by administrators. The J. O. himself initiates some complaints.

The Swedish J. O. exercises jurisdiction over the courts (in no other country does he have that right) but not over the armed services. Parliament created an M. O. (military ombudsman) in 1915.

In 1919 Finland adopted the ombudsman idea. Surprisingly, it stopped there until after World War II. During Nazi occupation of Norway, Norwegian army officers sheltered in Sweden were favorably impressed by the Swedish M. O. They carried it back to Norway. In 1952 the Norwegian Parliament accepted it. In 1962 it added an ombudsman for civil affairs. Denmark included a provision for an ombudsman in its new constitution adopted in 1953. In 1956, West Germany appointed a military ombudsman.

Perhaps the greatest impetus to the ombudsman idea has come from Bexelius and his Danish counterpart, Dr. Stephan Hurwitz, a former professor of criminal law at the University of Copenhagen.

The two men are writing and lecturing widely to spread the ombudsman gospel around the world—for all levels of government—federal, state and municipal. Through their efforts a commonwealth country, New Zealand, adopted the institution in 1962.

In the United States Rep. Henry S. Reuss of Wisconsin last year introduced the concept in the House of Representatives in a bill calling for an "administrative counsel" which he describes in the *Congressional Record* as an "American ombudsman." Last March Senator Edward Long, chairman of the Senate subcommittee on Administrative Practice and Procedures, held hearings on the ombudsman concept beginning with the testimony of Bexelius.

Ombudsman proposals are currently being debated in California, Connecticut, Illinois, New York and Utah and by the New York City Council. The literature on the ombudsman is extensive. A bibliography of English-language materials alone fills seven typewritten pages.

Is Missouri ripe for an ombudsman perhaps operating offices in St. Louis and Kansas City? Norman Anderson, attorney general, says his first assistant, J. Gordon Siddens, receives a minimum of 25 complaints a week from puzzled and irate citizens unable to cope with the maze of administrative agencies in state government.

"We aren't equipped or staffed to investigate all the complaints pouring into our office," Anderson says. "There is no question an ombudsman would fill a need which is becoming increasingly obvious."

The Attorney General is merely confirming what every Missouri lawyer knows—that Missouri, like the federal government, has grown a "fourth branch"—administrative agencies which are exclusive of the other three with its "checks and balances" called for by Montesquieu and expressly written into our state Constitution.

