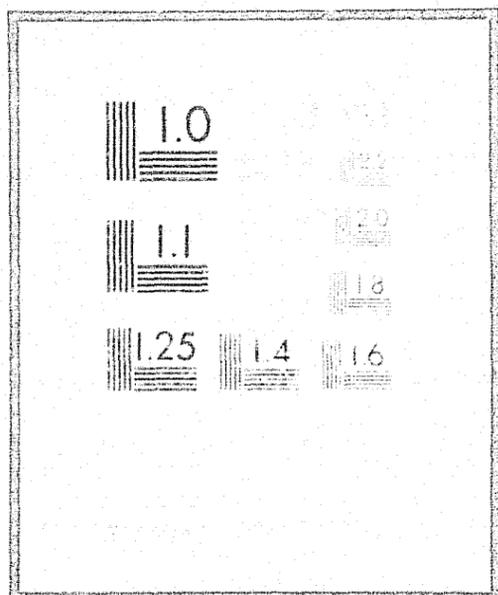


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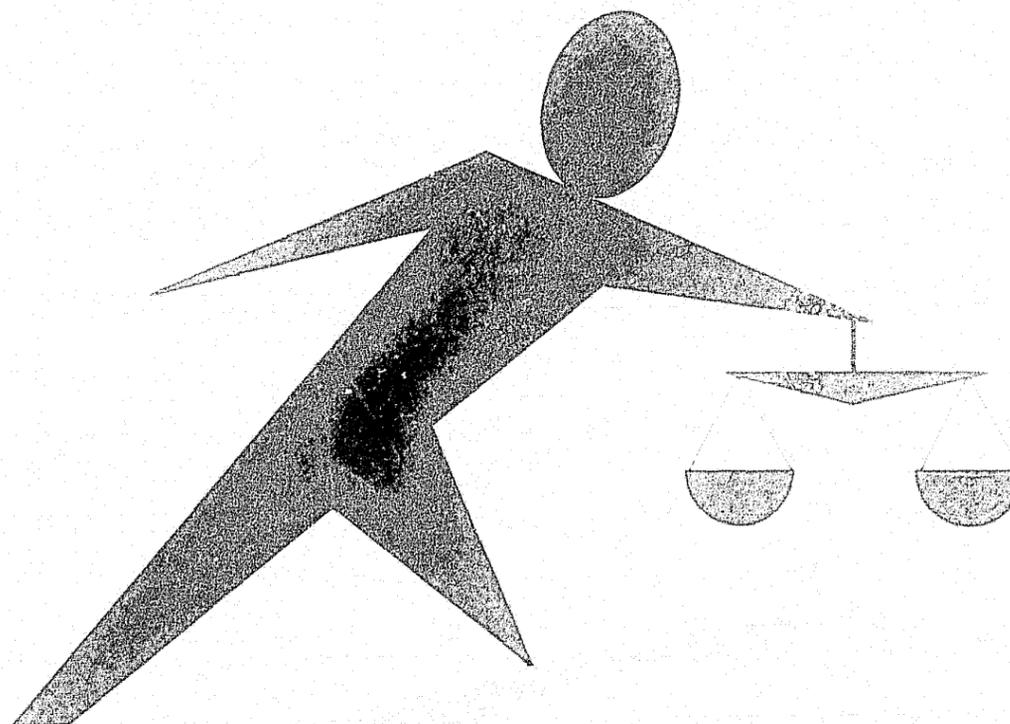
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5/19/77

J a r i l m e d

OMBUDSMAN FOR CORRECTIONS

1972-73 ANNUAL REPORT



013621

STATE OF
MINNESOTA

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OMBUDSMAN — ANNUAL REPORT

BACKGROUND

The Minnesota Ombudsman for Corrections began as an experimental program, applying the technique of the Scandinavian Ombudsman to receive and analyze inmate grievances and forward corrective suggestions to the proper administrative agency, the governor and the legislature.

Mr. Theartrice (T) Williams was appointed by the Honorable Wendell R. Anderson, Governor, State of Minnesota on April 21, 1972, as the first Ombudsman, assuming office on July 10, 1972. This project was funded through June 30, 1973, with two Law Enforcement Assistance Administration grants through the Governor's Crime Commission. The grants totaled \$63,650 in federal funds plus \$21,117 state matching funds.

In May, 1973, the state legislature passed a bill creating the Office of Ombudsman for Corrections as an independent agency of government. The proposal, under which the Ombudsman has operated for one year, was incorporated into the bill. See Appendix A.

The Ombudsman proposal was jointly developed by former Minnesota Commissioner of Corrections, David Fogel and the Office of Delinquency Control at the University of Minnesota and included an Ombudsman Commission that served as a selection advisory committee to the governor and an advisory committee to the Ombudsman. See Appendix B.

The Minnesota Ombudsman's basic goal was to assure that justice and fair play would prevail where people under the jurisdiction of the Department of Corrections was involved with special emphasis on the population of the various institutions.

The Office of Ombudsman for Corrections began with a staff of two people (the Ombudsman and a secretary) which had grown to six by year-end with provisions for a seventh person for the second year.

The Ombudsman spent a considerable amount of his time during the first few weeks developing basic operating procedures and communicating the fact of his existence. This was done by preparing brochures about the program and distributing them to the staff and clients within the correctional system. He frequently visited the various institutions and met with staff and residents to discuss the program, its intent and purpose. It was necessary to continually stress the role of the Ombudsman and to intercept any problems or rumors that arise regarding the actions that are taken by him. This has been a continuous process throughout the first year of the program.

Special attention had to be paid to assembling a staff because the credibility of the program would de-

pend upon the ability of the staff to communicate with and be trusted by both institutional staff and inmates. Special attention was paid to assembling a staff that would reflect the interracial and sexual makeup of the clientele of the system. The staff is mixed in terms of race and sex.

Provisions were made during the first year to utilize graduate students as interns in the program. This plan will continue during the second year.

OBJECTIVES OF PROGRAM

The Ombudsman idea is one of the outstanding developments of public administration in this country. The first Ombudsman was established in Sweden in 1809. Its success was recognized by other countries and was adopted in national form by Finland in 1919, by New Zealand in 1961, by Norway in 1963, by Tanzania in 1965, by Guiana in 1966, and by the United Kingdom in 1967.

In recent years the Ombudsman concept has gained widespread attention as a device for controlling the rapidly expanding bureaucracy of the United States.

Hawaii established a public Ombudsman in 1967. Iowa passed a Citizens Aide Act in 1971 that fulfills the Ombudsman role. Many states are presently considering the adoption of this idea.

It is often believed that the Ombudsman is some type of "super-administrator" who has the power to overrule the decisions of the various administrators and, therefore, dictates administrative policy. This is clearly not the case. The Ombudsman's only powers are to investigate and make recommendations to the department officials, civil servants, and the legislature.

The Ombudsman has the great virtue of being visible. He has the authority to investigate complaints and communicate with inmates, staff and governmental agencies, but he does not have the power to reverse, amend or otherwise alter any administrative decision.

The Minnesota Ombudsman program is still in its infancy. It is too early to tell the full extent of its impact upon the system. The program began with some significant goals and objectives:

1. Improving the relationship between staff and inmate by providing the inmates with information on the actions, motives, and design of administrative action.
2. Alleviation of tension within the prison by means of more open communications, i.e., a "release valve".
3. The improvement and clarification of administrative procedures and regulations.

4. Reorganization and revitalization of internal prison review procedures.
5. Increased access to judicial review by cooperation and coordination with the various legal aid services.
6. Encouragement of more active involvement of private and governmental agencies and interest groups in alleviating the grievances.
7. Coordination of overlapping governmental agencies by means of increased flow of information from the agencies to inmates and staff regarding functions, programs and procedures.
8. Strengthening and correcting legislation by providing the Legislature with information and recommendations regarding correctional institutions.

Since there has not been an evaluation of the program it may be difficult to deal with it in terms of success or failure. However, there have been some specific accomplishments that relate to the stated goals and objectives.

We will briefly enumerate some of them which will be further elaborated upon elsewhere in this report.

1. Creation of Inmate/Staff Advisory Council with a grievance mechanism. We do not claim credit, but did participate significantly in the process.
2. Passage of legislation creating the Office of Ombudsman for Corrections as an independent agency of government.
3. Appointment of a chairman of the inmate disciplinary court who is not an employee of the prison.
4. Provide financial accounting to inmates of Inmates Welfare Fund.
5. Negotiated the release of a hostage being held by three inmates.
6. Prison assumed liability for destruction or loss of prisoners' property during November, 1972 shakedown. Payment made on the basis of claims processed through the Ombudsman's Office with the assistance of L.A.M.P. (Legal Assistance to Minnesota Prisoners).
7. Ombudsman monitoring disciplinary court, Adult Corrections Commission (parole board) and Youth Conservation Commission hearings.
8. Review of policy governing inmate inaccessibility of base files and the contents of those files. A hoped for policy that will give inmates access to their files and expunge from those files irrelevant material.

9. Adult Corrections Commission (ACC) agreeing to give its reasons for denial in writing.
10. Clarification of disciplinary policies and procedures and the appeal process at Minnesota State Prison (MSP) with a closer adherence to due process.
11. Creation of a fulltime parole board. We claim no direct responsibility for this action, however we will monitor the proceedings of the board rather closely during its early existence. In addition, we have recommended that the new board develop some meaningful criteria that will guide it in making parole decisions.
12. Presented critical analysis of prisoners' rights, grievances and disciplinary procedures and related policies as practiced at MSP to Commissioner of Corrections and Warden. A timetable was established by the Commissioner, Deputy Commissioner and Warden to implement certain of their own recommendations along with those of the Ombudsman. That timetable had not expired upon the writing of this report.

The above by no means exhaust the list of examples that demonstrate working toward the accomplishment of certain goals or objectives. All of the accomplishments previously mentioned are meaningless unless they can be sustained. The Ombudsman, along with others, must work to not only sustain but to expand said accomplishments.

The Ombudsman for the most part operates on complaints in writing or on his own initiative. He has the authority to investigate any action of the Department of Corrections affecting an individual or individuals under the supervision of the Department. He has the authority to select his staff, organize his office and prescribe the methods by which complaints are made, reviewed and acted upon. He cannot charge any fee for his services. The Ombudsman determines the scope and manner of investigation. He has access to all information he deems necessary to investigating complaints received, including documents and discussions with inmate and staff participants and witnesses. The Ombudsman may bring an action in an appropriate court of the state to enforce the powers of his office.

HANDLING COMPLAINTS

How to Complain to Ombudsman

A complaint may be made to the Ombudsman in writing, in person, by telephone, by a third party in writing, person or telephone. The Ombudsman or a member of his staff visits with the person wherever he or she may be to investigate the complaint.

At the various institutions the Ombudsman collects his complaints either directly from the individual, from

a special complaint box or through the regular system at the institution.

People complaining who are not in an institution may contact the office by telephone, in person or by writing. The telephone is the most frequent source of contact for the non-institutionalized client. The office is flexible concerning how complaints may be made. No complaints are dismissed without some form of contact with the complainant.

Complainants are encouraged to utilize existing resources at the various institutions or within the Department of Corrections to resolve their grievance. The problem with this, as a hard and fast rule, is that the resources for resolving grievances frequently are not well defined. As the resources are better defined and the complainants gain confidence in them, the Ombudsman can become more insistent upon their use.

In conducting investigations of complaints, the Ombudsman addresses himself particularly to actions which might be

- contrary to law or regulation;
- unreasonable, unfair, oppressive, or inconsistent with the general course of the administrative agency's judgements;
- mistaken in law or arbitrary in ascertainment of facts;
- improper in motivation or based on irrelevant considerations;
- unclear or inadequately explained when reasons should have been revealed;
- inefficiently performed.

The system for processing complaints and recording data for future use is currently under review. Outside resources are participating in this review process. Out of this review should come a reorganization of the record keeping and data collection system that will provide a more comprehensive view of the Ombudsman program. It should allow for easy review and evaluation of the entire program.

Analysis of Complaints

The Ombudsman program serves all of the institutions under the supervision of the Minnesota Department of Corrections. In addition, persons on parole or placed in a group home directly supervised or operated by the Department of Corrections are served by the Ombudsman. The Ombudsman's services are available to staff. However, staff has made sparing use of the service and the Ombudsman has not made a concerted effort to promote use by staff. It is felt that staff has available to it more options for resolving its problems. In the State of Minnesota, two such examples are Civil

Service and the labor union where there is membership. Toward the end of the first year of the program the Ombudsman did meet with Department of Corrections and union officials to discuss the Ombudsman involvement in staff problems. We do anticipate an increased involvement in that area.

During the first year the Ombudsman received eight staff complaints. Two of the complaints involved staff/inmate relations. One such complaint came from an officer at MSP. The Ombudsman undertook the investigation because he felt it could improve lines of communication between inmates and staff and between staff. There was never any intention to recommend that a specific action be taken against the inmate because the institution has that authority against any inmate who violates the institution's rules. The end result of the investigation was that the inmate went through the disciplinary court on an abusive language, etc., charge. He agreed to apologize to the officer who accepted his apology (which was one of the Ombudsman's recommendations) and the matter was dropped.

The Ombudsman acts primarily on individual complaints from the eight different institutions of the Department of Corrections. These eight institutions, Minnesota State Prison (adult male), State Reformatory for Men at St. Cloud (young men), Minnesota Correctional Institution for Women (adult women), Willow River Camp (adult male and young adults), Minnesota Reception and Diagnostic Center (juvenile), Minnesota Home School at Sauk Centre (juvenile), State Training School for Boys and Thistledeew Camp (juveniles), are responsible for approximately 96% of the complaints to the Ombudsman. MSP, by far, is the most active of those institutions producing 63.5% of all complaints. MSP has an average daily population of under 900 which is approximately 20% of total population under the supervision of the Department of Corrections. It does represent, however, approximately 56% of the adult institutionalized population. It was anticipated that the adults would make greater use of the service if no more than they tend to be more articulate and knowledgeable of a variety of resources for dealing with their problems. We anticipated that more outreach would be required in relation to the juveniles. We have learned also that the same is necessary in relation to the women. MSP has lived up to our expectations in terms of using the service and are not necessarily overly represented in our complaints.

A few changes were made in February, 1973, in the kind of statistical data collected in the program and some of the analysis in this report will only cover the period from February, 1973, through June, 1973.

When a complaint is processed through the office and contact is made with the complainant, some decision is made about how to classify that complaint. That decision does not affect the service rendered but it does determine how it will be recorded in the office files.

During the first three months of the program, eight complaint categories were created based upon the early but limited experience of the Ombudsman. Those categories were placement, racial discrimination, policy, staff, program, legal, medical and parole. After six months, two new categories were added—property and threats—with a third catch-all category called other. The decision was made to stick with those categories through the first year and literally fit all complaints into those groupings. A study previously referred to in this report to examine office procedures and record keeping is underway that will change the categorization of complaints. We feel it will be more meaningful and based upon one year's experience.

Definition of Complaints

Placement — During the first six months of the program, this category was used almost exclusively in relation to the juveniles. A youth is committed to the Youth Conservation Commission (YCC) of the Department of Corrections. The YCC would then determine where or whether the youth would serve time. Frequently there was dissatisfaction with where the youth was ordered to serve his time. During the last six months, placement became a real problem at MSP as well. This resulted from the creation of a maximum custody living unit within the prison with the assignment of approximately 40 inmates to that unit. Almost all of them complained to the Ombudsman.

Racial Discrimination — Self-explanatory, perhaps. However, there is a close tie with the staff category.

Staff — Complaints about the behavior of certain staff members in relation to the inmates. Could be a black or an Indian complaining that the behavior is racially motivated.

Policy — A broad category that was meant to handle complaints about the various rules and regulations of the institution, such as visiting, disciplinary hearings, dress, etc.

Program — Complaints relating to the inability to get involved in a meaningful training or rehabilitation program regardless of availability at institution, e.g., drug treatment, vocational training, etc.

Legal — Complaints that require legal assistance or problems with getting proper response from public defender or other legal counsel.

Medical — Complaints about the ability to get treatment from staff physician or other medical resources.

Property — Complaints dealing with the loss, destruction or theft of personal property.

Parole — Complaints concerning the refusal of parole.

Threats — Complaints concerning threats of bodily harm to an inmate from other inmates.

During the first year of the program, 927 complaints were received (see Table 1) with the peak month being May. The May complaints which total 142 tends to distort the picture because 48 of total of 99 property complaints from MSP were processed during that month. The actual intake on the complaints occurred in March, 1973 but they were credited to May, 1973 because of a failure to incorporate them in March, 1973 report. In addition, it was in May, 1973 when the complaints were resolved.

Of that 929 complaints, 590 were from MSP, with SRM having the second highest of 123. For a detailed breakdown of complaints by institution and category see Table 2.

During the last six months of the program, we saw the complaints more than double from a total of 382 to a total of 927. This increase is due in part to the growth in staff from two people during the first six months to five by the end of the third month to seven by the end of the sixth month. Five of those seven people (including the Ombudsman) were available to investigate complaints. One of the seven people was on loan to the Ombudsman Office from a major corporation.

Another explanation for the significant increase may relate to the perceived credibility of the office. A significant number of complaints had been resolved mostly to the satisfaction of the complainant. See Table 5. Others were then encouraged to make use of the Ombudsman to help resolve grievances.

Several incidents at the prison throughout the first year assisted the Ombudsman in gaining credibility. The most notable of which during the first six months was the successful negotiation of the release of an officer being held hostage by three inmates at MSP. The Ombudsman was invited to intervene by the inmates, Warden and Commissioner of Corrections. The officer was released unharmed some four hours later. The entire incident was resolved without injury to anyone. Both prison officials and inmates recognized the value of the Ombudsman in that situation.

A second incident began during the first six months (November, 1972) but was not concluded until May, 1973. This involved the loss and destruction of inmate property by prison officials at MSP during a general lockup and search for weapons and contraband. The Ombudsman, with the assistance of L.A.M.P. (Legal Assistance to Minnesota Prisoners), was able to get the Department of Corrections and the prison to accept and pay claims from inmates for missing personal property. Many of the inmates felt that it would never happen and so did some prison officials.

A third incident occurred on March 1, 1973 at MSP. The prison officials used tear gas and shotguns

to put down a disturbance. The tear gas and several rounds of shotgun ammunition were fired in one of the cell blocks while the men were locked in the cell block but not in their cells. The Deputy Ombudsman was in the cell block attempting to help quiet down the inmates and get them to return to their cells. The gas and the shotguns were fired while he was in the cell block.

That incident led to a serious confrontation between the Warden and the Ombudsman. The Commissioner of Corrections and others were involved in the discussion. The Warden and Commissioner apologized for having used tear gas against the Deputy Ombudsman, but the Warden felt that the use of gas was appropriate otherwise. The Ombudsman's position was and still is that it was inappropriate.

As regrettable as it was, the incident tended to enhance the Ombudsman credibility among the inmates and to a lesser degree the prison officials. In addition, it led to a further clarification of the Ombudsman role in crises situations. It was agreed he had an appropriate role to play. It caused the Commissioner of Corrections to reaffirm his commitment to the program.

That incident also led the Ombudsman to do a critique on grievance and disciplinary procedures and other related policies at MSP. A presentation was made to the Commissioner, Deputy Commissioner and Warden based upon that critique. The grievance procedure which is informal was outlined with the recommendation that it be formalized and used consistently. Special emphasis was placed on the value of the Inmate/Staff Advisory Council. The disciplinary procedures were analyzed indicating the inconsistency and confusion that exist in that area. That presentation also dealt with the need for unlimited mobility on the part of the Ombudsman and his staff while conducting business at MSP.

Since that presentation, which occurred on April 5, 1973, some significant changes have occurred at MSP. The Ombudsman relationship with the Warden and other officials at MSP is on the upswing. An employee of the Department of Corrections, but not of the prison, was appointed chairman of the disciplinary court. A timetable for the implementation of a series of recommendations, some of which came from the Ombudsman, was established. An agreement for the Warden, Deputy Warden and Ombudsman to periodically meet to review progress on recommendations resulted from that presentation.

Whereas MSP has presented the most dramatic complaints and results, the Ombudsman activities have not been restricted to MSP. The Ombudsman has handled 123 complaints at State Reformatory for Men (SRM) and has been involved in helping to resolve several incidents of racial conflict among the inmates. See Table 1 for a more detailed breakdown.

The eight complaints received from staff related primarily to personnel or work condition matters. A group of caseworkers at MSP were concerned about the work involved in completing an inmate evaluation form when most of the areas of evaluation fell outside of the purview of the caseworker. The Ombudsman asked that the use of the form be discontinued because it was a poor and irrelevant evaluative tool. Instead the Ombudsman offered to secure the necessary resources to develop a more meaningful evaluative instrument. That instrument is nearing a completion and both staff and inmates have had input.

The greater majority of the juvenile complaints (87) came from the Minnesota Reception and Diagnostic Center (MRDC). The Ombudsman has higher visibility at MRDC because of frequency of visits there, relationship with staff and proximity to Ombudsman Office. Now that the Ombudsman staff is complete, special effort will be made to reach out to those institutions that are not within the Metropolitan area. Many of the complaints coming from MRDC were staff initiated. The staff was concerned about the treatment youth would receive in an appearance before YCC (Youth Conservation Commission). The high percentage of placement complaints (see Table 1) reflect that concern.

The State Training School for Boys (STSB) has generated an insignificant number of complaints. That may be due in part to low visibility from the Ombudsman Office at STSB. Visits have been made during the last three months only on complaint. The other side of that picture is that the kind of treatment program at STSB tends to mitigate against the youth filing complaints. STSB makes use of the "peer culture" group process. In that kind of environment the group becomes the overriding concern. The individual who feels that he may need someone other than the group to resolve his problem may be ostracized. Now that the Ombudsman Office has completed its staff, STSB will become a high priority in communicating the service of the Ombudsman program.

Complaints from Thistledeew Camp (TC) continue to be insignificant. Three factors are at play here. (1) the program is quite small, (2) it is a terminal program (successful completion which is 13 weeks means parole) and (3) TC is almost 300 miles from the Ombudsman Office.

The Willow River Forestry Camp (WRC) is in a situation similar to TC. The program is small and specialized (vocational training) and it is terminal.

The field services complaints represent a significant number of youth who have been placed in group homes by the Department of Corrections.

REFERRAL RESOURCES

The Ombudsman program is not an island unto itself. The success of the program is interdependent upon others and their commitment to fair play.

The one resource outside of the Department of Corrections that is most frequently and consistently used by the Ombudsman is Legal Assistance to Minnesota Prisoners (L.A.M.P.). L.A.M.P. was funded at the same time as the Ombudsman to provide legal aid for non-criminal matters to the inmates at MSP, SRM, Minneapolis Workhouse. L.A.M.P. and Ombudsman have worked cooperatively together making appropriate referrals to each other. L.A.M.P. has provided invaluable legal advice to Ombudsman from time-to-time. Both L.A.M.P. and Ombudsman are seen as an integral part of Inmate/Staff Advisory Council. Both sit ex-officio and have been designated as election supervisors for the inmate members of council. During the first year of the program, The Ombudsman made 68 referrals to L.A.M.P.

Among others who have received referrals from Ombudsman are Public Defender (10), Legal Aid (5), County Attorney (2), State Legislature (2), with eight different agencies receiving one each. A total of 104 referrals were made during the first year of the program (see Table 7).

SUMMARY AND PROJECTIONS

The Ombudsman program will receive a comprehensive evaluation by outside evaluators at the end of its second full year's operation. That evaluation will be presented to the 1975 Session of the State Legislature which may determine the continued existence of the program beyond 1977.

During the first year's operation, the Ombudsman was exceptionally well received by the Department of Corrections, prison and other institution officials, inmates, legislators, other public officials and the public in general. The legislators showed their approval by overwhelmingly passing the Ombudsman Bill. The inmates showed their acceptance by making use of the

office and the corrections officials agreed to work with the Ombudsman to resolve any problems that occurred.

The relationship with corrections officials was tense at times but the lines of communication remained open. This was and is crucial to the entire Ombudsman operation. The Ombudsman made a conscious effort to maintain a low profile in spite of encouragement from different corners, including his own staff, to take a more visible role. The profile must continue to be low without compromising on significant principles of fair play and decency.

The Ombudsman maintains his ability to communicate meaningfully with the various factors in the corrections system. It is counter-productive to be glorified by one faction and damned by the other. It goes without saying that an Ombudsman is only as effective as he is capable of persuading people to voluntarily do what they ought to have been doing in the first place. The Ombudsman's clout, whether it is through the courts, the governor or the commissioner of corrections, is most effective when it is seldom used.

In the future, the Ombudsman will be working closely with the state legislature in the area of corrections. If it seems appropriate the Ombudsman will make recommendations to the legislature for new legislation in the field of corrections. In addition, the Ombudsman will be available to testify before legislative committees upon request.

The Ombudsman sees as a high priority the close monitoring of the new fulltime parole authority. That monitoring will be done with the purpose of making recommendations to the parole authority, commissioner of corrections and state legislature for appropriate changes. In addition the Ombudsman will continue to urge the adoption of meaningful parole criteria that will guide the parole authority in its decision-making.

For the next two years the Office of Ombudsman for Corrections will be operating on \$109,000 appropriation from the state legislature, \$43,000 from Governor's Commission on Crime Prevention and \$135,421 from the Bush Foundation of St. Paul.

Table 1
Ombudsman Complaints: July, 1972-June, 1973

Institutions	Racial Discrimination	Placement	Policy	Staff	Program	Legal	Medical	Property	Parole	Threats	Other	Totals	Average
													daily population F.Y. 73
MSP	8	59	98	24	37	91	69	99	76	6	23	590	795
SRM	8	10	23	8	5	11	11	6	29	9	3	123	516
MCIW	0	1	11	8	5	8	3	0	12	0	0	48	53
MRDC	0	34	12	9	8	5	4	2	8	0	5	87	166
MHS	0	3	4	1	1	0	0	0	2	0	1	12	119
STSB	0	3	5	0	2	1	2	1	0	0	2	16	186
WRC	5	0	2	0	0	0	1	2	0	0	0	10	34
TC	0	1	1	2	0	0	0	0	0	0	0	4	27
FS	0	10	0	7	1	9	0	0	3	2	5	37	3,885
Totals	21	121	156	59	59	125	90	110	130	17	39	927	5,782

*1,897

MSP — Minnesota State Prison; SRM — State Reformatory for Men; MCIW — Minnesota Correctional Institution for Women; MRDC — Minnesota Reception & Diagnostic Center; MHS — Minnesota Home School; STSB — State Training School for Boys; WRC — Willow River Camp; TC — Thistledeew Camp; FS — Field Services (including probation and parole).

*Total institutions.

Table 2

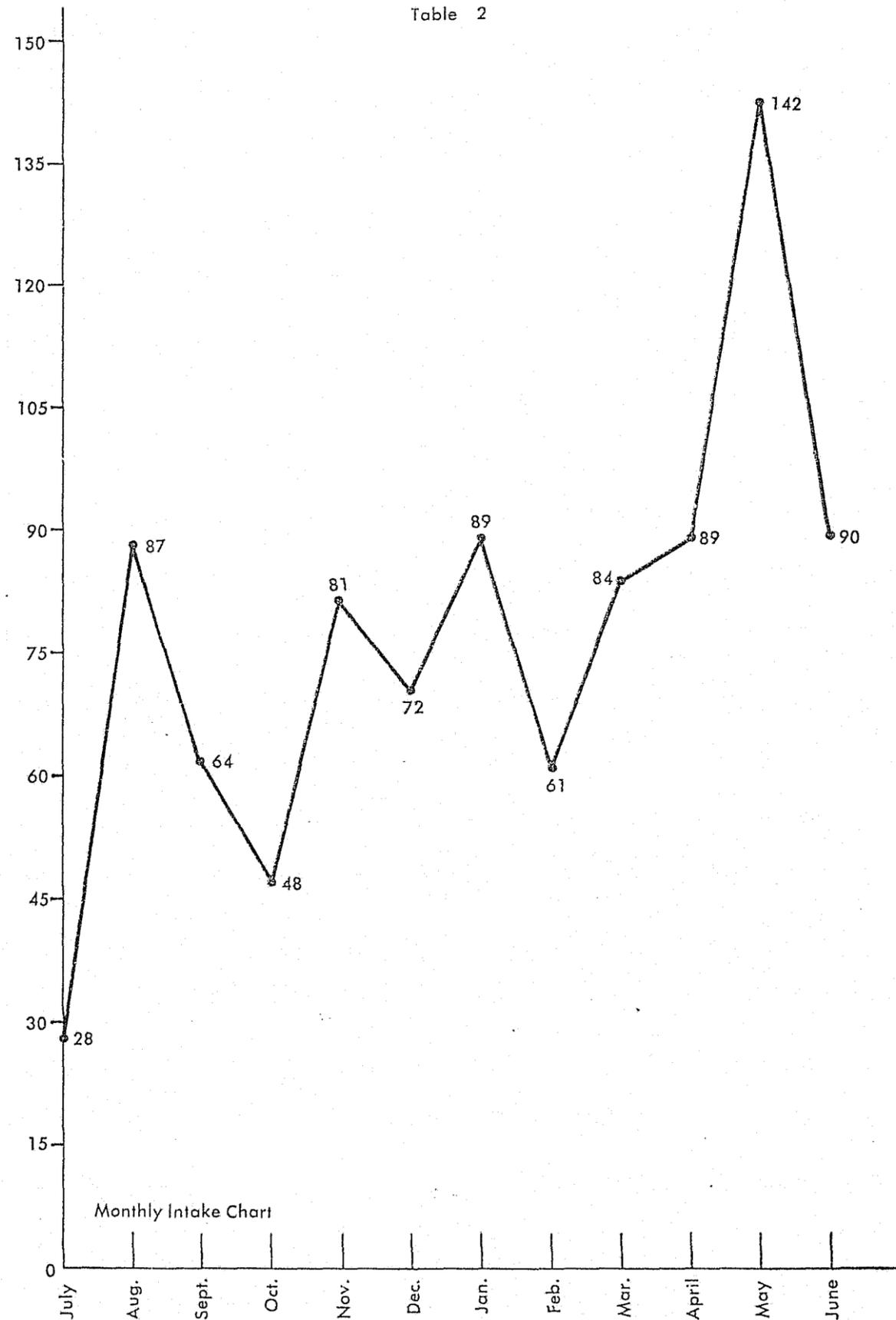


Table 3

Same Day	174
1-6 Days	122
6-10 Days	33
10-15 Days	25
15 and Over Days.....	02
TOTAL.....	356

Time lag between date complaint received and initial contact. Cases closed between February, 1973 and July, 1973.*

*Dates for which information available.

Table 4

*Direct (Pick-up at Institution) First contact....	198
Direct (Written or Telephone).....	166
Indirect (Third Party)	73
TOTAL.....	437

*Source of complaint for closed cases from January, 1973 to July, 1973.

Table 5

	Number	Percentage
Full Satisfaction	241	61.0
Partial	126	31.9
None	28	7.1
TOTAL.....	395	

Extent of satisfaction with resolution of complaint from January, 1973 to July, 1973.

Table 6

Days Open	Number of Cases
0-30*	235
30-60	118
Over 60	3
TOTAL.....	356**

Average number of days cases open before closing.

*Cases may be held open for 30 days when there is no further activity to facilitate monthly reporting.

**Cases on which information available February, 1973 to July, 1973.

SENATE

STATE OF MINNESOTA

SIXTY-EIGHTH LEGISLATURE

Introduced by Conzemius and Humphrey.

Read First Time Feb. 19, 1973, and Referred to
the Committee on Health, Welfare and Corrections.

Committee Recommendation. To Pass as Amended and
Re-referred to the Committee on Finance.

Committee Report Adopted Apr. 4, 1973.

Committee Recommendation. To Pass as Amended.

Committee Report Adopted Apr. 28, 1973.

Read Second Time Apr. 28, 1973.

1 A bill for an act
2 relating to corrections; establishing an
3 office of ombudsman; definitions;
4 granting the ombudsman certain
5 enforcement powers of investigation,
6 action on complaints, publication of
7 opinions and recommendations; amending
8 Minnesota Statutes 1971, Chapter 241, by
9 adding sections.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

11 Section 1. Minnesota Statutes 1971, Chapter 241, is
12 amended by adding a section to read:

13 [241.407] [OFFICE OF OMBUDSMAN; CREATION;
14 QUALIFICATIONS; FUNCTION.] The office of ombudsman for the
15 Minnesota state department of corrections is hereby created.
16 The ombudsman shall serve at the pleasure of the governor in
17 the unclassified service, shall be selected without regard
18 to political affiliation, and shall be a person highly
19 competent and qualified to analyze questions of law,
20 administration, and public policy. No person may serve as
21 ombudsman while holding any other public office. The
22 ombudsman for the department of corrections shall be
23 accountable to the governor and shall have the authority to
24 investigate decisions, acts, and other matters of the
25 department of corrections so as to promote the highest
26 attainable standards of competence, efficiency, and justice
27 in the administration of corrections.

28 Sec. 2. Minnesota Statutes 1971, Chapter 241, is
29 amended by adding a section to read:

30 [241.42] [DEFINITIONS.] Subdivision 1. For the
31 purposes of this act, the following terms shall have the
32 meanings here given them.

1 Subd. 2. "Administrative agency" or "agency" means any
2 division, official, or employee of the Minnesota department
3 of corrections, the youth conservation commission, the adult
4 corrections commission and the board of pardons, but does
5 not include:

- 6 (a) any court or judge;
- 7 (b) any member of the senate or house of
8 representatives of the state of Minnesota;
- 9 (c) the governor or his personal staff;
- 10 (d) any instrumentality of the federal government of
11 the United States;
- 12 (e) any political subdivision of the state of
13 Minnesota;
- 14 (f) any interstate compact.

15 Subd. 3. "Correctional client" means any person under
16 the jurisdiction of the Minnesota department of corrections,
17 and includes all persons in state correctional institutions
18 and all persons on parole or probation under the supervision
19 of the commissioner of corrections, the youth conservation
20 commission or the adult corrections commission.

21 Sec. 3. Minnesota Statutes 1971, Chapter 241, is
22 amended by adding a section to read:

23 [241.43] [ORGANIZATION OF OFFICE OF OMBUDSMAN.]

24 Subdivision 1. The ombudsman may select, appoint, and
25 compensate out of available funds such assistants and
26 employees as he may deem necessary to discharge his
27 responsibilities. All employees, except the secretarial and
1 clerical staff, shall serve at the pleasure of the ombudsman
2 in the unclassified service. The ombudsman and his
3 full-time staff shall be members of the Minnesota state
4 retirement association.

5 Subd. 2. The ombudsman shall designate one of his
6 assistants to be the deputy ombudsman.

7 Subd. 3. The ombudsman may delegate to members of his
8 staff any of his authority or duties except the duty of
9 formally making recommendations to an administrative agency
10 or reports to the office of the governor, or to the
11 legislature.

12 Sec. 4. Minnesota Statutes 1971, Chapter 241, is
13 amended by adding a section to read:

14 [241.44] [POWERS OF OMBUDSMAN; INVESTIGATIONS; ACTION
15 ON COMPLAINTS; RECOMMENDATIONS.] Subdivision 1. [POWERS.]

16 The ombudsman shall have the following powers:

- 17 (a) He may prescribe the methods by which complaints
18 are to be made, reviewed, and acted upon; provided, however,
19 that he may not levy a complaint fee;
- 20 (b) He may determine the scope and manner of
21 investigations to be made;
- 22 (c) Except as otherwise provided, he may determine the
23 form, frequency, and distribution of his conclusions,
24 recommendations, and proposals; provided, however, that the
25 governor or his representative may, at any time the governor
26 deems it necessary, request and receive information from the
27 ombudsman;

28 (d) He may investigate, upon a complaint in writing or
1 upon his own initiative, any action of an administrative
2 agency;

3 (e) He may request and shall be given access to
4 information in the possession of an administrative agency
5 which he deems necessary for the discharge of his
6 responsibilities;

7 (f) He may examine the records and documents of an
8 administrative agency;

9 (g) He may enter and inspect, at any time, premises
10 within the control of an administrative agency;

11 (h) He may order any person to appear, give testimony,
12 or produce documentary or other evidence which the ombudsman
13 deems relevant to a matter under his inquiry; provided,
14 however, that any witness at a hearing or before an
15 investigation as herein provided, shall possess the same
16 privileges reserved to such a witness in the courts or under
17 the laws of this state;

18 (i) The ombudsman may bring an action in an appropriate
19 state court to provide the operation of the powers provided
20 in this subdivision. The ombudsman may use the services of
21 legal assistance to Minnesota prisoners for legal counsel.
22 The provisions of this act are in addition to other
23 provisions of law under which any remedy or right of appeal
24 or objection is provided for any person, or any procedure
25 provided for inquiry or investigation concerning any matter.
26 Nothing in this act shall be construed to limit or affect
27 any other remedy or right of appeal or objection nor shall
28 it be deemed part of an exclusionary process.

1 Subd. 2. [MATTERS APPROPRIATE FOR INVESTIGATION.]

2 (a) In selecting matters for his attention, the
3 ombudsman should address himself particularly to actions of
4 an administrative agency which might be:

- 5 (1) contrary to law or regulation;
- 6 (2) unreasonable, unfair, oppressive, or inconsistent
7 with any policy or judgment of an administrative agency;
- 8 (3) mistaken in law or arbitrary in the ascertainment
9 of facts;
- 10 (4) unclear or inadequately explained when reasons
11 should have been revealed;
- 12 (5) inefficiently performed;

13 (b) The ombudsman may also concern himself with
14 strengthening procedures and practices which lessen the risk
15 that objectionable actions of the administrative agency will
16 occur.

17 Subd. 3. [COMPLAINTS.] The ombudsman may receive a
18 complaint from any source concerning an action of an
19 administrative agency. He may, on his own motion or at the
20 request of another, investigate any action of an
21 administrative agency.

22 The ombudsman may exercise his powers without regard to
23 the finality of any action of an administrative agency;
24 however, he may require a complainant to pursue other
25 remedies or channels of complaint open to the complainant

26 before accepting or investigating the complaint.
27 After completing his investigation of a complaint, the
28 ombudsman shall inform the complainant, the administrative
1 agency, and the official or employee, of the action taken.

2 A letter to the ombudsman from a person in an
3 institution under the control of an administrative agency
4 shall be forwarded immediately and unopened to the
5 ombudsman's office.

6 Subd. 4. [RECOMMENDATIONS.] (a) If, after duly
7 considering a complaint and whatever material he deems
8 pertinent, the ombudsman is of the opinion that the
9 complaint is valid, he may recommend that an administrative
10 agency should:

- 11 (1) consider the matter further;
- 12 (2) modify or cancel its actions;
- 13 (3) alter a regulation or ruling;
- 14 (4) explain more fully the action in question; or
- 15 (5) take any other step which the ombudsman states as
16 his recommendation to the administrative agency involved.

17 If the ombudsman so requests, the agency shall within
18 the time he specifies, inform the ombudsman about the action
19 taken on his recommendation or the reasons for not complying
20 with it.

21 (b) If the ombudsman has reason to believe that any
22 public official or employee has acted in a manner warranting
23 criminal or disciplinary proceedings, he may refer the
24 matter to the appropriate authorities.

25 (c) If the ombudsman believes that an action upon which
26 a valid complaint is founded has been dictated by a statute,
27 and that the statute produces results or effects which are
28 unfair or otherwise objectionable, the ombudsman shall bring
1 to the attention of the governor and the legislature his
2 view concerning desirable statutory change.

3 Sec. 5. Minnesota Statutes 1971, Chapter 241, is
4 amended by adding a section to read:

5 [241.45] [PUBLICATION OF RECOMMENDATIONS; REPORTS.]

6 Subdivision 1. The ombudsman may publish his conclusions
7 and suggestions by transmitting them to the office of the
8 governor. Before announcing a conclusion or recommendation
9 that expressly or impliedly criticizes an administrative
10 agency, or any person, the ombudsman shall consult with that
11 agency or person. When publishing an opinion adverse to an
12 administrative agency, or any person, the ombudsman shall
13 include in such publication any statement of reasonable
14 length made to him by that agency or person in defense or
15 mitigation of the action.

16 Subd. 2. In addition to whatever reports the ombudsman
17 may make on an ad hoc basis, the ombudsman shall at the end
18 of each year report to the governor concerning the exercise
19 of his functions during the preceding year.

20 Sec. 6. This act is effective July 1, 1973.

21 Sec. 7. [EXPIRATION DATE.] This act shall expire July
22 1, 1977.

Appendix B

EXECUTIVE ORDER NO. 14

I, Wendell R. Anderson, Governor of the State of Minnesota, do hereby issue this Executive Order in regard to the establishment of an Ombudsman Commission for the purpose of establishing an office of Ombudsman for the Department of Corrections accountable to the Governor with authority to investigate decisions, acts, and other matters of the Department of Corrections, so as to promote higher standards of competence, efficiency and justice in the administration of corrections.

The Ombudsman Commission shall be composed of ten (10) members:

1. The Commissioner of Corrections, or his representative.
2. The Attorney General, or his representative.
3. The State Public Defender, or his representative.
4. The Commissioner of Human Rights, or his representatives.
5. The remainder of the Commission shall be appointed by the Governor, provided that there be at least one woman and two representatives of racial minorities.

The term of office for the members of the Ombudsman Commission shall be for one and one-half (1½) years.

The Governor shall make appointments to vacancies occurring during the term of the members.

The powers and Duties of the Ombudsman Commission shall be as follows:

1. The Commission shall convene within 10 days after the effective date of this order, and act as a board of selection and review for the purpose of submitting names of nominees to the Governor to fill the office of Department of Corrections Ombudsman.
2. The Commission shall, by majority vote of all of the members thereof, submit to the Governor the names of the nominees, who in the judgement of the Commission are persons well equipped to analyze questions of law, administration, and public policy, and the Governor shall appoint from this list the Department of Corrections Ombudsman.
3. If after 30 days the Commission is unable to determine the names of the nominees, the Governor may proceed to appoint his own nominee.
4. The Ombudsman Commission may submit an annual report to the Governor and the Legislature, commenting on and analyzing the function and operation of the office of Ombudsman for the Department of Corrections.
5. The Commission may act in an advisory capacity to the Ombudsman, and shall provide any other assistance requested by the Ombudsman.
6. The Commission shall meet on the call of the Ombudsman, or the call of the Chairman of the Ombudsman Commission.
7. The Ombudsman Commission shall be subject to any further executive orders issued for this project.

Dated this 3rd day of February, 1972.

ARLEN I. ERDAHL

ARLEN I. ERDAHL
Secretary of State

WENDELL R. ANDERSON

WENDELL R. ANDERSON
Governor

#23620
STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
FEB. 4 - 1972
ARLEN I. ERDAHL
Secretary of State

END

7-11-1944