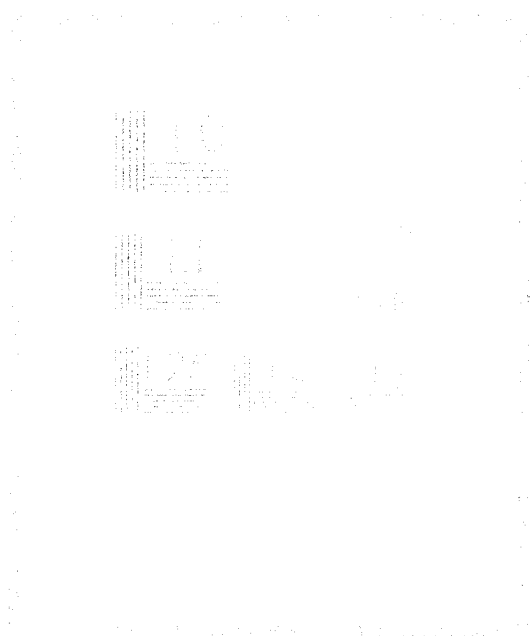


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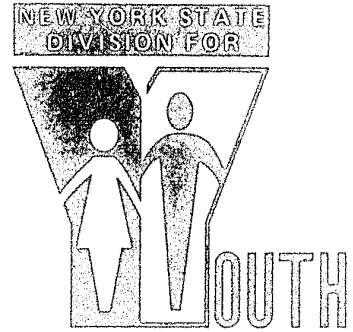


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THE OMBUDSMAN HANDBOOK

Malcolm S. Goddard
Project Director

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MAY 6 1977

The Division has made a commitment to ensure ^{ACQUISITIONS} that every effort possible is made to protect the legal rights of children in our institutions. This commitment included the development of release (parole) revocation hearings; new regulations pertaining to room confinement; the development of hearings before children can be transferred to secure facilities, and the Ombudsman project, which is the subject of this handbook.

We started thinking of an Ombudsman project in July of 1971. At that time a committee with representatives of the schools and centers, small facilities, Community Service Bureaus (C.S.B.), central office and intake met and discussed the proposed project. The project was then written up and copies were sent to the members early in 1972. In April of 1972 our application for federal funds to implement the project was approved and the selection of the Ombudsman commenced.

We then visited all the large institutions and met with staff at all levels, including child care, maintenance, professional and administration personnel. The project was fully discussed at those meetings and staff made their feelings known in terms of recommendations, objections, fears, etc. As a result of those meetings, many changes were made in the methods of implementing the project. Similar meetings were later held at the smaller institutions with equally encouraging results.

The Ombudsmen then spent a week in training at each of the large institutions with a lesser period at the smaller facilities. The training period was used to get to know staff; listen to their feelings about the project; learn the program at each institution, and become acquainted with the physical layouts in terms of child location at various times during a 24 hour period.



NEW YORK STATE

HUGH L. CAREY
GOVERNOR

DIVISION FOR YOUTH

PETER B. EDELMAN
DIRECTOR

I have gone into the steps leading to implementation of this project to let you know that it was not something we jumped into without much preliminary planning and consideration. However, despite the year of planning that took place before the Ombudsmen arrived, we still do not know how effective the program will be. This is the first time that Ombudsmen have been utilized in an institutional complex as extensive as we have.

At the beginning of this project, there will be many rough edges as we have nothing similar that has gone before us to point out the pitfalls. In the final analysis, success will depend upon each of us, including our charges, participating in good faith.

Having met with nearly all of you at this point, I have no doubt the project will be a success. I believe this because of your candor in meeting with me and laying your feelings on the line so that we could fully explore them before proceeding.

Malcolm S. Goddard
Project Director

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CHAPTER I

Ombudsman Explained

Ombudsman is a Scandinavian word meaning public officer. The word tells us little. However, the concept which has become associated with it, and which will be explained here, has gained wide acceptance as a practical means of helping individuals to have their real or imagined complaints against government agencies looked into by an impartial person who is himself a public official.

The ombudsman is a type of complaint department where a customer can go when he feels the service in a particular department of the store is bad and should be altered for the better. However, the ombudsman hears complaints by citizens against the service offered by agencies of government, the subdivision of these agencies, and in some cases, even private institutions. In New York State, ombudsmen hear complaints of citizens against agencies of local governments, as in the case of one of the State's largest cities and of students against school officials in several of the state's large universities.

The fact that a highly placed person within a university structure is available solely to hear and check into the validity of student complaints has helped to dissipate frustrations that have in the past led to violence. In some cases, the impartial investigation has shown that the complaint was justified and has resulted in beneficial changes for both the students and the university.

The ombudsmen in the facilities of the Division for Youth will function as impartial officials, providing a service of benefit to both our residents and our staff, much the same as the ombudsman in the universities.

CHAPTER II

Project Description

1. The Federal Government provided the cash contribution necessary to implement this project through a grant under the Omnibus Crime Control and Safe Streets Act of 1968, which act is administered in this State by the Division of Criminal Justice.
2. Ombudsman project is intended as an internal check system to ensure that the legal rights of the children in our custody are fully protected. The success of the project depends upon the commitment of the agency to take action, if violations of rights are revealed by the Ombudsman.
3. The project proposal divided the State into three regions - Buffalo, Albany and New York City. The New York region has two Ombudsmen and one each is provided for the Albany and Buffalo regions.
4. The Ombudsmen have the responsibility for regularly visiting all the facilities of the Division, in their regions, with 50 or more beds. Smaller facilities are visited on an as needed basis.
5. The Ombudsmen are attorneys, each of whom has had extensive experience in Family Court proceedings and juvenile matters. All of the Ombudsmen are former employees of a Legal Aid Association. Their names by regions are as follows:

Roger Billyard	Buffalo	State Agricultural and Industrial School South Lansing School for Girls, S. Lansing Great Valley Youth Camp, Great Valley Austin MacCormick Youth Camp, Brooktondale Annsville Youth Camp, Taberg
John W. Douglas	Albany	Tryon School for Boys, Johnstown New York School for Girls, Hudson Brookwood Center for Girls, Hudson Edward R. Cass Youth Camp, Rensselaerville

Alan Sussman	New York	Otisville School for Boys, Otisville Warwick School for Boys, Warwick
James Silberg	New York	Goshen Center for Boys, Goshen Highland School for Children, Highland Charles Loring Brace Camp, Masonville Youth Development Center #1, Bronx South Kortright Center for Boys, S. Kortright

- 6) The Ombudsmen are part of the Division's legal unit for purposes of accountability to the Federal Government for services rendered and employee benefits; however, they report to the Division's Director and to the Independent Review Board and may only be removed from office by the Director.
- 7) The Ombudsmen meet each month with the Director of the Division, the Project Director and other staff to discuss their reports. The reports are prepared as the result of investigations conducted by the Ombudsmen following complaints by the residents (this subject is discussed in detail in a later chapter).
- 8) A five member Independent Review Board composed of experts in various youth related fields meet with the Ombudsmen and Division staff bi-monthly to review the Ombudsmen reports, evaluate the project for the Federal Government, and offer their expertise in solving problems raised in the reports. In addition, the Independent Review Board acts as an external check whereby individuals outside of the agency evaluate the projects effectiveness. The members are:
1. Hon. I. Leo Glasser, Judge, Family Court, Brooklyn, New York
 2. Professor O. W. Mueller, Professor at Law, New York University School of Law
 3. Ms. Marta Valle, Professor, Columbia University, New York City
 4. Rev. Odell W. Surgick, Albany, New York
 5. Ms. Leah Marks, Attorney, New York City

- 9) The Ombudsman must limit his efforts in bringing his reports to the head of the agency and the Independent Review Board for action; he does not have the authority to go outside of the agency by providing his reports, which are confidential, to organizations, institutions, agencies or individuals not under the Division's jurisdictions.
- 10) The Ombudsmen are impartial, fact finding, public officials working for the Division. They are not advocates or attorneys for our residents or our staff.

CHAPTER IIIDuties

- 1) The Ombudsman will visit your facility on a regularly scheduled basis.
- 2) He will have an office and posted office hours so that students will know when he is available. In addition, the Ombudsman will visit the residents in their cottages and around the grounds. Although he will, at times, work from 9:00 a.m. till 5:00 p.m., he will also, on occasion, work evenings and nights.
- 3) The exact method for residents to contact the Ombudsman and arrange for an interview will be worked out at each institution between the Ombudsman and the Superintendent. This is necessary as the program schedules at each institution differ. However, in making these arrangements, confidentiality and ease of access to the Ombudsman are of prime importance.
- 4) The Ombudsman will listen to the complaints of residents, and he will investigate those complaints that involve possible violations of legal rights. The Ombudsman will not get involved with complaints that involve purely program matters. For example, the denial of a home visit would be a program matter and the Ombudsman will not get involved. However, if it were alleged the home visit was denied because the resident was Spanish speaking and Spanish speaking children always have their home visits denied, this could involve the violation of a legal right making the complaint a valid subject for investigation. This example shows the difficulty that will exist in determining whether some complaints involve program matters or legal rights. The Ombudsman will have the absolute discretion to determine whether a matter is program or legal and those legal matters he will investigate.

- 5) Once the decision to investigate a complaint has been made, the Ombudsman will seek to determine whether the complaint is valid or invalid. We know that residents may attempt to make false accusations and manipulate the Ombudsman for their own ends; therefore, the Ombudsman must seek verification through investigation. This would include speaking to the staff members mentioned in the complaint, other staff and other residents. The complaining resident's file is subject to inspection, but not the personnel file of an employee.
- 6) If the investigation results in the Ombudsman finding that the complaint is legitimate and involves a legal right, he will write a report on it. If it is found not to be legitimate, he will keep a file on the complaint and finding but not make a formal report; however, a statistical record of the total number of complaints made and the number and type of illegitimate allegations made is to be reported. It would also be acceptable for the Ombudsman to write up his investigation and state that he was unable to determine whether the complaint was valid or not.
- 7) The Ombudsman will check to insure that departmental regulations, such as those relating to room confinement and corporal punishment, are complied with.
- 8) a) When an Ombudsman determines that a complaint involves a program matter, he shall refer the resident to an appropriate staff member for assistance.
b) When an Ombudsman determines that a complaint involves a matter involving a resident's legal rights outside of the institution, he may refer the resident to an appropriate resource outside of the institution.
- 9) The parent of a resident may at any time contact or speak to the Ombudsman regarding any matter that the Ombudsman has jurisdiction to investigate.

CHAPTER IVReporting

- 1) The end result of an investigation, that in the opinion of the Ombudsman has revealed the violation of a legal right, is the report. Written reports are prepared by the Ombudsman for each facility they visit on a monthly basis. These reports are forwarded to the Superintendent, the Director of the Division, the Project Director and the Independent Review Board.
- 2) The reports are to be factual in nature, listing the complaint, the results of the investigation, and where necessary, the case or statutory authority for finding a violation of legal rights.
- 3) In preparing the monthly reports, the Ombudsman will work closely with the facility superintendent and the Ombudsman may call violations of legal rights to the Superintendent at any time without waiting for the preparation of the formal report.
- 4) The reports are not to editorialize; expressions of personal opinion may be made at the monthly and bi-monthly meetings with the director and the Independent Review Board.
- 5) The Superintendent may give any staff member mentioned in a negative manner in the report an opportunity to see that part of the report relating to him. The staff member would then have the right to make a statement presenting his views, if he felt the report did not present the situation accurately. This statement would be forwarded to Albany where it will be attached to and made part of the report.
- 6) The Ombudsman reports are forwarded, (unaltered) by the Project Director, to the members of the Independent Review Board. The reports are not subject to censorship by the Division. The Director of the Division, the Ombudsmen, the project director, and other Division officials meet with the Independent Review Board once every two months at which time a full discussion of the reports will be undertaken. The Division will present information as to steps taken to bring changes where changes are indicated in the reports or present the views of the agency when those views are in conflict with the Ombudsmen's reports. The Independent Review Board members will offer their views and expertise to the discussions. Due to the prestige of the board members, their views would carry great weight in influencing the Division's efforts to protect legal rights. The Independent Review Board prepares a yearly report indicating their opinion as to the project's effectiveness.
- 7) In addition to the monthly reports, an Ombudsman may contact the Project Director on a 24 hour a day basis when emergency action, in his opinion, is necessary to protect a child.
- 8) Weekly reports indicating facilities visited, hours spent at the facilities and other information which may be required shall be forwarded by each Ombudsman to the Project Director.

CHAPTER VStaff Protection

- 1) The Ombudsman is a fact gatherer; he is not a prosecutor. His investigation reports act as a warning light for the superintendent and central office. If the report indicates that a serious violation of rights has occurred that could lead to disciplinary action, the Division will not accept the findings until it has investigated the incidents outlined in the report on its own.
- 2) The Ombudsman does not have the power to initiate a disciplinary proceeding. This rests solely with the Director of the Division.
- 3) The Ombudsman reports may not be placed in a staff member's personnel file.
- 4) If a resident is making accusations against a staff member and the staff member wants the matter looked into for his own protection, he can ask the Ombudsman to investigate.
- 5) The Ombudsman will not be used as a witness against any staff member he has investigated, in a departmental proceeding, except if the violation occurred in his actual presence.
- 6) Complaints that are investigated and found to have no basis in fact are not formally included in the Ombudsman's monthly report; however a report of the investigation is kept by the Ombudsman and would be available to assist any staff member, if the complaint were raised again at some future date, possibly after the resident has returned to the community.

CHAPTER VICommon Comments and Questions

The following are comments of staff members which were most often raised during meetings with the project director at the facilities. After each comment is a reply offered by the project director:

I. "Why do we need an ombudsman?"

Many people in New York State, including legislators, judges and professional in the child care field, have expressed the feeling that children's rights are not being adequately protected in institutional settings. These feelings are appearing more and more in the press.

During the last session of the State Assembly, a bill was introduced prohibiting the use of room confinement. In the course of debate on this bill, which the Division opposed, legislator after legislator rose to the floor and made statements to the effect that most children were being abused in State schools. Through the ombudsman and the ombudsman's report, we hope to obtain the first accurate information as how well or poorly our children are treated. This information will enable us to counter existing myths with the truth.

II. "The kids have all the protection - why don't we have an ombudsman?"

The employees of the Division for Youth do have an ombudsman, or a person very similar to an ombudsman in his capacity. Mr. James Gifford, Director of Personnel, has responsibility for listening to staff and finding answers for valid complaints. In addition, Mr. Gifford is able to refer employees to agency procedures existing for their protection. Mr. Gifford may be reached at 2 University Place, Albany, New York, telephone 457-3148. The following are some of the procedures now existing in State service to protect the employee.

1. The agency grievance procedures. Employees may use this procedure to obtain a review of on the job grievance.
2. The Human Rights Division procedures. An employee may use this procedure to make complaints where discrimination, based on race, creed, color, sex or age is involved.
3. Disciplinary proceeding safeguards. This procedure provides that no employee may be disciplined until formal charges have been filed in writing and he has the opportunity to be heard by an independent hearing officer while represented by his own attorney.
4. Personnel file procedure. Under this procedure an employee has the right to see his personnel file at any time and demand a hearing to remove anything in the file that is not validly there.
5. Union Representative. Employees may see their union representative who can act for them, especially in areas involving terms of their negotiated employment contract.
6. An employee has one protection which no resident in a school or center has -- that is the freedom to leave the institution at will.

III. "As the ombudsmen have all gained their experience as Legal Aid attorneys, will they come to us with pre-conceived ideas - like, the State schools are all bad and facility staff are prone to abuse children?"

It is true that all of the attorneys hired as ombudsmen have had Legal Aid experience in their background. As Legal Aid attorneys, they represented young people in the juvenile courts and in that capacity acted as advocates for their clients. We have explained to the ombudsmen that their role with the Division

is no longer one of child advocate; as ombudsmen they will now have to act impartially. Their role is to arrive at the truth through investigation.

Attorneys are often called upon to play different roles and it is not inconsistent for an attorney to shift from advocacy to impartiality. The ability to make the shift is part of an attorney's legal education. The success of the project will largely depend upon the maturity of our ombudsmen and their ability to base their findings on facts, ruling out any personal biases they may have.

IV. "The central administration of the Division does not like, trust, or have faith in its own employees, and the ombudsmen project reflects this."

Over the past few years cases have come before the courts which have shown that, at least in some instances, children have been badly abused in the schools and centers. Departmental disciplinary proceedings during the last year have also revealed that the schools and centers are not totally free of abuse. With a system of institutions as large and diverse as we have in the Division, it would be impossible to guarantee that no child would ever be abused. However, the presence of the ombudsman will limit abuse to the fewest possible cases.

The fact that we acknowledge that there might at some time be a person prone to abuse children among our thousands of employees does not indicate that we do not like or trust facility staff. On the other hand, the fact that we do trust the vast majority of our people does not mean that we won't add safeguards to protect our children against the few.

v. "How can I know whether I am doing something that an ombudsman will report me for?"

It would be impossible to list every possible thing a staff member could do that the ombudsman might feel was a violation of a legal right. However, as a general guideline, I would say that a good test would be to ask one's self whether the doing of a certain act would offend human decency in the eyes of a reasonable person.

VI. "Will the ombudsmen spend all their time looking for beat up children? If they are, they aren't going to have much to do."

The ombudsmen will investigate complaints involving child abuse; however, there are many other areas he will be involved in that relate to legal rights. Over the years, the schools, centers and other facilities have received little guidance as to the rights of children, and as a result, each institution established its own policies as to what rights children had, based on what they believe to be best for the child and the program. These rights then differed from institution to institution. The ombudsmen will be spending much of their time establishing what the law says as to the legal rights of children in institutions, so that these rights can be uniformly applied in each institution.

END