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CONTRIBUTION TO A DISCUSSION OF OMBUDSMAN-STANDARDS DRAWN UP BY THE AMERICAN BAR ASSOCIATION (ABA)

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Information

Within the American Bar Association is a special „Ombudsman Steering Committee", that has for already a longer time – almost permanently - been busy elaborating principles for Ombudsmanship („Standards for the Establishment and Operation of Ombudsman Offices").

The paper published as VARIA 23 by the European Ombudsman-Institute – by express permission of the author – is the reproduction of the content of a writing addressed to Mrs Martha W. Barnett, (President, American Bar Association Holland & Knight, LLP Ste 600 315 S Calhoun St PO Box 0810 Tallahassee, FL 32302-0810), which offers an excellent insight into issues of Ombudsmanship and the understanding of the Ombudsman in the United States of America.

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Executive Board Member

In my capacity as the sole academic member of the aba's Ombudsman Steering Committee, I offer this dissent to its recent Report to the House of Delegates of the Standards for the Establishment and Operation of Ombudsman Offices. I believe that the Report seriously misrepresents the ombudsman institution and puts the aba on record as favoring various kinds of "quasi-ombudsmen" to the detriment of the "classical," or real, ombudsmen that report to the legislature.

The aba's 1969 resolution-which remains in effect and which was based on the scholarship and activism of such figures as Walter Gellhorn, Kenneth Culp Davis, Bernard Frank, and Henry Abraham-accurately defines classical ombudsmen and makes it possible to draw distinctions between those institutions and the increasingly common quasi-ombudsmen, which lack a true ombudsman's structural and functional requisites. In attempting to find common ground for a generic definition of "ombudsmen," the drafters of the Steering Committee's Report talk about classical ombudsmen, but they also talk about certain kinds of quasi-ombudsmen in ways that promote the erroneous idea that all of them are unqualified ombudsmen. The reader is left with the impression that one might choose between establishing a classical ombudsman and any other version of the office on the same basis that one might choose a flavor of ice cream.

Hawaii (1969), Nebraska (1971), Iowa (1972), Alaska (1975), and Arizona, (1996) created legislatively based ombudsmen on the Scandinavian model. Guam and Puerto Rico also adopted legislative ombudsmen, as did several u.s. local governments. The United States is unique among its peers in

developing hundreds of other quasi-ombudsman offices that attempt or claim to perform functions similar to those of an ombudsman. Three main types of quasi-ombudsmen have become prevalent: (1) "executive-ombudsman" offices, which are completely ignored by the Steering Committee's Report; (2) "mediator-ombudsman" offices, which are called "organizational ombudsmen" in the Report; (3) and "advocate-ombudsman" offices. In a structural sense, virtually all of the mediator-ombudsman and the advocate-ombudsman offices also are executive ombudsmen. But they each deserve their own subtype because their values are distinct from those of other offices. How do the various kinds of quasi-ombudsmen differ from each other and from the classical ombudsmen?

(1) Executive-Ombudsman Offices: One of the most misleading features of the Report is that its drafters fail to make an essential distinction: that between classical and executive ombudsmen. Section G, "Classical Ombudsman," is quite confusing. According to Section G-5, a classical ombudsman "should, if the ombudsman has general jurisdiction over two or more agencies, be established by legislation [note omitted] and be viewed as a part of and report to the legislative branch of government." Of course, a classical ombudsman should be legally established and report to the legislature, but what does the invented requirement about having "general jurisdiction over two or more agencies" have to do with whether an office is classical? Creating an ombudsman for federal prisons that reported to Congress, for example, would be highly desirable; and such an office certainly could be classical.

The vast majority of the public-sector ombudsmen in this country are completely ignored by the Report because they fall under the executive rather than the legislative branch and are therefore not classical ombudsmen [See Stanley V. Anderson, "Comparing Classical and Executive Ombudsmen in the United States," in Alan J. Wyner, ed., Executive Ombudsmen in the United States (Berkeley: University of California, Institute of Governmental Studies, 1973): 305-315]. Furthermore, the executive ombudsmen clearly do not fit under either of the two subtypes of quasi-ombudsmen discussed in the Report. Because I and other members of the Committee, including executive ombudsmen, have repeatedly made this point to the drafters of the Report, they are well aware of it.

When reformers began to agitate for ombudsmen during the mid-1960s, legislative resistance kept any classical ombudsmen from being created until the Hawaii office was created in 1969. Therefore, some activists adopted the strategy of creating offices modeled after, and often called, "ombudsman" that were placed under the executive, perhaps in the hope that they might eventually become classical offices. This happened with the Iowa office, which became a classical ombudsman in 1972 after having been created as an executive ombudsman reporting to the governor in 1970. In addition, a broader interest in complaint handling within the executive developed that led to the creation of many other executive ombudsmen without any expectation that they would morph into classical offices. Three subtypes of the executive ombudsman may be distinguished:

- A comprehensive executive ombudsman is prototypical. Under the heading "Ombudsman," the Council of State Governments' State Leadership Directory lists officials in forty states [State Leadership Directory: Directory III, Administrative Officials (Lexington, KY: Council of State Governments, 1997): 284-285]. The five states' classical ombudsmen are listed, but the directory does not differentiate them from varieties of executive ombudsmen in other states. Analysis reveals that twenty-five of these supposed "ombudsmen" are a part of the governor's office, two are a part of the lieutenant-governor's office, two are a part of the attorney-general's office, two are a part of the auditor's office, one is a part of the secretary of state's office, one is a part of the legal affairs office, one is a part of the human resources office, and one is a part of the inspector general's office. In addition, by analogy, most of the hundreds of college and university ombudsmen in this country fit this subtype in that they have jurisdiction over the entire campus and have a reporting relationship to the president or other high official. Some higher education ombudsmen have significant elements of independence from the executive, however, through at least a partial reporting relationship to bodies representing students, faculty, or staff.
- Some of the state offices listed in the State Leadership Directory may not have comprehensive jurisdiction, but are single-sector executive ombudsmen that stand outside the agency over which they have jurisdiction. (Most of these kinds of offices in existence are not listed in the Directory.) A number of state "ombudsmen" report to an official of the executive, usually the governor, and have jurisdiction over a limited sector of government,

such as corrections, social services, or mental health. A given state may have multiple, single-sector executive ombudsmen.

- But the vast majority of executive ombudsman offices are internal executive ombudsmen. That is, they are located within the agency over which they have jurisdiction and retain their linkage to the executive by reporting to the agency head or other agency official. (None of these offices are listed in the Directory.) Because they are located within the agency whose actions are being investigated, the internal executive ombudsmen belong to the weakest subtype of the executive ombudsman. In addition to the many state and local offices of this subtype, several federal agencies-including the Environmental Protection Agency, the Customs Service, the Federal Drug Administration, and the Internal Revenue Service-have internal executive ombudsmen. Members of Congress constantly propose to create more such offices.

Many offices falling within each of the three subtypes of executive ombudsmen strive to handle complaints as real ombudsmen do. Although some of these offices are established by statute and may have some elements of independence from the agency's hierarchical authority (for example, a term of office during which they cannot be fired), they lack vital features of the classical ombudsman. Most important, their dependence on the executive compromises their independence. To be sure, traditions have grown up around some executive ombudsmen that grant them a large measure of de facto independence; and some executives, believing that the offices are useful administrative tools, offer their support. But such traditions and individual grants of support are always tenuous: if either the political situation or the identity of the executive should change, the office's effectiveness could evaporate overnight-even if it is established by law-as has happened in many cases (the epa Ombudsman's recent problems are an object lesson). Many other executive ombudsmen cannot claim to be independent; they are a covert part of the governor's, or another official's, re-election machinery. Putting "ombudsman" in the office's title, thus, simply gives cover for an entity that performs the executive equivalent of legislative "case work."

Achieving the classical ombudsman's goal of maintaining investigative objectivity often is a crucial problem for executive ombudsmen. In structural terms, they are what Max Weber referred to as "patrimonial" organizations: their values cannot really be universalistic because the interests of the father figure to whom they report ultimately affect their actions. Some executive ombudsmen may have the supreme goal of making the executive look good, perhaps by painting the picture of agencies as being nearly perfect. Others may attempt to conduct objective investigations, but-when an investigation makes the executive uncomfortable-the executive ombudsman may find that the investigation is shut down or thwarted through such techniques as cutting the executive ombudsman's budget, limiting access to information, or forbidding it from issuing a report. Although some executive ombudsmen are normally allowed a great deal of investigative freedom, they always remain vulnerable to the executive.

Finally, executive ombudsmen differ greatly in the thoroughness of their investigations. Some conduct quite thorough investigations, although most of them lack such crucial powers as having complete access to agency files, subpoena power, and confidentiality for their files. Yet other executive ombudsmen pretend to perform the ombudsman's investigative function; but they merely pass complaints on to agencies and allow them to respond directly or indirectly to citizens, if they so choose. Probably the majority of executive ombudsmen do not conduct thorough investigations because they do not have the institutional capacity to do so. Calling most of the small offices a bureaucracy would be an exaggeration.

(2) **Mediator-Ombudsman Offices:** A newly popular type of internal quasi-ombudsman office, the "mediator ombudsman," earns its own subtype because of its distinctive values. The Report calls this kind of office the "organizational ombudsman." Curiously, Section H, "Organizational Ombudsmen," avoids defining the term. In fact, the tiny section says almost nothing; only its first sentence, which I quote in a later paragraph, is substantive; the rest is not substantive and redundant with Section A. Most extraordinary! Furthermore, in pursuing the notion that all the kinds of offices discussed are essentially alike, the Report also scrupulously avoids a matter essential to understanding the mediator-ombudsman offices: that is, providing any indication of how this kind of office is structurally different from a classical ombudsman. In my view, it was a mistake to believe that any committee could reconcile in a meaningful way the classical ombudsman and the mediator ombudsman, two offices whose values are vastly different from each other.

Apart from handling their normal caseload, some classical ombudsmen occasionally become involved in activity that reasonably could be called mediation. But classical ombudsmen virtually never mediate in handling citizen complaints: the ombudsman conducts an impartial investigation, the ombudsman determines whether the citizen was treated justly, and the ombudsman may then recommend that the agency take a different course of action.

Inspired by the goal of reducing the costs of lawsuits and by fashionable anti-hierarchical management theories, corporations began to create mediators that they chose, for public relations purposes, to call ombudsmen as an aspect of their involvement with the "alternative dispute resolution movement" during the 1970s. A glance at any adr textbook makes it clear that the mediator ombudsman is almost always included in a list of adr techniques, but that this particular technique is only a minor element of adr. American Express, Chevron, Eastman Kodak, Lucent Technologies, New York Life, Pitney Bowes, Shell, Sony, Texaco, Xerox, and hundreds of other corporations created adr-mediator ombudsmen during the 1980s or the 1990s. A very few corporate ombudsmen-for example, at American Express-have a measure of independence from management because they report directly to the corporation's board of directors [for a model of this kind of office, see Victor Futter, "An Answer to the Public Perception of Corporations: A Corporate Ombudsperson?" The Business Lawyer 46 (1990): 29-56].

In addition, many public organizations at all levels have created mediator ombudsmen. For example, a June 9, 2000, memorandum from the Attorney General announced the creation for the Department of Justice of "an organizational Ombuds Program," which was identified as

> a form of alternative dispute resolution to address workplace issues.... [I]ndividuals may raise questions or concerns about the meaning of workplace policies or the way in which those policies are implemented, issues concerning communication with co-workers or supervisors, complaints about perceived discrimination or mistreatment, and any other issue concerning employment at the Department. The Ombuds Program may provide guidance that will permit an employee or manager to address issues on his or her own; refer the person to another office that may be a more appropriate resource; or serve as an informal "go-between" or mediator to address conflicts.

Furthermore, during the 1980s and the 1990s a number of universities that did not earlier establish executive ombudsmen that were oriented in the direction of the classical office created mediator ombudsmen for faculty and staff personnel matters.

Whereas, owing to their underlying focus on justice, classical ombudsmen adopt the operating norm of impartiality, mediator ombudsmen usually have little or no interest in achieving justice or any other ultimate value. Instead, mediator ombudsmen-which are almost entirely concerned with the personnel function within an organization-are process oriented. Their job is simply to facilitate the resolution of disputes through mediation. Rather than searching for justice, the mission of the mediator ombudsman is "representing interests" or "Getting to Yes," the title of the best-selling manual of the dispute resolution movement [Roger Fisher and William Ury, Getting to Yes: Negotiating Agreement Without Giving In (New York: Houghton Mifflin: 1981)].

The mediator-ombudsman offices generally prefer to be called an unqualified "ombudsman," but if a qualifier is required their label of choice is "organizational ombudsman," used by the Report's drafters. Unfortunately, the label indicates only the venue of operation of these entities and is not especially descriptive of their status or function: (1) Most "organizational ombudsmen" are so small, one-to-two person entities, that they can hardly be called organizations. On the other hand, classical ombudsmen are bureaucratic organizations. (2) Many classical ombudsmen also could be called organizational ombudsmen because they have jurisdiction over civil servants' complaints against their agencies (except that some do not investigate matters subject to a union contract) in the same way that the mediator ombudsmen who want to be called organizational ombudsmen have jurisdiction over the personnel-related internal affairs of organizations. What is distinctive about the "organizational ombudsmen" is not their venue of operation but their function as mediators. Of course, the expanding number of "newspaper ombudsmen" is a subtype of the corporate ombudsman in which the clients are readers.

Most mediator ombudsmen have little independent power within the organization, but are highly dependent on the executive. Because they cannot guarantee confidentiality to clients, most of them

staunchly maintain that they do not conduct "investigations," but simply "address" matters variously labeled as "issues," "questions," "concerns," "problems," "conflicts," and (possibly) "complaints." Note that the only substantive, non-redundant item in the Report's Section H says: "An organizational ombudsman facilitates fair and equitable resolutions of concerns that arise within the entity." (One might possibly argue that Section H-1, which says that an organizational ombudsman should "be authorized to undertake inquiries and function by informal processes . . ." is also substantive. The problem is that all ombudsmen use informal processes, as that term is used in administrative law. What the drafters mean is that organizational ombudsmen operate by really, really informal processes, that are often so informal that they are unwilling to describe them as involving the investigation of a complaint.) Also because they cannot guarantee confidentiality to clients, most mediator ombudsmen do not keep records that could-if they were captured during a discovery process-identify and perhaps endanger a client's position. The same considerations normally prohibit mediator ombudsmen from issuing written recommendations or reports.

Perhaps most important in terms of process, mediator ombudsmen generally reject the posture of "impartiality," which they perceive has overtones of conducting "investigations," and prefer "neutrality," which is intended to conjure up images of competing parties representing interests (all of which may be equally valid) to the mediator. In addition to employee-management problems, mediator ombudsmen insist that an important part of their work is improving human relations within organizations by ameliorating worker-to-worker problems that do not derive from power imbalances. All in all, the contrast in functions with the classical ombudsman could hardly be sharper.

A crucial indicator of the mediator ombudsmen's weakness is that they often emphasize the importance of the client "owning the problem" and the centrality of the office's role in generating "options" for clients. Accordingly, the Report's Section A-7-c, which is supposed to apply to all ombudsman offices, talks of an ombudsman "developing, evaluating, and discussing options available to affected individuals." Such a notion would be unintelligible to a real Ombudsman, who (unless further information is needed) seldom involves the original complainant in an investigation. Mediator ombudsmen focus on generating "options" because they have so little power, and complainants are asked, in effect, to become their own ombudsman by helping to generate and evaluate optional courses of action.

As a subtype of the weakest kind of quasi-ombudsman, mediator ombudsmen have few of the classical ombudsman's structural or functional characteristics. Yet, in pursuing the goal of legitimating their offices, many of the entities are fiercely determined to be recognized as unqualified "ombudsmen." And their trade organization, imperialistically named The Ombudsman Association (previously named the Corporate Ombudsman Association) has for several years sponsored a movement to encourage the creation of such offices and to gain legitimacy for them. In testimony to the extreme variability of the offices, the association also has created a code of ethics and a standards-of-practice document.

So numerous have these mediator ombudsmen become in a variety of types of organizations that their members tend to talk of the ombudsman profession, or role, at least as often as they do of institutional entities. A related aspect of the frequent lack of an institutional basis for the mediator ombudsmen is that a substantial number of them are contractors, who operate as solo practitioners, rather than employees of the organization. These contractors argue that their status as organizational outsiders gives them an independence that agency employees lack. As noted above, agency employees who are executive or mediator ombudsmen are unlikely to possess much power. But of all the adjectives that students of the administrative process commonly use to describe the behavior of contractors, "independence" is one that is virtually never used.

(3) Advocate-Ombudsman Offices: Some other quasi-ombudsmen are noteworthy because they lack the value of objectivity and, instead, are commissioned to be advocates for particular populations. Creating advocates may be a good idea from a policy point of view; some groups may need an advocate. What is not a good idea is calling these advocates unqualified "ombudsmen," as the drafters of the Report do. Section A-7-i, Establishment and Operations, which is intended to apply to all offices, says that an ombudsman should be authorized by charter to function by such means as: "advocating on behalf of affected individuals or groups when specifically authorized by the charter." This statement is antithetical to the history and scholarship on the ombudsman; the drafters of the current Report apparently

made it up recently (without consulting the Ombudsman Steering Committee) to fit the situation of the long-term care ombudsmen. Accepting advocacy as a legitimate option for ombudsmen would be severely damaging for real ombudsmen.

Much of the Report's Section C-2, Impartiality in Conducting Inquiries and Investigations, which is supposed to apply to all ombudsmen, is sound:

> The ombudsman must conduct inquiries and investigations in an impartial manner, free from initial bias and conflicts of interest. Impartiality does not preclude the ombudsman from developing an interest in securing changes that are deemed necessary as a result of the process [sic], nor from otherwise being an advocate on behalf of a designated constituency. The ombudsman may become an advocate within the entity for change where the process [sic] demonstrates a need for it.

The unsound portion of the quotation is the second phrase of sentence two, which allows an ombudsman not conducting a particular investigation to be "an advocate on behalf of a designated constituency." The advocacy function is elaborated in the Report's Section I, which states that an advocate ombudsman should "(5) be authorized to initiate action in an administrative, judicial, or legislative forum when the facts warrant." If initiating action in an administrative or legislative forum merely means proposing reform when an investigation suggests its desirability, then this wording is redundant with Section A-e. And one must wonder why the advocate ombudsman's specifications differ from those for classical ombudsmen, who after conducting an impartial investigation, "should be authorized to advocate for change both within the entity and publicly" (Section G-4) and for organizational ombudsmen, who should "be authorized to advocate for change within the entity" (Section H-4). (Because of Section A-e, both provisions also are redundant.)

As far as I am aware, an authorization to initiate action in a judicial forum would be unprecedented in North American ombudsman practice. The ombudsmen in Sweden and Finland may take such actions, but those countries' (virtually identical) systems of administrative law are very narrowly drawn and also quite different from those of other Scandinavian countries. Of course, those administrative law systems are completely different from the u.s. system. Would not introducing the notion of advocacy, particularly judicial advocacy, encourage the opening of an ombudsman's records to discovery?

It is extremely important to note that such advocate ombudsmen as the states' long-term care ombudsmen, which the federal government mandates, are in a structural sense internal executive ombudsmen (normally located within a state's agency on the aged), but they are substantially different from other executive ombudsmen because of their value orientation towards advocacy. The same is true of the advocates that some states have created for other vulnerable populations, such as children. And some states have created consumer or business advocates.

Although the defenders of advocate-ombudsman offices argue that advocacy is necessary to protect vulnerable clients, adopting an investigatory posture of advocacy rather than impartiality causes an adversarial situation to develop with those being investigated. This helps to account for the vociferous opposition that nursing homes often display in responding to the long-term care offices' investigations. The role of such offices is always tainted by the perception that they are client advocates predisposed to find fault with the provider. In contrast, the classical ombudsmen's position of impartiality generates greater cooperation-and therefore greater effectiveness-from those being investigated than does a position of advocacy.

Unfortunately, the problem of the long-term care ombudsmen is that they are weak executive ombudsmen, whose only strength is a federal mandate. The usual political situation is that they are imbedded in a state's office on the aged, however it may be named, which provides an environment more or less hostile to the office. The long-term care industry typically makes large campaign contributions to the state's top political candidates, both for the executive and the legislature. After elections, the industry is seldom disappointed. Weak regulatory laws and enforcement are the norm in most states. The long-term care ombudsmen often fight valiantly to be effective, despite severe limitations in resources and often despite constant threats to their viability. I encourage those interested in the fates of the advocate ombudsmen and the populations that they serve to redirect their efforts toward making the offices real ombudsman or at least stronger executive ombudsmen that are not advocates rather than trying to get the

aba to legitimate their role as weak advocacy institutions. Having advocacy endorsed by the aba as an acceptable value orientation that any ombudsman might choose would, I believe, be poisonous for classical ombudsmen and also for the quasi-ombudsmen.

Miscellaneous: The Report's Section D, Limitations on the Ombudsman's Authority, contains seven items, the last four of which seem problematic or unnecessary; I recommend that they be deleted. The Report says an ombudsman should not: "(4) conduct an investigation that substitutes for administrative or judicial proceedings." I have no idea what prompted this provision, but it is wrongheaded. This would provide an open invitation for an agency to claim that the exhaustion of remedies had not occurred and that the ombudsman therefore had no jurisdiction; such a provision could put an ombudsman out of business.

The Report says an ombudsman should not: "(5) accept jurisdiction over an issue that is currently pending in a legal forum unless all parties and the presiding officer in that action explicitly consent." The Report's drafters do not understand important differences between real ombudsmen and courts. Very seldom is an ombudsman a true alternative to the courts in a given case; strictly speaking, it is usually incorrect to call a classical ombudsman an adr-mechanism. The two institutions have different perspectives and functions; for example, in a given case a court might find that an agency had acted within the bounds of legality, but an ombudsman investigating the same case might find that the agency should reconsider a discretionary decision or it should change a procedure. In addition, ombudsmen have accountability responsibilities to the public and to the legislature. While a case that focused on a peripheral aspect of a broader issue was winding through the courts over a period of years, for example, an ombudsman might conclude that the investigation revealed the need for a quick ventilation of that broader issue through a public report, perhaps, and a recommendation for changing the law. Section D-5 would have kept the ombudsman from undertaking an investigation.

The Report says an ombudsman should not: "(6) address any issue arising under a collective bargaining agreement unless the ombudsman is authorized to do so by the agreement or unless the collective bargaining representative and the employing entity jointly agree to allow the ombudsman to do so." The jurisdictions of classical ombudsmen around the world differ greatly on this issue: sometimes collective bargaining is inside the ombudsman's jurisdiction; sometimes it is not. This is a matter of policy for the entity creating the office; it is not a definition-of-the-ombudsman issue.

The Report says an ombudsman should not: "(7) act in a manner inconsistent with the grant of and limitations on the jurisdiction of the office when discharging the duties of the ombudsman." Does not this go without saying? Is the language needed in a definitional document?

Recommendations: Like its predecessors, the current Report is fatally flawed by its unwillingness to respect essential differences between the classical ombudsmen and the various kinds of quasi-ombudsmen and by its insistence on legitimating the quasi-ombudsmen as real ombudsmen. In addition to the Miscellaneous recommendations mentioned above, my main recommendations for revision follow:

1. The executive ombudsman and the mediator ombudsman (called "organizational ombudsman" in the Report) should be clearly delineated as kinds of quasi-ombudsmen-meaning that the latter are not quite real ombudsmen-and the differences of each type from the classical ombudsmen should be delineated. Yes; the result is to "privilege" the classical ombudsman over other kinds of offices, as is proper. The unwillingness of the Report's drafters to agree to this compelling principle explains why the Report has become so convoluted.
2. All of the Report's references to the propriety of advocacy as a value orientation for ombudsman offices should be deleted.
3. Encouragement should be given to entities that wish to use the unqualified name "ombudsman" to convert all types of quasi-ombudsmen to classical ombudsmen offices whenever possible.
4. For those quasi-ombudsmen-whether they are executive, mediator, or advocate-ombudsmen-that cannot be converted to classical offices, attention should be paid to making them as much like classical ombudsmen as possible. This means that all three types of quasi-

Ombudsmen should be made as independent, as impartial, and as confidential as possible. Accomplishing this goal poses special difficulties for each type of quasi-ombudsman office:

4. (a) Promoting the independence of executive ombudsmen from executive control is paramount. Several strategies, many of which are mentioned in various sections of the Report, are feasible.
(b) Making the mediator ombudsmen more independent, impartial and confidential is highly desirable. But because the operational values of the mediator ombudsmen incline them toward pursuing such instrumental values as simply resolving disputes rather than such an ultimate value as administrative justice, because most of the offices operate in the private rather than the public sector, and because almost all are very weak offices having only a slight institutional structure, the mediator ombudsmen pose major problems. Although virtually all of the mediator ombudsmen are in a structural sense executive ombudsmen, their distinctive values make it difficult to find a way to make them compatible with other executive ombudsmen. Whatever is done about these problems, these minor offices clearly are not important enough to make it worthwhile to pretend that they are real ombudsmen so that the classical ombudsmen institution should be sacrificed to placate them.
(c) After removing „advocacy" from the mission of the long-term-care-ombudsman and other advocacy-ombudsman offices that wish to be called ombudsman, they should be converted to classical ombudsmen or the strongest executive ombudsmen possible.

Because it is somewhat more respectful of the differences between classical ombudsmen and the various kinds of quasi-ombudsmen and because it is less single-mindedly oriented toward legitimating those quasi-ombudsmen as real ombudsmen, the current Report is an improvement over its predecessors. But making further revisions – however useful they might be – would constitute nothing more than nibbling around the edges of the problem unless Recommendation 1 above is adopted. Recommendation 1 is the crux of the issue: if the Steering Committee and the drafters of the Report are not willing to accept that recommendation, then to continue revising is pointless.

In an important respect, however, the original Report was far superior to the current version: the original courageously held out against the political power of the long-term-care-ombudsman lobby and pointed out that an ombudsman must be truly unbiased and impartial. Unfortunately, the drafters have now caved in to the pressure and agreed that an advocacy-ombudsman office is an ombudsman as respectable as any other. Accepting such a proposal would be devastating for real ombudsmen.

I appreciate your consideration of these matters.

Yours sincerely,