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JUDICIARY OMBUDSMAN: SOLVING PROBLEMS IN THE COURTS

*Michele Bertran**

INTRODUCTION

“Help! I have a problem. I need assistance.” Almost everyone entering the superior court in Newark, New Jersey, needs some type of assistance. Sometimes I wonder what would happen, if upon their arrival, a court employee greeted them by declaring, “Welcome to your court where we treat you fairly, mete out justice speedily, and help you to resolve your disputes satisfactorily.” This greeting would paraphrase the mission of the New Jersey courts and announce, literally from the door, a commitment to make that mission a reality.¹ What would be the public’s reaction to such a declaration? Incredulity? Suspicion? Relief? Gratitude? Respect?

Based on what we know about public opinion of the justice system we can imagine a combination of all of these responses.² The

* Michele Bertran, Esq., is the ombudsman for the Superior Court of New Jersey-Essex Vicinage. The author extends appreciation to the following people: former assignment judge Alvin Weiss and current assignment judge Joseph A. Falcone for their sponsorship of the ombudsman program; Trial Court Administrator Collins Ijoma, for his resolute leadership of a service-oriented court; Yolande P. Marlow, Ph.D., the Supreme Court Committee on Minority Concerns, and Essex Vicinage Advisory Committee on Minority Concerns, for their guidance and nurturing of the program; Samuel D. Conti, Esq., for his scholarship and support; Victoria Rivera-Cruz, Esq., for laying a foundation for others to build on; and Information and Community Relations Center staff members Shazeeda Samsudeen and Nichole Purcell for their research for this article and their daily dedication.

1. N.J. JUDICIARY STRATEGIC PLANNING COMM., REPORT TO THE SUPREME COURT: MISSION STATEMENT OF THE NEW JERSEY COURTS (1998) [hereinafter REPORT TO THE SUPREME COURT] (“We are an independent branch of government constitutionally entrusted with the fair and just resolution of disputes in order to preserve the rule of law and to protect the rights and liberties guaranteed by the Constitution and laws of the United States and this State.”), at <http://www.judiciary.state.nj.us/strategic/strat.htm>. The mission statement evolved out of the New Jersey judiciary’s strategic planning process begun in 1996. The rudiments of the mission statement were developed at a brainstorming meeting of court leaders led by the late Chief Justice Robert N. Wilentz.

2. See generally NAT’L CTR. FOR STATE COURTS, HEARST CORP., HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY (1999). The survey covered four broad areas including access to the courts, timeliness of court decisions, fairness of judicial decision-making, independence and responsiveness of the courts to the public and changing conditions in society. The survey found that although the American public generally respects the courts, “The negative image of the courts cov-

twenty-first century American public wants a legal system that instead of merely moving cases along in a conveyor belt-like manner, enables people to participate in a dignified, meaningful, and expeditious process that helps to address their problems.³ Recent innovations in court system design and management, such as problem-solving and user-friendly courts, are helping to achieve these goals.⁴

In response to public opinion and citizen requests, the New Jersey judiciary has developed an ombudsman program to help court users effectively participate in the system and redress problems when they occur.⁵ This article describes the program and its relevance for courts seeking to be more responsive to the public.

ers issues about access to the courts, the treatment courts give to members of minority groups, and the independence and responsiveness of the judicial branch of government. Regarding responsiveness, “[T]wo out of three African-Americans, a slim margin of Hispanics, and four out of ten whites believe the courts are out of touch with their communities.” *Id.* at 3.

3. *Id.*

4. See, e.g., Roger Warren, *Customer Service in the Courts: Responding to the Cry for Justice*, CT. MANAGER, Summer 1996, at 21 (discussing the importance of excellent customer service for all court users); see also CONF. ST. CT. ADMIN., *In Support of Problem Solving Courts* (Aug. 3, 2000) (on file with author); CONF. ST. CT. ADMIN., *In Support of Problem Solving Courts* (Jan. 25, 2001) (on file with author) (recognizing and supporting the significant contribution of problem-solving courts to the administration of justice); Ctr. for Court Innovation, *Problem-Solving Courts: Principles* (listing the common principles guiding the development of problem-solving courts), at <http://www.problem-solvingcourts.org> (last accessed Apr. 25, 2002).

5. New Jersey is a unified court system with fifteen judicial vicinages (administrative districts). The New Jersey ombudsman program grew out of public concern about equal justice. It was piloted in the Camden Vicinage and then expanded to the Essex Vicinage. Currently, four vicinages have either full or part time ombudsmen: Essex, Camden, Mercer, and Burlington. See generally SAMUEL D. CONTI, N.J. ADMIN. OFFICE OF THE COURTS, CAMDEN COUNTY OMBUDSMAN PROGRAM REVIEW: EVALUATION, AND RECOMMENDATIONS (1997) (describing the genesis of the New Jersey ombudsman program and providing a comprehensive overview of the initiation of the program and an evaluation of the pilot program); ESSEX VICINAGE OMBUDSMAN OFFICE AND INFO. CMTY. RELATIONS CTR., REVIEW, EVALUATION, AND RECOMMENDATIONS, NEW JERSEY ADMINISTRATIVE OFFICE OF THE COURTS (2001) [hereinafter ESSEX EVALUATION] (analyzing the development of the program including the incorporation of preventive services through an Information and Community Relations Center; N.J. ADMIN. OFFICE OF THE COURTS, OMBUDSMAN WORKING GROUP REPORT (2001) [hereinafter WORKING GROUP REPORT] (describing and analyzing the program statewide); N.J. ADMIN. OFFICE OF THE COURTS, NEW JERSEY SUPREME COURT COMMITTEE ON MINORITY CONCERNS REPORT A3-A37 (2000-2002) (describing the most recent developments regarding program expansion).

I. WHAT IS AN OMBUDSMAN?

A. Definition

The term “ombudsman,” generally recognized as originating from the Swedish word for representative, designates an office that investigates and resolves complaints about the functioning of an entity.⁶ It has as its basic goal the improvement of administration. The ombudsman’s most important feature is that it has the means to “protect individual rights against the excesses of public and private bureaucracies.”⁷

The idea⁸ of an ombudsman for the New Jersey courts grew out of discussions about the experiences of women and minorities in

6. See, e.g., BLACK’S LAW DICTIONARY 979 (5th ed. 1996) (defining ombudsman as “An official or semi-official office to which people may come with grievances connected with the government. The ombudsman stands between, and represents, the citizen before the government.”) The name ombudsman lends itself to different interpretations and controversy. See Jeffrey S. Lubbers, *Ombudsman Offices in the Federal Government—An Emerging Trend?*, ADMIN. & REG. L. NEWS, Summer 1997, at 6 (commenting that the term “ombudsman” is controversial in several senses. “First, some people are put off by its ‘foreignness,’ arguing that it lacks ready meaning to most citizens. Despite the fact that five states, 20 federal agencies, and over 1000 corporations have established such offices, alternative names have been used such as ‘advocate,’ ‘citizen’s representative,’ and ‘mediator.’”). Some people also dislike the term’s seeming lack of gender neutrality and prefer the term “ombudsperson.” See also N.J. ADMIN. OFFICE OF CTS., THE OMBUDSMAN ASSOCIATION HANDBOOK iii (V. Marti, ed., 1994).

7. SECTIONS OF ADMIN. LAW AND REGULATORY PRACTICE AND DISPUTE RESOLUTION, ABA, REPORT TO THE HOUSE OF DELEGATES, RECOMMENDATIONS: STANDARDS FOR THE OPERATION OF OMBUDSMAN OFFICES 1 (2000) [hereinafter REPORT TO THE HOUSE OF DELEGATES]. An ombudsman is authorized to (1) receive complaints about, and to address, investigate or otherwise examine alleged acts, omissions, improprieties, and systemic problems within the ombudsman’s jurisdiction; (2) exercise discretion to accept or decline to act on a complaint or questions; (3) act on the ombudsman’s own initiative; (4) operate by fair procedures to aid in the just resolution of a complaint or problem; (5) gather information from all relevant sources; (6) resolve issues at the most appropriate level of the entity; (7) issue periodic reports; (8) function by such means as (a) developing, evaluating, and discussing options available to affected individuals; (b) facilitating, negotiating, and mediating; (c) conducting an inquiry; (d) investigating and reporting findings; (e) making recommendations for the resolution of an individual complaint or a systemic problem to those persons who have the authority to act upon them; (f) identifying complaint patterns and trends and educating; (9) initiating litigation, but only to enforce or protect the authority of the office. *Id.*

8. E.g., LINDA C. REIF, THE OMBUDSMAN CONCEPT (1995) (describing the historical development of the public sector ombudsman); U.S. Ombudsman Ass’n, Public Sector Ombudsman (2002), at <http://www.usombudsman.org>. The ombudsman concept dates back to 1809 when an ombudsman was appointed by the Swedish parliament to guard the rights of the citizenry against the government. Since its inception in Sweden, the ombudsman concept has taken hold in more than ninety countries throughout Europe, Asia, Africa, and Latin America. In the United States, the idea

the courts. The court's Task Force on Minority Concerns proposed the idea to the New Jersey Supreme Court in an interim report about the treatment of minority groups in the New Jersey courts.⁹ The Task Force's final report included a series of recommendations to improve overall treatment of minorities in the courts. The Task Force found that the public wanted an office that could provide more information about the justice system and receive and investigate complaints about abuses in the judicial process.¹⁰ This recommendation defined the New Jersey Judiciary Ombudsman Program and laid the foundation for its objectives.

B. Models

As a general matter, there are three kinds of ombudsman: classical, organizational, and advocate.¹¹ A classical ombudsman position is usually established by legislation that creates a position to handle complaints against the government. An organizational ombudsman can work in the public or private sectors, such as universities, hospitals, and private companies. This type of ombudsman generally handles the complaints of constituents, such as students, patients, employees, consultants, or contractors. Simi-

of an ombudsman to protect against government excesses gained popularity in the last half of the twentieth century. Currently, in the United States there are ombudsman offices in county and state governments, more than twenty federal and regulatory agencies, and in many other public and private sector entities.

9. N.J. SUPREME COURT TASK FORCE ON MINORITY CONCERNS, INTERIM REPORT 92 Recommendation No. 18 (1989) ("The Supreme Court should create the position of ombudsperson for racial and ethnic minorities in the court system.").

10. N.J. SUPREME COURT TASK FORCE ON MINORITY CONCERNS, FINAL REPORT 252 (1992) [hereinafter TASK FORCE REPORT] at 252. ("The court system lacks sufficient complaint procedures to enable persons to overcome unfair treatment in the courts. The Supreme Court should direct that ombudsperson offices be established at the state and vicinage levels to provide information about the courts and to receive and investigate complaints about abuses in the judicial process.") See also SUPREME COURT COMM. ON MINORITY CONCERNS, REPORT OF THE SUBCOMMITTEE ON MINORITY ACCESS TO JUSTICE, 11 (Supp. 1996) "The Administrative Office of the Courts should also be directed to develop procedures and policies regarding complaints by the public immediately. These procedures shall include an avenue for filing complaints based not only on race and ethnic bias, but also gender, sexual orientation, age, language and other bases for illegal discrimination and unfair treatment."); Yolande P. Marlow, *New Jersey Ombudsman Program*, in REPORT ON TRENDS IN THE STATE COURTS 1998-1999, at 34 (Nat'l Ctr. for State Courts ed., 1999) (commenting that "The Ombudsman Office serves all court users but is particularly sensitive to the needs of those who traditionally have had limited access to the courts, who lack confidence in the legal system, or who feel they have been discriminated against or mistreated by the courts.").

11. ABA, Standards for the Establishment and Operation of Ombudsman Report (2002), at <http://www.ombuds-toa.org>.

larly, an advocate ombudsman may work in the public, or private sectors, serving as an advocate on behalf of specific categories of consumers and potential complainants.

A recent proliferation of ombudsman offices has produced variations in standards and procedures. Some offices, with other names, closely fulfill established ombudsman criteria while other ombudsman offices may stray from established standards. A recent report outlining the standards for the establishment and operation of ombudsman offices acknowledges that pragmatic reasons may prevent immediate conformity with established standards but nonetheless urges compliance.¹²

However, the models share a general definition of proper subjects for investigation by an ombudsman that include "allegations of unfairness, maladministration, abuse of power, abuse of discretion, discourteous behavior or incivility, inappropriate application of law or policy, inefficiency, decision unsupported by fact, and illegal or inappropriate behavior."¹³

The New Jersey Judiciary Ombudsman program incorporates elements from established ombudsman models and adheres to the general definition of proper subjects to investigate. The program was not established by legislation, like a typical classical model, but has evolved out of court policy on maintaining judicial independence and fostering public trust and confidence in the courts.¹⁴ It does not perform the function of protecting against governmental abuses from outside, but works from within to ensure good service and accountability. Nor does it advocate on behalf of any one particular constituency. In many ways it can be likened to an organizational ombudsman, often used as a tool to promote the credibility of an organization.¹⁵

The doctrine of judicial independence precludes the authority to intervene in the decision-making and conduct of courts and their personnel. Recognizing this doctrine, ombudsman standards typi-

12. *Id.*

13. *Id.*

14. *See* REPORT TO THE SUPREME COURT *supra* note 1 ("First, the court system must work proactively to inform and educate the public. The public should understand the court system, its role and its limitations. Second, the court must involve the public by recognizing its significant role in the administration of justice and the delivery of court related services.")

15. THOMAS FURTADO, OMBUDSMAN ASS'N, WHY AN ORGANIZATIONAL OMBUDSMAN?: WHAT AN ORGANIZATION'S MANAGEMENT MIGHT WANT TO KNOW 15 (1996) (noting that an ombudsman can enhance the credibility of organizations that value people and commenting on the special role of someone in an organization who is trained to listen, counsel, negotiate and mediate).

cally exclude the authority to investigate the conduct of judges.¹⁶ However, one model act carves out a narrow exception that gives a state ombudsman the "jurisdiction to investigate administrative or ministerial acts by employees of the judicial branch, when those acts are peripheral to the adjudication itself."¹⁷

An example of a state ombudsman's office that handles court-related issues is the Alaska Office of the Ombudsman. The office, which reports to the legislative branch, was established to address complaints about state government.¹⁸ A recent investigative report outlines the Alaska Ombudsman's investigation of a citizen's complaint about incorrect information received from the office of the court clerk. The investigation resulted in a resolution of the complainant's problem and recommendations for improving procedures to prevent future errors.¹⁹ This is the same type of service

16. See, e.g., REPORT TO THE HOUSE OF DELEGATES, *supra* note 7.

17. U.S. OMBUDSMAN ASS'N, MODEL OMBUDSMAN ACT FOR STATE GOVERNMENTS § 3(a)(1) (1997). The model act excludes from its purview the authority to investigate the conduct of judges, Section 3(a)(1).

The exclusion of judges is based upon the existence of the long established system of appellate review of judicial decisions and upon the existence of other mechanisms for the sanctioning and/or the removal of judges who act unethically or who are incapacitated. The exclusion is narrow and contemplates that the Ombudsman would have jurisdiction to investigate administrative or ministerial acts by employees of the judicial branch, when those acts are peripheral to the adjudication itself. In many instances, administrative errors affecting a particular adjudication would have to be challenged and resolved through the established judicial process, but even in those cases, the ombudsman could make recommendations for improving administrative procedures that would have prospective effect. The ombudsman would not, of course, have the jurisdiction to question, criticize or review the substantive content of any judicial order, decision or opinion. The exclusion of judges would pertain only to judicial officers of the judicial branch of government and would not exclude administrative tribunals or administrative law 'judges' from the Ombudsman's jurisdiction.

Id.

18. Alaska Office of the Ombudsman, News & Resources, at <http://www.state.ak.us/ombud>.

19. State of Alaska Ombudsman, Investigative Report, Ombudsman Complaint J099-0107 (May 20, 1999), at <http://www.state.ak.us/ombud/JDPFD.htm>. This complaint describes a situation in which a citizen sought the assistance of the ombudsman to help enforce a court's order. The citizen complained that probation officers said that a writ of execution was required to enforce a judgment for a juvenile to pay restitution, while at the same time court clerks said that a writ could not be filed against a debtor who is a minor. The ombudsman's investigation clarified that although generally writs cannot be filed against minors, an exception permits them to be filed to satisfy restitution orders. See also Donald C. Rowat, *Why an Ombudsman To Supervise the Courts?*, in REPORT OF THE FIRST SAN JUAN OMBUDSMANSHIP CONGRESS 24 (Judicial Ombudsman ed., 1991) (comparing Judicial Conduct Commissions with an ombudsman authorized to investigate issues in the courts).

that an ombudsman for the courts can provide, i.e., investigation and resolution of complaints about matters that are peripheral to adjudication. The New Jersey Judiciary Ombudsman Program follows this approach.

An ombudsman's office is a recognized method of promoting accountability in government institutions. Notwithstanding the differences between the models, many people are familiar with the ombudsman concept because of its existence in various entities in the public and private sectors. In New Jersey, for example, the public can redress their grievances about treatment of the institutionalized elderly or inmates in prisons through ombudsman offices serving those constituencies.²⁰

II. WHY AN OMBUDSMAN FOR THE COURTS?

A. Accountability

Courts can be complex and intimidating. The issues that bring the public into contact with the legal system generally involve significant rights and matters of great importance to individuals, communities, and society. When court users experience perceived or actual problems, for any reason, including the novelty of their legal issues, perceived mistreatment, or other unique concerns, they want someone to help them find out where the problem lies and help get the case on track.²¹ This is important because a court system's missteps, even minor ones, have significant consequences for the individuals involved and the public's perception of the judicial system. We know this from national public opinion surveys about public trust and confidence in the courts.²² In New Jersey, we have learned about this from our efforts to solicit public feedback from focus groups, citizen advisory boards, and customer service surveys.²³

20. See, e.g., N.J. Ombudsman for Institutionalized Elderly, http://www.state.nj.us/health/senior/sa_ombd.htm; Ombudsman for Corrs., www.state.nj.us/corrections/structur/community; see also McGreevey Proposes New and Stronger Public Advocate, at <http://www.state.nj.us/cgi-bin/governor/njnewsline> (announcing New Jersey Governor McGreevey's plan to re-establish the Department of the Public Advocate "which will tackle waste and inefficiency, while making state government more responsive, open and accountable.")

21. E.g., TASK FORCE REPORT, *supra* note 10, at 248-49.

22. See NAT'L CTR. FOR STATE COURTS, *supra* note 2, at 6-7.

23. See, e.g., TASK FORCE REPORT, *supra* note 10, at 4-8. The report comprehensively describes Task Force activities and research methods including surveys, public hearings, and focus groups; see also SUPERIOR COURT OF N.J.—ESSEX VICINAGE OMBUDSMAN, ANNUAL REPORT (2001) [hereinafter OMBUDSMAN REPORT] (on file with author).

Understandably, the public wants to effectively protect their individual rights and to hold the system accountable when the system's bureaucracy fails to do so. Like all courts, New Jersey has well-established mechanisms in place for appealing decisions and for filing formal complaints about judges and lawyers.²⁴ Less well defined are the steps citizens can take to file complaints about court staff.

However, formal disciplinary procedures often necessitate written correspondence from the complainant.²⁵ In many instances, the public may be unaware of these procedures, or if aware, nonetheless may want to speak with someone before initiating contact with these bodies. Established complaint mechanisms are only useful if they are accessible and if the public is aware of them. To be effective and offer meaningful redress, the public must not find them too cumbersome to use due to literacy or language barriers, or unfamiliarity with such procedures.

The ombudsman provides information about these procedures, and handles complaints about court staff as well. Perhaps more importantly, the ombudsman process allows the complainant to air grievances, ask questions, and consider options and possible solutions. Ultimately, the ombudsman helps support the proper use of established complaint mechanisms while acting as a court-based resource for the public. Enabling the public to have greater access to both established complaint mechanisms and a court-based resource for problem solving ensures greater court accountability.

B. Effective Participation

Courts across the country are facing myriad issues arising from social and economic problems. These issues have produced an increase in the overall volume of litigation and an increase in the numbers of pro se litigants.²⁶ Of all of the constituencies that a

24. N.J. COURT R. 1:20, 2:15 (1969). *See generally* CYNTHIA GRAY, AM. JUDICATURE SOC'Y, HOW JUDICIAL CONDUCT COMMISSIONS WORK (1999) (reviewing and describing state-by-state Judicial Conduct Commissions); *Fifteen Judges Removed in 2001*, JUD. CONDUCT REP., Winter 2002, at 3 (reporting that fifteen judges were removed from office nationally); and Bruce Fein & Burt Neuborne, *Judicature Viewpoint: Why Should We Care About Independent and Accountable Judges?*, 84 JUDICATURE 1 (2002), (commenting on the significant impact of judicial interpretations and discretion).

25. *See generally* WORKING GROUP REPORT, *supra* note 5; Marlow *supra* note 10.

26. *See, e.g.*, NANCY BIRO, MEETING THE CHALLENGE OF PRO SE LITIGATION: AN UPDATE OF LEGAL AND ETHICAL ISSUES (2000) (discussing how courts have handled various issues including unethical conduct by a judge, errors made by a judge, and court staff assistance); JONA GOLDSCHMIDT ET AL., MEETING THE CHALLENGE OF

court-based ombudsman may serve, perhaps the most likely group to avail itself of this service is the litigant without a lawyer. Although litigants represented by counsel may experience problems in the courts, they nonetheless have a designated advocate and guide. In contrast, pro se litigants must navigate foreign territory alone.

Other constituencies can include people having problems with their attorney or experiencing difficulty finding one, inexperienced court users and nonresidents, or those who have historically been underserved by the justice system, e.g., ethnic, linguistic, and racial minority groups, undocumented workers, the disabled or mentally ill, and court users with multiple issues. These constituencies may also need assistance navigating the courts.

The social and economic strains currently being experienced by the justice system create new challenges that must be met to ensure the public's participation in a just process.²⁷ A recent survey notes that "[T]here is a large body of research supporting the view that if litigants perceive that their case was decided in a fair and efficient manner, their confidence in the courts is likely to increase even if the decision in the case went against them. Public trust and confidence and satisfaction with the courts are driven as much, and probably more, by perceptions of how courts reach decisions as they are by the decisions themselves."²⁸

Thus, attention to the integrity of the process is paramount. Courts are meeting this challenge by implementing ideas that foster a user-friendly environment in which the public can participate in an informed and productive way. Proponents of more accessible and responsive courts have recommended an ombudsman. These proponents recognize the simple truth that most people want to be

PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS (1998) (reviewing issues, policy and program developments arising out of the increase in pro se litigation); KATHLEEN M. SAMPSON, MEETING THE PRO SE CHALLENGE: AN UPDATE (2001) (discussing progress since the publication of the initial study on pro se litigants and commenting on the synergy between initiatives that serve pro se litigants and other court reforms aimed at improving access to justice and increasing public trust and confidence in the courts).

27. See, e.g., John Feinblatt et al., *Judicial Innovation at the Crossroads: The Future of Problem-Solving Courts*, 15 CT. MANAGER 28, 29 (2001) (noting that "[T]he emergence of problem solving courts can be traced to two realities: rising caseloads in the state courts and increasing frustration—both among the public and among system players—with the standard approach to case processing and case outcomes.").

28. See NAT'L CTR. FOR STATE COURTS, *supra* note 2, at 15.

able to speak to a human being when they are confused, have a problem, need assistance, or want to complain.²⁹

III. HOW DOES THE OMBUDSMAN PROGRAM WORK?

A. Services Offered

The New Jersey judiciary's ombudsman program offers public information, community relations, and citizen assistance services. Public information endeavors address the public's need for information about the court's mission, policies, procedures, and programs. The information is imparted through the use of educational literature, videos, and a website. Accurate court information informs the public and prevents misunderstandings before they develop. The office also conducts outreach efforts such as court tours, public education seminars, and special events. These efforts create opportunities for the public to learn about the courts from judges and staff and, reciprocally, for judges and staff to learn about the public's concerns in a nonadversarial setting.

The other component of the ombudsman program—citizen assistance—includes the investigation and resolution of complaints. This function is most closely associated with the ombudsman concept. However, all of the ombudsman's services are fully integrated, often overlapping and interconnected. Many issues that may at first seem to be complaints can be resolved with good communication and information. Conversely, inquiries can bring to light mistakes or highlight problems or areas that need improve-

29. Richard Zorza, Preliminary Draft, *Designing, From the Ground Up, A Self-Help Centered Court, One In Which The Litigant Without a Lawyer Is the Norm*, at para. XXIII (2001), at <http://dev.cast.org/castweb/dgrogan/law/selfhelp/index.cfm>. Zorza includes "a powerful ombudsperson program" in his grand scheme for courts accessible to litigants without lawyers. Zorza argues that "If the court is to be truly open, it must build a mechanism for the safe making of complaints about the functioning of the court. A well structured ombudsperson program gives court users the opportunity to complain to a person in a position to do something about the problem, as well as to make recommendations to the team about the need for changes highlighted by the complaint." *Id.* at para. XXIV. See also JONA GOLDSCHMIDT & IRA PILCHEN, *AM. JUDICATURE SOC'Y, USER-FRIENDLY JUSTICE* 13 (1996) (suggesting that courts consider designating a staff person or volunteer as an ombudsman, a person court visitors can contact if they have a grievance with a service they receive. The ombudsman's name, and how to contact him or her, can be displayed in prominent locations throughout the courthouse. An ombudsman can not only solve problems but also enhance the perception of courthouse users that their concerns are being heard. In the case of a complaint against a judge, the ombudsman can educate court users about the process for filing a formal complaint with the judicial conduct commission. In some cases, the ombudsman may be able to address the matter informally.

ment. The office accepts verbal or written complaints, as well as feedback and suggestions for improvement, in an easily accessed and identifiable courthouse location. One of its greatest advantages is that it can forestall the filing of formal complaints by appropriate and timely intervention.

B. Unique Characteristics

An Office of the Ombudsman typically has four unique characteristics: neutrality, confidentiality, independence, and sufficient authority to accomplish its purpose.³⁰ First, although all judiciary employees must be neutral in their dealings with the public and avoid any actual or apparent impropriety,³¹ the ombudsman extends this neutrality to the resolution of problems or complaints brought to the attention of the office. The ombudsman does not act as an advocate for the individual complainant but rather as an advocate for the proper functioning of the courts. The ombudsman receives criticisms or complaints from court users and works with judges, court managers, and staff to achieve a fair and just result according to the rules, standards, and policies of the judiciary.³²

Second, the ombudsman handles problems in confidence. Often, the nature of the complaint will require an ombudsman to make a specific inquiry about a case or situation. However, the ombudsman always works to resolve matters informally, without fanfare, and without compromising the identity of the complainant or the issues or other individuals involved in the complaint. If a complainant requests complete anonymity, the ombudsman maintains that confidence, noting only the type of problem complained about for record keeping and analysis.³³

Third, the ombudsman has sufficient independence to resolve issues expeditiously without having to steer through many levels of the bureaucracy. The ombudsman respects the system's structure

30. See REPORT TO THE HOUSE OF DELEGATES, *supra* note 7, at 2-3 (describing the essential characteristics of an ombudsman, i.e., independence, impartiality and confidentiality); N.J. ADMIN. OFFICE OF CTS., *supra* note 6 (noting that an ombudsman is neutral, informal, independent, nonretaliatory, fair, ethical, and maintains confidentiality).

31. N.J. COURT R. pt. I app. (1969), CODE OF CONDUCT FOR JUDICIARY EMPLOYEES Canon 3 (N.J. Sup. Ct. 1993).

32. See, e.g., REPORT TO THE SUPREME COURT, *supra* note 1; WORKING GROUP REPORT, *supra* note 5.

33. WORKING GROUP REPORT, *supra* note 5, at 4 (noting that some issues are confidential).

and hierarchy of authority while working to deliver the highest quality of service and problem resolution.

Fourth, the ombudsman reports to the highest administrative officers to receive guidance and to keep them informed of any problems, either isolated or systemic, thereby assuring the greatest organizational accountability.

The New Jersey Judiciary Ombudsman supports the judiciary's mission³⁴ and its core values of independence, integrity, fairness, and quality service.³⁵ Its aforementioned characteristics ideally position the ombudsman to act as a link between the court and the community it serves.

The complaints presented to the office can include concerns about judicial demeanor, inappropriate staff conduct, an excessive time spent waiting and delay, misunderstandings about court procedures, and general dissatisfaction with the system.³⁶

Although New Jersey has formal bodies for the investigation and resolution of complaints against judges and lawyers,³⁷ and, while those bodies fulfill an important function, the unique contribution of an ombudsman program is that the ombudsman offers informal, more personalized on-site attention in the courthouse and a clear means of addressing complaints about staff and the system in general.

An ombudsman program can serve as a lightning rod for problem identification and resolution and a catalyst for systemic growth and improvement. It supports judicial independence by promoting accountability and effective participation in the judicial process.

C. Essex Vicinage Ombudsman

Like any utilitarian idea, this program works when applied in its proper context. To understand it, one must visualize most present day court complexes. The Superior Court of New Jersey-Essex Vicinage court complex is located in four buildings in downtown

34. See generally REPORT TO THE SUPREME COURT, *supra* note 1.

35. COMM'N ON TRIAL COURT PERFORMANCE STANDARDS, NAT'L CTR. FOR STATE COURT AND THE BUREAU OF JUSTICE ASSISTANCE, U.S. DEP'T OF JUSTICE, TRIAL COURT PERFORMANCE STANDARDS WITH COMMENTARY (1990). Current national standards for trial courts including access to justice, expedition and timeliness, equality, fairness, and integrity, independence and accountability, and public trust and confidence. The ombudsman has the greatest impact in the area of public trust and confidence. However, timely and efficient resolution of problems and related recommendations for improvement support all of the trial court's performance standards.

36. OMBUDSMAN REPORTS *supra* note 23, at 23.

37. N.J. COURT R. 1:20, 2:15 (1969).

Newark, New Jersey. It is the state's largest trial court in the state's largest urban area. The buildings house more than sixty judges and 1000 court employees, who process more than 100,000 cases annually and host thousands of court users daily.³⁸ The trial court has original jurisdiction in all criminal, general equity, family, and civil cases (civil including small claims and landlord and tenant matters).³⁹

On any given day, there are many people in the courthouse who may lose their liberty in a criminal case, their hard earned money in a civil suit, their housing in a landlord and tenant matter, or their parental rights in a family case. For each court user, the case that impacts them is the most important one. People come to the courthouse in search of a fair process and a just result, and they want judges, lawyers, and court staff to ensure that happens. Many cases are full of loss, suffering, and despair.

Located on the first floor near the public entrance, the Essex Vicinage Ombudsman Office is a welcoming, well-furnished, comfortable space where court users can receive personal and confidential attention. Visitors are immediately greeted by attentive community relations liaisons who ask visitors a series of questions to determine the reason for the visit. Typical visitors need directions, information about court procedures, help filling out forms, interpreter's services, or an accommodation for a disability. Others are dissatisfied with the service or attention they have received elsewhere, including the courtroom or are distraught due to perceived or actual mistreatment, discrimination, or adverse ruling or unfavorable case outcome.⁴⁰ These court users want to complain and want someone to listen to them.

One court leader has likened the office to a hospital's Intensive Care Unit⁴¹ for the courts. The space and staff are equipped to provide a greater level of care and service to individuals in danger of being overwhelmed by the routine stream of courthouse business. To continue the medical metaphor, the series of questions initially asked are a way to triage issues and conduct a diagnostic assessment of the presenting problem. Most visitors are helped with the simple prescription of answers to their questions and the provision of related informative literature, assistance with forms

38. Caseload Profile, Essex County, available at http://www.judiciary.state.nj.us/quant/cm_m.pdf; <http://www.judiciary.nj.us/essex>.

39. N.J. CONST. art. VI, § 3 (1947).

40. WORKING GROUP REPORT, *supra* note 5, at 4-6.

41. *Id.*

completion, language interpretation, or disability accommodation. Visitors whose problems are more complicated, or who wish to register a complaint, are invited to a private office where they can present their concerns directly to the ombudsman.

D. Ombudsman Procedures

The ombudsman describes the role of the office and listens to the person's concerns or complaint. In this situation as well, the ombudsman asks a series of questions to gather information and clarify issues. Often, once the person has a chance to express their feelings and the issues have been clarified, the ombudsman may be able to offer an immediate resolution to the problem or a referral to another appropriate resource.⁴² If an investigation is necessary, the ombudsman will explain the investigation process and the steps, consequences, and timetable for such an investigation.

The ombudsman must also take care to disabuse visitors of the idea that the office can change unfavorable case outcomes or substitute in any way for proper reconsideration by the trial court or appellate review.⁴³ The ombudsman must also explain the prohibitions against ex parte communication and giving legal advice.⁴⁴ Investigations conducted by the ombudsman usually conclude with a formal written response. All complaints are documented and tracked to determine patterns, make recommendations for improvement, and provide feedback to court leaders.⁴⁵ The ombudsman encourages a proactive public by soliciting and welcoming criticism to strengthen the performance of the judicial branch. Underscoring the importance of the public's contribution

42. *Id.*

43. N.J. COURT R. 4:50-1, R:2:2 (1969).

44. CODE OF CONDUCT FOR JUDICIARY EMPLOYEES Canon 1 (N.J. Sup. Ct. 1993). This issue is significant because court staff must provide good information but not give legal advice. For a more complete discussion about the prohibition against giving legal advice, see John M. Gracean, *No Legal Advice from Court Personnel: What Does That Mean?*, JUD. J., Winter 1995, at 10; see also JOHN M. GRACEAN, THE DISTINCTION BETWEEN LEGAL INFORMATION AND LEGAL ADVICE: DEVELOPMENTS SINCE 1995 (1999) (describing the development of guidelines for court employees, including New Jersey guidelines). *But see* Russell Engler, *And Justice For All—Including the Unrepresented Poor: Revisiting the Roles of Judges, Mediators and Clerks*, 67 FORD. L. REV. 1987 (1999) (arguing that the court system's prohibition against legal advice hinders unrepresented litigants from obtaining information they need to make informed decisions about their cases leading to the significant forfeiture of rights.)

45. See WORKING GROUP REPORT, *supra* note 5, at 5.

in shaping government, one judicial ombudsman's motto for the public is "Don't complain, if you don't complain."⁴⁶

IV. COMMUNITY RESPONSE

The welcoming environment and responsiveness of the office often surprises visitors who may not expect to receive a high level of attention, service, and care from the court system. Caring is a particularly important and sometimes undervalued quality in the adversarial justice system. Personal attention and careful screening of problems permits visitors to express their frustration, exasperation, disappointment, and sadness in a safe environment. This new office is geared to problem solving. The public has been both genuinely perplexed and pleasantly surprised that the court system has an office dedicated to helping them.⁴⁷

Imagine an incarcerated drug user, frantically calling the court from another county's jail, in danger of losing his placement in a court-ordered drug treatment program because outstanding bench warrant information is not up to date in a central computer system. Imagine too, family members seeking help for their incarcerated loved ones, including those who are physically or mentally disabled, and especially vulnerable to the vicissitudes of life while incarcerated. Imagine criminal defendants upset by the havoc wreaked on their ability to remain employed while having to make innumerable court appearances.

Think about a non-English speaking tenant with young children, locked out of her apartment on a Friday afternoon at 4:00 p.m., desperately searching the courthouse for assistance. Picture parents frustrated by the problems associated with nonreceipt or nonpayment of child support while struggling with poverty or dealing with the sorrow caused by contentious separations, divorces, and visitation disputes. Imagine, also, litigants who are mentally ill,⁴⁸

46. See R. Adolfo de Castro, *The Ombudsman and the Privatization of Governmental Services* (1997) (commenting on citizen involvement in government), at <http://www.ombuds.uci.edu>.

47. Greg Berman & John Feinblatt, *Problem-Solving Courts: A Brief Primer*, 23 L. & POL'Y 126 (2001). Problem-solving courts proponents note that such courts forge new responses to chronic social, human and legal problems like family dysfunction, addiction, delinquency, and domestic violence—that have proven resistant to conventional solutions. And they attempt to fix broken systems, making courts (and their partners) more accountable and responsive to their primary customers—the citizens who use courts every day, either as victims, jurors, witnesses, litigants, or defendants.

48. DEREK DENCKLA, *RETHINKING THE REVOLVING DOOR, A LOOK AT MENTAL ILLNESS IN THE COURTS* (2001) (discussing the current analysis of the problems faced

daunted and confused by an incomprehensible tangle of court rules and procedures all carefully cast in legalese. It is not difficult to imagine litigants in these circumstances wanting to be absolutely sure that their cases have been properly managed and fairly decided.

Now, add to these concerns the possibility of human errors and computer glitches, and rushed and overworked judges and staff, and you have the alchemy for problems.⁴⁹ Frequently, the first response of people in these circumstances upon contacting our office is "Thank God." Others frequently ask if all courts have ombudsman offices and remark, that if not, they should. Various commentators have also supported the program by writing articles about it in newspapers and law journals.⁵⁰

We have been humbled by the extent to which recipients of services from the office have gone to demonstrate their gratitude. We receive many letters from recipients of our information and community outreach services. As court employees we are strictly prohibited from accepting gifts⁵¹ and of course, we explain this policy when offers are made. Nonetheless the many people, who contact our office with a complaint or a dire need, have been creative in circumventing the policy in order to express their approval of the services. We have had money surreptitiously stuffed in our pockets, flowers, balloons, and gifts delivered, all of which we donate. We receive letters, calls, and visits, sometimes months and years later, from people expressing their appreciation. Often people will go out of their way to come back and thank us once their crisis has passed, their problem is resolved, and they have gained control of the situation. We are honored by their generosity because quality service is to be expected.⁵²

by the mentally ill in the criminal justice system and the development of mental health courts).

49. See David Wexler, *Therapeutic Jurisprudence*, 17 T.M. COOLEY L. REV. 125 (2000) (arguing that "much of what legal actors do has an impact on the psychological well-being or emotional life of persons affected by the law.")

50. See generally Evelyn Apgar, *Ombudsman Test in for Expansion*, N.J. L., Feb. 23, 1998, at 1; Martin L. Haines, *Ombudsman Valuable Member of the Court*, ASBURY PARK PRESS, Mar. 18, 1999 at 15; Melissa Tennen, *An Ombudsman Arrives at Court*, 5 N.J. L. 43 (1996) (commenting on the significance of an ombudsman program for the courts); Renee Winkler, *Court Ombudsman Tries to Fill a Need*, COURIER-POST, Oct. 22, 1996, at B1-B2. See also Martin L. Haines, *Facing Minority Concerns Head On*, N.J. L., May 6, 2002 at 23.

51. N.J. COURT R. pt. I app. (1969), CODE OF CONDUCT FOR JUDICIARY EMPLOYEES Canon 3 (N.J. Sup. Ct. 1993).

52. See ESSEX EVALUATION, *supra* note 5.

Not everyone is pleased about the Ombudsman Program. Some people who come to the office to complain may doubt that a court-based office can actually be accountable to the public, or they are disappointed that the ombudsman cannot change the court's decisions or interfere with the adjudicative process in any way. Interestingly, while the public may at times be disappointed by the constraints of the office, others may be concerned about its infringement on judicial independence. The ombudsman must be wary of the public's desire for a way around the judicial process and the chafing of some within the system who may be reluctant to entertain the public's criticism of the court.

CONCLUSION

Consistent with the goal of all courts seeking to guarantee a more responsive, accessible, equal and fair justice system,⁵³ the ombudsman program provides information about the courts and redresses complaints about the court's performance.⁵⁴ The public wants courts to offer a dignified, meaningful, and expeditious process that helps them to address the issues that bring them into court. When this desire is delayed or thwarted by barriers in the system itself, an ombudsman can work to resolve issues and correct mistakes.

The program also engenders a reciprocal relationship between the court and the community it serves by encouraging the use of the public's comments and criticism to improve the system. The ombudsman links citizens with the court by educating the public about its processes and procedures, encouraging communication and interaction and conveying the public's concerns to court leaders.

53. See generally Berman & Feinblatt, *supra* note 47.

54. In 1990 the State Justice Institute and the American Judicature Society convened a conference to discuss "Alternative Futures for the State Courts of 2020." Conference presenters postulated "Seven Futures," fictional visions of what courts might look like in the first part of the twenty-first century. Participants were invited to suspend disbelief as they envisioned how social, economic, and political forces might combine to change the justice system for better or worse. One scenario entitled "Judicial Leadership" described the future thusly: "People want their disputes settled quickly and fairly. They want to have confidence in the wisdom and justice of their judges. They want to be treated fairly and politely by service providers. They want to believe that the service is being rendered efficiently, with cutting edge technologies complementing, indeed, helping to preserve traditional rights and procedures. And they want the service provided on their turf and terms, not merely at the time, pace and convenience of the providers."

Like newly developed problem-solving courts and user-friendly court initiatives elsewhere in the country, the ombudsman program in New Jersey has been well received thus far. However, continued careful monitoring is necessary to determine its efficacy and ensure that it fulfills its objectives. More dialogue and research are also needed to support the development of the program, shape its parameters, and hone its operations.

The program announces a commitment to quality service and contributes to a climate in which creative problem solving can flourish. An ombudsman program can help the court treat the public fairly, mete out justice speedily, and resolve disputes satisfactorily.