

1982

The Swedish Press Ombudsman - A Model for the United States?

John W. Williams

Follow this and additional works at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law

 Part of the [Law Commons](#)

Recommended Citation

Williams, John W. (1982) "The Swedish Press Ombudsman - A Model for the United States?," *NYLS Journal of International and Comparative Law*: Vol. 3 : No. 2 , Article 2.

Available at: https://digitalcommons.nyls.edu/journal_of_international_and_comparative_law/vol3/iss2/2

This Article is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Journal of International and Comparative Law by an authorized editor of DigitalCommons@NYLS.

JOURNAL OF INTERNATIONAL AND COMPARATIVE LAW

Volume 3

Number 2

1982

THE SWEDISH PRESS OMBUDSMAN—A MODEL FOR THE UNITED STATES?

JOHN W. WILLIAMS*

“The Swedish democracy is founded on freedom of opinion”

—The Instrument of Government

“[I]n order to ensure free interchange of opinions and enlightenment of the public, every Swedish national shall . . . have the right to express his thoughts and opinions in print, to publish official documents and to make statements and communicate information on any subject whatsoever.”

—The Freedom of the Press Act

I. INTRODUCTION

Freedom of the press is provided for in the constitutions of a number of liberal-democratic Western states, including those of Sweden¹ and the United States.² A reading of the constitutional language, and a thorough examination of their legal and social history, reveals the extensive protections and freedoms that have been afforded their

*J.D., George Washington University National Law Center, 1980. Member of the Virginia Bar. Chairman of the International Legal Education Committee of the International Law and Practice section of the ABA.

1. See Flanz & Kortiz, *Sweden*, in 14 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 1 (1976). The Swedish Constitution is composed of three fundamental documents: the Freedom of the Press Act (*Tryckfrihetsordning*) [hereinafter cited as SWED. CONST., *Freedom of the Press Act*]; the Instrument of Government (*Regeringsformen*) [hereinafter cited as SWED. CONST., *Instrument of Government*]; and the Act of Succession (*Successionsordning*) [hereinafter cited as SWED. CONST., *Act of Succession*].

2. See U.S. CONST. amend. I.

respective presses.³

Yet somewhere in the extensive legal history of these concepts of a free press, a certain freedom has slipped between the cracks: the individual's freedom from abuse by the press. Both the Swedish and American constitutional guarantees speak to the protections granted to the press industry.⁴ Even though the statutory language seems to grant a "freedom of the press" to each citizen,⁵ this is not the reality. Simply stated, there is no freedom of, or right to, the press for the citizens of

3. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Near v. Minn. ex rel. Olson*, 283 U.S. 697 (1931); *Gitlow v. New York*, 268 U.S. 652 (1925); Campbell, *Free Press in Sweden and America: Who's the Fairest of Them All?*, 8 SW. L. REV. 61 (1976); Douglas, *The Press and First Amendment Rights*, 7 IDAHO L. REV. 1 (1970); Freund, *The Supreme Court and Civil Liberties*, 4 VAND. L. REV. 533 (1950); Michanek, *Freedom of the Swedish Press*, 20 CURRENT SWED. 2 (1974).

4. The first amendment to the Constitution of the United States provides that, "Congress shall make no law . . . abridging the freedom of speech, or of the press" U.S. CONST. amend. I. Similar protection is afforded by the Swedish Freedom of the Press Act:

Freedom of the press means the right of every Swedish national, without any hindrance raised beforehand by any authority or other public body, to publish any written matter, thereafter not to be prosecuted on account of the contents of such publication otherwise than before a legal court, and not to be punished therefore in any case other than such where the contents are in contravention of the express terms of law, enacted in order to preserve general order without suppressing general information.

In accordance with the principles set forth in the preceding paragraph of this Article concerning freedom of the press for all, and in order to ensure free interchange of opinions and enlightenment of the public, every Swedish national shall, subject to the provisions set forth in the present Act for the protection of individual rights and public security, have the right to express his thoughts and opinions in print, to publish official documents and to make statements and communicate information on any subject whatsoever.

Any person shall likewise have the right, unless otherwise provided in the present Act, to make statements and communicate information on any subject whatsoever for the purpose of publication in print, to the author or editor or editorial office, if any, of any publication, or to an enterprise dealing commercially with the forwarding of news to periodicals.

SWED. CONST., *Freedom of the Press Act*, ch. 1, art. 1.

5. See U.S. CONST. amend. I; SWED. CONST., *Freedom of the Press Act*, ch. 1, art. 1.

Sweden⁶ or the United States.⁷ They have no right of access⁸ nor do they have the more narrowly defined right of reply.⁹ The established press, with its enormous resources and reach, has incalculable national impact and influence. Without the resources of the established press or access to it, the individual citizen cannot exercise more than illusory "freedom" and, unless aided, has no effective freedom of the press.

The arguments for public access to the press derive from the broad concept of the press as a public utility,¹⁰ existing to serve a constitutional guarantee reserved to the public, and the more limited concept of public access, embodying an ability by members of the public to respond to assertions made by the press.¹¹ Neither Sweden nor the United States confers by law a right of reply and correction¹² nor do they grant a mandatory right of access.¹³ In Sweden, however, the absence of a right of reply and correction is mitigated by the presence

6. Interview with Lars Arno, Press Counsellor, Royal Swedish Embassy (Oct. 31, 1979).

7. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). See also Note, *Access to the Printed Media by Political Candidates: Miami Herald Publishing Company v. Tornillo*, 28 Sw. L. J. 1038 (1974).

8. See, e.g., J. BARRON, *FREEDOM OF THE PRESS FOR WHOM? THE RIGHT OF ACCESS OF MASS MEDIA* (1973); Barron, *Access to the Press—A New First Amendment Right*, 80 HARV. L. REV. 1641 (1967) [hereinafter cited as Barron, *Access to the Press*]; Barron, *Access—The Only Choice for the Media*, 48 TEX. L. REV. 766 (1970) [hereinafter cited as Barron, *The Only Choice*].

On access to the press in Sweden, see, e.g., Michanek, *supra* note 3.

9. The right of reply is similar to the right of rejoinder and correction, a concept of mandatory access to the press by a person injured by published statements. Neither the Swedish nor the United States' constitution provides for a mandatory right of reply.

10. Campbell, *supra* note 3, at 90.

11. See generally Barron, *The Only Choice*, *supra* note 8. Mr. Barron has written that:

A constitutional right of access I find far preferable to either a journalism of involvement or a journalism of noninvolvement. It will take the mass circulation newspaper and require publication of the political advertisement and, starting with the new public law of libel, initiate a right of reply for group and personal attack. But these are only partial responses. The concept of access for ideas that so recently have been proclaimed a constitutional right is a new and, I hope, challenging one. Its possibilities for practical implementation are only beginning to be understood.

Id. at 779.

12. Campbell, *supra* note 3, at 90 n.181. A right of reply and correction does not require the publication of an alleged defamation as a prerequisite. It is considered to be much broader than the right of retraction under libel law. *Id.*

13. See *supra* note 8 and accompanying text.

and work of a press ombudsman of national stature.¹⁴ There is no comparable citizen's aid in the United States.

This article will discuss the elements of a potential "aid" to a citizen's freedom of and to the press, the ombudsman. This article is the nexus of two separate developments in mass media or press law: the right of access and the press ombudsman. The right of access is an extension of the traditional newspaper doctrine of the right of reply.¹⁵ In the United States any public right of access to the print media, even to reply to personal attacks, is, however, held to contravene the freedom of the press.¹⁶ The leading advocate of public access to the press in the United States, Dean Jerome Barron of the George Washington University National Law Center, has written extensively on the subject.¹⁷ A decade ago, Dean Barron summarized the situation, one that is, in essence, the same today, as follows:

There is an anomaly in our constitutional law. While we protect expression once it has come to the fore, our law is indifferent to creating opportunities for expression. Our constitutional theory is in the grip of a romantic conception of free expression, a belief that the "marketplace of ideas" is freely accessible. But if ever there was a self-operating marketplace, it has long ceased to exist. The mass media's development of an antipathy to ideas requires legal intervention if novel and popular ideas are to be assured a fo-

14. See *infra* text accompanying notes 139-85.

15. See Daniel, *Right of Access to Mass Media—Government Obligation to Enforce First Amendment?*, 48 TEX. L. REV. 783, 789-90 (1970); Donaghue, *Reconsideration of Mandatory Public Access to the Print Media*, 21 ST. LOUIS U.L.J. 91 (1977).

16. Lange, *The Speech and Press Clauses*, 23 U.C.L.A. L. REV. 77, 84 (1975).

17. See, e.g., J. BARRON, *supra* note 8; Barron, *Access to the Press*, *supra* note 8; Barron, *The Only Choice*, *supra* note 8. Dean Barron contends that:

If public order and an informed citizenry are, as the Supreme Court has repeatedly said, the goals of the first amendment, these goals would appear to comport well with state attempts to implement a right of access under the rubric of its traditional police power. If a right of access is not constitutionally proscribed, it would seem well within the powers reserved to the States by the tenth amendment of the Constitution to enact such legislation. Of course, if there were conflict between federal and state legislation, the federal legislation would control. Yet, the whole concept of right of access is so embryonic that it can scarcely be argued that congressional silence preempts the field.

Barron, *Access to the Press*, *supra* note 8, at 1676.

rum—unorthodox points of view which have no claim on broadcast time and newspaper space as a matter of right are in poor position to compete with those aired as a matter of grace.¹⁸

American press critic A.J. Liebling has said that, in practice, freedom of the press is guaranteed only to those who own the press.¹⁹ Dennis Campbell points out that the accuracy of this view is enhanced by the growing concentration of newspaper ownership in both Sweden and the United States coinciding with a decreasing opportunity for dissent.²⁰

This article will examine the Swedish institution of the Press Ombudsman and its potential applicability to the United States. The analysis of this institution encompasses the history and development of the concept of an ombudsman, as either an individual or a committee, and its application, particularly in the United States and Sweden. Because of the uniqueness of the Swedish Press Ombudsman, this article also considers the development and content of the expansive Swedish Freedom of the Press Act.

The importance to the Swedish nation of a free and vocal press is emphasized in two ways. First, nearly a third of the present Swedish Constitution is devoted to The Freedom of the Press Act.²¹ "[I]n order to ensure free interchange of opinions and enlightenment of the public,"²² the Swedish people have the "right . . . to publish any written matter."²³ Second, the state is actively involved in the financial aspects of newspaper publishing. Through a program of selective and general subsidies to publishers, the state attempts to maintain diversity in the press and to curb the trend toward newspaper monopolies. Government support includes production subsidies, development and establishment grants, distribution rebates and aid to collaborative efforts among newspapers.²⁴ While this approach is the antithesis of the American concept of a free press, freedom from government control or intervention, it is an attempt to achieve a similar goal, namely the maintenance of a vibrant democratic society. The Swedish people believe that the press can be the best counterweight to the power of government and that a multitude of newspaper viewpoints will prevent a

18. Barron, *Access to the Press*, *supra* note 8, at 1676.

19. Campbell, *supra* note 3, at 90.

20. *Id.*

21. SWED. CONST., *Freedom of the Press Act*, *supra* note 1.

22. *Id.* ch. 1, art. 1, cl. 1.

23. *Id.*

24. See generally K. GUSTAFSSON & S. HADENIUS, *SWEDISH PRESS POLICY* (1976); O. HULTEN, *MASS MEDIA AND STATE SUPPORT IN SWEDEN* (1979).

stagnation or co-optation of the press by the government. Hence, one of the key elements of Swedish press policy is the maintenance of diversity in the press through government subsidies to various newspapers.²⁵

II. THE OMBUDSMAN²⁶

Lord Devlin summarized the need for an ombudsman in this way:

I believe it to be generally recognized that in many of his dealings with the executive, the citizen cannot get justice by process of law. *The common law has now, I think, no longer the strength to provide any satisfactory solution to the problem of keeping the executive, with all the powers which under modern conditions are needed for the efficient conduct of the realm, under proper control.*²⁷

George McClellan, former Commissioner of The Royal Canadian Mounted Police and the first Ombudsman of Alberta, Canada, "could find no more fitting summation to [his] views on the requirement for an Ombudsman."²⁸ The existence of an ombudsman is not "a clear admission of government's failure to correct injustices to the citizen."²⁹ Sweden has had an active ombudsman for over one hundred and seventy years. As Commissioner McClellan declared, "I do not think for one moment that Sweden would admit that every government it has had since 1809 has been a failure."³⁰

This century has witnessed an ever-increasing computerization, automation, systematization and bureaucratization of daily life. To many, the social institutions and government administration are becoming less humane and less responsive. The result is a feeling of injustice on the part of the citizenry. Niall MacDermot, Secretary-General of the International Commission of Jurists, has concluded that:

If these feelings of injustice are left without

25. Arno, *supra* note 6.

26. For information on the concept of an ombudsman, see generally M. MOHAPATRA, *STUDIES ON OMBUDSMAN AND OTHER COMPLAINT HANDLING SYSTEMS* (1979); *THE OMBUDSMAN* (D. Rowat 2d ed. 1968); C. SMITH, *OMBUDSMAN, CITIZENS DEFENDER* (1966).

27. McClellan, *The Role of the Ombudsman*, 23 U. MIAMI L. REV. 463, 469-70 (1969) (emphasis in original).

28. *Id.* at 470.

29. *Id.* at 464-65.

30. *Id.* at 465.

remedy, if there is no one to whom the citizen can turn in these circumstances, the gap between the government and the governed, between the state and the citizen is likely to grow, with a buildup of sullen resentment of authority which is detrimental to progress and development in the society.³¹

31. MacDermot, *The Ombudsman Institution*, 21 INT'L COMM'N JURISTS REV. 37, 38 (Dec. 1978). MacDermot summarized the development of "these feelings of injustice" in the following manner:

The twentieth century has seen an enormous growth in the responsibilities of the state, covering almost all aspects of economic and social as well as political and cultural life. This has necessitated the devolution of power to the officials of an ever-growing public service in many matters which intimately affect the daily lives of ordinary citizens. Their entitlement to land, housing, employment, health and welfare benefits and other social services, their obligations to pay taxes and social contributions, and many other important matters are in the hands of those belonging to what is often disparagingly called "the bureaucracy."

On occasions unreasonable decisions are made, causing a sense of injustice. They may be the result of bias, improper influence, graft, abuse of power or merely incompetence, neglect, idleness or other causes amounting to what is sometimes termed "maladministration."

There are, of course, many safeguards provided by law to give protection against improper administrative action. Sometimes there is a right of appeal to a higher administrative authority, or to an administrative tribunal or to the ordinary courts. At times these procedures are simple, speedy and effective, but as often as not they are protracted and costly. They will often involve making written complaints and filling up forms and following procedures which confuse and intimidate the ordinary citizen. Sometimes, the very procedures by which the citizen can assert his rights are too complex for, say, an illiterate peasant in a rural area. The well-known short story of Ousmane Goundiam, *Le Mandat*, illustrates the labyrinth of confusion, ending in injustice, which may result from bureaucratic procedures. The question then becomes one of how to make the administration more human and more responsive to the needs of those it is intended to serve.

On other occasions the complainant feels that a decision against him is unjust but lacks the means to probe into the matter to find out whether he has been the victim of an arbitrary or improper decision. Even if he goes to a lawyer, the lawyer may advise him that without some proof of irregularity he has no remedy. What the complainant needs is the help of someone who has greater power than a lawyer to investigate

Hence the growth of the institution of the ombudsman.

McClellan believes that the search for administrative justice has been a constant in the evolution of democratic government. The search has either been instigated by the government or brought about by external pressures. He identifies the legal profession as one of the elements most responsible for reforms and improvements in administrative justice.³²

For over a century and a half, however, the results of this search were slow to materialize. In 1955 only three countries, Sweden, Finland and Denmark, had such institutions.³³ Two more countries, Norway and New Zealand, adopted this system in 1962.³⁴ Soon to follow were the United Kingdom and various Canadian provinces. In the last ten years there has been "an explosion of Ombudsmen."³⁵ There are now over forty national, state or provincial ombudsmen³⁶ throughout Europe and North America, in Fiji, Papua New Guinea, Japan, Israel, Venezuela and throughout the countries of the Commonwealth, in civil law nations such as France, as well as in developing countries such as Guyana, Sudan, Tanzania and Zambia.³⁷ In many of these countries, the lack of procedural administrative law or tribunals, or the shortcomings of the traditional vehicles for complaint and remedy, gave rise to the demands for an ombudsman which was introduced in order to assist the citizenry burdened by the over-fecundity of regulations.³⁸

The term "ombudsman" comes from the Swedish word for "agent" or "representative."³⁹ An ombudsman is usually an appointed governmental officer who is the public's representative against authority. As an independent and nonpartisan officer (or committee of officers), he deals with the public's specific complaints of administrative injustice or maladministration. Sometimes referred to as a "grievance man,"⁴⁰ "*le mediateur*"⁴¹ or people's advocate, the ombudsman has the

his complaint, if it seems to merit investigation, and to try to negotiate a remedy for him.

Id.

32. McClellan, *supra* note 27, at 465.

33. *Id.*

34. *Id.*

35. Powles, *Ombudsmen and Human Rights Commissions*, 21 INT'L COMM'N JURISTS REV. 31 (Dec. 1978).

36. *Id.* at 31-32.

37. See generally K. WEEKS, *OMBUDSMAN AROUND THE WORLD* (1978).

38. See Holmgren, *The Need for an Ombudsman Too*, in *THE OMBUDSMAN* 225 (D. Rowat 2d ed. 1968).

39. D'Alemberte, *The Ombudsman—A Grievance Man for Citizens*, 18 U. FLA. L. REV. 545, 545 n.2 (1966).

40. *Id.* at 546.

41. F. STACEY, *OMBUDSMAN COMPARED* 92 (1978).

power to investigate, report upon and make recommendations about individual cases and procedures. He seeks solutions to problems by a process of investigation and conciliation. Essentially, "the great majority of complaints considered by Ombudsmen are matters which, for one reason or another, would go without recourse if there were no Ombudsman to receive a complaint from the person aggrieved."⁴² Literally, he "investigates and criticizes what the governors do that the governed do not like."⁴³

An ombudsman does not wield unlimited power.⁴⁴ His scope of authority is limited so as not to conflict with that of the judiciary. As has been noted, "the genius of the Ombudsman idea is that the holder of the office has full authority to investigate and pass judgement, but no power to enforce."⁴⁵ His "main weapon to secure remedial action is publicity—through his reports to the legislature and through the press."⁴⁶ As MacDermot points out, "his authority and influence derive from the fact that he is appointed by, and reports to one of the principal organs of state, usually either the parliament or the President. This ensures both the confidence of the complainant in the Ombudsman, and the respect of the civil service."⁴⁷ Thus, the ombudsman is armed with the political independence and objectivity necessary to negotiate and mediate with the bureaucracy. His power lies in the threat of publicity. "Hence, as he 'fights city hall,' his efficacy relies in a large measure on the public respect and confidence he enjoys."⁴⁸

The ombudsman concept originated in Sweden in 1809⁴⁹ and has enjoyed a long and successful tradition there.⁵⁰ Today, Sweden has the most developed ombudsman system in the world.⁵¹ The ombudsman is regarded as a direct intermediary between the public and the authori-

42. MacDermot, *supra* note 31, at 38.

43. Newman, *Review—Ombudsman and Human Rights—The New U.N. Treaty Proposals*, 34 U. CHI. L. REV. 951, 955 (1967).

44. See generally Peterson, *Press Councils—A Look Towards the Future*, 29 U. MIAMI L. REV. 487 (1975).

45. Anderson, *The Scandinavian Ombudsman*, 54 AM.-SCAND. REV. 408 (1964). The new legislation adopted in 1975 limits the role of Ombudsmen in prosecuting officials. It also places more emphasis on their right to institute disciplinary measures against officials rather than to prosecute. It remains to be seen how far the Ombudsmen may decide to start disciplinary proceedings in cases where they would have prosecuted. See F. STACEY, *supra* note 41, at 4.

46. Rowat, *The Spread of the Ombudsman Idea*, in OMBUDSMAN FOR AMERICAN GOVERNMENT? 10 (S. Anderson ed. 1968).

47. MacDermot, *supra* note 31, at 38.

48. McClellan, *supra* note 27, at 464.

49. Flanz & Kortiz, *supra* note 1, at 1.

50. Arno, *supra* note 6.

51. F. STACEY, *supra* note 41, at vii.

ties. He investigates complaints against a variety of public agencies and officials, including courts, judges and prosecutors.

One type of Swedish ombudsman is the Parliamentary Ombudsman, or *Justitieombudsman*, who is an officer of the Parliament, or *Riksdag*. The details of his position are spelled out in the Riksdag Act.⁵² The Riksdag elects one or more persons to serve as Ombudsman.⁵³ The Ombudsman is under the direct authority of the Committee on the Constitution⁵⁴ to which he must submit an annual report of his activities. The Committee appoints a six-person sub-committee, the Delegation for the Parliamentary Ombudsman, to assist the Ombudsman in developing procedural rules and other matters.⁵⁵ The Ombudsman, elected by secret ballot, serves for a term of four years. His election is "prepared" by the Delegation for the Parliamentary Ombudsman in consultation with the Speaker's Committee, a body representing the various political parties.⁵⁶ If the Ombudsman fails to enjoy the confidence of the Committee and the Riksdag, he can be discharged before the completion of his term of office.⁵⁷

The Parliamentary Ombudsman's jurisdiction is sweeping in scope. As an officer and representative of the Parliament, he supervises the observance of laws and statutes.⁵⁸ Open to direct access by the public, the Ombudsman can investigate all branches of government,⁵⁹ including complaints against the judiciary relating to judicial conduct or administrative problems in the court system. He can also investigate complaints about offenses against the freedom of the press.⁶⁰ It is understood that, upon completion of an investigation, the Ombudsman's files are generally open to inspection by the press.⁶¹ This reinforces the obligation of the Ombudsman to keep the public informed about his duties and activities.

52. The Riksdag Act, 1974, ch. 8, art. 10, reprinted in Flanz & Kortiz, *supra* note 1, at 72. Although the Riksdag Act, which governs the conduct and business of the Parliament, was removed from the Swedish Constitution in 1974, it still retains a special legal status and is often reprinted along with the three Fundamental Laws. *Id.* at 18.

53. *Id.* ch. 8, art. 10.

54. *Id.* ch. 4, art. 6, supplementary provision 4.6.1.

55. *Id.* ch. 8, art. 10, supplementary provision 8.10.1.

56. *Id.* supplementary provision 8.10.2.

57. *Id.* ch. 8, art. 10, cl. 1.

58. See generally MacDermot, *supra* note 31, at 39.

59. See generally THE OMBUDSMAN 25 (D. Rowat 2d ed. 1968).

60. See L. GROLL, PRESS COUNCIL AND THE PRESS OMBUDSMAN IN SWEDEN (Royal Ministry for Foreign Affairs Information Service, June 1972).

61. See F. STACEY, *supra* note 41, at 8. In Sweden, all official documents are open to scrutiny by the public and the press, unless special reason can be given for keeping them confidential. *Id.*

The Parliamentary Ombudsman's relationship with the press is actually limited to two areas. First, he works closely with the press to publicize government abuses. In this capacity he uses his most powerful tools—publicity and public opinion. Second, he investigates complaints by the press concerning government abuses of the press freedoms guaranteed by the Freedom of the Press Act.⁶² Since the press is not part of the government, the Parliamentary Ombudsman does not act upon complaints of abuse by the press. This is the duty of another individual, the Press Ombudsman.⁶³

The Swedish government has also established three other Ombudsmen: the Antitrust Ombudsman, the Consumer Ombudsman and the Equal Opportunities Ombudsman. The Antitrust Ombudsman was established in 1954 to investigate violations of Swedish antitrust law.⁶⁴ The first Consumer Ombudsman was appointed in 1971, and now serves as the Director General of the National Board for Consumer Policies.⁶⁵ The Equal Opportunities Ombudsman, established in 1980, seeks to end discrimination based on sex.⁶⁶ Each Ombudsman, like the Press Ombudsman, can act on his own initiative or upon public complaints and can seek voluntary settlement or court action.⁶⁷

III. THE FREEDOM OF THE PRESS ACT

The success of the Swedish Press Ombudsman is derived in large part from the unique Freedom of the Press Act⁶⁸ which acknowledges the need for the free flow of information. The public is presumed to have a right to receive information. To give meaning to the free flow of

62. SWED. CONST., *Freedom of the Press Act*, *supra* note 1.

63. See *infra* text accompanying notes 155-85.

64. Unlike the Parliamentary Ombudsman, the Antitrust Ombudsman is appointed not by the Riksdag, but by the Government. THE SWEDISH INSTITUTE, *FACT SHEETS ON SWEDEN* 1 (Jan. 1981).

65. The Consumer Ombudsman is charged with the duty of ensuring that two laws for protection of consumers are observed: the Marketing Act and the Unfair Contract Terms Act. In July, 1976, the Office of the Consumer Ombudsman and the National Board for Consumer Policies were fused into a single body, headed by the Consumer Ombudsman. *Id.* at 2.

66. A new law regarding equality at work came into effect on July 1, 1980. The law includes a prohibition against sex discrimination and a demand for active measures promoting equality. The Equal Opportunities Ombudsman, appointed by the Government, initially attempts to persuade employers to voluntarily comply with the law. He also participates in efforts to promote equality at work, and represents, in the Labor Court, individual employees who feel that they have been discriminated against. *Id.*

67. *Id.*

68. For the legislative history of the Act, see Flanz & Kortiz, *supra* note 1, at 1-19.

information, the media's ability to gather and publish information is protected. As in the United States, the right of the press to publish is readily acknowledged and protected. Unlike the United States, however, Sweden also protects a special right of the press to gather information. Supporting this news-gathering privilege are an array of protections extended to the journalist and his sources, including their right to anonymity,⁶⁹ the requirement to respect confidentiality,⁷⁰ the presumption against compelled testimony⁷¹ and the shield against liability extended by the rule of designated editorial responsibility.⁷² The right of news-gathering is reinforced by the constitutional principle of publicity and the extensive right of access to official documents.⁷³ These rights are designed to facilitate the ability to communicate information, both from the source to the press and from the press to the public.

The Swedes proudly point out, and rightly so, that their freedom of the press laws are older than any others, including the United States' first amendment.⁷⁴ The Swedish Freedom of the Press Act of 1766 was the first written constitutional guarantee against government censorship granted after the invention of the printing press.⁷⁵ Although often revised,⁷⁶ it remains fundamentally unchanged. Subsequently, the Swedes adopted one of the first modern constitutions,⁷⁷ *The Reger-*

69. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 3, art. 1.

70. *Id.* ch. 3, art. 4, cl. 1. The United States does not similarly respect the confidentiality of a communication between a journalist and his source. See *In re Farber*, 78 N.J. 259, 394 A.2d 330, *cert. denied*, 439 U.S. 997 (1978).

71. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 3, arts. 1-5.

72. *Id.* ch. 3, art. 5.

73. *Id.* ch. 2, art. 1, cl. 1.

74. The first amendment to the Constitution of the United States was proposed by Congress, along with eleven other amendments, on September 25, 1789. Ten of the proposed amendments, including this one, were ratified by the requisite number of states on December 15, 1791.

75. Campbell, *supra* note 3, at 62 n.9.

76. See Flanz & Kortiz, *supra* note 1, at 1-19.

77. On August 21, 1772, the *Regeringsform* was enacted, which some historians have regarded as the first modern constitution. Actually, the Swedish document of 1772 was anticipated by several charters bearing the same name. The term *Regeringsform* was used as early as 1634 and again in 1719 and 1720. But while the title was the same, the content and character of these charters differed considerably. The *Regeringsform* of 1634 was mainly concerned with the structure and exercise of the executive power while the charters of 1719 and 1790 marked a victory on the part of the estates and the Parliament over the absolutist pretensions of Charles XII. It was followed by other significant achievements such as the enactment of a new code of parliamentary procedure in 1723 and the promulgation of the first law concerning the freedom of the press. *Id.* at 1.

ingsform,⁷⁸ and a new code of parliamentary procedure.⁷⁹ These laws were abrogated by the coup d'état of Gustav III. Following Sweden's defeat at the hands of the Russians during the Napoleonic Wars, King Gustavus IV Adolphus was arrested and his autocratic rule terminated. On June 6, 1809, the Regent (who became the monarch Charles XIII) accepted the new *Regeringsform*, which included three "Basic Laws": the Law Concerning Parliament, the Law Concerning Succession and the Law Concerning the Freedom of the Press, the last "Basic Law" having been promulgated on March 9, 1810. Sweden's constitutional process was thrown into turmoil within the year upon the death of Charles XIII. The French Marshall Bernadotte was elected the next sovereign, and all three of the Basic Laws were rewritten. The 1810 press law was replaced with the new version on July 16, 1812, thus firmly establishing press freedom as a constitutional principle.

The Basic Law concerning the Freedom of the Press has been amended approximately thirty times since its enactment in 1812. In 1947 a committee of experts proposed a revision of the patchwork of press laws. Their report was accepted by the government, and, on April 5, 1949, a new and comprehensive press law was promulgated. In 1954 the government established a Constitutional Commission to propose a modernization of the Constitution. The Commission's report, issued in 1963, failed to discuss the Freedom of Press Law. In 1966 a second commission was established, their proposal culminating in the adoption of a new constitution on February 27, 1974. The new constitution made little substantive change in the Freedom of the Press Law. It did, however, reduce the status of the monarch and confirm the status of three acts as Fundamental Laws: the Instrument of Government, the Act of Succession and the Freedom of the Press Act.⁸⁰

The very first chapter of the tripartite⁸¹ Swedish Constitution recognizes that "Swedish democracy is founded on freedom of opinion and on universal and equal suffrage"⁸² The second article in that chapter establishes the Freedom of the Press Act as one of the three "fundamental laws of the Realm of Sweden."⁸³ These statements are "Basic Principles of the Constitution."⁸⁴

The second chapter of the *Regeringsformen*, the first instrument of the Constitution, delineates the "Fundamental Freedoms and

78. Promulgated in Stockholm on August 21, 1772.

79. The new code of parliamentary procedure was promulgated in 1773.

80. See *supra* note 1.

81. See Flanz & Kortiz, *supra* note 1, at 1.

82. SWED. CONST., *Instrument of Government*, *supra* note 1, ch. 1, art. 2, cl. 2.

83. *Id.* ch. 1, art. 2.

84. *Id.* ch. 1.

Rights"⁸⁵ that every Swedish citizen is guaranteed "in relation to the community."⁸⁶ These rights include "the freedom of expression and the freedom of press"⁸⁷ and "the right to information."⁸⁸ Freedom of expression and press is explicitly defined as "the freedom to communicate information and express opinions either orally, in writing, in pictorial representations, or in any other way."⁸⁹

The Freedom of Press Act, a third of the constitution, consists of fourteen chapters and one hundred fifty-eight articles. It reaffirms the basic freedom to publish, which was enunciated in the 1810 Basic Law by stating that:⁹⁰

[I]n order to ensure free interchange of opinions and general enlightenment, every Swedish citizen shall have the right to express his thoughts and opinions in print, to publish official documents and to make statements and communicate information on any subject whatsoever, subject to the regulations set forth in this Act for the protection of individual rights and public security.⁹¹

The basic freedoms of the press are laid out in the first chapter of the Act. Article 1 of chapter 1 defines freedom of the press as:

[T]he right of every Swedish national to publish any written matter, thereafter not to be prosecuted on account of the contents of such publication otherwise than before a legal court, and not to be punished therefore in any case other than such where the contents are in contravention of the express terms of law, enacted in order to preserve general order without suppressing general information.⁹²

In addition to protecting the right to publish, article 1 also grants the right "to make statements and communicate information on any subject whatsoever for the purpose of publication in print, to the author or

85. *Id.* ch. 2.

86. *Id.* ch. 2, art. 1, cl. 1.

87. *Id.*

88. *Id.* ch. 2, art. 1, cl. 2.

89. *Id.* The constitutional rights of freedom of expression and press are broader than their statutory counterparts, which are not considered to grant a general freedom of expression or to protect other than written expression. *See infra* text accompanying notes 96-100.

90. *See supra* text accompanying note 80.

91. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 1, art. 1, cl. 2.

92. *Id.* ch. 1, art. 1, cl. 1.

editor or editorial office, if any, of any publication, or to an enterprise dealing commercially with the forwarding of news to periodicals.”⁹³ These key rights are guaranteed on the belief “that freedom of the press is a foundation of a free society.”⁹⁴

The Act in its entirety provides a detailed scheme for fostering and protecting these rights, leaving little room for interpretation or judicial definition.⁹⁵ For example, the Act narrowly defines the concepts of printing and publishing and the terms “printed matter” and “periodical.”⁹⁶ Perhaps the most important definition is contained in article 5, which prescribes the scope of the Act to “apply only to matter produced by means of a printing press. The term ‘printed matter’ includes maps, drawings or pictures, even if there is no accompanying text.”⁹⁷ Thus the Act does not protect oral communications or those transmitted by the use of symbols or electronic devices.⁹⁸ It does not grant a general freedom of expression or freedom of speech. The Freedom of Press Act provides simply for an expansive freedom to communicate in print.

Chapter 1 speaks directly to the question of prior restraint. Article 1 guarantees the right to publish “without any hindrance raised beforehand by any authority or other public body.”⁹⁹ The protection against “hindrance . . . beforehand” is articulated in article 2, which states: “No publication shall be subject to censorship before being printed, nor shall the printing thereof be prohibited. Furthermore, no authority or other public body may . . . prevent the printing or publication thereof, or the circulation of the publication among the public.”¹⁰⁰ Offenses “against the freedom of the press,” defined as “any offense consisting of an unlawful statement in printed matter, or an unlawful publication by means of printed matter,”¹⁰¹ can be prosecuted only after publication and circulation of the printed matter.¹⁰²

The offenses against the freedom of the press are described in detail in chapter 7 of the Act.¹⁰³ This chapter, which is the successor to

93. *Id.* ch. 1, art. 1, cl. 3.

94. *Id.* ch. 1, art. 4, cl. 1.

95. Campbell, *supra* note 3, at 67.

96. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 1, arts. 5-7.

97. *Id.* ch. 1, art. 5.

98. *Id.* ch. 1, art. 5. This article states that the Act applies only to matter produced by means of a printing press and has not been expanded by statute to include modes of communication made possible by advances in technology.

99. *Id.* ch. 1, art. 1, cl. 1.

100. *Id.* ch. 1, art. 2.

101. *Id.* ch. 7, art. 1.

102. *Id.* ch. 7, art. 3, cls. 1 & 2.

103. *Id.* ch. 7, art. 4.

the Secrecy Act provisions of the 1949 Act,¹⁰⁴ addresses issues concerning secret government documents,¹⁰⁵ as well as libel, slander and defamation.¹⁰⁶ The provisions for supervision and prosecution,¹⁰⁷ liability,¹⁰⁸ damages¹⁰⁹ and legal action¹¹⁰ of this chapter are spelled out in great detail. One of the unique features of Swedish law is the requirement of trial by jury for these offenses.¹¹¹

Chapter 2 further protects Swedish press freedom by declaring, "To further free interchange of opinions and enlightenment of the public, every Swedish national shall have free access to official documents"¹¹² This chapter, in essence a secrecy act, embodies "the principle of publicity."¹¹³ Roughly analagous to the American Freedom of Information Act,¹¹⁴ this chapter details the right of access to official documents and defines with careful precision the documents that qualify for exclusion from public inspection. Unlike the United States, this right of access extends to all levels of government from national to municipal.

Another key right granted by the Act is the guarantee of anonymity.¹¹⁵ Central to this right is the guarantee that no author be forced to reveal his identity in print.¹¹⁶ Printers, publishers, editors and other persons concerned with the press are prohibited from revealing an author's identity contrary to his wishes, "unless an obligation to do so arises under law."¹¹⁷ This requirement is so strict that the author's identity "may not be raised during any legal proceedings concerning the freedom of the press"¹¹⁸ except in carefully circumscribed instances.¹¹⁹ Finally, the chapter prohibits the printing of a "name or pseudonym of a person who is not in fact the author, editor, or informant."¹²⁰ These rights impose an affirmative responsibility on the journalist to respect the anonymity of authors and informants.

104. Flanz & Kortiz, *supra* note 1, at 12.

105. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 7, art. 4, cls. 3-5.

106. *Id.* ch. 7, art. 4, cls. 6, 7, 10, 11, 12 & 15.

107. *Id.* ch. 9.

108. *Id.* ch. 8.

109. *Id.* ch. 11.

110. *Id.* ch. 12.

111. *Id.* ch. 12, art. 2.

112. *Id.* ch. 2, art. 1, cl. 1.

113. Campbell, *supra* note 3, at 84.

114. 5 U.S.C. § 552 (1976 & Supp. IV 1980).

115. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 3.

116. *Id.* ch. 3, art. 1, cl. 1.

117. *Id.* ch. 3, art. 4 & art. 1, cl. 2.

118. *Id.* ch. 3, art. 2.

119. *See id.* ch. 3, art. 3.

120. *Id.* ch. 3, art. 5, cl. 1.

Finally, the Act provides a system of designated responsibility whereby writers and informants are immune from liability in libel actions and criminal investigations.¹²¹ The system requires all editors,¹²² deputy editors¹²³ and printers¹²⁴ to register with the Ministry of Justice. Only these parties can be held liable for the content of a newspaper or periodical. One Scandinavian scholar notes that:

In press cases, therefore, no criminal investigation is necessary in order to find the culprit; a telephone call to the Ministry of Justice is generally enough. This rule relating to responsibility in itself excludes an inquiry into the news sources. The police have no business in the newspaper office or the printing works. This is also underlined by the rule according to which the editor is legally responsible even if he had nothing to do with the punishable article. Its content shall be deemed to have been inserted with the knowledge and consent of the editor. The presence or degree of his criminal intent becomes immaterial.¹²⁵

If no responsible editor is registered with the Ministry of Justice, the liability is transferred to the newspaper or periodical owner.¹²⁶ If his identity cannot be established, the printer is liable.¹²⁷ If the printer cannot be determined, the distributor assumes the liability.¹²⁸ In each instance, authors and sources are shielded from direct liability.

The Freedom of the Press Act does not apply to the broadcast media.¹²⁹ The Act speaks specifically to the print media omitting the broadcast media from its coverage.¹³⁰ Swedish broadcasting, a state regulated industry, is the exclusive domain of the Swedish Broadcasting Corporation, *Sveriges Radio AB*. This state-regulated monopoly, similar to that found in other European countries, serves as the parent

121. Campbell, *supra* note 3, at 78.

122. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 5, art. 4.

123. *Id.* ch. 5, art. 9, cl. 1.

124. *Id.* ch. 4, art. 3, cl. 1.

125. Eek, *Protection of News Sources by the Constitution*, in 5 SCANDANAVIAN STUDIES IN LAW 17, 20-21 (F. Schmidt ed. 1961). In the United States, newspaper offices do not have this broad immunity from police searches. See *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978).

126. Eek, *supra* note 125, at 20 n.7.

127. *Id.*

128. Campbell, *supra* note 3, at 78 n.109.

129. Arno, *supra* note 6.

130. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 1, art. 1.

organization for Sweden's two television channels, three national radio channels, a network of twenty-four "local" radio stations and an educational broadcasting system.¹³¹ Perhaps the leading motivation for this system of broadcasting is the commitment to providing equal service to all parts of Sweden.¹³² Funds for the broadcasts are obtained by a parliamentary budget allocation which is based on receiver license fees. There is no commercial advertising. Additionally, the state controls broadcasts through a series of separate agreements with each of the broadcasting entities. The agreements grant the companies the right to broadcast, while allowing the state to demand certain "cultural, political and journalistic standards . . . in programming."¹³³ The state also controls program distribution through its National Telecommunications Administration, *Televerket*.

On July 1, 1978, a new Broadcasting Act went into effect.¹³⁴ The Act reorganized the Swedish Broadcasting Company in an attempt to decentralize it and to defuse the criticisms that the monopoly had accumulated too much power and influence and that program production was over concentrated in Stockholm.¹³⁵ Through prohibitions against censorship or cancellation prior to broadcast, and through decentralization, the new Act frees program companies from direct state intervention. A limited freedom of expression is afforded the broadcasting media by the Broadcasting Liability Act.¹³⁶ A government-appointed Radio Council, *Radionamnden*, determines whether programs already broadcast have adhered to the guidelines and limitations set forth in the Broadcasting Act and Separate Agreements.¹³⁷ Thus, although compared with the "long protected freedom of expression in the printed media,"¹³⁸ this media lacks the high standard of protection specifically granted to the press under the Swedish Constitution.

IV. THE PRESS OMBUDSMAN

During the past century the Swedish press has come to recognize the double-edged nature of the great freedoms bestowed upon the press industry by the Swedish Constitution. While the Freedom of the Press Act protects the press against abuse, it does little to prevent abuse by the press. The professional Code of Ethics for the press ac-

131. See O. HULTEN, *supra* note 24, at 30.

132. *Id.*

133. *Id.* at 31.

134. *Id.* at 32.

135. *Id.* at 38.

136. *Id.* at 31.

137. *Id.*

138. *Id.*

knowledges that "[t]he role played by the mass media in society and the confidence of the general public in these media demands accurate and unbiased news."¹³⁹ Inaccurate or biased reporting or abuses by the press of its privileges and immunities could result in the collapse of public confidence in the media and thus of its special "role" in society. This, in turn, may indicate to the public that the unique protections extended to the press are no longer warranted. It is a vicious cycle that the press does not want to see begun. As the prior review of the Swedish Constitution¹⁴⁰ and The Freedom of the Press Act¹⁴¹ demonstrated, except in the case of official secrecy or libel and defamation, the Swedish press remains unregulated by the state. Abuse of this freedom by the press could result in public demand for greater government intervention. Therefore, as Lennert Groll, Sweden's first Press Ombudsman stated, "[t]he press has an interest in maintaining this great freedom and therefore in promoting effective self-discipline."¹⁴² Consequently, "[t]he Swedish Press has for a long time tried to uphold high ethical standards through a self-correction system."¹⁴³

In 1916, in response to alleged abuses, the Swedish Union of Journalists, the Swedish Newspapers Publishers' Association and the National Press Club formed the Swedish (National) News Council. As a further response to criticism, in 1923 the Council promulgated its Code of Honour or Ethics. In 1969 the Council established the position of the Press Ombudsman. A tribunal, or "Court of Honor," was charged with examining alleged violations of journalistic rules of honor. These rules establishing a professional standard of "good journalistic practice"¹⁴⁴ were first codified in 1923 as a Code of Ethics. In an attempt to establish guidelines for good journalistic practice by both the publisher and the individual journalist,¹⁴⁵ the present Code, which was amended in 1953, 1970 and 1974,¹⁴⁶ classifies its rules under two headings: publicity or publishing rules and professional rules. The Code of Ethics is the foundation for the Swedish press system of self-discipline. The Code lays down strict rules, particularly as it relates to reporting crimes and police investigations and respect for personal privacy, as an expression of the high ethical ambitions of the industry. These ethical goals are summarized in the standard of "good journalistic practice." It

139. Swedish Press Council, Code of Ethics, pt. 1, para. 1.

140. See *supra* text accompanying notes 77-89.

141. See *supra* text accompanying notes 68-140.

142. See L. GROLL, *supra* note 60, at 2.

143. *Id.* at 1.

144. Arno, *supra* note 6.

145. See *supra* note 139.

146. Campbell, *supra* note 3, at 69 n.52.

is the responsibility of the Press Ombudsman and the Press Council to investigate possible violations and enforce the Code.

The Press Council, which is responsible for the publicity rules, is a voluntary organization of representatives from all the newspapers, periodicals and press organizations except for a very few "underground" publications.¹⁴⁷ Participation in the Council requires subscription and faithful adherence to the Code of Ethics.¹⁴⁸

The Press Council tribunal consists of a chairman who must be a member of the judiciary, six representatives from the various press organizations and six representatives from the general public and important Swedish organizations.¹⁴⁹ The Council acts as a self-regulating board of review for the press industry. It passes judgment on complaints, filed either through the Press Ombudsman or directly by citizens. The Council is responsible for defining what constitutes "good practice" and can charge violating publishers.¹⁵⁰ Decisions of the Press Council are regularly published in special supplements to "Press Journal" and are reported in "The Journalist." The Council itself issues an annual summary of those cases it considers to be most significant to journalistic practices.¹⁵¹ The impact of the Council's findings is further enhanced by the fact that any publication found in violation of the Code must publish the text of the Council's ruling.¹⁵² Furthermore, the Council can levy a series of modest fines against the offending publications which are used to meet the costs of the self-discipline system.¹⁵³

The growth of the popular press and greater competition in the 1960's resulted in an increasing number of violations causing "a deterioration of the ethical climate."¹⁵⁴ To check these violations, the press reformed its system of self-discipline in 1969, the most salient of these reforms being the introduction of the Press Ombudsman.¹⁵⁵ The Press Ombudsman for the General Public is a creation of the press, not the government.¹⁵⁶ He is, however, nominated by a committee on which the

147. *See id.* at 68-69.

148. Arno, *supra* note 6.

149. *Id.* The Trade Union Council and the Employers Association are among the organs represented.

150. *Id.*

151. *Id.*

152. Swedish Press Council, Code of Ethics, pt. 1, para. 5.

153. The Swedish Broadcasting Corporation also subscribes to the Code of Ethics. Enforcement of the Code in radio or television broadcasting is the responsibility of the National Broadcasting Council, which regularly publishes its own decisions. Arno, *supra* note 6.

154. L. GROLL, *supra* note 60, at 2.

155. *Id.*

156. *Id.* at 3.

press organizations do not command a majority of the votes, thus securing his independence.¹⁵⁷ Properly known as the *Allmanhetens Pressombudsman*,¹⁵⁸ his functions are patterned after the work of the Parliamentary Ombudsman.¹⁵⁹ Although he has no legal powers, the Press Ombudsman is an integral part of the press self-discipline system.

Similar to the Parliamentary Ombudsman, the success of the Press Ombudsman is a reflection of the public's confidence in the institution. To achieve the highest quality of service, the Press Council elected Lennart Groll as its first Ombudsman. Groll had previously served as an associate justice of the national Court of Appeals.¹⁶⁰ The second, and present, Ombudsman, Thorsten Cars, was appointed in 1979. He was formerly chief of the Stockholm city courts.¹⁶¹ The selection of men of high caliber and public reputation to serve as Ombudsman has been a hallmark of the Swedish system.

Lennart Groll took office as the first Press Ombudsman on November 1, 1969. Prior to his nomination, the Press Council was receiving an average of sixty complaints per year.¹⁶² In sharp contrast nearly four hundred complaints were filed in 1971.¹⁶³ Groll suggested that a possible reason for this dramatic increase was that "it is easier for the man in the street to turn to the Ombudsman with his trouble, often after a preliminary telephone inquiry, than it was to file a complaint with a more anonymous body."¹⁶⁴ This statement can also be used to reflect the familiarity of the average citizen with the workings and successes of the ombudsman concept in other forums.

The majority of the Press Ombudsman's time is spent receiving and investigating citizen complaints against the media.¹⁶⁵ Functioning as a type of grievance commissioner, the Ombudsman receives complaints from any citizen, all of such complaints going to him for a preliminary investigation.¹⁶⁶ The Ombudsman is also expected to investigate questionable journalistic practices on his own initiative. Prior to beginning his investigation, the Ombudsman must secure permission to proceed from those whom he believes may have been injured by the publication or may have a right to rejoinder or correction. Unfortu-

157. *Id.*

158. Campbell, *supra* note 3, at 68 n.49.

159. *Id.*

160. *Id.* at 69 n.51.

161. Arno, *supra* note 6.

162. See L. GROLL, *supra* note 60, at 4.

163. *Id.*

164. *Id.*

165. *Id.* at 2-3.

166. *Id.* at 3.

nately, because of the sheer volume of public complaints received by the Ombudsman,¹⁶⁷ he initiates only five percent of the investigations.¹⁶⁸

The Ombudsman's first task is to determine whether the complaint has merit. Groll noted some considerations involved in this determination when he stated that:

[C]omplaints have met with my disapproval because I have found them primarily directed against an expressed opinion in a political matter, or some other matter of public interest. It is not the business of the PO [Press Ombudsman] and the Press Council to encroach upon the freedom of the press to give information and express opinions in matters of public interest. We could hardly claim to have a mandate to judge what is accurate and unbiased in disputed matters. The Council has repeatedly stressed that its function is primarily to uphold the right of the private individual against newspapers of perhaps overwhelming strength. Henceforth, it will not be so easy for the Press Council to censure alleged biased reporting. If, however, a statement concerning an individual, an association, etc. is obviously incorrect and damaging to those concerned, it can of course be rebuked by the Press Council, even if it appears in the contest for instance of a political commentary.¹⁶⁹

The Press Ombudsman employs a standard of "good journalistic practice," as outlined in the Code of Ethics.¹⁷⁰ The Ombudsman acts as a prosecutor before the Council, in a manner similar to an American prosecutor, serving the interests of the public. Less than twenty-five percent of the complaints reach this stage in the self-discipline system.¹⁷¹ Groll observed that:

One reason [for the high rate of dismissals] may be that the newspaper has carried a rejoinder which should, in my opinion, satisfy the com-

167. *Id.* at 5.

168. *Id.* at 4.

169. *Id.* at 4-5.

170. *See* Arno, *supra* note 6.

171. *See* L. GROLL, *supra* note 60, at 4.

plainant. If a newspaper has given fair space to a reply from the attacked party, I might feel that good Press ethics have been observed and tell the complainant so. The effort to settle a conflict in a way which can be accepted by both sides is, of course, an interesting feature of my work.¹⁷² Why has [sic] a large proportion of the complaints been dismissed without further action? Successful mediation is one reason.¹⁷³

At least one scholar believes that this high dismissal rate indicates that the "Swedish system of access succeeds."¹⁷⁴

The Press Ombudsman may also dismiss a complaint which he finds to be without foundation. The complainant may then appeal directly to the Press Council. The Council, however, accepts appeals only from those persons "personally affected by the statement or article in question."¹⁷⁵ Thus a third party, who could register a complaint with the Ombudsman, lacks standing to appeal to the Council should the Ombudsman reject the merits of his complaint.

Upon determining that a complaint has merit, that there was a violation "of rules of good journalistic practice,"¹⁷⁶ the Ombudsman attempts to mediate a voluntary settlement with the publication involved. Successful mediation usually results in the publication of a rejoinder or correction, thereby satisfying the complainant. In summarizing his role as a mediator, Groll stated:

My efforts to mediate between complainants and newspapers have met with success in some cases, but have failed in others. I want to emphasize that my relations with newspaper editors have on the whole been amicable and that I have been met with understanding, which is only what one has a right to expect, considering that my work is in fact carried out in the best interests of the press itself.¹⁷⁷

If the mediation fails and the newspaper or magazine refuses to grant a limited right of rejoinder or correction, the Ombudsman con-

172. L. GROLL, *PRESS LAW AND PRESS ETHICS IN SWEDEN* 13 (1975).

173. L. GROLL, *supra* note 60, at 4.

174. Campbell, *supra* note 3, at 91.

175. See L. GROLL, *supra* note 60, at 3.

176. *Id.* at 3.

177. *Id.* at 4.

ducts further investigation. He reexamines the grounds of the complaint and discusses them with the editor of the accused publication. If the Ombudsman still believes that there has been a violation of the rules of journalistic practice, he will recommend the complaint to the Press Council for prosecution.¹⁷⁸ After the Ombudsman determines that a complaint indicates a violation of the Code of Ethics, he will refer it to the Press Council with his recommendation.

The Press Council is not a rubber stamp for the Ombudsman as it may reject his recommendations.¹⁷⁹ Nevertheless, in 1973 there were sixty-nine convictions.¹⁸⁰ Convictions can result in fines, which are used to subsidize the self-discipline system, and publication of the prosecution and censure in the offending newspaper or periodical. The Council will not, however, require the convicted publication to print any statement of the complainant.¹⁸¹

The action of either the Press Ombudsman or the Press Council will not preclude the complainant from instituting court action. There are, however, relatively few, usually between ten and twenty annually,¹⁸² lawsuits brought against the press in Sweden. The infrequency of press litigation has been attributed to the limitations on court actions due to the extensive freedoms granted to the press under the Freedom of Press Act and the effectiveness of the self-discipline system, particularly mediation.¹⁸³

Lernart Groll, commenting, after nearly three years in office, on the effectiveness of the self-discipline system in guaranteeing the public professional journalistic practices, stated that:

[C]ertainly a more effective and easier available remedy has been put at the disposal of the general public, which may earlier have felt helpless in this respect. Violations of the rules are more often brought to the attention of the PO [Press Ombudsman] and the Press Council. Editors and journalists have to concern themselves to a greater extent with complaints against the products of their work. I believe this has already led to a somewhat better observation of the newspapers'

178. *Id.* at 6.

179. *See* Campbell, *supra* note 3, at 69 n.54.

180. *Id.* at 69 n.56.

181. *Id.* at 69.

182. *Id.* at 69 n.58.

183. *Id.* at 91.

own ethical rules and that further progress along these lines is possible in the future.¹⁸⁴

After another three years of experience, Groll was able to state:

[T]he self-discipline system works more effectively now than earlier. The big number of complaints is an important factor. I think it is fair to say that no major violations of the ethical rules occurs in Swedish newspapers without someone complaining about them or otherwise bringing it to my attention. . . . Also, it has been said that the Swedish Press is increasingly willing to publish corrections and rejoinders, regardless of whether they are asked directly by the injured person . . . or the person turns to the Press Ombudsman for help.¹⁸⁵

V. RIGHT OF ACCESS IN SWEDEN

The unrestricted public right of access to the press is freedom of the press at its broadest.¹⁸⁶ A narrower right is the right of reply, a concept of mandatory access by the injured party in limited circumstances. The right of rejoinder or correction, especially if the statement is in the words of the injured party, is similar to the right of reply. If the correction or rejoinder statement, such as employed by the Swedish Press Ombudsman, is not in the words of the injured party, then this right is much narrower than the right of reply. Furthermore, the greater the editor's discretion in publishing statements, as in letters to the editor columns, the narrower the right of public access. There is no constitutionally-mandated right of reply in Sweden.¹⁸⁷ The basis for this right can be found in the first chapter of The Freedom of Press Act.¹⁸⁸

The second paragraph of Article 4 reads "[i]n determining the sanctions which under the present Act are attendant upon abuses of the freedom of the press, particular attention shall, in the case of statements requiring correction, be given to whether such correction was

184. L. GROLL, *supra* note 60, at 6.

185. L. GROLL, *supra* note 172, at 16.

186. See Lange, *The Role of the Access Doctrine in the Regulation of the Mass Media: A Critical Review and Assessment*, 52 N.C.L. REV. 1 (1973).

187. Arno, *supra* note 6.

188. SWED. CONST., *Freedom of the Press Act*, *supra* note 1, ch. 1, art. 1.

brought to the notice of the public in an appropriate manner.”¹⁸⁹ Article 9 allows that, “notwithstanding the provisions of the present Act, rules laid down by law shall govern . . . prohibitions against the publication . . . of any credit report which . . . contains an incorrect or misleading statement . . . and correction of incorrect or misleading statements.”¹⁹⁰ The “abuses of the freedom of the press” of which article 4 speaks refer to abuses against the press itself and its freedoms, not abuses by the press against the public.

Article 9 specifically acknowledges a right of correction for the inaccurate or misleading reporting of one’s credit-rating.¹⁹¹ Given the context of the wording, it is unclear whether this right extends beyond the scope of the specific language to grant the individual a right of correction in all circumstances. Furthermore, this is not a constitutional right, merely a statutory right which must be adopted.¹⁹²

A right of rejoinder and correction is granted by those organizations subscribing to the Code of Ethics.¹⁹³ The fourth and fifth paragraphs, entitled “Give Space for Rejoinders,” read as follows:

4. Factual errors are to be corrected when necessary. Anyone with a legitimate claim to reply to a statement is to be given the opportunity to do so. Corrections and rejoinders are to be published in appropriate form without delay and in such a way that they will be noticed by those who have received the erroneous information.

5. Publish without delay statements of censure issued by the Swedish Press Council in cases referring to your own newspaper. Apply the same procedure to statements made by the Press Ombudsman for the General Public in cases not referred to the Press Council for consideration.¹⁹⁴

Paragraph 4 of the Code speaks specifically of “factual errors,” thereby excluding non-factual errors, editorial comments and a broad array of possible misstatements. This paragraph gives the right of reply by rejoinders to “[a]nyone with a legitimate claim”¹⁹⁵ Determining the legitimacy of the claim remains within the editor’s discretion,

189. *Id.* ch. 1, art. 4, cl. 2.

190. *Id.* ch. 1, art. 9.

191. *Id.* ch. 1, art. 9, cl. 2.

192. *Id.* ch. 1, art. 9.

193. Swedish Press Council, Code of Ethics, pt. 1, paras. 4 & 5.

194. *Id.*

195. *Id.* para. 4.

although the Press Council and Press Ombudsman may review his decision. These officials can also review the appropriateness of the manner in which a newspaper handles corrections and rejoinders. The paragraph further indicates that such publication must be "without delay and in such a way that [the statements] will be noticed by those who have received the erroneous information."¹⁹⁶ Although this clause limits the statements to corrections of "erroneous information," it demands the corrections receive an equality of treatment with the original, incorrect statements.¹⁹⁷

The weakness in this correction process lies in the fact that adherence to the Code is entirely voluntary.¹⁹⁸ This shortcoming is compounded by the lack of legal and enforcement authority of either the Council or the Ombudsman. Hence, any right of reply, correction or rejoinder is neither constitutional nor statutory in nature. Rather, it is a purely discretionary right which has been granted to the public by the press through its own Press Council and Code of Ethics and which is to be enforced by its own Press Council and Press Ombudsman.

In recent years the Mass Media Commission has reviewed the need for a legal right of reply. It recommended that there should be no legal right of reply.¹⁹⁹ The Commission believed that because of the tremendous technical and organizational problems involved, a constitutional or statutory right would be impossible to enforce.²⁰⁰ The Commission thought that a right to reply should be left to the discretion and enforcement of the press and that the present press mechanisms for enforcement were more practical and afforded the public a quicker and better response than a legal regime. Underlying this recommendation were the ever present fear of further government interference with the press and the editor's functions²⁰¹ and the fear that an obligation to publish imposed on the editor, by operation of law, would erode the freedom of the press.²⁰²

196. *Id.*

197. *Id.*

198. Civil action in the courts, particularly for defamation, however, is not precluded by the Code, the Press Council or the Ombudsman.

199. Arno, *supra* note 6.

200. *Id.*

201. *Id.*

202. See *Herbert v. Lando*, 441 U.S. 153 (1979), where Justice White, writing for the majority, stated:

In . . . *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), and *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94 (1973), we invalidated governmental efforts to pre-empt editorial decision by requiring the publication of specified material. In *Columbia Broad-*

Although extensive adherence by press organizations and journalists to the press code and the investigative activities of the Press Council and Ombudsman atone for some of the shortcomings of the absence of a legal right of reply,²⁰³ the Mass Media Commission continues to review the Freedom of the Press Act and may yet recommend a constitutionally-based freedom of expression law that could codify a right of reply.²⁰⁴ Absent this, the public's right of reply must continue to depend upon the good will of the press.

VI. THE UNITED STATES

James C. Thomson, an administrator for the Nieman Fellowships at Harvard University, has observed the growth of American media. He has concluded that:

Never before have the media attained such visible national power—notably through the evolution of a de facto national press composed of three TV networks (ABC, CBS, NBC), two weekly news magazines (*Time*, *Newsweek*), two wire services (AP, UPI), and at least two dailies (*The New York Times*, *The Washington Post*). Such power is the result of vast economic and technological changes. These changes include . . . media conglomerations, concentrations of multiple media ownerships, and the striking growth of newspaper chains, along with new modes of electronic reproduction and distribution.²⁰⁵

He noted that "the efforts of one of these organizations, *The Washington Post*, uncovered gross abuse of power by the executive branch and forced the preimpeachment resignation of President Nixon."²⁰⁶

The "striking growth of newspaper chains," as well as the increasing concentration of media ownership, is not a new phenomenon. By 1962, over fifty percent of the total circulation of Sunday newspapers

casting System, it was the requirement that a television network air paid political advertisements and in *Tornillo*, a newspaper's obligation to print a political candidate's reply to press criticism.

Id. at 167. See generally Daniel, *supra* note 15.

203. See Campbell, *supra* note 3, at 90-92.

204. Arno, *supra* note 6.

205. Thomson, *Journalistic Ethics: Some Probing By a Media Keeper*, in *QUESTIONING MEDIA ETHICS* 40 (B. Rubin ed. 1978).

206. *Id.* at 41.

was controlled by chain ownership. The twelve largest American chains²⁰⁷ produced over a third of all the daily newspapers sold in this country.²⁰⁸ By 1973, less than three percent of American cities had completely separate and competitive newspapers,²⁰⁹ and only 182 of the 1,511 American communities with daily newspapers had more than one.²¹⁰ The statistics further illustrate the concentration of media ownership. For example, in San Francisco (Chronicle-Examiner) and in San Diego (Copley chain), the daily papers are owned by the same chain. The national impact of these newspapers is multiplied through cross-ownership. Consider the print media. *The Washington Post* parent company owns *Newsweek* magazine,²¹¹ and Time-Life, Inc. owned the now-defunct *Washington Star*.²¹² This concentration of ownership²¹³ emphasizes the disparity between the power of the press and the individual's "freedom of the press."

"The first amendment guarantees a free press but not a fair press."²¹⁴ These words sum up the state of the freedom of the press as it impacts upon the individual American. The American freedom of the press is one of the fundamental rights incorporated into the concept "liberty", and, therefore, it is protected from state interference under the fourteenth amendment.²¹⁵ The freedoms extended to the press include broad immunity from censorship and prior restraint,²¹⁶ but not standards of press responsibility²¹⁷ or public access to the press

207. These are: Hearst, Chicago Tribune, Scripps-Howard, Newhouse, Knight, Cowles, Ridder, Cox, Gannett, Chandler (Times Mirror), Ochs Estate (New York Times) and Triangle. Campbell, *supra* note 3, at 65 n.27.

208. *Id.*

209. U.S. News and World Report, Apr. 29, 1974, at 35.

210. *Id.*

211. See WHO OWNS THE MEDIA? CONCENTRATION OF OWNERSHIP IN THE MASS COMMUNICATIONS INDUSTRY 146 (B. Compaine ed. 1979).

212. Time-Life's purchase of *The Washington Star* placed the company in head-to-head competition with *The Washington Post* parent company, in both the Washington and the national markets.

213. See D. GILLMOR & J. BARRON, MASS COMMUNICATION LAW 690 (1979).

214. Ritter & Leibowitz, *Press Councils: The Answer to Our First Amendment Dilemma*, 1974 DUKE L.J. 845.

215. *Gitlow v. New York*, 268 U.S. 652, 666 (1924).

216. *Near v. Minnesota ex rel. Olson*, 283 U.S. 697 (1931); *Patterson v. Colorado*, 205 U.S. 454 (1907).

217. See Campbell, *supra* note 3, at 85. Professor Campbell has written that "given that the press has a particular constitutional role to play in the exchange of information, it is not difficult to argue that the press also has an implied first amendment right to serve the public as information gatherer and communicator." *Id.* He added: "Absent Sweden's right of anonymity and concept of *designated responsibility*, the essence of the freedom to give information in the United States must lie, from the perspective of the press, in its ability to assure the confidentiality of its news sources." *Id.* (emphasis added).

through a right of reply.²¹⁸ Justice White, in his concurrence in *Miami Herald Publishing Co. v. Tornillo*,²¹⁹ expressed these concerns:

The press is the servant, not the master, of the citizenry, and its freedom does not carry with it an unrestricted hunting license to prey on the ordinary citizen. . . .

To me, it is a near absurdity to so depreciate individual dignity . . . and to leave the people at the complete mercy of the press, at least in this stage of our history when the press, as the majority in this case so well documents, is steadily becoming more powerful²²⁰

Several experiments are under way to balance the growing power of the press in the United States. These include the creation of press councils,²²¹ the promulgation of press codes²²² and the appointment of in-house ombudsmen.²²³

American press councils are patterned after the British Press Council, which was formed in 1953 upon the recommendations of a Royal Commission.²²⁴ Unlike the American councils, the British Press Council is a government-created entity. Its major objectives include preserving freedom of the press, maintaining high professional standards of journalism, handling complaints about the conduct of the press and reviewing developments that might restrict the flow of information.²²⁵ Proposals for an American national press council date back to a 1947 recommendation of the Commission on Freedom of the Press.²²⁶ The Commission, chaired by Robert Hutchins, Chancellor of the University of Chicago and former Dean of Yale Law School, called

218. See *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

219. 418 U.S. at 259 (White, J., concurring).

220. *Id.* at 263.

221. See generally McKay, *National News Council as National Ombudsman*, 21 ST. LOUIS U.L.J. 102 (1977); Peterson, *supra* note 44; Ritter & Leibowitz, *supra* note 214; W. RIVERS, W. BLACKENBURG, K. STARCK & E. REEVES, *BACKTALK—PRESS COUNCILS IN AMERICA* (1972).

222. See Thomson, *supra* note 205, at 55. See also N. CRAWFORD, *THE ETHICS OF JOURNALISM* (1924).

223. The *Louisville Courier-Journal* and *Times* set the example in 1967. Other newspapers, such as *The Washington Post*, *Milwaukee Journal* and *Wilmington News-Journal* have acted similarly. *TIME*, Sept. 9, 1974, at 48.

224. Ritter & Leibowitz, *supra* note 214, at 851.

225. *Id.*

226. *Id.* at 852.

for the creation of an independent agency to appraise and report annually on press performance.²²⁷

The first major regional American organization concerned with press fairness was the Minnesota Press Council. The Council, established in 1971 by the Minnesota Newspaper Association, resembles the Swedish Press Council more than any other press entity. The Council's parent body, the Minnesota Newspaper Association, is composed of daily and weekly newspapers, as is that of the Swedish Council.²²⁸ The Chairman of the Minnesota Press Council is a State Supreme Court Justice,²²⁹ whose selection reflects both the Swedish and British practices. The Council is comprised equally of laymen and journalists. As in Sweden, the lay members are selected to represent various factions of the community. Unlike its Swedish counterpart, however, the Council, in order to avoid the appearance of collusion with the press, has severed its ties with its parent organization.²³⁰

America's first nationwide press council, the National News Council, was founded in 1973.²³¹ Unlike the Minnesota Press Council which was founded by the press, the National News Council was begun by the Twentieth Century Fund, a private foundation. Funded by several other national foundations, the National News Council was established to preserve freedom of communication and advance accurate and fair reporting. In the tradition of the other Councils, former California Supreme Court Chief Justice Roger Traynor was named the National News Council's first Chairman.²³²

In addition to state and national councils, there are also municipal press councils in America.²³³ None, however, escape extensive criticism.²³⁴ Although only some of the criticism is valid, it must all be considered, because it comes from the very industry the councils seek to regulate, the press. These criticisms, enumerated below, would apply equally to the institution of a press ombudsman as well as to other forms of "regulation."

Another element of the Swedish system of self-discipline, the voluntary press code, has been adopted in the United States with little

227. *Id.*

228. *Id.* at 854.

229. *Id.*

230. For further details about the Minnesota News Council, see Peterson, *supra* note 44; Ritter & Leibowitz, *supra* note 214, at 853-862.

231. See McKay, *supra* note 221, at 103.

232. For further details about the National News Council, see generally McKay, *supra* note 221; Ritter & Leibowitz, *supra* note 214, at 862-65.

233. See McKay, *supra* note 221, at 102.

234. See Campbell, *supra* note 3, at 70-71; Ritter & Liebowitz, *supra* note 214, at 865-70.

success. In Massachusetts, all but one of the state's major daily newspapers has refused to subscribe to the guidelines,²³⁵ and its code has been characterized as "less than forceful."²³⁶ The Kentucky code has been dismissed because the "high hopes for universal principles had to be tempered by difficulties of practical day-to-day news operations."²³⁷ Critics of the Oregon code have dismissed it as "no more enforceable than other codes."²³⁸

Individual newspapers have attempted to introduce their own mechanisms for self-discipline. The *Toledo Blade* and *Toledo Times* adopted their own code.²³⁹ The Toledo papers pledged to follow their guidelines "unless special circumstances dictate otherwise."²⁴⁰ This caveat demonstrates the unsatisfactory nature of this in-house mechanism, for it can be set aside whenever a unique situation arises. Giving responsibility for enforcement of an in-house code to those who are restricted by it is similar to allowing wolves to guard sheep.

Another self-discipline mechanism borrowed from Scandinavia is the appointment of in-house ombudsmen. A number of newspapers, including *The Washington Post*, have instituted such positions.²⁴¹ The ombudsman acts as a conduit for reader complaints about factual errors, ensures that such complaints are dealt with promptly and, on some papers, may serve as a monitor of staff performance. The present ombudsmen, no matter how independent, are subject to internal pressures and office politics. Ben H. Bagdikian served as the ombudsman for the *Post* before his outspoken critiques of the paper's errors precipitated a showdown with top management and his return to free-lance criticism. Other ombudsmen are suspect for their criticism by their colleagues and by the public who view them as part of the press establishment. Finally, an in-house ombudsman has only limited impact in that he serves only one paper or chain and cannot grant any member of the public unrestricted access to print.

James Thomson of Harvard University does not foresee press participation in any nationwide system of self-discipline, especially not in a national council, despite these regional signs of support for press

235. See Campbell, *supra* note 3, at 71 n.65.

236. *Id.*

237. KENTUCKY PRESS STATEMENT OF PRINCIPLES FOR PRE-TRIAL REPORTING 125 (1963).

238. See Friendly & Goldfarb, *Crime and Publicity*, in THE TWENTIETH CENTURY FUND 124 (1967).

239. These guidelines were announced by the Toledo newspapers in August, 1966. See Campbell, *supra* note 3, at 71.

240. Friendly & Goldfarb, *supra* note 238, at 124.

241. See *supra* note 223.

self-discipline mechanisms.²⁴² There is little real support among American journalists and publishers for any external regulation, be it by code, council or ombudsman.²⁴³ Underlying this lack of support is the fear of a growth in regulation and oversight by any outside agency which could, in turn, eventually lead to government control.²⁴⁴ The press sees any regulation as an encroachment on the traditional freedoms of the journalist and editor. It would inhibit the reporter and limit the discretion of the editor. Ultimately, it would have a "chilling effect" on the special obligations of the press to report and publish.

The press industry believes that the individual publication should police itself.²⁴⁵ Furthermore, they believe that alternative safeguards such as the introduction or expansion of letters-to-the-editor columns, opinion and commentary pages and the subscriber's option to cancel his subscription render external regulation unnecessary.²⁴⁶ These alternatives to self-discipline or public access are too often a fiction in practice. The *New York Times* illustrates the limitation of the letters-to-the-editor mechanism. In one year, for example, it received nearly 40,000 letters to the editor. Ninety percent of these letters were "fit to print." If printed, the letters, amounting to over 18 million words, would fill 135 complete issues of the *Times*. As a result, only six percent of the letters could be published, and these were subject to editorial review.²⁴⁷ To be published on an "op-ed" or commentary page, the author usually has to have some status or expertise, though a few papers have specified space for the "man on the street." Finally, as the statistics presented earlier indicate, many Americans cannot afford to end their subscriptions to their daily paper, because it is the only one in their community.

Given the inadequacy of the press self-discipline mechanisms in the United States, the concept of the press council seems to remain the best system for the future. The idea still faces difficulties, particularly in light of the lack of support it has received from the industry it regulates. Furthermore, the present National Press Council lacks any enforcement power or sanctioning process. This is compounded by the impotence of the Council's only weapon: publicity. No periodical is required to publish the work or holdings of the Council. As a result, the individual who feels he was wronged by the press, in general, has no

242. Thomson, *supra* note 205, at 51.

243. See generally Campbell, *supra* note 3; Ritter & Leibowitz, *supra* note 214; Thomson, *supra* note 205.

244. Daniels, *supra* note 15, at 783.

245. See Ritter & Leibowitz, *supra* note 214, at 865-67.

246. *Id.* at 866.

247. Daniel, *supra* note 15, at 785.

remedy against or access to the press. The most hopeful development in the United States regarding press self-discipline is the Minnesota Press Council. Perhaps one of the most important factors in the success of the Minnesota and Swedish Councils is the homogeneous nature of the press industry and jurisdiction which they regulate. The lack of national homogeneity within the United States does not harken well for any press initiatives toward national self-discipline.

VII. CONCLUSION

This article has examined the status and operation of freedom of the press in Sweden as it affects both the press and the public. While there are a number of similarities between the Swedish and American press freedoms, the differences are such that it is unrealistic to expect the adoption in the United States of a press ombudsman institution of any stature in the foreseeable future.

As for similarities, both Sweden and the United States place great emphasis on the press as the protector of democracy. This belief is incorporated into the constitutions of both nations²⁴⁸ and is given practical application.²⁴⁹ The freedom of the press cherished by these two nations is not, however, comprehensive. In Sweden and the United States, while the press is shielded against abuse of its freedom, it is not prevented, except in the most limited circumstances, from abusing that freedom itself. As one commentator put it, "[t]he law can guarantee a free press, but it is incapable of guaranteeing a fair press."²⁵⁰ Neither Sweden nor the United States has constitutionally provided for the public's right of access to the press.

Finally, given their unique national contexts, the press in both the United States and Sweden play powerful and broad roles in national affairs. Their resources and their impact, when compared to those of the individual citizen, are overwhelming. The press has effectively become a sacred industry. The public, though subject to abuse, cannot demand access to print, retraction or correction of statements or to space for reply or rejoinder.

At some point generalized comparisons break down. The structure of the press in these two nations, like the nations themselves, is

248. SWED. CONST., *Freedom of the Press Act*, *supra* note 1; U.S. CONST. amend. I.

249. See *Gitlow v. New York*, 268 U.S. 652 (1924). There the United States Supreme Court declared freedom of the press to be among those fundamental rights incorporated in the term "liberty" and thus protected from state interference by the fourteenth amendment. *Id.* at 666.

250. Ritter & Leibowitz, *supra* note 214, at 870.

different. Sweden is a small, homogeneous country with an extensive national press. The United States, on the other hand, is a large, heterogeneous nation with a strong local press. Although the press in each nation recognizes that its influence, power and continued existence depend largely on the confidence of the public in its work, the Swedish and American press differ on how they react to this realization. The Swedish press acknowledges that its continued role in Swedish public life depends not only on its freedoms but on the respect and confidence of its readers as well. To maintain this respect and confidence, and the power it bestows, the Swedish press has established and maintained its own system of self-discipline. The American response can be summarized by the following comments of an American editor:

We at the *Tribune* consider that we are monitored daily by 170,000 subscribers and on Sundays by 200,000. We cheerfully listen to complaints, correct errors and provide in our Letters columns free space for any reader to criticize our news reporting and editing or challenge our editorial positions (last year we published 2,128 letters).²⁵¹

This reflects the desire of the American press to remain free of any regulation or discipline, save editorial discretion. Unfortunately, the actual experience of the American press, as indicated in this article, reveals the shortcomings of this approach.

While the Swedish system does not provide for a truly comprehensive freedom of and to the press, it does in some measure make the press responsive and accountable to the public. This is important because, ultimately, the only justification for the great latitude of freedoms guaranteed the press is its service to the public as a protector of the democratic state. In failing to be responsive or accountable, as every other institution in a democratic society must be, the press denies its rationale for existence and undermines its special, protected status.

Although the Swedish system of self-discipline does not grant citizens a right of mandatory access to the press, it does effectively resolve many of the complaints the public has against the media. The success of the Swedish system in protecting the individual has defused demands for greater regulation of the press and greater individual rights vis-a-vis the press. The net result has been a greater protection

251. Letter from James A. Clendinen, Editor of *The Tampa Tribune*, to John A. Ritter, Aug. 24, 1973, reprinted in *id.* at 866.

for the "man in the street" and the securing of a stronger, special status for the press under Swedish constitutional law.

The United States has neither a national press code nor a national press ombudsman. Even with the establishment of a national and several regional councils, individual Americans are no nearer to securing their freedoms with regard to the press. They should not expect equivalent protection through the establishment of a national or regional ombudsman until the American press recognizes that self-discipline is in its own best interest. The public, however, may become sufficiently distressed with the performance of the press and demand governmental restrictions thereby causing the American press to lose its self-proclaimed special status as the protector of our democracy. Perhaps the words of Justice Frankfurter are the most appropriate warning: "In plain English, freedom carries with it responsibilities even for the press; freedom of the press is not a freedom from responsibility for its exercise."²⁵² Because "[w]ithout . . . a lively sense of responsibility a free press may readily become a powerful instrument of injustice."²⁵³

252. *Pennekamp v. Florida*, 328 U.S. 331, 356 (1945) (Frankfurter, J., concurring).

253. *Id.* at 365.