

CHAPTER FIVE

STAYING VIGILANT AGAINST BIAS

A NEED FOR ONGOING OVERSIGHT

“If more complete court records were available, bias could be revealed where it exists and thereby reduced. More complete court records might also reveal the lack of bias and dispense with the need for taking steps to avoid a problem that does not exist.”

—Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, *Final Report* 75 (1994).

INTRODUCTION

This chapter opens with the Implementation Committee's most important proposal: the creation of an ongoing implementation committee. The Task Force Report brought racial and ethnic issues to the fore and, as this report documents, inspired many to action. However, the successful elimination of all forms of racial and ethnic bias from Oregon's justice system will not occur overnight, or even over several months. Lasting change requires a long-term, dedicated effort. With the establishment of the Implementation Committee one year ago, the Oregon Supreme Court began the journey toward complete fairness within Oregon's justice system. Now, a year following the identification, initiation and documentation of implementation programs and policies, the most difficult and important task becomes the maintenance of our momentum.

An additional and important aspect of this chapter is the discussion of data collection measures related to the criminal and civil justice systems. As noted by the Task Force, a lack of empirical data made identification of precisely where bias affected these systems difficult. The data collection recommendations would address this need and, if implemented, help direct resources to the proper areas. And finally, the chapter closes with a review of two recommendations relating to the need for informal complaint procedures for court staff and the public to use when they find themselves victims or witnesses of allegedly discriminatory acts by judges, lawyers, supervisors and coworkers. The last section also describes the three formal complaint mechanisms currently available for such purposes. In reviewing these recommendations, the Implementation Committee met with the Oregon Criminal Justice Council, members of the Oregon legislature, the Chief Justice of the Oregon Supreme Court, the State Court Administrator and Racial and Ethnic Task Force members from other states.

MAINTAINING MOMENTUM

THE NEED FOR A STANDING IMPLEMENTATION COMMITTEE

Task Force Recommendation 1-1. The Task Force opened its report with what it termed as the “strongest” recommendation. The recommendation encouraged the Oregon Supreme Court to establish a committee to “assist in the implementation of the recommendations” and “to report annually on the progress made during the previous year.” The Task Force recognized the great need for an oversight entity and for the oversight process to be ongoing.

The Implementation Status. On June 15, 1994, Chief Justice Wallace P. Carson, Jr., appointed an eight-person Implementation Committee (IC) and charged it with translating the recommendations contained in the Task Force Report into directives, programs or legislation. Under the leadership of Appellate Judge Paul J. De Muniz, the IC divided itself into seven subcommittees, met with affected entities and developed a legislative package of six bills. After one year of sustained effort, the IC addressed all 72 recommendations and completed this progress report documenting statewide implementation efforts and making additional proposals if necessary.

- **Implementation Committee Proposal 5.1—A Standing Implementation Committee.** After a year of oversight, facilitation and the witnessing of significant implementation progress, the IC, in a fashion similar to the Task Force, has reached its most important conclusion: a standing implementation committee is necessary to continue the implementation efforts. Because much of the implementation work involves new programs or policies, the initiatives are only the first step in achieving the ultimate goal of equal justice for all. To ensure that the new policies proceed effectively, and in accordance with recommendation 1-1, the IC proposes that the Chief Justice establish a standing implementation committee with eight designated slots:

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| 1. A trial judge | 5. A lawyer in private practice |
| 2. A Supreme Court Justice or Court of Appeals Judge | 6. A nonlawyer member |
| 3. A staff person in the Governor’s office | 7. A prosecutor |
| 4. A representative from the Oregon State Bar | 8. A criminal defense lawyer |

The Chief Justice would appoint members for three-year, voluntary terms. The Chief would stagger the appointment process so that half the committee members are appointed each eighteen-month period. Under this scheme, the committee would have continuity because it would retain members with a year and a half of committee experience.

The need to create a permanent implementation committee has precedent. For example, in Washington D.C., after publication of its Racial Bias Task Force Report, the D.C. courts formed a committee to oversee the implementation efforts. It lasted for nine months. At a March 1995 national conference on the elimination of bias in the courts, some members of the D.C. Task Force noted that in retrospect, an implementation committee of limited duration was inadequate because when the committee disbanded, the progress of implementation efforts slowed significantly. In contrast, Washington State established a permanent implementing body—the Minority and Justice Commission—after its task force report issued and has achieved outstanding results. With an operating budget of \$150,000 per year and two staff people (an executive director and one clerical support person), it has created and implemented a cultural

diversity educational program for court personnel, a minority recruitment resource directory for judges and court administrators and initiated research studies regarding sentencing disparities and prosecutorial discretion. The Commission also developed a communications and networking newsletter.

The purpose of Oregon’s Standing Implementation Committee would be to coordinate, monitor and aid implementation efforts, help initiate new programs and report on the implementation process. The committee would contract its staffing needs with an attorney or other interested person who would commit to a part-time assignment in conjunction with their other employment. It is anticipated that this person would devote roughly 10 hours or less per week coordinating the committee’s work. The cost for the contracted staff person and other committee expenses would be approximately \$25,600 per year (480 hours at up to \$40 per hour = \$19,200 plus \$2,400 for travel, mailing and other administrative expenses plus \$3,000 for publication of an annual progress report). The IC hopes that this funding will come directly from the Supreme Court’s budget.

Related Task Force recommendation: R 1-1

IMPLEMENTATION PROGRESS “AT A GLANCE”

Rec. #	Description	Implementation Status
1-1	Oregon Supreme Court should publish its response to the Task Force recommendations, appoint an implementation committee, require the committee to report annually on implementation progress and publish progress reports.	<ul style="list-style-type: none"> • On June 15, 1994, the Chief Justice appointed an eight-person Implementation Committee (IC). • This IC report is the annual report on implementation progress. • For yearly updates and ongoing monitoring, the IC proposes the establishment of a standing implementation committee.

DATA COLLECTION NEEDS

THE CRIMINAL JUSTICE SYSTEM

Task Force Recommendations 4-3, 4-5, 4-6, 4-9, 4-10, 4-12 and 4-13. As noted in chapter two, the Task Force found that many minorities have lost faith in the criminal justice system. The Task Force supported the loss of faith with anecdote and data showing that minorities were disproportionately overrepresented at virtually every point within the criminal justice process, from arrest through incarceration. For example, in 1990, African Americans comprised 1.61 percent of the state's population, but made up 13.5 percent of the prison population. While such evidence failed to prove the existence of bias within the system, it raised the concern that the system might treat racial and ethnic minorities differently. In response to lingering questions about bias, the Task Force recommended seven data collection measures designed to determine where, if at all, bias occurred. The recommendations related to pretrial, charging, sentencing and post-prison decisions and if implemented would help guide the development of appropriate remedies or dispense with the need to create solutions for problems that do not exist.

Implementation Status. Five of the data collection measures related to information the Criminal Justice Council (CJC) was best suited to retrieve. Accordingly, the Implementation Committee (IC) met with the CJC to discuss the recommendations and developed Senate Bill (SB) 866 to mandate legislatively that the CJC implement three data collection projects relating to the pretrial release process and charging and post-prison decisions. SB 866 was not enacted. The IC also met with the CJC to ensure that it would continue to study the implementation of the sentencing guidelines, with an additional focus on the impact of race in the sentencing process. However, with the passage of House Bill (HB) 2704, the 1995 legislature abolished the CJC. The same bill established the Oregon Criminal Justice Commission (OCJC) but left its specific duties unclear.

Notwithstanding the death of SB 866 and the elimination of the CJC, the IC has discussed the data collection needs set forth in SB 866 and relating to the sentencing process with the OCJC. The IC also met with The Department of Corrections (DOC) regarding post-prison decisions and with the Chief Justice and the State Court Administrator regarding the development of uniform judgment and pretrial release forms for the collection of racial data. Based on these discussions, the IC developed a data-collection proposal. The DOC's analytical efforts, the content and purpose of SB 866, the past analyses of the implementation of Oregon's sentencing guidelines and the substance of HB 2704 are discussed below. In the following subsections, the IC also makes two proposals regarding the OCJC and uniform judgment and pretrial release forms.

The Department of Corrections. In its November 16, 1995 report entitled *Racial/Ethnic Issues in Oregon Corrections: An Update*, the DOC described its efforts to study the influence of racial bias in parole and post-prison decisions. It conducted an initial study in February 1994 and found that revocation rates were higher for minority probationers and parolees than for whites. In March 1995, the DOC conducted a follow-up study to control for offender history and demographic characteristics. This study showed that even after controlling for those characteristics, race was "a significant factor in determining an offender's likelihood of being revoked to prison." Additionally, the DOC is providing countless statistical information to help the courts protect their post-prison decisionmaking processes from influence of racial bias.

Senate Bill 866. The IC developed SB 866 to provide for the collection of data regarding the influence of race in the pretrial release process and charging and post-prison decisions. It directed the Criminal Justice Council to collect and analyze racial data relating to these three decisionmaking points and determine if race affected the decisions. SB 866 would have provided Oregon's judicial system a mechanism to determine whether, and where, bias exists in the criminal justice process. The data collection process would not have included a historical analysis, but rather would have collected and studied current information. In April 1995, the Senate Judiciary Committee provided SB 866 a public hearing, subsequently referring it to the Joint Ways and Means Committee because it had an associated fiscal impact. The bill later died in Ways and Means.

Sentencing Guidelines—The Need for More Data. Since 1989, the Oregon criminal justice system has used uniform sentencing guidelines to set presumptive sentences for convicted felons based on the crime's seriousness and the offender's criminal history. The Criminal Justice Council (CJC) designed the sentencing guidelines to accomplish four goals: proportional and just punishment; truth in sentencing; maintenance of a sentencing policy consistent with correctional capacity; and sentence uniformity. The last goal is most relevant to the Task Force Report and means that offenders who commit similar crimes, and have similar criminal histories, will receive similar sentences. In essence, the fourth goal was designed in part to promote sentencing decisions that are race- and gender-neutral.

Despite the fourth goal of sentence uniformity, the sentencing guidelines have failed to eliminate racial disparity in presumptive sentencing. In its 1994 report on the implementation of the sentencing guidelines during 1993, the CJC concluded that ". . . minority offenders were more likely [than whites] to have a presumptive sentence of prison." The Council noted further that "sentencing disparity [was] not entirely due to differences in current and prior conviction offenses." It stated the need for more data to adequately explain the reasons behind the dissimilarity.

The IC determined that SB 866 would serve the increased data collection needs and encouraged the CJC to continue to analyze the implementation of the guidelines in light of the additional data. The CJC had planned to continue the study but, as noted above, because it was recently abolished by HB 2704, so too was the specific directive to study the guidelines. However, HB 2704 contains language which may authorize the new Oregon Criminal Justice Commission (OCJC), in its discretion, to continue the study. Specifically, HB 2704 authorizes OCJC "to . . . serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination on state and local sentencing practices." Therefore, the IC proposes, as set out below, that the Commission continue this study and implement new data collection programs.

House Bill 2704. In the 1995 legislative session, the state legislature passed, and the Governor signed, House Bill (HB) 2704. The bill abolished the Criminal Justice Council and established the Oregon Criminal Justice Commission (OCJC). The OCJC's purpose is "to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning." The Commission's primary duty is to "develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system." Its other general duties include the implementation of joint studies with other state agencies on matters within its jurisdiction, the provision of analytical and statistical information to federal agencies and the collection and analysis of data relating to state and local sentencing practices. The Commission's specific duties have yet to be determined because its members have not been appointed.

- **Implementation Committee Proposal 5.2.** As noted above, HB 2704 directs the OCJC to develop a long-range plan for the state’s criminal justice system that focuses on efficiency and effectiveness, permits the OCJC to engage in joint studies with other state agencies and authorizes it to analyze state and local sentencing practices. The bill also requires the OCJC to consult with the Chief Justice “on any matter that impacts the operation of the courts.”

Because the operation of Oregon’s courts impacts issues of racial fairness, the OCJC should consult with the Chief Justice regarding this issue and incorporate it into the development of a long-range criminal justice system plan. The IC accordingly proposes that the Chief Justice request that the OCJC study the effect of race on pretrial, charging, sentencing and post-prison decisions to ensure that the long-term plan identifies points in the system where bias may impact decisions.

Uniform Judgment and Pretrial Release Forms. In order to collect important racial data, the Task Force made two recommendations encouraging the Chief Justice to require trial judges to use uniform forms that record the defendant’s race in connection with pretrial release and sentencing. The IC met with the Chief Justice and the State Court Administrator (SCA) to discuss the recommendations and independently analyzed the suggestions. The Chief Justice and the SCA agreed in principle with the need to ensure that the pretrial release and sentencing processes were free of bias; however, they requested that the IC develop a plan designed to retrieve most effectively the necessary information. The IC reviewed the current pretrial and judgment decisionmaking processes and determined that related data-collection measures via uniform forms should dovetail with efforts by the OCJC. The specific proposal is outlined below.

- **Implementation Committee Proposal 5.3.** As a preliminary matter, the IC is well aware that trial courts are very busy. It also understands that different courts have differing needs and use distinct judgment forms and processes. However, the IC also recognizes that an empirical analysis of the criminal justice system is critical to ensuring racial fairness within its confines. Below, this section describes the Criminal Justice Council’s “Felony Guidelines Sentencing Report” form, the Oregon Judicial Department’s new Uniform Sentencing Judgment system and concludes with a proposal to form a working group to develop an integrated data-collection plan.
 - * **Felony Guidelines Sentencing Report Form.** Under the previous system, trial courts were required to submit sentencing reports to the Criminal Justice Council (CJC). The CJC developed the “Felony Guidelines Sentencing Report” form to collect data (including race) necessary to analyze the implementation of the guidelines and requested that all trial courts use it. However, because the four-page form was in addition to the judgment form completed by judges, it placed another paperwork burden on the courts. Some courts could not cope with the added work. For example, Multnomah County courts decided to submit its judgment and criminal history forms instead of the Council’s document. This alleviated Multnomah County’s burden but increased the CJC’s workload because the CJC had to retrieve data from a form not designed for such purposes. Research analysts at the CJC stated that using several different judgment forms to retrieve data increased their workload from a sixty-second data-entry process to a ten- to fifteen- minute task. Other courts simply failed to submit any information to the CJC.
 - * **Uniform Sentencing Judgment System.** In 1994, Oregon Judicial Department’s Information Services Division (ISD) implemented a Uniform Sentencing Judgment (USJ) computer

system designed to bring uniformity to the judgment process. The system is linked with the Oregon Judicial Information Network (OJIN) and can produce judgment forms containing information already in the system and information that is inputted at the time of sentencing. It can then print a judgment form for the judge to sign and upload the information to the OJIN database. Lincoln and Douglas counties, Multnomah County drug court and Coos County traffic court are experimenting with the program.

The benefit of the USJ is that OCJC could retrieve nearly all the information it needs for sentencing analysis from OJIN, eliminating the need for courts to complete an additional form and the need for an OCJC data-entry person. Also, by establishing uniformity in the process used to enter sentencing decisions, OJIN could be automatically uploaded with case-tracking information, which would also eliminate the need for a data-entry person at ISD. Despite the potential benefits of the USJ, it is limited in two ways: (1) a court may generate a mix of judgment forms for one offender because it can only use USJ for the original sentence (i.e., when offenders return to court for sentence modifications, the court must use a different form); and (2) the language of the printed judgment may vary from court to court because the USJ's uniformity is limited to data fields (i.e., the data fields are not checkboxes so data-entry clerks may use different words to describe similar information).

- * *The Future—Establish a Working Group to Coordinate Data Collection Efforts.* Assuming the OCJC agrees to study the effect of race on pretrial, charging and sentencing decisions, it will need to collect data from the courts relating to each process. The Oregon Judicial Department (OJD) already collects the data needed to analyze the influence of race at these decisionmaking points, only it is not in a form that the OCJC can easily access. Moreover, OJD has developed a computer framework for efficient data retrieval (the USJ system) which would satisfy, if implemented in all trial courts, most of OCJC's data needs.

Because OCJC will need to collect data related to race in the pretrial release, charging and sentencing processes, if its needs are not addressed by the USJ system, it will subject trial courts to a second data collection process. This inefficiency can be avoided if the groups cooperatively develop a mutually beneficial data collection plan. Accordingly, the IC proposes that the Chief Justice establish a working group to study and develop an effective data collection system that both satisfies OCJC's needs and meets OJD's goals relating to more efficient court administration. The Chief Justice should appoint presiding judges, staff from the OCJC, ISD and the Office of the State Court Administrator to the working group.

THE CIVIL JUSTICE SYSTEM

Task Force Recommendation 6-6. At the Task Force hearings, comparatively few witnesses testified about bias within the civil justice system. The Task Force attributed the lack of discussion to an underrepresentation of minorities in civil litigation, a conclusion corroborated by survey results indicating a belief among those working in the civil justice system that minorities "use the court less." Other survey results showed that many respondents felt minorities were likely to receive less compensation for an adjudicated claim and less money for a settled claim than a similarly situated nonminority plaintiff. The Task Force noted that no statistical, racial data regarding the civil justice system existed and consequently it was unable to validate or refute the perceptions described above.

Accordingly, the Task Force recommended that the State Court Administrator develop forms for civil litigation that request the voluntary provision of racial and other information. The Task Force suggested the “Civil Action Data Form” required by ORS 18.425 as a possible tool to collect the data.

Implementation Status. The IC met with the Chief Justice and the State Court Administrator (SCA) regarding the development of civil justice reporting forms. The Chief Justice and the SCA were supportive of the goal of recommendation 6-6 but requested a clarification of purpose and an independent analysis of the efficacy of a reporting form given the large administrative effort involved in developing such a document and analyzing the information contained therein. Accordingly, below, the IC described the purpose of such a form and reviewed the “Civil Action Data Form” as a means to collect the necessary data. Regarding the implementation of this recommendation, the IC views the collection of racial data in the civil system as a low priority because few witnesses testified about bias in the civil process. Moreover, the problems that may exist—a lack of use and disparate damage awards—can effectively be addressed by the public education efforts described in chapter one and the efforts to diversify juries described in chapter six.

- **Clarification of Purpose.** The development of a form to collect racial data about litigants in the civil justice system is necessary because no data is currently available relating to the rate of use of civil courts by minorities, types of cases filed by minorities and judgments and settlements awarded to minorities. The data would be used by the Oregon Judicial Department (OJD), oversight committees and public interest groups that wished to study the civil system to determine if any racial disparities existed. The forms would request that litigants *voluntarily* provide racial data.
- **Civil Action Data Form.** In recommendation 6-6, the Task Force suggested that ORS 18.425 might be an effective mechanism for the collection of data relating to race. The IC reviewed the law and required form. It concluded that the Chief Justice could add a section requesting the race of the litigant, which could likewise be added to OJD’s records, without much additional work.

ORS 18.425 requires attorneys to file, in every civil action “for damage resulting from personal injury or wrongful death” a “certified statement in the form and manner required by the Chief Justice.” Further, ORS 18.425 (5)(a) requires the SCA to “use the information in the statements [forms] to compile statistical summaries.” The information “shall be public records” and “shall not contain information that identifies a specific case or a party to the case.”

Uniform Trial Court Rule (UTCR) 5.070 implements ORS 18.425 by requiring all attorneys to complete the “Civil Action Data Form.” The form is found in the UTCR Appendix of Forms. The form requests information on the type of case, attorney’s fees and damages awarded. Staff from the SCA enter data from the form into their records and then destroy the form. The Chief Justice could amend the form to request the voluntary provision of the litigants’ race by adding a section with an ethnicity checkbox. The identity of the litigants would remain unknown. The race of the litigants could then be added to the SCA’s records for statistical summary purposes. The summaries would help identify if and where racial disparities exist.

Related Task Force recommendations: R 4-3, 4-5, 4-6, 4-9, 4-10, 4-12, 4-13 and 6-6

IMPLEMENTATION PROGRESS “AT A GLANCE”

Rec. #	Description	Implementation Status
4-3	District Attorneys should be required to collect and report to the Criminal Justice Council data on the variable of race in all charging decisions.	<ul style="list-style-type: none"> • SB 866 (not enacted). • See R 4-12 below.
4-5	The Chief Justice should require trial judges to use uniform pretrial release forms that include defendant’s race.	<ul style="list-style-type: none"> • IC met with Chief Justice and SCA. • IC proposes a working group to study issue and link needs with Oregon Criminal Justice Commission.
4-6	The legislature should direct the Criminal Justice Council to study whether a defendant’s race affects the outcome of a pretrial release decision.	<ul style="list-style-type: none"> • SB 866 (not enacted). • See R 4-12 below.
4-9	The Chief Justice should require trial judges to use uniform judgment forms that include defendant’s race.	<ul style="list-style-type: none"> • IC met with Chief Justice and SCA. • IC reviewed Criminal Justice Council’s “Felony Guidelines Sentencing Report.” • In 1994, OJD’s ISD developed and implemented the Uniform Sentencing Judgment computer system. Four counties are testing program. • IC proposes a working group to study the coordination of data collection needs. The working group’s efforts will streamline the data collection process.
4-10	All counties should be required to submit sentencing guidelines reports timely and in a complete manner.	See R 4-9 above.
4-12	The Criminal Justice Council should continue to study and report on racial disparities in sentencing.	<ul style="list-style-type: none"> • HB 2704 (now law) abolished the Criminal Justice Council and established the Oregon Criminal Justice Commission (OCJC). The OCJC’s specific duties are not yet known, but IC proposes that the Chief Justice consult with the OCJC to ensure that sentencing studies continue and that OCJC implement other related data collection efforts.
4-13	The Department of Corrections and the Criminal Justice Council should study whether race affects parole and other post-prison decisions.	<ul style="list-style-type: none"> • SB 866 (not enacted). • See R 4-12 above. • The DOC conducted studies in February 1994 and March 1995 that showed race was a significant factor in determining an offender’s likelihood of being revoked to prison.
6-6	The State Court Administrator should develop forms asking all civil litigants in all cases to provide information, including race, for demographic statistical and record-keeping purposes.	<ul style="list-style-type: none"> • IC met with the Chief Justice and the SCA and were asked to analyze R 6-6. • IC characterized R 6-6 as low priority because the problem relating to bias in civil system could be effectively addressed by public education efforts and diversification of juries. • IC reviewed ORS 18.425 as possible means to collect data and concluded that a racial checkbox could be added to “Civil Action Data Form” without much additional work.

COMPLAINT PROCEDURES

THE APPOINTMENT OF AN OMBUDSPERSON

Recommendations 3-7 and 3-8. The Task Force found that many working in the justice system felt “substantial problems exist[ed] in communication between minorities and nonminorities in the court system.” The communication problems led to perceptions of discrimination, which in turn led to tension at work among fellow staff members or dissatisfaction with the court experience among litigants, jurors and witnesses. Such communication problems oftentimes involved subtleties not warranting and not substantiating a formal complaint, but nonetheless creating less friendly working and courtroom environments.

Consequently, the Task Force recommended that each court and the Office of the State Court Administrator appoint someone to serve as an ombudsperson to hear and respond to lower level discrimination complaints. The Task Force designed recommendations 3-7 and 3-8 to provide court staff and litigants an informal and immediate opportunity to voice their dissatisfactions (via ombudspersons), to create an informal and expedient complaint resolution process (e.g., conversations) and to improve the public’s perception of the courts. The Task Force did not recommend creating a new position. It suggested that a current employee be appointed as the person to receive and investigate such complaints in addition to her or his other job duties.

Implementation Status. The IC met with the Chief Justice and the State Court Administrator (SCA) regarding recommendations 3-7 and 3-8. The Chief Justice and the SCA supported the idea but were concerned about the pragmatic effect of imposing this additional duty on a staff member. Consequently, they asked the IC to determine whether the new duty was a feasible addition to a staff person’s other full-time responsibilities and whether current complaint procedures were inadequate.

- **Implementation Committee Proposal 5.4—The Appointment of One Ombudsperson.** The IC analyzed the ombudsperson recommendations and its associated duties and function. It concluded that as an informal complaint resolution process, it would require only a minimal reduction in an employee’s other job duties. Moreover, it would provide a service not otherwise available. However, the IC also concluded that only one ombudsperson was required despite recommendations 3-7 and 3-8 calling for the appointment of 38 ombudspersons—one for each court (i.e., 36), one for the OSCA and one to investigate complaints against judges and administrators. Only one ombudsperson is necessary because the number of complaints will likely not require the attention of 38 people, because the complaints can be dealt with quickly and because a central location would make record keeping easier. Consequently, because most situations giving rise to a complaint would not justify formal discipline, because an ombudsperson would require only a minimal reduction in an employee’s other job duties, and because the complaint procedure requires only one ombudsperson, the IC proposes that a person in the OSCA be charged with the responsibility of handling such complaints.

The IC concluded that the appointment of one ombudsperson in the OSCA would improve the system because, as noted above, the Task Force found that many working in the justice system felt “substantial problems exist[ed] in communication between minorities and nonminorities in the court system.” Yet, in 1994, only two out of 1532 formal complaints filed against lawyers involved allegations of racial discrimination and none was filed against judges or against staff or

administrators of the Oregon Judicial Department. The IC concluded that this discrepancy related to most of the problems being the result of subtle and unintended miscommunications, problems which rarely support formal complaints. Notwithstanding, these situations are a cause for concern, should be addressed and in many circumstances, provide excellent educational opportunities.

Accordingly, the ombudsperson system would create a new tier of complaint resolution, one that could respond to problems of unintended miscommunications. It would provide a swift, and informal, resolution to these problems, a service not provided by the three formal complaint mechanisms listed below. The process would work as follows; the SCA would publicize the appointment of the ombudsperson, her role, phone number and mailing address; she would then receive complaints by phone or mail; she would review the complaints to determine what sort of action was required; if the complaint appeared to require more than an informal conversation, she would refer the complainant to one of the three formal complaint streams listed below; if the ombudsperson could handle the complaint, she would likely call or meet with the actor to discuss and resolve the problem.

- ***The Three Formal Complaint Mechanisms for Discriminatory Acts.*** Oregon's justice system has the following three formal complaint mechanisms—one for judges, one for lawyers and one for court staff.
 1. *Judges—The Commission on Judicial Fitness.* If a person, in good faith, feels a judge has acted in a discriminatory fashion, she may file a written complaint with the Commission on Judicial Fitness and Disability. The person must send the complaint to: The Commission on Judicial Fitness and Disability, P.O. Box 9035, Portland, OR 97207. The Commission meets every two months and considers, at no cost, all complaints at its bimonthly meetings. For more information, call the Commission on Judicial Fitness at (503) 222-4314.
 2. *Lawyers—File an Ethics Complaint with the Oregon State Bar.* If a person, in good faith, feels a lawyer has acted in a discriminatory and unethical manner, she may file a written ethics complaint with the Oregon State Bar. The complainant must state the reason for the complaint and submit it to: Disciplinary Counsel's Office, The Oregon State Bar, 5200 S.W. Meadows Rd., Lake Oswego, OR 97035. The Disciplinary Counsel will review the complaint at no cost and determine if it raises an actionable issue. If it does, Counsel will investigate it further. If not, Counsel will return a letter notifying the complainant of Counsel's decision to dismiss the complaint. For more information, call the Oregon State Bar at (503) 620-0222 or the bar's Tel-Law service at (503) 620-3000 (or 1-800-452-4776) and request tape #7036—"If You Have a Problem With Your Lawyer."
 3. *Oregon Judicial Department Employees—File a Discrimination Complaint with the Judicial Department Personnel Director.* Beginning on page four, the Judicial Department's *Personnel Rules and Employee Reference Manual* outline the complaint procedure for all judges, staff and applicants who feel, in good faith, that a judge, administrator or staff person has acted in a discriminatory way toward them. The victim must notify the Judicial Department's Personnel Director (or the State Court Administrator if the complaint is against the Personnel Director) in writing of the alleged

discrimination. The victim must file the complaint within one year of the discriminatory act and must describe the act, the statutory basis for the claim (e.g., race or sex discrimination) and the relief sought. The Personnel Director will direct and complete the investigation of the complaint within thirty days (unless extended by agreement) and notify the complainant of the Director’s decision to grant or deny relief. For more information, or to receive a copy of the manual, call the Judicial Department’s Personnel Division at (503) 378-5171.

Related Task Force recommendations: R 3-7 and 3-8

IMPLEMENTATION PROGRESS “AT A GLANCE”

Rec. #	Description	Implementation Status
3-7	Each court and the OSCA should appoint an ombudsperson to investigate complaints against staff relative to allegations of racial bias.	<ul style="list-style-type: none"> • IC reviewed with the Chief Justice and the SCA and proposed that the SCA appoint one person in the OSCA to serve as an ombudsperson for all trial courts and the OSCA.
3-8	The Chief Justice should appoint an ombudsperson to investigate complaints against judges and administrators relative to allegations of racial bias.	<ul style="list-style-type: none"> • See R 3-7 above.