

EXECUTIVE SUMMARY

This Executive Summary highlights many of the implementation efforts and lists the IC proposals set forth in each chapter. It also concludes each subsection with a brief statement on the role of the standing implementation committee (SIC) regarding the subject area. The IC urges that the complete report be read to gain a full understanding of how far we have come and how far we have to go.

As a preliminary note on the role of the SIC, because the implementation process has just begun, its general role will be one of monitoring and assistance to ensure that our momentum is maintained. This role can be accomplished by monitoring the status of efforts described in this report and by publishing an annual progress report with updates on information contained in this report and descriptions of new programs initiated in the upcoming year. Further, because the implementation process is new, accurate forecasting regarding the SIC's role is difficult. Consequently, the SIC will likely discover roles not mentioned here but that are nonetheless important.

CHAPTER ONE: EQUAL ACCESS TO JUSTICE—OPENING THE DOORS

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee's Role

CHAPTER SUMMARY

Chapter one describes the implementation status of twelve Task Force recommendations concerning equal access to justice. These issues relate to barriers imposed by language and cultural differences. Accordingly, chapter one describes the implementation status of recommendations designed to address the linguistic needs of Oregon's non-English-speaking population and the need to educate minorities about the court system. The recommendations appeared in two chapters of the Task Force Report and addressed four problems associated with language issues: (1) interpreter quality control in court; (2) interpreter quality control in administrative hearings; (3) the availability of interpreters to parties in court-annexed mediation or arbitration and certain parties in juvenile proceedings; and (4) the need for more translated court forms and an informational booklet.

Regarding interpretation concerns, the IC helped the State Court Administrator (SCA) continue an effort that began in 1993 to implement a court interpreter testing, certification and appointment process, developed an interpreter code of ethics and drafted and promoted two bills in the 1995 legislative session designed to expand and improve the interpreter appointment processes (Senate Bills 864 and 865—neither was enacted). The IC also met with the Oregon State Bar (OSB) regarding jury instructions on court interpreters and the SCA regarding an increase in the fees paid to certified interpreters.

Regarding translation needs, the IC conducted a court forms study, identified 19 high priority forms and developed a forms translation strategy. It also developed a specific blueprint for an informational booklet designed to make Oregon courts more user-friendly. The SCA plans to implement the translation projects in the next biennium. The IC also developed and promoted Senate Bill (SB) 867 to require employers subject to Oregon's workers' compensation laws to post notice of compliance

forms and provide injury reporting forms in non-English languages. SB 867 was not enacted. Regarding the public education campaign, eight entities are implementing, or are planning to initiate, programs designed to educate minorities about Oregon's justice system.

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 1.1. The OSB should continue the process of developing jury instructions related to the use of an interpreter during civil trials.

Implementation Committee Proposal 1.2. The SIC should continue to pursue legislative changes proposed by SB 864 to improve the quality control process for interpreters used in administrative hearings.

Implementation Committee Proposal 1.3. The SIC should continue to pursue legislative changes proposed by SB 865 that would expand the right to a state-funded interpreter in court-annexed mediation and arbitration and to certain parties in juvenile proceedings. The IC encourages all interested parties and organizations to coordinate with the standing committee to refine SB 865 and to prepare an effective advocacy campaign for the upcoming 1997 legislative session.

Implementation Committee Proposal 1.4. The SCA should implement the IC's court forms translation project.

Implementation Committee Proposal 1.5. All trial courts that serve significant numbers of non-English-speaking individuals, at a bare minimum, should develop translated signs that direct non-English-speaking people to information desks or booths where bilingual staff, interpreter information or translated forms are available. Further, the IC recommends that the courts use plastic sign holders and computer-generated directions because this method is less expensive and allows for easy updates.

Implementation Committee Proposal 1.6. The SCA should implement the IC's translation project for an informational booklet about Oregon's court system.

Implementation Committee Proposal 1.7. The SIC should continue to pursue legislative changes proposed by SB 867 that would amend the workers' compensation laws to require subject employers to post notice of compliance forms and to provide report of injury claim forms in foreign languages. The committee should begin developing an effective legislative strategy for the upcoming 1997 legislative session.

Implementation Committee Proposal 1.8. Because research has demonstrated that many non-English-speaking individuals need translated information regarding the small claims and dissolution of marriage processes, the OSB should translate its "Small Claims Court" and "Dissolution of Marriage" information pamphlets into Spanish and Vietnamese.

Implementation Committee Proposal 1.9 The OSB should provide the Lawyer Referral Service's (LRS) recorded, informational phone message in Spanish because unless a LRS clerk immediately

answers, the non-English-speaking caller will be greeted by an English-only message, not understand the information and may hang up. The portions of the recording which should be translated include the messages that tell the caller to stay on the line and that instruct the caller to have certain information ready when an LRS clerk answers.

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

In order of priority, the Standing Implementation Committee (SIC) should aid the SCA on the translation projects regarding court forms and a court process informational booklet and develop effective legislative strategies for the reintroduction of SBs 864, 865 and 867 in the 1997 legislative session. The SIC should also work with the Oregon State Bar to ensure that its translation projects (see chapter one for details) are completed and to help it meet the translation needs described in IC proposals 1.1, 1.8 and 1.9. Finally, the SIC should monitor and assist trial courts with large numbers of non-English-speaking consumers in their efforts to install bilingual signs of direction.

CHAPTER TWO: THE CRIMINAL JUSTICE SYSTEM—AN ISSUE OF PUBLIC TRUST

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee's Role

CHAPTER SUMMARY

Chapter two describes six Task Force recommendations designed to increase the public's confidence in Oregon's criminal justice system through cross-cultural education, other decisionmaking guidance and certain procedural modifications. The chapter focuses on the recommendations designed to safeguard decisions that affect how an individual progresses through the criminal justice system. The decisions include those made before trial, at trial and, if convicted, at prison.

Chapter two begins by describing the cross-cultural courses that new law enforcement and corrections officers receive and the operating philosophy of the officer training programs—weaving cultural issues into the entire curriculum. The chapter then describes the implementation status of the effort to develop uniform charging standards and to change the pretrial release criteria. The IC extensively analyzed these two areas and ultimately decided not to pursue implementation. Regarding decisions made at trial, the chapter discusses the efforts to provide judges cross-cultural education and to amend the sentencing guidelines to establish a five-year sunset period for the consideration of prior criminal history. The IC and the Oregon Criminal Justice Council reviewed the sunset period and after serious consideration, the IC decided not to pursue its implementation.

Regarding decisions made at prison, the chapter concludes with a discussion of the Department of Corrections (DOC) implementation efforts. The DOC reviewed the Task Force recommendations and conducted an evaluation of the entrance requirements of its educational, vocational training and treatment programs. It determined, and the IC agreed after an independent analysis, that the entrance requirements were race-neutral. However, because the Prison Reform and Inmate Work Act

of 1994 has forced the DOC to change the focus of its educational and vocational training programs, the IC also cautioned the DOC to structure its new program so that prisoners' jobs are equitably distributed. Although in the planning stages, the DOC is committed to ensuring equal opportunity under the new program as well.

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 2. The Oregon District Attorneys Association (ODAA) should draft its own uniform charging standards concerning race that reflect its recently adopted "Recommended Standards for Charging." Although the current standards relate to evidentiary sufficiency and other procedural matters, the format provides a good model for standards relating to race-neutral charging. Further, such an explicit statement, even if not enforceable at law, enhances the public's trust in the criminal justice system because it publicly expresses a race-neutral charging policy.

Implementation Committee Proposal 2.2. The DOC should design and monitor the inmate work program to ensure that high quality jobs are equitably distributed among minority and nonminority inmates.

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

The Standing Implementation Committee (SIC) should work closely with the DOC to ensure that the entrance requirements of the work programs developed under the Prison Reform and Inmate Work Act of 1994 are race-neutral and that the DOC equitably distributes the jobs. Also, the SIC should help the ODAA develop its own uniform charging standards. The standards should state, at a bare minimum, that race is an improper basis for charging.

CHAPTER THREE: THE JUVENILE JUSTICE SYSTEM— MINORITY YOUTH ARE OVERREPRESENTED

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee's Role

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Chapter three discusses two Task Force recommendations concerning further improvements to Oregon's juvenile justice system. The recommendations encouraged the Oregon State Commission on Children and Families to continue its effective work in addressing the issues of minority youth overrepresentation in confinement and to develop a list of culturally competent juvenile expert witnesses. Such witnesses would ensure that the court considers culturally specific facts related to a minority youth's background and needs. The chapter also discusses other related activity that will both change the juvenile justice system and possibly affect the overrepresentation problem.

In the last four years, the State Commission has funded five local pilot projects designed to address the overrepresentation issue, a state-wide cross-cultural training program and a systems change pilot project. The Commission also began developing a strategy to develop a list of culturally competent experts but staffing changes slowed the process. In April 1994, Ballot Measure 11 went into effect and now mandates that every juvenile between the ages of 15 and 17 who is charged with one of sixteen listed violent and sex crimes will “be prosecuted as an adult in criminal court.” On June 30, 1995 Senate Bill 1 became effective and will reform the entire juvenile justice system. Finally, Multnomah County Juvenile Division received a large grant to implement a detention alternatives initiative which will, in part, attempt to eliminate bias from the detention system.

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 3.1. All youth service agencies, juvenile justice practitioners and policy planners should continue or implement programs designed to help juveniles avoid criminal activity in the first place by providing them with support from, and opportunities in, their communities.

Implementation Committee Proposal 3.2. The State Commission on Children and Families should reinitiate the implementation planning process regarding the development of a list of culturally competent expert witnesses. The Commission should serve as the coordinating body for the list, gathering the necessary information from the county commissions. Juvenile court staff could contact their local commissions, or the State Commission, for copies of the list or recommendations regarding experts.

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

The Standing Implementation Committee (SIC) should work with the State Commission on Children and Families to ensure that policy decisions regarding juvenile justice address the need to develop and fund front-end, culturally competent youth services. Also, the SIC should help the Commission compile the list of culturally competent juvenile experts.

CHAPTER FOUR: A REPRESENTATIVE AND CULTURALLY COMPETENT JUSTICE SYSTEM— THE CORNERSTONE OF EQUALITY

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee’s Role

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Thirty-one of the Task Force’s recommendations (almost half) related to the justice system’s human side. The recommendations appeared in four chapters of the Task Force Report and addressed the responsibility of law schools, justice system employers and professional groups to contribute to the

diversification effort. Regarding Oregon's law schools, all operate effective academic support programs for first year minority students and are improving the programs to provide second and third year academic assistance. All the schools have specific minority recruitment programs and are engaged in efforts to encourage more minorities from Oregon to pursue a law degree. The schools are also attempting to raise the awareness of students and faculty by weaving more cultural issues into standard courses and other campus events.

Regarding Oregon's legal employers, the Oregon State Bar (OSB) operates six programs designed to increase the number of minority attorneys who practice in Oregon. Over thirty public and private legal employers have participated in the programs. Also, managing partners from nine of Portland's largest private law firms met with the IC and pledged to increase the diversity on their staffs. Further, OJD, law enforcement agencies and the Department of Corrections are educating their managers in the techniques of community outreach recruitment and other innovative hiring strategies. Regarding professional organizations, eight groups have taken active steps to diversify their ranks, their OSB committee positions and their pool of continuing legal education speakers and authors.

Regarding cross-cultural education, the OJD recently implemented a diversity training program for staff and judges. The Oregon Judicial Conference's Judicial Education Committee provided three in-state trainings and coordinated six out-of-state programs for Oregon state judges designed to address issues of racial fairness. In the past three years, the OSB's Minimum Continuing Legal Education program approved eight courses for credit that addressed issues of racial fairness and recently approved a new policy statement that encourages attorneys to take at least three credit hours of diversity training per reporting period. And finally, the IC is working with the Minority Lawyer Organizations to develop a self-facilitated cross-cultural training program for use in private firms.

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 4.1. All public and private legal employers should make a concerted effort to attract and hire qualified minority attorneys for full-time positions.

Implementation Committee Proposal 4.2. The IC proposes an additional (not replacement) approach to improving diversity in the legal work force that links its goal with the needs of the legal consumer, rather than the desires of the legal supplier: a demand-side diversification effort. While supply-side efforts are necessary to, and effective in, improving diversity in the work force, a demand-side initiative will supplement and enhance the programs already in place. A demand-side diversification program should include two components: (1) a demand-side initiative similar to the American Bar Association's Minority Counsel Demonstration Project; and (2) an effort to motivate legal consumers (e.g., Nike, Inc. or the City of Portland) either to mandate or express a desire to use law firms that have a demonstrated commitment to racial equality as reflected in their hiring practices and community involvement.

Implementation Committee Proposal 4.3. The Judicial Department's Personnel Division should develop a monitoring program designed specifically to determine whether more minorities are being recruited and whether the cultural diversity training module is achieving the desired outcome.

Implementation Committee Proposal 4.4. The IC and the Minority Lawyer Organizations (MLO) should form a nonprofit foundation to raise the awareness of nonminority lawyers. The foundation would seek funding to prepare an educational program designed to educate attorneys in private practice and their nonlegal staff through eight or nine weekly, on-site and self-facilitated sessions. The materials would include weekly reading assignments and discussion questions. Each week a different member of the discussion group would facilitate the session. The weekly sessions would last one hour and likely occur over lunch.

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

The Standing Implementation Committee (SIC) should work with the MLOs to develop and implement IC proposals 4.3 and 4.4. It should work with the OSB and the SCA to develop a system to measure the effectiveness of diversification and cross-cultural education efforts. The SIC should also work with the bar's Diversity Task Force or Affirmative Action Committee to develop a process employers could use to assess the effectiveness of their hiring practices to attract and retain minority employees. The SIC might consider developing a pamphlet describing such an assessment process.

CHAPTER FIVE: STAYING VIGILANT AGAINST BIAS— A NEED FOR ONGOING OVERSIGHT

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee's Role

CHAPTER SUMMARY

Chapter five discusses eleven Task Force recommendations concerning the need to remain vigilant against racial bias in Oregon's justice system. The recommendations appeared in four chapters of the Task Force Report and addressed the need to report annually on the implementation process, to collect data regarding certain court processes and to create 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.

Regarding the need to report annually on the implementation process, the IC has proposed that the Chief Justice establish a standing implementation committee with eight designated slots (see below). The Chief Justice would fill the slots (e.g., a district attorney) with different persons for a three-year term. Regarding the data collection needs, the IC drafted and pursued the passage of Senate Bill (SB) 866. SB 866 would have mandated that the Criminal Justice Council (CJC) implement data collection measures relating to the pretrial release process and charging and post-prison decisions. SB 866 was not enacted. Also, the legislature abolished the CJC and created a new entity—the Oregon Criminal Justice Commission (OCJC)—to handle much of the CJC's previous work and undertake new duties. The IC proposed that the Chief Justice form a working group to study and develop an integrated plan that links the data-collection needs of the OCJC with the court's computer record keeping system (see below).

Regarding data collection in the civil justice system, the IC reviewed the related recommendation and the “Civil Action Data Form” (see UTCR 5.070) as a means to collect race-based data. The IC concluded that the form could be an effective data-collection tool but that this recommendation’s implementation was a low priority because few witnesses testified about bias in the civil process and the problems that might exist (e.g., disparate damage awards) could be effectively addressed through other implementation efforts (e.g., diversifying juries). Regarding informal complaint mechanisms, the IC concluded that one person in the SCA’s office could be designated the ombudsperson to handle such complaints, rather than a person in each trial court and one in the Office of the State Court Administrator (see below).

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 5.1. The Chief Justice should establish a standing implementation committee with eight designated slots:

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

Implementation Committee Proposal 5.2. The Chief Justice should request that the OCJC study the effect of race on pretrial, charging, sentencing and post-prison decisions to ensure that its long-term criminal justice plan identifies points in the system where bias may impact decisions.

Implementation Committee Proposal 5.3. The Chief Justice should establish a working group to study and develop a data collection system that both satisfies data collection needs and addresses paperwork burdens facing trial courts. The Chief should appoint presiding judges, staff from the OCJC, the Judicial Department’s Information Services Division and the Office of the State Court Administrator to the working group.

Implementation Committee Proposal 5.4. 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 SCA should charge one person in its office with the responsibility of handling such complaints.

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

The Standing Implementation Committee (SIC) should monitor, aid and report on the implementation progress of IC proposals 5.2 through 5.4.

CHAPTER SIX: MINORITIES AND JURY SERVICE — THE GOAL: A JURY OF ONE'S PEERS

- Chapter Summary
- Implementation Committee Proposals
- Standing Implementation Committee's Role

CHAPTER SUMMARY

Chapter six discusses twelve Task Force recommendations concerning to the need compose juries that fairly representative the community served. The recommendations appeared in one chapter of the Task Force Report and addressed the need to compile representative jury pools, to implement a public relations campaign regarding the importance of jury service, to ensure that prospective jurors are not improperly removed by the attorneys from consideration and to ensure that racially biased persons are removed from the jury panel before jury selection is complete.

Regarding the need to ensure that jury pools are representative, the IC concluded, based on discussions with the Chief Justice and the SCA and a review of statistics and other information, that jury representativeness was not a source list issue. Rather, it related, in order of priority, to the jury experience and to the summons and excuse and deferral processes. Regarding the jury experience, the SCA and the IC developed Senate Bill 189 to increase juror compensation and to cover a juror's child and dependent care expenses. SB 189 was not enacted. The SCA will continue to pursue this change. Multnomah and Marion Counties will implement a one-trial/one-day jury practice to shorten jury terms and eliminate much of the boredom associated with jury service. The SCA will assist other counties that want to implement the practice.

Regarding a public relations campaign, the OSB will distribute more widely its "Handbook for Jurors." The IC proposed that the bar rewrite the booklet to make it easier to read. The IC also proposed that the SCA and the OSB develop a short public service announcement for radio regarding the importance of jury service (see below).

Regarding jury selection, the IC reviewed and developed proposals concerning the juror orientation and removal processes. Juror orientation involves three processes: (1) a verbal orientation by a court staff person; (2) distribution of the bar's "Handbook for Jurors;" and (3) a presentation of the SCA's juror orientation videotape. The IC concluded that no process mentioned a juror's duty to disclose bias. The IC also concluded that the verbal orientation was well suited to its purpose (i.e., logistical information) but that the "Handbook for Jurors" and the video presentation should be updated to include a statement on one's duty to disclose bias (see IC proposals 6.4 and 6.5 below). The IC also proposed that the juror oath on voir dire contain a statement on a juror's duty to disclose bias. The IC proposes that this oath become a part of chapter six of the Uniform Trial Court Rules (see below).

Regarding juror removal, the IC drafted and secured the passage of Senate Bills (SB) 868 and 869. Each bill became effective on September 9, 1995. SB 868 amends ORCP 57 D to establish a specific, actual cause to challenge a juror based on any statement made by the prospective juror that shows prejudice on part of the juror base on race or ethnicity. SB 869 amends ORCP 57 D to establish an orderly procedure to question the opposition's use of a peremptory challenge to exclude a prospective juror solely on the basis of race or gender.

IMPLEMENTATION COMMITTEE PROPOSALS

Implementation Committee Proposal 6.1. All trial courts should send the public a message of compliance regarding jury service.

Implementation Committee Proposal 6.2. The SCA and interested parties should continue to pursue changes to ORS 10.060 to increase juror compensation and provide for child and dependent care expenses.

Implementation Committee Proposal 6.3. The SCA and the OSB Public Service & Information Committee should develop a short public service announcement for radio describing the importance of jury service.

Implementation Committee Proposal 6.4. The OSB Public Service & Information Committee should rewrite the "Handbook for Jurors" at an eighth-grade reading level and include in the revised version a small section on a juror's duty to disclose racial bias. The revised version should contain a section in the beginning that highlights the most important aspects of jury service—e.g., duty to disclose bias, duty to try cases impartially, employment protection. Further, the rewrite should discuss the one-trial/one-day system being implemented in Multnomah and Marion Counties because many persons are summoned for jury duty in these two counties and thus would find the information relevant.

Implementation Committee Proposal 6.5. The SCA should update the juror orientation videotape to include a specific statement on a juror's duty to disclose racial bias when the current Chief Justice retires. The tape's introduction will need to be redone. The statement could be a part of the Chief Justice's opening remarks.

Implementation Committee Proposal 6.6. The Chief Justice should order that the following rule be added to chapter six of the Uniform Trial Court Rules:

Juror Oath on Voir Dire. Prior to questioning by the court or counsel on voir dire, the court shall administer to the jury panel, or individually if necessary, an oath substantially similar to the following:

Do each of you solemnly swear or affirm that you will truly and fully answer all questions put to you by the court and counsel regarding your qualifications to act as jurors in this case and will disclose to the court or counsel any prejudices you may have against a particular party or racial, ethnic or religious group?

THE ROLE OF THE STANDING IMPLEMENTATION COMMITTEE

The Standing Implementation Committee's (SIC) should help the SCA and the Public Service & Information Committee rewrite the "Handbook for Jurors." The SIC should also assist in the development of a short public service announcement for radio. The SIC should help the SCA develop a legislative strategy to increase juror compensation and cover the cost of child and dependent care expenses while on jury duty. The SIC should also monitor and assist in the implementation of IC proposals 6.1, 6.5 and 6.6.