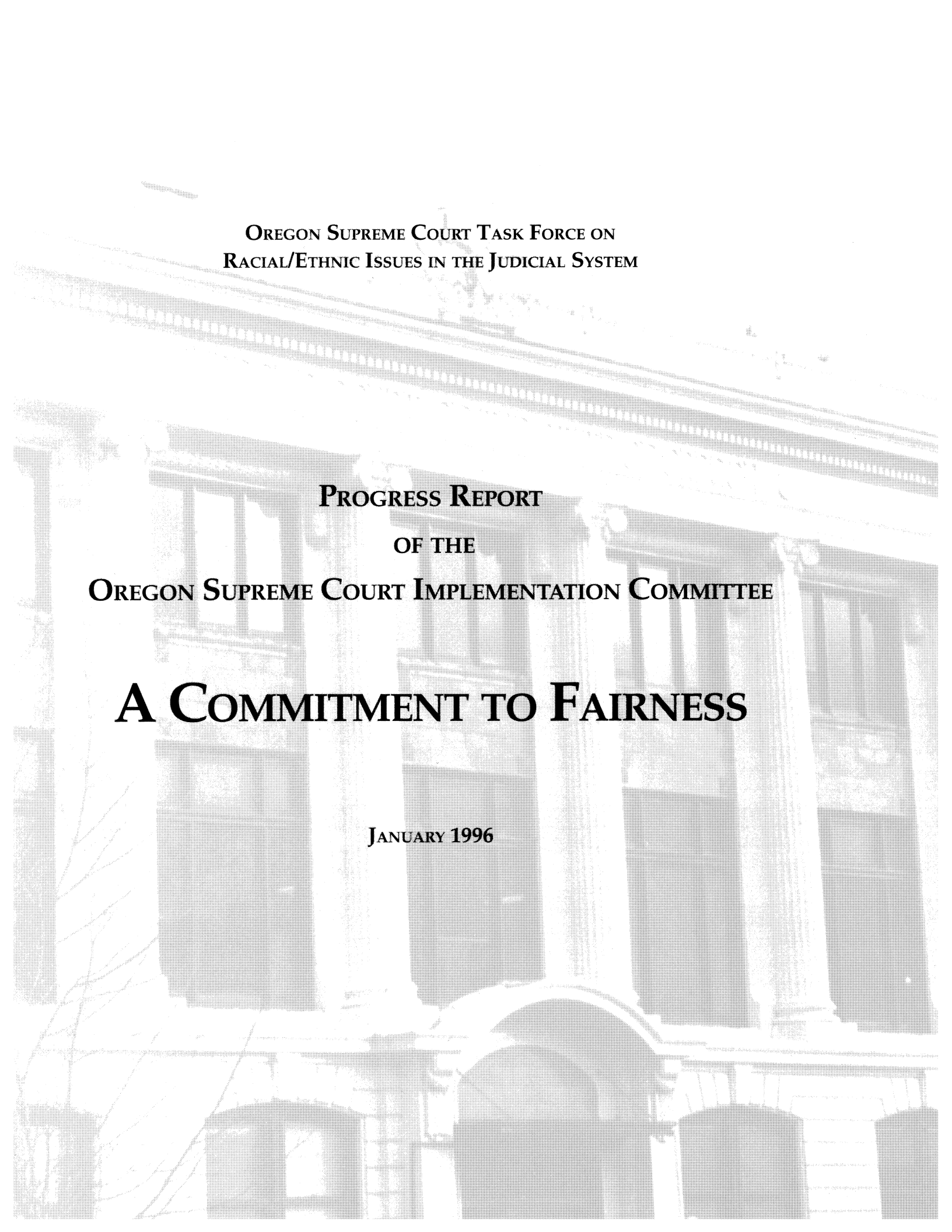

OREGON SUPREME COURT TASK FORCE ON
RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM

PROGRESS REPORT
OF THE
OREGON SUPREME COURT IMPLEMENTATION COMMITTEE

A COMMITMENT TO FAIRNESS

JANUARY 1996

PROGRESS REPORT
OF THE
OREGON SUPREME COURT
IMPLEMENTATION COMMITTEE

JANUARY 1996

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OREGON JUDICIAL DEPARTMENT

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10/30/95

Honorable Wallace P. Carson, Jr.
Chief Justice
Oregon Supreme Court
Salem, Oregon 97310

Dear Chief Justice Carson:

On behalf of the Oregon Supreme Court Implementation Committee, I am pleased to present the Implementation Progress Report of 1995. When you asked me to serve as the Implementation Committee's chairperson sixteen months ago, I was anxious. Today, I am encouraged. I was anxious because the Task Force Report raised many serious concerns and no parallel implementation efforts existed; we were covering new ground. I am encouraged because the implementation project illuminated a dedication to equality and fairness among those working within Oregon's justice system that existed prior to our efforts and has grown stronger along the way. With the publication of this report, the committee's work is complete; however, the report's publication does not signify an end to the overall effort to improve the equality and fairness of Oregon's justice system. Rather, and more importantly, it represents a beginning. It is the foundation of a long-term effort. We hope that this important first step will inspire others to maintain the momentum we worked so hard to create.

The committee designed the report to serve three purposes: (1) to describe implementation efforts; (2) to provide additional proposals; and (3) to serve as a networking resource. The first two purposes are self-explanatory. However, to be sure that you understand the third purpose, I will provide an explanation. Throughout the committee's work, we discovered many entities and individuals who were committed to implementing positive change but little coordination of efforts. Without coordinated efforts, work was duplicated and ideas were not shared. This made implementation proceed more slowly. Moreover, we found no document containing all of the efforts to address issues of the equality and fairness in Oregon's justice system and, in many cases, no written descriptions of innovative programs in operation. The lack of any "source" document, in light of the need to coordinate efforts, motivated the committee to design the report as a networking resource. We accomplished this by, for example, providing written summaries of innovative programs and including contact names and numbers whenever possible.

This report, and the work documented herein, would not have been possible without the dedicated efforts of my fellow committee members, the individuals and entities affected by the Task Force recommendations and, of course, your decision to establish the committee. Accordingly, I want to thank the committee members for their time and effort, the entities for their cooperation and commitment and you for your willingness to take this important step in the process of change. I also wanted to recognize specifically the efforts of Edwin J. Peterson, who dedicated an unusual amount of time to our effort and whose commitment immensely improved the committee's work. Finally, I want to thank the committee's coordinator and only staff person, Chris Lundberg, for his contribution to our efforts. Without Chris's creative sense, writing abilities and, above all, commitment to the goals of this project, the committee would not have achieved its high level of success.

Sincerely,

Paul J. De Muniz
Chairperson

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FOREWORD

MEETING THE CHALLENGE

A COMMITMENT TO FAIRNESS

"Often the greatest challenge is getting those who cause a problem to recognize any responsibility for the problem and agree on a solution."

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

INTRODUCTION

With the formation of Oregon's first court and the ratification of Oregon's Constitution, a judicial system based on the principles of fairness, accessibility and excellence was established. Yet, despite the solid foundation on which our judicial system rests, the passage of time generated new ideas and uncovered inefficiencies that motivated the Oregon courts to implement change. In the past 25 years, judicial reform related primarily to issues of professional and efficient court management. Most recently, as highlighted by the publication of the final report of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System (the Task Force), Oregon's system of justice required further improvement. The new focus, engineered by the Task Force and managed by the Oregon Supreme Court Implementation Committee (IC), will equip our judicial system to fulfill more effectively its mission, bending ever closer toward the goal of equal justice for all.

The findings of the Task Force demonstrated that the problems racial and ethnic minorities experience in their dealings with the judicial system do not stem from overt acts of disrespect or mistreatment. In the context of Oregon's court system, explicit manifestations of racial bias rarely occur, and when they do, are isolated events. Rather, as the Task Force discovered, something more pervasive is at work: institutionalized bias. Institutionalized bias describes a residue of beliefs that continue to linger in the subconscious of our society, perpetuate negative stereotypes and accordingly affect people's actions without their knowledge.

Given the subtle nature of institutionalized bias, the greatest challenge to resolving the problem is convincing nonminority people of good will, that in a subconscious manner, they are the key contributors to the problem. When confronted with such a suggestion, nonminorities are quick to defend themselves rather than critically analyze the system in which they operate. It is crucial to the successful elimination of institutionalized bias for nonminorities to understand its power and become vigilant against its possible manifestations because given their numbers and placement in positions of power, once nonminorities take responsibility for contributing to the problems flowing from institutionalized bias, the solutions will come more easily. In short, and as noted by the Task Force, "increased understanding fosters fairness."

Despite the challenge, the IC discovered that most entities affected by the Task Force recommendations have accepted the conclusions of the report, recognized the urgency of the issues and are implementing positive change. The IC wants to give special recognition to the efforts of the Oregon Supreme Court, the Office of the State Court Administrator, the Oregon State Bar and the Oregon law schools because the majority of the recommendations affected these entities and they have all demonstrated strong leadership in the implementation process. The following groups have also demonstrated a similar commitment to implementing positive change: the Board on Public Safety Standards and Training; the Department of Corrections; the managing partners of nine of Portland's largest law firms; Oregon attorneys; members of the Oregon Legislative Assembly; the Minority Lawyer Organizations; local bar organizations and other professional groups; the Oregon Commission on Children and Families; and the Oregon State Police.

OVERVIEW

This section contains three subsections summarizing the past, present and future of the effort to improve the fairness of Oregon's justice system. The first subsection briefly discusses the Task Force, the second provides an overview of the IC and its work process and the third highlights the IC's most important conclusion: the need for ongoing oversight. The next section—"Executive Summary"—highlights the implementation efforts, lists the IC's proposals for further improvements and concludes each subsection with a statement on the related role of the standing implementation committee.

THE PAST: THE OREGON SUPREME COURT TASK FORCE ON RACIAL/ETHNIC ISSUES IN THE JUDICIAL SYSTEM

On February 21, 1992, the Oregon Supreme Court established the Task Force on Racial/Ethnic Issues in the Judicial System to identify problems faced by minorities in Oregon's justice system and to propose realistic and attainable solutions to the identified problems. Chief Justice Wallace P. Carson, Jr., appointed an ethnically and professionally diverse group of eighteen persons to serve on the Task Force under the direction of Oregon Supreme Court Justice, and former Chief Justice, Edwin J. Peterson. In May 1994, the Task Force published its findings and made 72 recommendations. The recommendations touched virtually every aspect of the justice system—law schools, the Oregon State Bar (OSB), the Oregon Judicial Department (OJD), law firms and law enforcement and other government agencies.

THE PRESENT: THE OREGON SUPREME COURT IMPLEMENTATION COMMITTEE

- **The Oregon Supreme Court Implementation Committee**
- **The Implementation Status Report**

THE OREGON SUPREME COURT IMPLEMENTATION COMMITTEE

Overview. The first recommendation encouraged the Oregon Supreme Court to "appoint a committee to assist in the implementation of the recommendations." In accordance with the recommendation, and as a sign of its commitment to rectifying the problems identified by the Task Force, on June 15, 1994, the Supreme Court established an eight-person Implementation Committee (IC). Chief Justice Carson charged the IC with overseeing the translation of the 72 recommendations into directives, programs or legislation and preparing this Implementation Progress Report. Under the leadership of Appellate Judge Paul J. De Muniz, the IC divided itself into seven subcommittees, met with all the affected entities, considered all 72 recommendations and developed a legislative package of six bills (Senate Bills 864 through 869).

The Subcommittees and Work Process. The Implementation Committee's first tasks were to hire a staff person and develop a strategic work plan. Based on the strategic plan, the committee initially divided itself into five subcommittees, later adding a sixth when legislative issues emerged and a

seventh when this report neared completion. The seven subcommittees were: (1) Interpreters & the Translation of Court Information and Commonly Used Court Forms; (2) The Criminal & Juvenile Justice System; (3) Diversifying the Legal Profession and Institutions & Data Collection Proposals; (4) Minorities and Jury Service & Professional Standards; (5) Public Education & Cross-Cultural Training; (6) Legislation; and (7) Final Report Editing and Review.

From its inception, the committee followed a strict protocol based on openness and deliberation. The protocol required the presence of a majority of the committee members and a corresponding majority vote before policy decisions could be made. Further, the committee adopted two underlying themes to help guide its work: (1) it did not further question the findings of the Task Force; and (2) its approach toward the affected entities (e.g., the law schools, the Oregon State Bar and the courts) was one of support rather than direction.

The committee's general charge was to oversee, to the extent possible, the implementation of the 72 recommendations. Because the charge directed it to oversee implementation, not implement the changes itself, the IC was not empowered with economic incentives or armed with sanction authority to aid the implementation process. Rather, it facilitated the implementation process by relying on the collective goodwill of the affected entities to make change happen. Accordingly, the responsibility of translating the recommendations into directives or programs laid with the Judicial Department, other government agencies, members of the bar, law enforcement agencies, the Oregon law schools and the Oregon State Bar. The IC did, however, take a lead role in the development of related legislation. The committee therefore fulfilled its duty by determining the implementation status of each recommendation, meeting with all the affected entities, identifying areas where the committee could aid implementation efforts and providing such support, developing and pursuing the passage of six bills and completing this progress report.

During the oversight process, the IC met with the following entities and subjected each to the same level of rigor and analysis: the Board on Public Safety Standards and Training; the Chief Justice of the Oregon Supreme Court; the Department of Corrections; the managing partners of nine of Portland's largest law firms; members of the Oregon Legislative Assembly; the Minority Lawyer Organizations; local bar organizations and other professional groups; the Office of the State Court Administrator; the Oregon Commission on Children and Families; the Oregon law schools; the Oregon State Bar and the Oregon State Police. The committee also held public meetings, invited interested individuals to attend and participate and maintained a mailing list.

THE IMPLEMENTATION PROGRESS REPORT

This Implementation Progress Report documents the continuing efforts of Oregon's judicial system toward the goal of equal and effective justice for all. The IC designed this report not only to describe implementation progress, but also to serve as a networking tool and an informational resource to aid ongoing implementation efforts. It is the result of research, discussion and outreach conducted between August 1994 and August 1995. The report describes the implementation efforts and summarizes model programs, procedures and legislation designed to create a bias free justice system.

The report has six chapters that address the following subjects: (1) language issues; (2) criminal justice issues; (3) juvenile justice issues; (4) cross-cultural education, recruiting and hiring concerns; (5) the need for ongoing oversight and data collection; and (6) jury pool and jury selection issues. Each chapter begins with an overview of the problem, continues with a description of implementation efforts and contains, if necessary, additional proposals offered by the IC.

The report also contains four appendices. Appendix A contains a summary list of all the recommendations and the related implementation efforts. Appendix B contains a list of all the forms local courts have translated. Appendix C contains a copy of the Code of Professional Responsibility for Interpreters in the Oregon Courts and Appendix D contains copies of the IC's six bills and two other bills the IC helped develop.

THE FUTURE: ONGOING OVERSIGHT AND COORDINATION

The efforts described in this report demonstrate a strong commitment to equal justice among the organizations and individuals affected by the Task Force recommendations. As Oregonians, we have a lot to feel good about. But the efforts contained in this report are only the first step. All who are committed to achieving the goal of equal justice must maintain their vigor. *We must continue the effort.*

Two themes emerged from the committee's work: one, the need to *coordinate* the efforts of various entities involved in the implementation effort; and two, the need to ensure that the Implementation Committee's efforts are *ongoing*. Throughout the judicial system, the committee discovered a vast amount of dedication to change but little coordination of efforts. Without coordination, efforts are often duplicated and resources not shared. Also, the committee found that despite the significant implementation progress, lasting change will take time. Ongoing oversight and coordination by the Implementation Committee will significantly aid such continued implementation efforts (see chapter five, section "Maintaining Momentum," at page 107 regarding the IC's specific proposal for a standing implementation committee). The next section—"Executive Summary"—describes the role the standing committee would play in the continuing implementation process.

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' job 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**

CHAPTER SUMMARY

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**

CHAPTER SUMMARY

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.

CHAPTER ONE

EQUAL ACCESS TO JUSTICE

OPENING THE DOORS

"**Accessibility of Justice.** A democratic society cannot maintain its legitimacy simply by promising equality before the law to all of its citizens. That promise must be fulfilled by justice that is available, affordable and understandable to any person who seeks it. The Oregon courts are accessible to all who need and seek their aid."

—The Future of the Courts Committee, *Oregon Courts Statement of Values*, Final Report 3 (Jan. 1995).

INTRODUCTION

The promise of "equality before the law" is an empty one unless the context for its fulfillment exists. **Equal justice presupposes access.** For example, a non-English-speaking person without a qualified interpreter or the benefit of translated forms will not understand the court's orders, cannot properly analyze her options, cannot communicate her position to the judge and may not even seek the court's aid because she is unaware of her options. **Access requires understanding.** For the non-English-speaking person, the key to understanding is found in linguistically compatible information about the judicial system and the courtroom experience.

In its final report, the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System (Task Force) identified several areas where Oregon's judicial system failed adequately to provide linguistic minorities meaningful access to its services and a true understanding of its directions. The Oregon Judicial Department's Future of the Courts Committee (Futures Committee) similarly underscored this problem by identifying the "[i]nadequate service to the state's minority language groups" as one of ten key weaknesses in our judicial system.

Beyond language concerns, the Task Force identified a lack of awareness concerning the civil justice system among minorities as the other important issue regarding access. The Task Force found that some minorities were unfamiliar with the system of civil justice and consequently failed to avail themselves of its services when appropriate. In some instances, the lack of use resulted in people taking the law into their own hands (e.g., repossession) and ending up in the criminal justice system. In others, victims of domestic abuse remained in dangerous situations and injured workers failed to seek the benefits of workers' compensation laws.

It is important to recognize that it has been and continues to be the goal of judges and court administrators to provide linguistic minorities with equal access to justice. In fact, the Implementation Committee heard many accounts of judges who used innovative methods to find an interpreter for an obscure language or provide translated forms. In recent times, a combination of increased docket pressure, a scarcity of resources and a sudden increase in the use of the courts by non-English-speaking litigants has hindered courts in addressing the rising language needs. The changed times have created new problems that need to be addressed on a larger, institutional scale.

Although much work remains, Oregon's judicial system has responded to the problems faced by non-English-speaking people regarding their ability to access justice. Efforts to improve the quality of interpreters, translate important court information and commonly used court forms and educate the public about the civil justice system are underway. As the following examples demonstrate, Oregon's judicial system is *beginning to open its doors.*

INTERPRETERS

The problems associated with interpreters related to three areas: quality control in court; quality control in administrative hearings; and the availability of interpreters to parties in court-annexed mediation or arbitration and certain parties in juvenile proceedings. To implement the Task Force's solutions to these problems, the Implementation Committee (IC) helped the Office of the State Court Administrator (SCA) continue an effort that began in 1993 to implement an interpreter certification and appointment process for court interpreters and drafted and promoted a bill this 1995 legislative session which was designed to expand the interpreter appointment process. The IC also met with the Oregon State Bar regarding jury instructions on court interpreters and the SCA regarding an increase in the fees paid to certified interpreters.

QUALITY CONTROL IN COURT

- **An Interpreter Certification and Appointment Process—ORS 45.273 to 45.297**
- **Increasing the Fees Paid to Certified Court Interpreters**
- **Jury Instructions Regarding Interpreters in Court**

AN INTERPRETER CERTIFICATION AND APPOINTMENT PROCESS—ORS 45.273 TO 45.297

In the 1993 legislative session, the legislature passed a bill sponsored by the SCA (now codified at ORS 45.273 to 45.297) that authorized it to develop an interpreter certification program. The SCA has been working steadily since 1993 to get the pieces in place. In November 1994, the Legislative Emergency Board approved a $40,000 allocation for the program. The program required the development of a new testing, training and appointing procedure. It also required the development of an interpreter code of ethics.

The Legal Requirements. ORS 45.288 governs the appointment procedure and establishes an appointment preference for certified interpreters. If no certified interpreters are available, the court must appoint a qualified interpreter. ORS 45.291 regulates the certification process. It must include a testing program for language and ethics competency, a licensing procedure and a teaching program.

The Testing Program. Since 1993, the SCA has been working with the National Center for State Courts and Minnesota, New Jersey and Washington to develop a shared language proficiency testing program. Each state will use common administrative standards to develop and share different tests. The SCA administered the first Spanish language test on November 11, 1995. When the collaborative effort is complete, Oregon will have access to tests in nine additional languages (Cambodian, Cantonese, Korean, Laotian, Vietnamese, Haitian Creole, Portuguese, Russian and Hmong).

The Code of Ethics. The testing and certification program will also require that interpreters, as sworn officers of the court, understand their ethical duty to remain neutral and impartial. To help guide interpreters in their duty, on May 19,1995, the Chief Justice signed an order approving and making effective the Code of Professional Responsibility for Interpreters in Oregon Courts (the Code). The Code is the result of several months work that began in December 1994. At that time, the IC published a model code in the December 5, 1994, Oregon Appellate Courts Advance Sheets and distributed copies to various individuals requesting comment. The IC received many comments by the middle of January 1995, and incorporated them into a final working draft. The IC and the SCA

reviewed the draft, redistributed it for comment and then completed a final version. The Chief Justice approved the final draft code on May 19, 1995. (See Appendix C for a copy of the Code.)

The Training Program. Portland State University (PSU) and the Training and Economic Development Center of Chemeketa Community College (CCC) are developing interpreter training programs. Both programs are in the planning stages. PSU's program will train potential interpreters in the ethical, substantive and legal issues related to interpretation, teach relevant legal and medical terminology and train different types of interpreters (e.g., business, medical or legal). CCC's program will exclusively focus on the ethical responsibility of translators and interpreters.

INTERPRETER FEES

In recognition of the new certification requirements and required training, the SCA is committed to raising the fees paid to certified court interpreters. The change is subject to the availability of funding.

JURY INSTRUCTIONS

The final piece of a quality control program for court interpreters relates to jury instructions concerning the use of an interpreter during trial. Effective court interpretation requires more than the presence of an interpreter who is a proficient bilingual speaker and understands her ethical responsibility to remain neutral. It also requires that the jury understand the interpreter's role. The jury must know that the interpreter is neutral and that it is not to give any greater or lesser weight to interpreted testimony. In the criminal context, the Oregon State Bar's (OSB) Committee on Uniform Criminal Jury Instructions drafted a model instruction for the use of an interpreter in a criminal case (*Use of an Interpreter*, Uniform Criminal Jury Instructions, No. 1001A (Oregon State Bar Committee on Criminal Jury Instructions 1994)). No similar instruction exists for use in civil trials. However, in March 1995, the bar asked the Committee on Uniform Civil Jury Instructions (UCJI) to consider the development of such an instruction.

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

Related Task Force recommendations: R 2-4, 2-5 and 2-6

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QUALITY CONTROL IN ADMINISTRATIVE HEARINGS

A PREFERENCE FOR CERTIFIED INTERPRETERS—SENATE BILL 864

Prior to 1993, the interpreter appointment process governing administrative hearings paralleled the process used for court proceedings. However, in response to the Task Force's findings, the 1993 legislature passed a law (ORS 45.273 to ORS 45.297) improving the process used in court that was not accompanied by a similar change in administrative tribunals. Because administrative hearings are much like court proceedings, it is important that parties in such hearings have the same procedural safeguards as are provided in court. Consequently, in this 1995 legislative session, the IC proposed Senate Bill (SB) 864 to establish a similar system of quality control in administrative hearings.

The IC had hoped to secure the passage of a bill authorizing the development of a distinct certification program for interpreters used in administrative hearings. The IC recognized that while similar in many ways, the knowledge needed to effectively interpret in court differs from that needed in administrative hearings (e.g., medical versus legal terminology). However, given the financial austerity of our state and the costs associated with developing a certification program, the IC settled on language ensuring that the administrative hearing appointment process contained a statutory preference for interpreters certified under ORS 45.291.

As an example of the IC's original goal, the State of California operates a tiered interpreter certification program with court certification representing the highest standard of qualification. The State Personnel Board (the Board) of the Executive Branch administers the certification program for agency interpreters. The Administrative Office of the Courts (AOC) of the Judicial Branch administers the court interpreter certification program. Each program is designed to be self-sustaining through the collection of fees.

The two California certification processes differ in the terminology tested and in the requirement that court-certified interpreters also meet certain continuing education requirements. Certification under the AOC's program authorizes an individual to interpret in both court and administrative proceedings. However, those certified under the Board's program cannot serve as certified interpreters in court. Court-certified interpreters pay only one certification fee. For more information, contact Ms. Sandy Claire at the Administrative Office of the Courts, Judicial Council of California, 303 2nd Street, South Tower, San Francisco, CA 94107, or by phone at (415) 396-9112.

Although SB 864 does not fully address the quality control issue in contested case hearings, it is an important first step. SB 864 requires the appointing body to use an interpreter certified under ORS 45.291 or an interpreter otherwise approved by the relevant agency administrator. The bill would establish a preference for court-certified interpreters, while also providing the agency the flexibility to use interpreters with a proven track record or to develop its own certification program.

In April 1995, the Senate Judiciary Committee provided SB 864 a public hearing. The Judiciary Committee disapproved of the requirement that the Department of Administrative Services (DAS) develop its own certification program. The IC responded to the Senate Committee's suggestions and made the necessary changes in cooperation with DAS. Senate Judiciary then provided the bill a work session, removed a subsequent referral to the Joint Committee on Ways and Means and approved SB 864 with a "do pass" recommendation for the Senate floor. On May 8, 1995, the Senate approved the bill with a vote of 26 ayes (four Senators were excused). On May 9, the Speaker of the House assigned the bill to the House Judiciary Committee. However, SB 864 did not pass because it remained in this committee upon the legislature's adjournment (see Appendix D for a copy of SB 864).

Three other entities are similarly concerned with the quality of interpreters used in administrative tribunals and accordingly submitted bills designed to address the issue. None of the bills was enacted. The bills are:

- HB 2441 (sponsored by Representative Avel L. Gordly)
- HB 2284 (sponsored by the House Interim Task Force on Hispanic and Migrant Issues)
- HB 3413 (sponsored by the Secretary of State, the bill addresses certification generally).

Implementation Committee Proposal 1.2. The standing implementation committee should continue to pursue legislative changes to improve the quality control process for interpreters used in administrative hearings.

Related Task Force recommendation: R 2-7

EXPANDING THE EXPLICIT PROVISION OF INTERPRETERS

- **The Problem: Court-Annexed Arbitration & Mediation and Juvenile Proceedings**
- **The Solution: Senate Bill 865**

THE PROBLEM

Court-Annexed Arbitration and Mediation. No explicit, statutory language guarantees the provision of interpreters to non-English-speaking parties in court-annexed arbitration and mediation proceedings. Regarding court interpreters in general, ORS 45.275 limits the appointment of interpreters to "any civil or criminal proceeding." ORS 36.420(3) governs the payment of arbitration expenses and authorizes a court to waive or defer arbitration expenses (which are then paid by the state) if the court finds that a party is "unable to pay all or any part of those . . . expenses." Although this language authorizes a court to provide an indigent person with an interpreter at the public's

expense, it does not clearly express a right to an interpreter or demonstrate the state's commitment to providing non-English-speaking persons the same access to arbitration services as English-speakers.

Regarding mediation, no similar language appears in the laws governing the mediation process (ORS 36.100 to 36.210). Although it is likely that courts, if necessary, would provide an interpreter to a non-English-speaker in court-annexed mediation and find a way to pay for it, the policy and right to such a service is not expressed clearly. The Task Force found the lack of an expressed right to interpreter services troubling both in terms of the public's perception of the justice system and in a non-English-speaking person's ability to successfully navigate these laws and identify and secure the right to state-funded interpretation services.

The Oregon Supreme Court Future of the Courts Committee underscored the importance of clarifying the state's policy in this regard by concluding that the use of alternative dispute resolution mechanisms was increasing and by noting that the presence of linguistic minorities in Oregon's courts was rising. Accordingly, the laws governing the appointment of interpreters and those regulating court-annexed mediation and arbitration must reflect the policy that all those seeking justice in Oregon's judicial system will be provided an interpreter if necessary.

Juvenile Proceedings. The statutory framework regulating the appointment of interpreters in juvenile proceedings presents a different dilemma: the right to an interpreter exists but it is limited. In the juvenile justice system, Oregon law only guarantees the provision of interpreters to those people who meet the statutory definition of "party." In the past, the definition captured all those who could be significantly involved in a child's life. However, with shifting demographic trends, the group of individuals who might influence a juvenile's life has expanded. Now, an uncle or a sister without custody or the title of legal guardian might in fact be the most influential person in a child's life. Consequently, the laws governing juvenile proceedings need to recognize this new circumstance by providing the right to an interpreter to those persons who have extended personal involvement with the child, or have been granted rights of limited participation, but do not fit within the current statutory definition of "party."

THE SOLUTION—SENATE BILL 865

In the 1995 legislative session, the IC drafted and introduced SB 865 to address these issues. SB 865 would have amended ORS 45.275 (interpreters) and ORS 419B.115 and 419C.285 (juvenile proceedings). Regarding ORS 45.275, SB 865 would have added explicit references to court-annexed mediation and arbitration to the general authorization to appoint interpreters "in any civil or criminal proceeding." In the juvenile context, SB 865 would have explicitly provided a right to an interpreter to "any person who . . . had extended personal involvement with the child." In April 1995, the Senate Judiciary gave the bill a public hearing and work session. The Senate Judiciary approved SB 865 with a do pass recommendation; however, due to an associated fiscal impact, the committee subsequently referred the bill to the Joint Ways and Means Committee. Unfortunately, SB 865 died in Ways and Means and thus was not enacted (see Appendix D for a copy of SB 865). House Bill 2441 addressed the same concerns but also failed to gain final legislative approval.

IMPLEMENTATION COMMITTEE PROPOSAL 1.3

The standing implementation committee should continue to pursue legislative changes in this area. 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.

Related Task Force recommendations: 2-8 and 5-2

OTHER LANGUAGE SERVICES

- **The Spanish Language Legal Network Directory**
- **The AT&T Language Line**

THE SPANISH LANGUAGE LEGAL NETWORK DIRECTORY

The Spanish Language Legal Network publishes a directory of Oregon attorneys who speak Spanish. The Network designed the directory as a referral resource for non-English-speaking people. It contains the addresses, phone numbers and specialty areas of Spanish-speaking attorneys. The attorneys self-assess their Spanish speaking ability on a scale of 1 to 10. Persons may obtain the directory by writing: Spanish Language Legal Network, c/o Constance Crooker, Attorney at Law, 815 S.W. Second Avenue, Suite 500, Portland, OR 97204; or by phone at (503) 221-1792.

THE AT&T LANGUAGE LINE

In 1993, the Oregon Judicial Department made the AT&T Language Line available to trial courts statewide. The Language Line provides trial courts immediate access to interpreter services for over 155 languages, 24 hours a day. The process involves a conference or speaker phone call with an AT&T interpreter. All of the AT&T interpreters are tested and certified prior to serving as interpreters on the Language Line. The State Court Administrator did not provide the Language Line to replace live interpretation. It was intended to increase access to interpreter services at nontraditional work hours and for uncommon foreign languages. It can also serve as a cost effective means of interpreting noncomplex hearings or discussions.

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
2-4	• Implement interpreter certification program. • Draft an interpreter code of ethics.	• SCA is working with the National Center for State Courts and three other states to develop a shared testing program. In November, the E-Board approved $40,000 for the program. First test administered in November 1995. • Code of Ethics approved on May 19, 1995.
2-5	Raise interpreter fees to $32.50/hour for certified interpreters.	Requires internal policy change. SCA supports idea but it is subject to budget.
2-6	OSB Committee on Jury Instructions should draft instructions re: use of interpreted testimony.	• OSB Comm on Crim JI has drafted instruction for use in criminal context (see UCrJI No. 1001A). • OSB Comm on Civil JI is considering.
2-7	Governmental agencies should provide interpreters in administrative proceedings.	• SB 864 (not enacted). • HB 2441, sections 2 - 7 (not enacted). • HB 2284 (not enacted).
2-8	Interpreters should be provided in court supervised arbitration and mediation.	• SB 865 (not enacted). • HB 2441, section 1 (not enacted).
5-2	Interpreters should be provided to all non-English-speaking parents and care-givers in juvenile proceedings and for all encounters with juvenile system.	• SB 865 (not enacted). • HB 2441, sections 8 - 10 (not enacted).

TRANSLATIONS

The translation needs of the linguistic minority fall into three categories: the need for translated court forms; the need for translated information about legal rights and remedies; and the need for translated information about the judicial system. The Implementation Committee (IC) contacted all 36 state trial courts, a juvenile detention facility, five legal services offices, the Office of the State Court Administrator (SCA) and its Indigent Defense Services Division and the Oregon State Bar to determine and prioritize the needs of the non-English-speaking litigant regarding forms, court signs and information on court processes and legal rights and remedies. Through its research, the IC discovered several translation projects already underway and identified the forms and information most in need of translation. The IC also reviewed pamphlets produced by the Oregon State Bar, Oregon Legal Services, various trial courts and other jurisdictions describing the judicial system. The information from these entities provided a balanced perspective regarding the need and availability of certain forms and information. The committee's findings are described below.

COMMONLY USED COURT FORMS

- **The Forms**
- **Translation Obstacles**
- **Translation Strategy**
- **Translation Methods and Associated Costs**
- **Translating Court Signs**

In an ideal situation, all frequently used court forms would be available in the most common foreign languages. However, a lack of resources, the absence of a statewide certifying process for translated forms, the presence of ORS 1.150 which limited court documents to English (recently changed by legislation) and the fact that the state centrally produces only eight forms, has made it difficult for Oregon's judicial system to implement a large scale translation effort. Notwithstanding these obstacles, the Implementation Committee (IC) discovered that some segments of Oregon's judicial system have taken an important first step toward the realization of translating all commonly used court forms by recognizing, prioritizing and responding to the needs of its non-English-speaking consumers (see Appendix B for list of translated forms). Further, the IC and the SCA responded to the problem posed by ORS 1.150 by securing an amendment to the law this 1995 legislative session.

In this section, the IC makes recommendations to the SCA regarding a translation prioritization scheme which tags the forms most in need of translation. Through interviews with trial court administrators and the directors of legal services, the IC was able to identify the forms most often used in court and the most common legal problems faced by non-English-speaking individuals. This section also analyzes the two main obstacles to translation efforts (no certifying process and ORS 1.150), describes implementation efforts and recommends solutions.

THE FORMS

The important and immediate translation needs of the non-English-speaking litigant come within four categories: forms related to indigence; forms used by litigants who choose to represent themselves in civil matters (i.e., pro se); forms used by courts that inform criminal defendants of their rights and the court's decision and mandates; and forms used by courts to inform parties of

important appointments and their locations. The following nineteen forms were repeatedly mentioned by trial court administrators and legal service directors as forms most in need of translation. Following each list is a summary statement of the rationale behind the decision to place the form on the list. As a baseline rationale, the rate of use by non-English-speaking litigants played the most significant role in the listing of each form. The forms are not listed in order of priority.

Indigence Forms	Civil Forms (Pro Se)	Criminal Forms	Notices
• Affidavit of Indigence • Advice of Rights • Fee Deferrals • Claim of Exemptions	• Restraining Orders • Summary Dissolution • Forcible Entry and Detainer • Small Claims	• Notice of Right of Appeal • Plea Petitions • DUII Diversion Forms • Traffic Tickets • Release Agreements • Fine Payment Schedules • Referrals • Conditions of Probation • Sentencing Judgment	• Notices to Appear • Traffic Tickets
Rationale: Many non-English-speaking litigants use these forms.	*Rationale*: Not only do many non-English-speaking individuals use the above legal procedures, but they do so without the assistance of an attorney. Therefore, it is essential that they understand the documents.	*Rationale:* The criminal justice system is experiencing more non-English-speaking defendants. These individuals need to understand their rights and the significant consequences associated with criminal prosecution and pleas. Further, so they can effectively follow the court's directions regarding the payment of fines and the conditions of release or bench probation, it is essential that non-English-speaking defendants are able to refer to the court's written instructions after leaving court.	*Rationale:* If a non-English-speaking person receives an English-only notice, they will likely not understand where they are to go and why. Moreover, a lack of understanding early on can lead to harsher problems further into the process. More severe consequences result in higher costs to the state and the individual, both of which could be avoided by the provision of translated forms.

TRANSLATION OBSTACLES

No Certifying Process. Many trial court administrators noted that despite an increase in the use of their courts by non-English-speaking persons, they had either not implemented a translation effort or were reluctant to borrow translated forms from other courts because they were unsure of the quality of the language used in the translated document. In light of this valid concern, the IC proposes a centralized translation effort. The process is described in the next section.

ORS 1.150. Several trial court administrators also noted that ORS 1.150 hindered translation efforts because it provided that "every writing in any action . . . shall be in English." While the IC believed ORS 1.150 did not limit the use of dual language forms, it worked with the SCA to develop section 1 of Senate Bill (SB) 192 to amend ORS 1.150. The amendment will permit the use of foreign language documents if the documents are accompanied by a certified English translation. Such documents will be subject to all relevant discovery rules. SB 192 passed both the House and the Senate, was signed by the Governor on June 5 and became effective on September 9, 1995 (see Appendix D for a copy of SB 192, section 1).

TRANSLATION STRATEGY—Implementation Committee Proposal 1.4

- **Centralized Translation Effort**
- **Reading Level**
- **Format**
- **Languages**
- **Forms Priority**
- **The Future of the Courts—Judicial Kiosks and OJIN**

Centralized Translation Effort. Centralized production of forms presents the cleanest method to monitor the quality of translated court forms. Further, most trial courts currently use the centrally produced Family Abuse Prevention Act and Summary Dissolution forms and those related to indigence. Consequently, many courts would likely use other centrally produced forms. Moreover, with the court's unification in 1981, the centralized production of court forms makes sense because courts now operate under the same administrative guidelines. And finally, several trial court administrators noted their support of centrally produced and translated court forms. To provide for the high quality translation of important court forms, the IC recommends the SCA undertake following two actions:

1. ***Centrally Translate and Produce More Forms.*** Below, the report lists the eight forms produced by the SCA, none of which is currently provided in non-English languages. In the second subsection, the IC identifies the forms associated with small claims and Oregon's forcible entry and wrongful detainer laws as documents the SCA should also centrally produce. In the last subsection, the IC recommends that the SCA adopt a translation policy for all forms it produces.

    - *Current Forms.* The SCA currently produces the following eight forms: (1) Instructions and Forms for Summary Dissolution of Marriage Procedure; (2) Abuse Prevention Act Instructions and Forms for Obtaining a Restraining Order; (3) Abuse Prevention Act Instructions and Forms to Modify (Change) a Restraining Order; (4) Abuse Prevention Act Instructions

and Forms to Renew (Continue) a Restraining Order; (5) DUII Diversion Petition and Agreement; (6) Uniform Marijuana Possession Diversion Petition and Agreement Form; (7) Advice of Rights Concerning Court-Appointed Counsel; and (8) Affidavit of Indigence and Request for Court-Appointed Counsel.

- *New Forms.* The SCA should also produce Small Claims Court forms and those associated with Oregon's Forcible Entry and Wrongful Detainer laws—Complaint for Return of Personal Property (ORS 105.112), Complaint of Forcible Entry and Unlawful Detainer (ORS 105.125) and Answer to the Complaint (ORS 105.137). The centralized production of these forms is important because the unrepresented litigant uses the documents. Consequently, the quality of the forms must be ensured. Moreover, centralized production of the forms will ultimately make their translation easier. The SCA should also develop corresponding information packets.

- *Translation Policy.* The SCA should make it standard practice to translate all forms and informational material it produces.

2. ***Provide for Translation.*** The IC is aware that many local courts have tailored documents to meet their specific needs. While the IC does not consider this the best policy, the SCA should develop a system that monitors quality. Regarding court forms not produced by the SCA that need translation, the SCA should provide for their high quality translation by developing a contracting program in which trial courts could either refer to a list of translator's screened by the SCA or send their forms to the SCA for translation.

   The SCA could link its need for a contracting program with a program being developed by the Department of Administrative Services' (DAS) Foreign Language Translation Committee. The committee is designing a Request for Qualifications Questionnaire (RFQQ) which will serve as a screening device for potential translators. The committee will screen translators and place their names on a list that can be accessed by all public agencies for their translation needs. The RFQQ will consider cultural and language competency in its screening process. The list will identify a translator's area of expertise (e.g., legal, medical, scientific or social service) and whether the translator can provide graphics, only a narrative or both. Contact Ms. Esperanza Garcia at (503) 978-3698 for more details.

Reading Level—Eighth-Grade. The reading level of all translated court forms should mirror the English versions. Any adjustments to reading level should occur first in the English versions. The translations will reflect the modifications. The IC recommends that the English version of all court forms, particularly the pro se forms, be written at an eighth-grade reading level to ensure that the information reaches the widest possible segment of the public without losing its substance. The IC recommends using the Fog Index (borrowed from Robert Gunning's *Techniques of Clear Writing*) as a helpful and easy method for determining a document's reading level. The process requires a writing sample of at least 100 words and involves three easy steps: (1) determine the average number of words per sentence; (2) count the number of words with more than three syllables; (3) add the results of steps one and two and multiply by 0.4. The resulting number is the writing's Fog Index and corresponds to a reading grade level.

Format–Dual Language Forms. The IC recommends the creation of dual language court forms as opposed to the development of separate English and non-English documents. Dual language forms are more effective because English and non-English speakers can work from the same document rather than going between forms to ascertain the meaning of a document or a line within a document.

Languages. The SCA has identified 27 languages used in trial courts during the period from 1992 through 1994. The seven most common languages, in order of priority, are listed below. The IC recommends that all forms be translated into the seven most common foreign languages. However, in light of cost considerations, the IC recommends that at a bare minimum, the SCA translate forms into Spanish and Vietnamese.

1. Spanish
2. Vietnamese
3. Russian
4. Korean
5. Laotian
6. Cambodian
7. Chinese

Forms. The IC recommends that the SCA translate or provide for the translation of the nineteen forms listed under the "Forms" section above. However, if such an effort is hindered by a lack of funding, the SCA should, at a bare minimum, implement the following priority translation effort as funding permits.

- *PRIORITY ONE*—***Obtaining, Modifying and Renewing a Restraining Order and Summary Dissolution Forms and Information Packets.*** The SCA already centrally produces the forms and corresponding information packets. All courts use these forms. All trial court administrators and legal service directors noted that many non-English-speaking people use the forms and highlighted that the forms are designed for the pro se litigant. Many trial court administrators have already translated restraining order petitions demonstrating the high translation need. The SCA produces the English versions and should guarantee and monitor the translation quality by also providing translated forms.

- *PRIORITY TWO*—***Forcible Entry and Detainer (FED) and Small Claims Forms.*** The SCA does not centrally produce these forms, but should begin producing and translating them or provide for their high quality translation because the forms are for the unrepresented litigant. Moreover, all trial court administrators and the legal services directors noted that many poor, non-English-speaking litigants use FED and Small Claims forms. The SCA should ensure that such people have access to the associated legal remedies by providing high quality translations of each form.

- *PRIORITY THREE*—***DUII Diversion.*** The SCA centrally produces this form; however, most trial courts have modified the SCA's version. All trial court administrators noted that an increasing number of non-English-speaking individuals are becoming involved in the DUII diversion program. Further, the offender must refer to the form for directions after leaving the courthouse.

Because the SCA centrally produces this form, and due to its increased use by linguistic minorities, the SCA should prepare a translated version or provide for the translation of the various modified versions.

- *PRIORITY FOUR*—***Plea Petitions, Notice of Right to Appeal, Conditions of Bench Probation, Sentencing Judgments and Appearance Notices.*** Although the SCA does not centrally produce these forms, the SCA should provide for their high quality translation because they inform the defendant of important rights, instruct the defendant on how to act after leaving court and inform the defendant when and where to appear in court. It is crucial to the effective administration of justice that non-English-speaking individuals understand this information.

- *PRIORITY FIVE*—***Advice of Rights and Affidavit of Indigence.*** The Indigent Defense Services Division of the SCA currently produces these two forms. All trial court administrators and legal service directors noted that many non-English-speaking individuals use the forms. Moreover, several courts have translated the forms to meet a recognized linguistic need in their districts. However, the forms do not rank in the priority one category because many Indigent Verification Officers are bilingual and generally complete the affidavits in an interview fashion rather than the litigant completing the form herself. Nevertheless, the SCA centrally produces the forms and many non-English-speaking individuals use them. Consequently, the SCA should translate the forms to ensure quality and to meet the language needs.

The Future of the Courts—Judicial Kiosks and OJIN. The IC encourages the SCA to implement its vision of judicial kiosks which will provide computer-generated pro se forms in selected languages. The IC also encourages the SCA to ensure that the Oregon Judicial Information Network (OJIN) develops the capability to produce notices of court appointments in selected foreign languages.

TRANSLATION METHODS AND ASSOCIATED COSTS

As the examples in this section demonstrate, many translation methods of varying costs are available. Of course, with different methods come varying guarantees of quality; however, it is up to the entity responsible for providing translated forms to evaluate the best method based on cost and quality considerations. Listed below are four translation methods:

Professional Translation Service. These professional organizations provide translation services in many languages. The translators on staff are usually native speakers who have graduated from college in their native country. Some are accredited by the American Translators Association; however, the organizations do not rely solely on such an accreditation. They also require each translator to pass a test and evaluate the translator's resume before hiring the person to translate. The cost of translations can range from $10 to $100 per page depending on the job because the organizations offer a wide range of services. The services include translations, editing, graphic design and copying. For more information, contact European Languages Plus at (503) 224-2256.

Certified Court Interpreters. Many court interpreters who are certified by another state or the federal system also provide translation services. Some are accredited by the American Translators Association in addition to their court certification. Their services are limited to providing narratives.

The cost is generally $.12 to $.15 per word for legal and technical documents, and $.10 to $.12 per word for general writings. There is a $50 per page minimum. For 1,000 words (roughly a four page document) the cost is $120. Some interpreters may also request that they be paid the same hourly fee they receive when orally interpreting in court (e.g., $25 per hour).

Bilingual Attorneys, Members of the Public and College Interns. Quite often, attorneys, members of the public or college students who are fluent in a foreign language are interested in participating in a translation project at little or no cost. The individuals come from a variety of backgrounds and may or may not be certified as fluent in a foreign language. However, organizations that employ such translation methods generally use these individuals to produce the bulk of the translated documents, and then ask bilingual staff members or certified court interpreters to edit the work.

Translation efforts in Marion County and at the Donald E. Long Juvenile Detention facility in Portland illustrate the cost effectiveness of this process. In Marion County a consortium of Spanish interpreters donated their services and translated 13 forms (see list in Appendix B). The Donald E. Long facility used a combination of a college intern and bilingual staff members to translate 36 forms and informational material into Spanish and Vietnamese for a total cost of roughly $1,400 (see list).

Language Professors. Oregon has five major universities, each with language programs, which offer a rich pool of language resources. Language professors could provide a service much like that described immediately above. Their ability to speak, read and write the relevant language, as well as understand the culture is ensured due to their occupation. Entities in need of translation work could establish a relationship with the professors in which the professors provide editing or full translation services or refer language students to the entity.

TRANSLATING COURT SIGNS

Implementation Status. Several trial courts have translated signs of direction and "No Weapons" signs. The courts, and in some cases the counties, undertook the sign translation effort as part of an overall building resigning project. Using computer-generated placards, and court interpreters to translate, the courts were able to produce bilingual signs at a low cost. The most inexpensive sign translation project used plastic sign holders and computer generated directions. The holder contains the sheet of paper between its covers which allows for easy revisions.

- ***Implementation Committee Proposal 1.5.*** All trial courts with 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 committee recommends that the courts use plastic sign holders and computer-generated directions because this method is less expensive and allows for easy updates.

Related Task Force recommendations: 2-2 and 6-1

COURT SYSTEM AND PROCESSES—CREATING A MORE "USER-FRIENDLY" COURT

- **General Court Process Information**
- **Notice of Compliance and Reporting Forms under Oregon's Workers' Compensation System**
- **The Oregon State Bar's "Tel-Law" Service and Other Informational Pamphlets**

For many non-English and English-speaking people alike, the court experience can be an intimidating and frightening one because they lack the knowledge to understand what is expected of them and what they can expect while in court. A reason for the lack of knowledge is that little information on basic court procedures and processes is available at courts around the state and of the informational material that is available, little is provided in foreign languages. The Task Force highlighted the need to create a more "user-friendly" court system by recommending the development and translation of an explanation of the court system and its processes. The explanation would ensure that all who come into contact with Oregon's court system possess a better understanding of the process.

The Task Force further identified the Oregon State Bar's "Tel-Law" and other legal information pamphlet service as valuable informational resources and encouraged the bar to translate more of this material. And finally, the Task Force also noted that non-English-speaking employees were not accessing the benefits of Oregon's workers' compensation system due to a lack of translated notice of compliance and injury reporting forms. The committee recommended that the state legislature amend the related laws to require the posting and provision of such forms in foreign languages. This section describes the implementation status of each recommendation and identifies the necessary additional steps, if any, for complete implementation.

Before addressing the three Task Force recommendations, this section discusses two important preliminary matters: the reading level of translations and necessary foreign languages.

- *Reading Level—Eighth-Grade.* The IC recommends that the English versions of information pamphlets or booklets be written at an eighth-grade reading level. The translations would mirror the reading level contained in the English versions. See the previous section's "Translation Strategy" for information on how to determine a writing's reading level.

- *Languages—Spanish and Vietnamese.* The SCA or other appropriate entity should translate the information into the same foreign languages used in the forms translations project. At a bare minimum, the information should be translated into Spanish and Vietnamese because these languages represent the two most common foreign languages used in Oregon's court.

GENERAL INFORMATION REGARDING THE COURT SYSTEM AND ITS PROCESSES

Task Force Recommendation 2-1. The Task Force highlighted the need to create a simple explanation of the court system and its processes (both civil and criminal) that described the function and structure of the court system and the role of litigants and interpreters. It also recommended that the SCA create a corresponding videotape and translate both into the languages most commonly used in Oregon's courts.

The Implementation Status. The Office of the State Court Administrator (SCA) supports recommendation 2-1. The SCA is committed to implementing a translation project regarding information on the court system and its processes during the upcoming 1995-97 biennium and plans to use the IC's following proposal to guide the translation project.

Implementation Committee Proposal 1.6: A Specific Blueprint for an Informational Booklet. Through conversations with trial court administrators and the directors of legal aid organizations and a review of similar informational booklets from other jurisdictions, the IC has identified the following seven areas that, as a bare minimum, must be included in such a document.

1. COURT SYSTEM'S STRUCTURE AND ROLE. Information on the structure of Oregon's court system and the different roles of Oregon courts.

2. THE RIGHT TO AN INTERPRETER. Information apprising a non-English-speaking person of her right to an interpreter in criminal and civil cases and how to assert that right.

3. TRAFFIC OFFENSES. Information describing minor traffic infractions, DUII offenses and the offender's options.

4. THE PRO SE PROCESS. Information concerning the small claims and forcible entry and wrongful detainer processes.

5. OTHER CIVIL PROCESSES. Information on the civil process in which parties are represented by counsel.

6. CRIMINAL PROCESS. Information on the criminal process that describes each step.

7. LEGAL ADVICE REFERRALS. Information describing the Oregon State Bar's Lawyer Referral Service, legal aid organizations and other methods by which individuals can obtain legal services.

- ***Models from Oregon and Other Jurisdictions.*** The following four models demonstrate various methods to present general information on the court system's structure and processes. The IC recommends that the SCA model its brochure after the example from California because it describes six of the seven essential subject areas, is written at an eighth-grade reading level and addresses local, as opposed to national, processes. The IC recommends a modified organizational format in which, for example, information on interpreters is given its own chapter, rather than occupying a subsection of a chapter on the civil process. However, such formatting specifics are more properly left within the discretion of the publication's creator.

  * CALIFORNIA: Central Orange County Municipal Court, *Welcome to Your Court* (1992). This 23-page document specifically relates to the Central Orange County Municipal Court. It provides the location and hours of the court, identifies parking facilities, and describes the traffic division, the criminal division, the civil division, the small claims division and legal advice referral service. It is written at an eighth-grade reading level and is available in Spanish. The right to an interpreter and how to exercise that right is described only in a

subsection of the chapter on the civil division. Oregon's informational booklet should highlight the right to an interpreter and the appointment process by designating a separate chapter for the information. Nevertheless, the words used and the organizational format provide a useful model for Oregon because it is written at an eighth-grade reading level and is formatted in an easy to read fashion.

* OHIO: Lorraine Kardos, Portage County Municipal "Court Clips" Public Information Pamphlets (1994). This series of 25 informational pamphlets describes in very simple language topics ranging from traffic offenses to domestic violence. The pamphlets are written at a ninth-grade reading level and describe local Ohio law. The pamphlets would be useful to refer to when considering formats and language. Some of the pamphlets could be copied verbatim, with some minor changes for Oregon law.

* OREGON: Office of the State Court Administrator, *The Courts of Oregon* (1987). This 11-page document describes the roles courts play in society, the different courts of Oregon, the election and removal of judges and the structure of the judicial system. It is written at a ninth-grade reading level. The SCA could use the sections on courts in society and the courts of Oregon for the informational booklet described above with minor rewrites to lower the grade level. The other sections do not contain information of high importance to the English or non-English-speaking individual who is unfamiliar with our system of justice. For example, such individuals do not need to know that Oregon's judicial system operates under a unified budgeting system to better understand why they are in court and what will happen to them while there.

* NATIONAL: American Bar Association, *Law and the Courts—A Layman's Handbook of Court Procedures, with a Glossary of Legal Terminology* (1974). This 36-page booklet contains a chapter on civil cases, criminal cases, civil and criminal trials, the right to free press and a fair trial and a glossary. It explains the basic processes of court procedure and is designed to guide newspaper, radio and television news reporters and other non-lawyers. It is written at a twelfth-grade reading level.

- ***The Corresponding Videotape.*** Once the SCA completes the booklet, it should produce a corresponding version on videotape. At a bare minimum, the SCA should make the tape available in Spanish and Vietnamese. The cheapest method to complete such a project would be to place a court interpreter in front of a camera and have the interpreter read the translated copy. A more sophisticated method would be to enhance the text with pictures of the areas in a courthouse that are being described. For example, when the reader is describing the traffic process, the camera might shoot the traffic counter or the inside of a district or municipal court.

  The SCA could complete the project by enlisting one of its own staff to direct the taping, seek volunteer assistance or employ a professional video production company. The IC recommends that the SCA employ a professional video production company because sound and visual quality is assured and the cost of a project in which the person simply reads the text is low. The costs listed below are based on a project in which the booklet is simply read and a complete reading takes no more than one hour. The costs associated with employing a professional company were obtained by contacting Allied Video Productions, 245 Division NE, Salem, Oregon, at (503) 363-7301. The SCA's Personnel Division has used Allied in the past for various training videos.

- SCA (In house): TOTAL = $420
  - * video camera rental: $35 per day.
  - * 3 master tapes ($5 each) for each language: $15
  - * Spanish and Vietnamese interpreter to read ($25 per hour each for 2 hours): $100
  - * 36 copies ($7.50 each) for all 36 trial courts: $270
- Allied Video Productions: TOTAL = $1120 (reading only) to $7,870 (reading and scenes)
  - * 3 low-end master tapes (reading only/in studio: $250 per tape): $750
  - * High-end (different scenes of court that correspond to chapter being read: $2,500 per tape): $7,500
  - * Spanish and Vietnamese interpreter to read ($25 per hour each for 2 hours): $100
  - * 36 copies ($7.50 each) for all 36 trial courts: $270

THE WORKERS' COMPENSATION SYSTEM

Task Force Recommendation 6-3. The Task Force found that the population of non-English-speaking citizens in Oregon is increasing rapidly. It also found that many non-English-speaking or English-reading workers in Oregon who are injured on the work site have no knowledge of workers' compensation benefits or their rights. The Task Force also found that ORS 656.056 and 656.265 (regulating the notice and claim form responsibilities of employers subject to Oregon's workers' compensation system) contained no provisions requiring subject employers to post foreign language notice of compliance forms or provide foreign language injury reporting claim forms. The Task Force recommended that the legislature amend ORS 656.056 and 656.265 to require subject employers to post foreign language notice of compliance forms and to provide foreign language injury reporting forms if available in the needed language.

Implementation Status—Senate Bill 867. The IC drafted and proposed Senate Bill 867 to ensure that linguistic minorities understood and could access their rights under Oregon's Workers' Compensation Act (the Act). The bill required subject employers to post notice of compliance forms and to provide report of injury claim forms in foreign languages if the employer had employees who did not speak or read English and if the Department of Consumer and Business Services had developed and made such forms available. SB 867 received a hearing before the Senate Committee on Labor and Government Operations. However, the bill did not pass out of committee, due in part to the business association's opposition to the bill. (See Appendix D for a copy of SB 867.)

Notwithstanding the legislative activity, the Department of Consumer and Business Services has already implemented a translation project to provide non-English-speaking employees with access to information about their rights under Oregon's workers' compensation system. The department created Spanish translations of the following four informational items:

- *A Guide to Oregon's Workers' Compensation System Benefits, Rights, and Responsibilities*
- *Directory for Workers' Compensation Questions*
- Information sheet on the Preferred Workers Program
- Information sheet on the Employer-at-Injury Program

Implementation Committee Proposal 1.7. The standing implementation committee should continue to pursue legislative changes to 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.

OREGON STATE BAR'S "TEL-LAW" SERVICE & OTHER INFORMATIONAL MATERIAL

Task Force Recommendation 6-2. The Task Force noted that the Oregon State Bar provides a valuable resource to the citizens of Oregon with its "Tel-Law" tapes and legal information pamphlets. The Task Force also noted, however, that in order for the information to reach all of Oregon's citizens it must be available in foreign languages, as well as English. Accordingly, the Task Force recommended that the bar translate this information into the most common foreign languages spoken in Oregon.

The Implementation Status. The bar currently offers 96 English "Tel-Law" selections. It has translated 26 of the tapes into Spanish and 10 into Vietnamese. The public can access the "Tel-Law" service 24 hours a day, 7 days a week. The bar also provides the general "Tel-Law" information pamphlet which describes how to use the tapes in all three languages. The bar will provide the pamphlet to all entities that request one. The bar has not translated any of its thirteen informational pamphlets. However, in January 1995, the bar's Board of Governors added a charge to the bar's Public Service and Information Committee (PS&I) that required the committee to provide the Board with a recommendation regarding a translation and distribution program of the "Tel-Law" tapes and other informational material.

In accordance with its new charge, the PS&I Committee, in February 1995, stated its commitment to translating two new tapes on landlord and tenant law, and other currently available English tapes as resources would allow, into Spanish and Vietnamese. The committee also decided to translate two informational brochures—the "On Your Own" pamphlet and the "Handbook for Jurors"—into Spanish and Vietnamese. The "On Your Own" pamphlet is designed to aid young adults at the dawn of their independence and describes car insurance, voting and emancipation. The committee believed the pamphlet would be a valuable resource to young, non-English-speaking adults. The committee decided to translate the "Handbook for Jurors" into Spanish and other languages because of its relationship to recommendation 7-7 which encourages the bar to publicize the handbook and the importance of jury duty.

CONTACT NUMBERS

"Tel-Law" Contact Number:
Portland: (503) 620-3000
Other: 1-800-452-4776

Oregon State Bar General Information Number:
(503) 620-0222

- ***Implementation Committee Proposal 1.8.*** The IC supports the current efforts of the bar in this area. However, because research has demonstrated that many non-English-speaking individuals need translated information regarding the small claims and dissolution of marriage processes, the bar should also translate the "Small Claims Court" and "Dissolution of Marriage" pamphlets into Spanish and Vietnamese.

OTHER INFORMATIONAL RESOURCES

The Oregon State Bar's Lawyer Referral Service (LRS). The LRS is a free service offered between 9 a.m. and 5 p.m., Monday through Friday. It helps callers identify their legal problems, what type of assistance they may need and refers them to participating attorneys who charge no more than $35.00 for an initial consultation. A Spanish-speaking clerk is available to answer calls at all times. The LRS phone number is: Portland (503) 684-3764; for other areas in Oregon (800) 452-7636.

- ***Implementation Committee Proposal 1.9.*** The bar should also provide the 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.

Oregon Legal Services' Translated Informational Booklets. As part of its Community Education Series, Oregon Legal Services (OLS) created and translated the following four legal informational booklets into Spanish:

- *Family Law in Oregon*
- *Landlord - Tenant Law in Oregon*
- *Unpaid Consumer Bills*
- *Unemployment Benefits*

Additionally, OLS provides Spanish translations of the following two informational pamphlets:

- "How to Get and Enforce a Restraining Order"
- "Problems with Serving Restraining Orders"

Finally, OLS Offices that represent non-English-speaking clients also have translated various internal forms and information sheets which apply to their relevant jurisdictions.

The Campaign for Equal Justice. In 1989, Oregon lawyers formed the Campaign for Equal Justice to raise funds for Oregon's legal aid programs. The programs provide legal services to many non-English-speaking individuals. The lawyers formed the nationally acclaimed fundraising campaign in response to the steady erosion of federal funds for legal aid programs.

The Oregon Department of Justice. The Oregon Department of Justice (DOJ) provides a Spanish version of its booklet entitled *The Child Support Program in Oregon*. It can be obtained by calling DOJ's Support Enforcement Division at (503) 378-4879.

Portland Police Bureau's Domestic Violence Unit. In April 1995, the Portland Police Bureau hired a Spanish-speaking outreach worker to work in its Domestic Violence Unit. The new employee will help Spanish-speaking victims of domestic abuse understand their rights and options under Oregon's Family Abuse Prevention Act. The bureau recognized that in Hispanic communities many situations of domestic abuse were going unresolved because victims were unaware of their options and uncomfortable around the police. The bureau created the new position to increase the Hispanic community's awareness and trust of the legal process. For more information, call Portland's Domestic Violence Reduction Unit at (503) 823-0961.

Related Task Force recommendations: 2-1, 6-2 and 6-3

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
2-1	Judicial Department should prepare a document and videotape for the public that explains in simple terms the civil and criminal justice system. Both materials should be translated into most common foreign languages.	IC has developed a blueprint for an informational booklet and the SCA is committed to implementing a translation project during the 1995-97 biennium based on IC's recommendation.
2-2	• Commonly used court forms should be translated into other languages. • In counties with large numbers of non-English-speaking persons, court signs should be translated.	The IC has completed a survey of all 36 trial courts and five legal services offices regarding translation efforts, needs and concerns. The IC has developed a forms translation strategy based on the survey. The SCA is committed to using the IC's strategy to undertake a translation effort in the 1995-97 biennium. Regarding court signs, the IC discovered that many courts have Spanish/English "No Weapons" signs and some have bilingual signs of direction. The IC recommends that courts with high numbers of non-English-speaking consumers install translated signs that direct these individuals to bilingual staff or translated information.
6-1	The Chief Justice should ask the appropriate body to consider a rule that would permit courts to accept foreign language documents if accompanied by certified English translations.	• SB 192, section 1 (Governor signed on June 5, 1995 and became effective on September 9).
6-2	OSB should translate "Tel-Law" tapes and other informational material into foreign languages and make these available in county courthouses.	• "Tel-Law" tapes: OSB currently provides Spanish and Vietnamese translations of tapes. It offer 96 English, 26 Spanish and 10 Vietnamese selections. The general "Tel-Law" information pamphlet provides information on how to use the tapes in all three languages. OSB plans to translate two additional tapes. • Informational material: OSB is planning to translate the "On Your Own" booklet and the "Handbook for Jurors" into Spanish and Vietnamese.
6-3	Legislature should amend the Oregon workers' compensation laws to require employers to post notices and provide forms in foreign languages if necessary and to extend notice provisions if such notices are not posted.	• SB 867 (not enacted). • HB 2440 (not enacted).

PUBLIC EDUCATION

The development of translated information on the court system is only one component of an effort to increase the understanding among minority and non-English-speaking communities about the court system and processes. An additional, and proactive, approach is necessary to educate those unaware of their legal options, particularly concerning the civil process, because many individuals who lack knowledge of civil remedies never make it to the courthouse or other institution where brochures or pamphlets might be available. The Task Force accordingly encouraged bar organizations and members of the bar to engage and educate minority communities on the civil justice system. As the following examples demonstrate, these entities understand the importance of such an effort and are committed to implementing various public education campaigns to ensure that such information is effectively disseminated.

PUBLIC EDUCATION EFFORTS

- **The Office of the State Court Administrator**
- **The Oregon State Bar**
- **The Oregon State Bar New Lawyers Division**
- **The Multnomah Bar Association's Young Lawyers Division**
- **The Asian-Pacific American Lawyers Association**
- **The Street Law Program of Northwestern School of Law of Lewis & Clark College**
- **The People's Law School of the University of Oregon School of Law**

The Office of the State Court Administrator. The Office of the State Court Administrator (SCA) has available for review an educational video presentation which was designed to explain the basics of the United States justice system to immigrants. In 1993, the American Judicature Society produced the video—*Through My Own Eyes: A Personalized Look at the United States*. A facilitator's manual accompanies the video. The Society developed it to educate recent immigrants or those who have lived in the United States for several years but, for cultural reasons, have not yet become socialized to our system of justice. The video and the presentation each require thirty minutes to complete. The video is available in 10 non-English languages (including Vietnamese and Spanish). The facilitator's guide is available only in English. The SCA encourages all interested entities to borrow the English version of the video presentation to determine if it is something they might find useful. For more information call (503) 986-5500.

The Oregon State Bar. In January 1995, the Oregon State Bar Board of Governors asked the Public Service and Information (PS&I) Committee to develop an implementation plan for a public education campaign concerning the civil justice system among minority communities. In February 1995, the PS&I Committee developed an action plan. It initially contacted several organizations that provide social services to minority communities to identify minority groups and distribution methods. The committee plans to meet with the identified groups to determine their outreach needs. The bar's Workers' Compensation Section has noted its interest in participating in the effort as well and in January 1995, appointed a subcommittee to examine the project. The PS&I is also initiating a general public relations campaign that will include televised public service announcements. The announcements will highlight volunteer activities of lawyers around the state.

As part of the bar's general effort to educate the public about the civil justice system, its community service programs also address the need to educate minority communities. The programs include: "Tel-Law" tapes, Legal Information Pamphlets, Senior Law Handbook, Local Law Day Programming, Law Related Education Conference and the Speakers' Bureau. The bar also sponsors a Mock Trial Competition and coordinated a youth-at-risk internship program this past summer. While these programs address the public education need, they also address recommendation 9-1 which encourages the bar to attract more Oregon minorities to the practice of law. Accordingly, these programs will be more fully discussed in chapter four.

Oregon State Bar New Lawyers Division. Since 1994, members of the Oregon State Bar New Lawyers Division have participated in a program aimed at high school students and designed to motivate them to stay in school. The volunteers conduct a one-hour presentation in high school classrooms showing the "Dropout Prevention" videotape and facilitating a follow-up discussion. Contact the New Lawyers Division of the Oregon State Bar at (503) 639-9713 for more information.

Asian-Pacific American Lawyers Association. The Asian-Pacific American Lawyers Association (APALA) plans to use the American Judicature Society's video presentation—*Through My Own Eyes: A Personalized Look At the United States Justice System*—in a public education campaign among Asian communities.

The Street Law Program of Northwestern School of Law of Lewis & Clark College. The Street Law Program was designed to educate local high school students about basic legal rights and remedies. Law students participate as teachers in the program. They instruct two one-hour classes a week in local high schools.

The People's Law School of the University of Oregon School of Law. The People's Law School was designed to provide the local Eugene community with basic information on legal rights and remedies. Law students participate as teachers in the program.

Related Task Force recommendation: 6-4

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
6-4	The OSB should engage in an intense public relations campaign in minority communities re: the civil justice system.	In February 1995, the bar's PS&I Committee developed an action plan concerning how best to implement the recommendation.

CHAPTER TWO

THE CRIMINAL JUSTICE SYSTEM

AN ISSUE OF PUBLIC TRUST

"There is, at the least, a significant perception, by both minorities and nonminorities, of racism *within* the criminal justice system and that perception is, in many ways, every bit as disturbing as statistical reality."

— Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, *Final Report* 31 (1994).

INTRODUCTION

Oregon's criminal justice system is designed to be fair and in most cases exercises its authority in a nondiscriminatory fashion. Yet despite the system's inherent qualities of fairness, the Task Force discovered that some members of the public have lost confidence in the criminal justice system and no longer believe it is an institution in which they will receive fair treatment. Although based on anecdote, witness testimony and survey responses demonstrated that the perceptions of unequal treatment emerged as a response to and had a basis in actual experiences as justice seekers or legal practitioners. The Task Force also found six empirically based facts which supported the perception: minorities are (1) more likely to be arrested; (2) less likely to be released on bail; (3) more likely to be convicted; (4) less likely to be put on probation; and (5) more likely to be incarcerated. Additionally, and as a consequence of the preceding five facts, minorities are present in Oregon's state prison population in numbers that greatly exceed their proportional representation in the state. Yet, as noted by the Task Force, such perceptions and statistics only suggest the existence of a problem. Whether such perceptions conclusively demonstrate the existence of bias in Oregon's criminal justice system is a different matter. Nevertheless, the perception regarding the fairness of the criminal justice system is insolubly linked to its effectiveness and thus is cause for serious concern. Oregon's criminal justice system must not only be fair, but it must also appear to be fair.

The Task Force made recommendations to increase the public's confidence in the criminal justice system through cross-cultural education or other decisionmaking guidance, hiring needs, procedural modifications and the need to continue, and in some cases begin, collecting race-based data on significant flash points within the system. The implementation status of the recommendations relating to cross-cultural education, other decisionmaking guidance and procedural modifications are discussed in this chapter. The hiring recommendations are addressed in chapter four ("Creating a Culturally Competent and Representative Justice System"), and the data collection recommendations are discussed in chapter five ("Staying Vigilant Against Bias"). The Implementation Committee (IC) reviewed the recommendations with the Board on Public Safety Standards and Training, the Department of State Police, prosecutors, public defenders, the Chief Justice, the State Court Administrator, trial judges and legislators and determined the implementation status of each recommendation.

DECISIONS MADE BEFORE TRIAL

Before an offender's criminal trial, the system has subjected her to three decisions: a decision to arrest and detain her; a decision to charge her with a crime; and, if charged, a decision whether to release her from custody pending trial. At each stage, the Task Force made recommendations to safeguard the decisionmaking process from the possible influence of racial bias.

ARREST AND DETENTION

CROSS-CULTURAL TRAINING FOR POLICE OFFICERS

Arrest and detention were technically outside the scope of the Task Force's responsibility because the activities occur prior to an individual becoming involved in the judicial process. However, because the Task Force received numerous comments regarding racially discriminatory acts during arrest and detention, and because arrest is the gateway to the judicial process, the Task Force developed two recommendations to address the concerns. The testimony related to a feeling among minorities that police officers stopped them and treated them with hostility solely on the basis of their race. The Task Force concluded that the perception of bias severely undermined the credibility and effectiveness of law enforcement and was related to a lack of cross-cultural understanding. Accordingly, the Task Force made recommendations to increase the cultural awareness of law enforcement personnel through education and hiring. The recommendation concerning employment will be addressed in chapter four.

Task Force Recommendation 4-1. The Task Force underscored the need for the Board on Public Safety Standards and Training (BPSST) and the Department of State Police (State Police) to ensure that state, county and city police officers receive training on how cross-cultural issues could impact their law enforcement activities.

The Implementation Status. Before an individual can serve as a law enforcement or corrections officer, she must graduate from an officer training program (see ORS 181.640). The BPSST conducts the training for county and city police and corrections officers. The larger counties (e.g., Multnomah) provide additional training once a candidate successfully completes the BPSST coursework. Most counties also provide in-service training for veteran officers. The State Police conducts a basic training program for state police officer candidates. Although the basic training programs are distinct, the State Police's program must meet the requirements set by BPSST because ORS 181.640 sets BPSST's training requirements as the minimum standards for all similar training programs. BPSST's program includes cross-cultural training as part of its curriculum. The Latin American Law Enforcement Association (LALEA) also emphasizes the need to ensure that police officers understand the concerns of minority communities and in so doing promotes effective communication between law enforcement and minority communities.

- **BPSST.** BPSST operates the Police Academy where county and city police and corrections officer candidates are trained. Basic training consists of an eight-week course that combines classroom instruction with field work. During the course, the Academy provides a four- to seven-hour cross-cultural training course for police officer candidates entitled "Cultural Dynamics in Law Enforcement" and one for corrections officer candidates entitled "Human Similarities." In

addition to the distinct cross-cultural courses, BPSST attempts to weave cultural issues into all its coursework (e.g., evidence gathering).

* *The Operating Philosophy.* BPSST has made cross-cultural training an integral part of its training program. Each year it asks the instructors to review their curriculum to determine the portions which are affected by cultural issues and to attempt to address the issues in a revised course plan.

* *The Courses.* The "Cultural Dynamics in Law Enforcement" course seeks to "develop an awareness of cultural/interpersonal issues which dictate the predominant values, attitudes, beliefs, and outlooks among multi-cultural environments." It accomplishes this goal by training a candidate to identify the following five performance objectives: (1) the interpersonal communication skills necessary to promote cooperation from members of the Hispanic community; (2) the interpersonal communication skills necessary to promote cooperation from members of the Black community; (3) the interpersonal communication skills necessary to promote cooperation from members of the Asian community; (4) the sub-cultures police officers experience; and (5) the contemporary measures that police departments are implementing to improve their communication with multiracial communities.

  The "Human Similarities" course seeks to help the corrections officer candidates "better understand people different than [themselves] so [they] can perform [their] duty in the most effective and fair manner possible." It accomplishes this goal by training a candidate to identify the following ten performance objectives: (1) the corrections officer's responsibility in dealing with personal prejudices; (2) the most important thing to remember about inmate personality types; (3) comments often innocently said but highly offensive to different people; (4) a common term used in reference to minority groups that can be offensive; (5) the proper meaning of the word "prejudice;" (6) the proper meaning of "minority;" (7) the correct meaning of "bigot;" (8) how certain gestures can be offensive to people of different cultures; (9) the problem of identifying an individual as a member of a particular social or cultural group; and (10) typical examples of sexual harassment.

* *The Future.* The director of BPSST, Mr. Steve Bennett, is committed to doing all he can to remove cultural misunderstandings and racial prejudice from law enforcement activities. This commitment has translated into the development of three exciting initiatives for the future: (1) the weaving of cultural issues into the entire officer training curriculum; (2) the development of a community policing program; and (3) the development of a computerized cross-cultural training module. Regarding the community policing program, BPSST recently developed the Western Regional Community Policing Resource and Training Center to train citizen/public safety personnel teams in effective community policing strategies. BPSST created the Center in response to a new focus on community policing by various law enforcement agencies. The Center plans to emphasize the development of interpersonal communication skills. Such skills include the ability to communicate effectively with people from diverse cultural backgrounds. Regarding the computer training module, BPSST is discussing the idea of developing a cultural diversity curriculum and placing it on the Ed-Net computer network. County and city police agencies could access the program for ongoing training and review.

- **The Department of State Police.** The State Police operates the basic training course for state police officer candidates. Basic training consists of a sixteen-week course which includes classroom instruction and field work. During the sixteen-week course, the State Police provides 12 hours of cultural awareness/diversity training, 19 hours of related interpersonal communication training and 40 hours of Spanish language instruction.

    * *The Operating Philosophy.* The State Police has adopted a "built in, not added on" philosophy regarding cultural diversity training in law enforcement. Thus, it is moving toward a training program that weaves cultural issues into the entire curriculum.

- **The Latin American Law Enforcement Association (LALEA).** LALEA is an organization with over 100 members comprised of Hispanic and nonHispanic law enforcement officers. It recently entered a partnership with BPSST to develop a community policing project called the Community Assistance Response Teams (CART). The bilingual and bicultural CART are comprised of law enforcement officers, criminal justice personnel and citizens trained at BPSST. CART's purpose is to foster understanding between Hispanic communities and local police agencies, to help the communities and local law enforcement agencies address cultural issues that may divide such communities and to leave tools for long term solutions. For more information call: Lt. Raul Ramirez, Central District Commander, Marion County Sheriff's Office, Central District, 3940 Aumsville Highway S.E., Salem, Oregon 97301 or by phone at (503) 588-7971.

Related Task Force recommendation: R 4-1

CHARGING DECISIONS

THE DEVELOPMENT OF UNIFORM CHARGING STANDARDS

Being arrested does not necessarily mean a person will be prosecuted. Indeed, the decision whether to prosecute an arrested individual, and what charges to file, is left up to the county prosecutor. The county prosecutor bases the decision on a variety of factors including, but not limited to, the strength of the evidence and issues of public safety. The Task Force recognized the importance of prosecutorial discretion to effective charging decisions but was troubled by testimony indicating a perception that prosecutors were improperly influenced by race when making their charging decisions. Based on this testimony and an analysis of Oregon's charging process, the Task Force highlighted three aspects of the process that, when taken together, raised a cause for concern: one, the strong perception among minorities and others that the race of the defendant or victim played a role in the decisionmaking process; two, prosecutors have almost no limitations on their charging authority; and three, no research has ever been done on the charging process in Oregon. Based on these findings, the Task Force made recommendations concerning the collection of race-related data in the charging process and the need to develop uniform charging standards. The recommendation relating to data collection is addressed in chapter five.

Task Force Recommendation 4-4. Because, as the Task Force noted, perception evidence is limited in its ability to demonstrate conclusively the presence of bias, the Task Force recommended that the

legislature require the Criminal Justice Council (CJC) to develop uniform charging standards, much like other professional codes of conduct, that would not restrict the charging process but would explicitly clarify a policy of race-neutral charging practices. The standards would be used by all prosecutors throughout Oregon and would state, at a bare minimum, that race, religion, nationality, gender, occupation or economic class were improper bases for charging.

The Implementation Status. The IC recognized the positive effect implementing recommendation 4-4 would have on the public's trust in the criminal justice system and accordingly engaged in a serious implementation effort. It reviewed models from other states and solicited the input of legislators, the CJC, the Oregon District Attorneys Association (ODAA) and the Oregon Criminal Defense Lawyers Association regarding the recommendation. It drafted legislation based on the research and suggestions and again solicited comment. However, after several committee discussions, a recognition that strong opposition to a legislative mandate to create uniform charging standards existed and the development of legislation by Representative Avel L. Gordly designed to address the recommendation (HB 2441, section 11, ultimately not enacted), the IC decided not to pursue further the implementation of recommendation 4-4.

- ***Implementation Committee Proposal 2.1.*** The IC encourages the ODAA to 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.

Related Task Force recommendation: R 4-4

PRETRIAL RELEASE DECISIONS

AMEND THE PRETRIAL RELEASE CRITERION IN ORS 135.230(9)

The Pretrial Release Process—ORS 135.230 to 135.295. Oregon's criminal justice system employs a uniform pretrial release process that creates a presumption in favor of a personal recognizance release, rather than the posting of a security amount, to assure the appearance of the defendant at trial (see ORS 135.245(6)). Because a presumption is not a guarantee and because different defendants present varying risks, a judge must determine, in each case, the appropriate release decision. A judge may impose release conditions more restrictive than a recognizance release when necessary to protect the public's safety or assure the defendant's later appearance. To help guide the judge in determining the appropriate release decision, ORS 135.245(3) directs the judge to impose the "least onerous condition" likely to secure the defendant's appearance at trial and to release the defendant upon her own recognizance unless application of nine release criteria suggest that such a release is unwarranted.

The legislature designed the release criteria to help a judge determine whether a defendant, if released prior to trial, will return. The nine release criteria are listed at ORS 135.230(9) and include:

(1) the defendant's employment status; (2) the defendant's family relationships; (3) the defendant's past and present residences; (4) names of persons who agree to help the defendant appear for trial; (5) the current charge; (6) the defendant's prior criminal record; (7) any facts indicating the possibility of violations of law if the defendant is released without regulations; (8) the defendant's ties to the community; and (9) any other relevant facts.

Task Force Recommendation 4-7. The Task Force found that while the release criteria were facially neutral, factors relating to income had the potential for unfair application to minority defendants because they tend to comprise a disproportionately large percentage of the lower economic classes. Consequently, the Task Force concluded that a judge should consider the defendant's ability to satisfy a security amount when making a pretrial release decision. If the defendant has a very low income, the judge could consider other release options rather than imposing a bail amount that is impossible to meet and thereby confining the defendant to jail until her trial. The Task Force accordingly recommended that the legislature add the following factor to the pretrial release criteria listed in ORS 130.230(9): "the defendant's ability to provide cash, stocks, bonds or real property to secure a promise to appear in court."

The Implementation Status. The IC analyzed recommendation 4-7 and met with the Chief Justice and the State Court Administrator regarding the problem. After careful analysis, the IC determined that such an amendment would not achieve the desired results because a judge can analyze a defendant's ability to pay a bail amount under the current system. Moreover, the IC determined that without the inclusion of instructions regarding how to use the recommended language, the proposed amendment was unclear. The IC concluded that the problem was better handled through judicial education efforts rather than legislative action.

Related Task Force recommendation: R 4-7

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
4-1	BPSST and the State Police should ensure that all state, city and county police officers receive cross-cultural awareness training. BPSST should make such training a prerequisite to certification.	• BPSST includes cross-cultural training as part of Police Academy curriculum. • Department of State Police also trains new recruits on cultural issues. • Latin American Law Enforcement Association and BPSST are engaged cooperatively in a community policing project designed to improve the relationship between Hispanic communities and local law enforcement agencies.
4-4	Legislature should instruct the Criminal Justice Council to develop uniform charging standards that specify, at a bare minimum, that race, religion, nationality, gender, occupation or economic class are improper bases for charging.	• The IC drafted legislation, met with the affected entities and determined that strong opposition to a legislative mandate to create such standards made implementation unrealistic at this time. • HB 2441, section 11 (not enacted). • IC proposes that the Oregon District Attorneys Association develops its own uniform charging standards.
4-7	Legislature should amend the pretrial release criteria of ORS 135.230(9) to include "the defendant's ability to provide cash, stocks, bonds or real property to secure a promise to appear in court."	The IC analyzed the recommendation and determined that the system was facially neutral and sound and that the problem was better addressed through judicial education efforts.

Decisions Made At Trial

Once a defendant's case reaches the trial stage of the criminal process, built-in racial biases can negatively influence decisions made by attorneys, jurors and the judge regarding a defendant's or witness's truthfulness and ability to communicate. Further, unnecessary references to race during trial or in case law can perpetuate negative stereotypes. The Task Force accordingly made several recommendations to address issues related to built-in biases of lawyers, jurors and judges. The recommendations related to the need for cross-cultural education, a review of the uniform sentencing guidelines, explicit prohibitions on the manifestation of bias in the judicial code of conduct and the code of professional responsibility for lawyers, hiring concerns, educating jurors and jury selection. The recommendations regarding unnecessary references to race and sentencing practices are discussed below. The majority of the related recommendations are discussed in chapter four ("Creating a Culturally Competent and Representative Justice System"). The Task Force's recommendations regarding juries are discussed in chapter six ("Minorities and Jury Service").

CONDUCT OF TRIAL

JUDGES SHOULD REFER TO RACE ONLY WHEN NECESSARY TO THE DISPOSITION OF THE CASE

Task Force Recommendation 4-8. Because judges play such an important leadership role in court and in the development of case law, the Task Force made a specific recommendation to judges regarding the need for them to be keenly aware of racial stereotypes lurking beneath references to race and to refer to race only when necessary to the disposition of a case.

The Implementation Status. As noted above, ongoing cross cultural education and an amendment to the canons of judicial conduct prohibiting bias are proposed methods to address this issue. The educational efforts and judicial canons are discussed in more detail in chapter four. For the general purposes of this section, the Oregon Judicial Department (OJD) recently developed a diversity training module for all OJD employees (including judges) and local Inns of Court have conducted several symposiums on the issue of bias in the courts. Additionally, the Oregon Supreme Court is considering an amendment to the judicial canons that will prohibit the display of racial bias.

SENTENCING

THE SENTENCING GUIDELINES BOARD SHOULD CONSIDER AMENDING THE GUIDELINES TO ESTABLISH A FIVE-YEAR SUNSET PERIOD FOR CONSIDERATION OF PRIOR CRIMINAL HISTORY

Oregon's Sentencing Guidelines. Since November 1, 1989, Oregon's felony sentencing guidelines have governed the state's felony sentencing practices. The legislatively determined guidelines set presumptive sentences for convicted felons based on the seriousness of the crime and the offender's criminal history. Judges may impose a sentence other than the presumptive sentence after stating on the record the "substantial and compelling" reasons for the different sentence. 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 this section and means that offenders who commit similar crimes, and have similar criminal histories, will receive similar sentences. In essence, the fourth goal is designed to promote sentencing decisions that are race and gender neutral.

Task Force Recommendation 4-11. Despite the stated purpose, the racial neutrality of sentencing guidelines has failed to eliminate racial disparity in presumptive sentencing. In its most recent report on the implementation of the sentencing guidelines, the CJC concluded that ". . . minority offenders were more likely [than whites] to have a presumptive sentence of prison." Although socioeconomic factors, rather than racial bias in the criminal justice system, could explain the above conclusion, the CJC noted that "[i]f there [was] racial . . . discrimination in the . . . system prior to sentencing, the disparity [would] be displayed in sentencing practices, even if the sentencing guidelines [were] administered without any bias based on race." Consequently, the Task Force recommended that the CJC study and determine whether a five-year decay period is needed to ensure that Oregon's presumptive sentencing framework does not work to petrify, or amplify, any discrimination that may have already taken place.

The Implementation Status. In October 1994, the CJC's Legislative Committee discussed recommendation 4-11 and examined two examples of decay period proposals (one from the State of Washington and one developed by a committee member). After a significant discussion, the committee voted not to pursue the idea any further. After the CJC's meeting, the IC met and discussed recommendation 4-11. The IC determined that it would not pursue legislation in this area because the CJC had previously considered a decay period and had determined it inappropriate, due to the presence of other recommendations designed to ameliorate the effect of bias in the criminal justice system and because Representative Avel L. Gordly had sponsored a bill addressing the recommendation (HB 2441, ultimately not enacted).

Related Task Force recommendations: R 4-8 and 4-11

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
4-8	Judges should be aware of hidden racial stereotypes and refer to race only when necessary to the disposition of the case.	• The OJD developed a diversity training module and provided it to all its employees. • Inns of Court have sponsored several symposiums on issues of racial bias in the courts. • The Oregon Supreme Court is considering an amendment to the canons of judicial conduct which would prohibit bias.
4-11	The Sentencing Guidelines Board should again consider amendments to the sentencing guidelines that establish a five-year sunset period for consideration of prior criminal history.	• The CJC Legislative Subcommittee examined the recommendation and two draft decay models and determined not to pursue implementation. • The IC reviewed the recommendation, discussed it with the affected entities and decided not to pursue legislative action. • HB 2441, section 13 (not enacted).

DECISIONS MADE AT PRISON

The Task Force concluded that the potential for racial and ethnic bias to affect negatively minorities in the criminal justice system continues in prison. The Task Force determined that bias could affect decisions relating to parole and post-prison supervision and an inmate's ability to receive educational or vocational training and counseling. The Task Force noted that many of these decisions are made by management level personnel, few of whom are minorities. The Task Force also noted that whether bias affected these decisions and processes was not certain and accordingly made three recommendations to determine the presence or absence of bias and safeguard the decisionmaking processes. The recommendations relate to data collection regarding parole and post-prison supervision decisions, an examination of program entrance requirements and an internal promotional program designed to retain minority employees for management positions. The recommendation related to hiring is addressed in chapter four and the recommendation concerning the need to collect data is discussed in chapter five.

IMPRISONMENT

THE ENTRANCE REQUIREMENTS OF THE DEPARTMENT OF CORRECTION'S EDUCATIONAL, VOCATIONAL AND TREATMENT PROGRAMS MUST BE RACE NEUTRAL

Task Force Recommendation 4-14. The Department of Corrections (DOC) provides its inmates with three types of services designed to promote reformation of offenders: educational, vocational and substance abuse counseling. In recommendation 4-14, the Task Force encouraged the DOC to examine the entrance requirements of these programs because testimonial evidence and statistical data indicated that the prerequisites might operate in a manner that systematically disfavors a racial or ethnic group.

The Implementation Status. The IC met with the former director of the DOC, the DOC's Educational/Vocational Programs Director and the DOC's Personnel Director to discuss the related recommendations. As a preliminary note, the former director was very supportive of the recommendations and the need to address racial/ethnic problems in the DOC. He stated that he had appointed a research person to review the recommendations affecting the DOC, had brought up the issues at the latest executive meeting and conducted frequent visits with individuals to discuss different aspects of the report. The DOC's new director has continued this effort. On November 16, 1995, the DOC published an update regarding its responses to related recommendations. The report is entitled: *Racial/Ethnic Issues in Oregon Corrections: An Update.* After a careful analysis, the DOC made the following determinations regarding its programs. The IC independently reviewed the programs' entrance requirements and the DOC's analysis and agreed with the DOC's conclusions.

- ***The Treatment Programs.*** The Alcohol and Drug Program provides an array of services that include many culturally sensitive programs (e.g., Native American sweat lodges, bilingual services, racially homogeneous group counseling and culturally specific workshops). The alcohol and drug treatment programs require that all inmates who wish to participate in the program have an unresolved alcohol or drug abuse problem, will reasonably benefit from the program and have an absence of psychopathology which would interfere with group counseling. Prior to application for enrollment into the program, a DOC staff person conducts a psycho-

logical evaluation with the inmate to determine the presence or absence of the above factors. The treatment program uses the psychological evaluations just as the educational programs uses screening tests. The DOC determined that the treatment programs' entrance requirements were not biased and that the programs themselves were culturally competent because the services were offered in foreign languages and organized around cultural practices. Additionally, the DOC reported in its recent report that "with few exceptions, the proportion of minority inmates in Department Alcohol and Drug Treatment Programs exceeds their proportion in the total prison population."

- ***The Educational and Vocational Programs.*** The DOC offers three general types of educational services to inmates: basic skills training, post secondary education and a job training program. The basic skills program provides courses in adult basic skills improvement, a general education development (GED) class, an English as a second language (ESL) course and a basic skills upgrade class. The post secondary program offers a developmental education course designed to improve basic academic skills and a college degree program. The vocational training program provides a job training and certification program in a variety of occupations from desktop publishing to auto mechanics. Before an inmate may participate in any educational or vocational program, she must complete a screening test. The test results dictate, in part, the programs in which an inmate may participate. Other prerequisites may include a GED certificate, a high school diploma or college degree. If the inmate does not speak English, she can enroll in the ESL course to improve her English skills. All of the courses are taught and tested in English.

  The DOC determined that the entrance requirements of its educational programs were not racially biased because the screening requirements related directly to the services provided. For example, a very low score on a screening test and lack of a high school diploma would prohibit an inmate from enrolling in any program except the adult basic education or GED class. The test results, and other indicators, identify the academic level of an inmate, and in turn, her academic needs. The proportion of minority inmates participating in Education/Professional Technical Training Programs exceeds their proportion in the prison population.

  However, the DOC also concluded that the vocational program's entrance requirements may negatively impact certain inmate groups because the programs are offered only in English and thus require an ability to speak English. Consequently, the requirement operates to deny participation by non-English speaking inmates. The inmates can take ESL classes to improve their English-speaking abilities, but because it may take several years to attain fluency, inmates may leave prison before they have an opportunity to benefit from vocational training. The DOC noted that to address these concerns and identify other potentially unfair entrance requirements, it was going to meet with prison minority groups (e.g., an African American inmate group called Uhuru-Sa Sa) to discuss the vocational program's entrance requirements, whether the requirements unfairly deny participation by minority inmates, and to identify potential solutions.

The Future—Ballot Measure 17 (The Prison Reform and Inmate Work Act of 1994). With the recently approved Prison Reform and Inmate Work Act of 1994, the DOC's mission regarding its educational and vocational training programs will change. The act requires the DOC to ensure that all prisoners work 40 hours per week. The work requirement will likely force a significant

downsizing of the vocational program and cause the educational program to refocus on work experience, rather than preparation for a college degree. Although the DOC has not yet formally modified its programs, its initial ideas include linking its educational programs with on-the-job experience and limiting its vocational program to computer training. The DOC noted that the staff participating in the process of developing inmate work programs regularly discuss the concept of equal opportunity regarding race, sex and physical handicaps.

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

The DOC's Minority Affairs Council. The Council is comprised of minority affairs officers from each prison, parole and probation officers, minority representatives from related organizations and a variety of upper level DOC administrators. The Council discusses racial issues within the DOC and proposes solutions to the problems.

Related Task Force recommendation: R 4-14

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
4-14	The Department of Corrections should examine the entrance requirements of its educational, vocational and treatment programs to determine whether the requirements operate in a manner that systematically disfavors any racial or ethnic group.	• DOC is committed to addressing the issues identified by the Task Force. • On November 16, 1995, the DOC published a report entitled *Racial/Ethnic Issues in Oregon Corrections: An Update.* • DOC examined the entrance requirements and determined that the treatment and educational program requirements did not disfavor any racial group; however, it also concluded that the English-only nature of its vocational programs disfavored non-English-speaking inmates. It planned to meet with inmate minority groups to discuss the requirement and any others the groups felt were unfair and develop possible solutions. • The Prison Reform and Inmate Work Act of 1994 will change the nature of educational and vocational training programs. Vocational programs will be scaled back and educational programs will focus on work, rather than college, preparation. DOC is committed to ensuring equal opportunity in its inmate work program.

CHAPTER THREE

THE JUVENILE JUSTICE SYSTEM

MINORITY YOUTH ARE OVERREPRESENTED

"It has been an axiom of popular wisdom that minority youth are more likely to become involved with the justice system than their nonminority counterparts. This cannot be characterized as a paranoid fantasy, nor can it be dismissed as a mere 'perception.' [Overrepresentation of minority youth in the juvenile justice system] was confirmed more than a decade ago . . . it was confirmed again in 1989 . . . it was confirmed overwhelmingly in 1993."

— Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System, *Final Report* 65 (1994).

INTRODUCTION

Oregon's juvenile justice system has both a disturbing and encouraging quality. The disturbing aspect is the conclusion of four studies demonstrating that in Oregon's juvenile system minority youth are represented in secure facilities at percentages that greatly exceed their representation in the general population. The encouraging attribute is that Oregon is nationally recognized as a leader in the effort to address this issue. The main reason for national acclaim is Oregon's long-standing commitment to rethinking and ultimately improving its juvenile system. In the last four years, Oregon has embarked on a voyage of unprecedented analysis and improvement which has led to the implementation of six pilot projects to address the overrepresentation issue, a system wide cross-cultural training program, the implementation of a juvenile detention alternative initiative in Multnomah County and a major overhaul of the entire juvenile system.

In 1991, the state legislature created the Oregon Commission on Children and Families (the Commission) to improve upon previous efforts of the Juvenile Services Commission and the Oregon Community Children and Youth Services Commission (the Oregon Community) by providing comprehensive planning for the "wellness" of all children. The Commission provides county commissions with funds to implement systems that serve the needs of children and families in their communities. It also monitors these programs for adherence to ten legislatively determined principles. Among others, one principle local commissions must meet in order to receive funds is the recognition that a community's ethnic, cultural and language diversity is an integral component of comprehensive planning.

Since 1988, the Commission's precursor (i.e., the Oregon Community), and now the Commission, have also been studying the problem of disproportionate overrepresentation of minority youth in secure facilities and developing strategies to address the problem. These efforts are described below. Two other efforts described in this chapter likewise demonstrate Oregon's leadership in the juvenile justice area. One program is a juvenile detention alternative initiative in Multnomah County. One of four goals of the project is to reduce minority youth overrepresentation by eliminating racial bias in the detention system. The other efforts to improve the juvenile system are the translation of findings of the Governor's Task Force on Juvenile Justice (Governor's Task Force) into legislation reforming the entire juvenile system, and Ballot Measure 11, which requires courts to try juveniles accused of committing certain violent and sex crimes as adults.

The Task Force made three recommendations further to improve the juvenile justice system. It recommended that the Commission continue its efforts to address the minority youth overrepresentation issue, that the statutory right to an interpreter in juvenile proceedings be expanded and that a list of culturally competent juvenile experts be compiled and made available to all juvenile justice practitioners. The recommendations concerning the Commission and the development of a list are discussed in this chapter. The recommendation concerning interpreters is described in chapter one. The Implementation Committee met with the Commission, the Native American Pass Through Initiative Project, juvenile practitioners and the Governor's Task Force to identify the various efforts in this area.

IMPROVING THE SYSTEM

This chapter begins with a discussion of the phase I and II efforts of the State Commission on Children and Families to address the overrepresentation problem. As noted above, the Commission has been involved in this issue for several years and is recognized nationally as a leader in the area. Below, the report summarizes the Commission's efforts since 1991. The chapter's second subsection discusses other related efforts to improve the juvenile justice system and address the overrepresentation issue.

THE STATE COMMISSION ON CHILDREN AND FAMILIES

MAINTAINING THE PROGRESS IN ADDRESSING THE OVERREPRESENTATION PROBLEM—PHASE I AND II EFFORTS

In 1988, the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) developed a discretionary grant program entitled the Special Emphasis Minority Program. The OJJDP designed the grant program to develop pilot programs in five states to address the problem of minority youth overrepresentation in secure facilities. Through a competitive process, the OJJDP selected Oregon as one of five states to receive the funds. The Commission then initiated a Phase I and II effort to fulfill the grant program's goals.

Task Force Recommendation 5-1. The Task Force concluded that minority youth were disproportionately represented in confinement in Oregon's juvenile justice system. It also recognized the notable efforts of the Commission to address this issue. The Task Force accordingly recommended that the Commission maintain its progress and suggested six specific areas the Commission should study. The six areas included: (1) community-based alternatives; (2) diversion programs; (3) alternatives to confinement; (4) after-care programs; (5) cross-cultural training for juvenile justice personnel; and (6) the development of a systemic ongoing monitoring procedure.

The Implementation Status. The Commission's Phase I and II implementation plan incorporates recommendation 5-1 and is summarized below.

- **Phase I.** During its Phase I efforts, the Commission initiated a study to determine whether and to what extent minority youth were disproportionately overrepresented in the juvenile justice system. The Commission focused the bulk of its research efforts on Lane, Marion and Multnomah counties because 70 percent of all 12- to 17-year-olds and 60 percent of all minority youth live in these counties. Based on its research, the Commission determined that minority youth were disproportionately overrepresented in confinement in Oregon's juvenile justice system.

  At the same time the Commission was conducting its research, it implemented three pilot projects designed to address the overrepresentation problem. In 1991, the Commission provided Lane, Marion and Multnomah counties $33,000 each to develop the pilot projects. The Commission hoped that the projects, if successful, could serve as models for other counties. The projects concluded in 1994 and are summarily described below. As part of its Phase II efforts, the Commission undertook a process and impact evaluation to determine the effectiveness of the pilot programs. The evaluations will be discussed in the section describing the Phase II efforts.

* *Lane County—The Minority Youth Advocacy Program.* The Lane County Department of Youth Services designed the Minority Youth Advocacy Program to reduce the recidivism rate of minority youth offenders by addressing their needs in a more culturally appropriate manner and providing them support in the larger community. To this end, it provided the following services to minority youth and their families: counseling, mentoring through the Big Brother Program, interpreter/translation services, transportation, court advocacy, conflict mediation, liaison to schools, and information and referrals. The services were designed to help youth overcome behavioral, language, self-esteem and cultural identity issues. As part of the Commission's Phase II efforts, Lane County received funds to continue the project. For more information, contact Ms. Linda Wagner at (503) 341-4792.

* *Marion County—Minority Initiative Program: Cultural Competency Criteria.* The Marion County Commission (MCC) on Children and Families implemented a systems change by developing the Cultural Competency Criteria. Youth service agencies funded by the MCC used the criteria as a checklist to help them determine their "cultural competency" and thereby improve their ability to provide culturally appropriate services to all clients. Components of the checklist included: the surrounding community, management controls, bilingual capabilities, available resources, facilities, the type of service provided and feedback received. The MCC introduced the criteria to agencies through grant processes and formal contract and other meetings. Due to the initiative's success, the MCC has decided to make the criteria a permanent part of its grants program. For more information, contact Mr. Marco Benavides at (503) 588-7975.

* *Multnomah County—Parole Transition Project.* The Multnomah County Juvenile Justice Division (Multnomah County) designed the Parole Transition Project to improve the services provided to minority youth during the first three months after release from custody. A Parole Transition Coordinator staffed the project and performed the following duties: meeting with youth at training schools and close custody camps; attending Close Custody Review Board hearings and case reviews; working with juvenile parole staff to develop an effective transition plan for each youth; and developing community-based resources for paroled youth. The project's goals were to protect the community by providing better services to youth during the first three months of parole, make the state-funded youth care beds and programs located in Multnomah County more accessible to paroled Multnomah County youth and make Multnomah County Juvenile Justice Division a leader among youth care systems nationwide. The project was a success and is now a permanent component of Multnomah County's juvenile system. For more information, call the project coordinator, Mr. Steve Walker, at (503) 248-3460, ext. 8192.

- **Phase II.** The Commission's Phase II efforts began in the fall of 1994 and involves the coordination of two research efforts: a process evaluation and an impact report regarding the three Phase I pilot projects. Additionally, the Commission continually uses the data from its research on minority youth overrepresentation to enhance and refine the Special Emphasis Minority Program projects. The Commission also developed a comprehensive plan to address the overrepresentation issue. As part of the plan, it allocated $150,000 for a grant program to fund three new demonstration projects, $108,000 for cultural competency training and other money to study a more effective and comprehensive data collection process.

* *The Process Evaluation.* In September 1994, Joan Brown-Kline of Brown-Kline & Company completed a process evaluation of the Phase I pilot programs in Lane, Marion and Multnomah counties. The evaluation's purpose was to analyze the effectiveness of efforts related to program implementation, rather than measure the impact on clients. Ms. Brown-Kline developed seven conclusions regarding each program. She generally concluded that each program had effectively implemented its vision but also made several specific recommendations per project to improve the processes used in each. The purpose of the recommendations was to aid other entities wishing to replicate the programs by identifying the processes that worked best and the areas that could be improved.

* *The Impact Report.* The Commission is also completing an impact report to determine the effectiveness of the three pilot projects in terms of client outcomes. The report is not yet complete.

* *The Three New Demonstration Projects.* In August 1994, with a grant of $150,000, the Commission requested proposals from organizations statewide for projects that would provide more culturally competent services and ultimately decrease the disproportionate overrepresentation of minority youth in confinement. The Commission wanted to fund projects that other units of local government or agencies could replicate. The Commission divided the $150,000 three ways—$40,000 for a rural project, $60,000 for an urban project and $50,000 for a systems change project. In October 1994, the Commission funded the following three projects:

Rural	Urban	Systems Change
Malheur County—Mexican American Citizens League, Hispanic Youth on the Move Project The Citizens League designed the project to impact the overrepresentation of Hispanic youth in confinement by implementing intervention strategies (e.g., mentoring), improving relationships with juvenile justice practitioners (e.g., providing interpretation services) and developing a computer tracking system. • **Contact:** Mr. Arthur Gueora (503) 889-9194	**Lane County—The Minority Youth Advocacy Program (MYAP)** MYAP is a continuation project of Lane County's Phase I grant program. Its goal is to reduce the overrepresentation of minority youth in the juvenile system by providing an effective diversion program that reduces the likelihood of minority youth progressing through the system. • **Contact:** Ms. Linda Wagner (503) 341-4792	**Marion County—Juvenile Department, Student Internship Program** The program's goal is to improve the provision of services to Hispanic youth and thereby reduce their presence in confinement by placing bilingual/bicultural college interns in the Juvenile Department of Marion County. An additional goal is to diversify the department's workforce by employing the student interns once they graduate. • **Contact:** Ms. Maria Parra (503) 982-2323, ext. 20

* *The Cultural Competency Training Program.* In the fall of 1994, the Commission sent two juvenile justice practitioners to a training that equipped them to train others in cultural competency. The trained practitioners then made their services available to counties throughout the state. The Commission decided to develop a local resource of trainers who focused on the juvenile system, rather than contract with other diversity trainers, because under this scheme the Commission could ensure that a uniform and high quality program focusing on juvenile justice was disseminated statewide. The Commission also provided each county with $3,000 for cultural competency training and assistance.

* *The Data Collection Systems Plan.* A recurring problem the Commission encountered during its research and evaluation efforts was the poor data collection system used by various counties. The data was not only incomplete in many circumstances but also lacked uniformity across counties. These facts made an accurate analysis of the juvenile system difficult. Consequently, the Commission is studying methods the counties might use to better collect data at all decision points in the juvenile system and thereby enhance the Commission's ongoing monitoring efforts.

The Native American Pass Through Initiative (NAPTI). Part of the JJDPA block grant process mandates that a portion of the funds pass through to Native American tribes to study juvenile justice issues within their communities. However, because no tribal organization expressed an interest in the project, the Commission used the pass-through money and other block grant funds to contract with Ms. Patricia Hinrichs to study the issue. In September 1994, Ms. Hinrichs completed a report. A significant problem inhibiting research was the failure by most juvenile justice entities to track Native American ethnicity. Based on the report's findings, the NAPTI Committee adopted the following six recommendations: (1) address the lack of data on Native American youth; (2) provide technical assistance to Native American professionals; (3) provide training that addresses tribal sovereignty and cultural diversity issues; (4) examine tribal/state linkages; (5) provide a Native American resource library; and (6) address the lack of funding sources for tribes. For more information, contact Ms. Patricia Hinrichs at (503) 756-2020, ext. 517.

Related Task Force recommendation: R 5-1

OTHER RELATED EFFORTS

- **Ballot Measure 11**
- **Senate Bill 1**
- **Multnomah County Juvenile Detention Alternatives Initiative**
- **List of Culturally Competent Juvenile Experts**

BALLOT MEASURE 11

In April 1995, the recently enacted 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 "be prosecuted as an adult in criminal court." The law also sets mandatory minimum sentences for each listed crime that range from 5 years and 10 months to 25 years.

Implementation Committee Proposal 3.1. The Committee is concerned that without careful front-end planning, Measure 11 could exacerbate the overrepresentation problem. Accordingly, it encourages all youth service agencies, juvenile justice practitioners and policy planners to continue or implement programs designed to help juveniles avoid criminal activity in the first place by providing youth with support from, and opportunities in, their communities.

SENATE BILL 1

On June 30, 1995, Governor Kitzhaber signed Senate Bill (SB) 1. SB 1 is the result of a year-long planning effort of the Governor's Task Force on Juvenile Justice (the Governor's Task Force), chaired by Attorney General Theodore R. Kulongoski, and implements a complete overhaul of Oregon's juvenile justice system. The Governor's Task Force based its systemic reform recommendations on the following seven goals: (1) individual accountability; (2) public safety; (3) certain and consistent sanctions; (4) effective reform and rehabilitation programs; (5) early intervention and prevention; (6) parental involvement and responsibility; and (7) most effective use of available resources.

SB 1 divests the Children's Services Division of the responsibility of dealing with violent juvenile criminals and creates a new Department of Youth Authority. The new department is solely responsible for the administration of services to violent juvenile offenders. SB 1 authorizes the construction of four maximum security juvenile facilities, requires all juvenile offenders to be photographed and fingerprinted, implements a tiered sanction system and makes the expungement of juvenile records more difficult. It also includes a "second-look" review which provides youths with an opportunity for parole after serving half of their sentence. The decision is generally based on the youth's behavior while incarcerated.

MULTNOMAH COUNTY JUVENILE DETENTION ALTERNATIVES INITIATIVE

In August 1994, the Annie E. Casey Foundation awarded Multnomah County (one of three jurisdictions nationwide) a $2.25 million grant to implement a juvenile detention alternatives initiative. The project has four goals, the last of which is most relevant to the overrepresentation issue. The four goals are: (1) to minimize the use of secure detention; (2) to enhance the monitoring and tracking capabilities of the juvenile system through better data collection methods; (3) to use diverted funds to improve case management; and (4) to reduce the disproportionate number of minority youths in secure facilities by eliminating racial bias from the juvenile system. The initiative's primary tool is a risk assessment instrument designed to help detention intake workers prioritize their intake decisions. By weighing a variety of factors, the assessment tool identifies those juveniles who pose the most serious threat to the public's safety. The grant will fund the initiative for three years.

LIST OF CULTURALLY COMPETENT JUVENILE EXPERTS

The Task Force concluded that because experts who testified at some juvenile trials involving minority youth lacked an understanding of the child's cultural background, they did not consider facts and disposition alternatives specific to the youth's culture. The failure to consider culturally specific facts could lead the court to render inappropriate and ineffective disposition decisions. The Task

Force accordingly recommended that the Commission, Children's Services Division and county juvenile departments develop a list of juvenile experts who possessed knowledge of various minority cultures and make the list available to juvenile court staff and practitioners.

The IC met with the Commission and the NAPTI Project regarding the recommendation. The entities agreed that such a list would be helpful and the Commission's representative agreed to raise the issue of how to develop such a list at the February 1995 meeting of the Commission's subcommittee working on the overrepresentation issue. The representative subsequently obtained another job that took her out of state. Consequently, a strategic plan regarding the implementation of this recommendation is pending.

Implementation Committee Proposal 3.2. The IC encourages the Commission to reinitiate the implementation planning process and proposes that the Commission 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.

Related recommendation: R 5-3

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
5-1	The Commission should continue to develop and implement a comprehensive plan to reduce minority overrepresentation. The plan should focus on the following six areas: community-based alternatives, diversion programs, alternatives to confinement, aftercare programs, cross-cultural training for juvenile justice personnel and the development of a systemic ongoing monitoring process.	The Commission has a comprehensive plan to reduce minority youth overrepresentation in secure facilities that includes a process and impact evaluation of three completed pilot projects, the funding of three new projects, a state-wide cross-cultural training program for all juvenile justice personnel, a study on how to improve system-wide data collection and a completed report with recommendations regarding the treatment of Native American youth in the system.
5-3	The Commission, CSD and juvenile departments should develop a list of experts who are minorities or can evaluate the cultural background of minority youth and their families to be made available to juvenile court staff and practitioners.	The IC met with the Commission and NAPTI. The Commission agreed to pursue implementation of the recommendation but the contact person subsequently obtained a new job and left the state. Consequently, implementation is pending.

CHAPTER FOUR

A REPRESENTATIVE AND CULTURALLY COMPETENT JUSTICE SYSTEM

THE CORNERSTONE OF EQUALITY

"**Equality Before the Law.** A democratic society should be dedicated to the idea that each of its members is equal in right. More importantly, it should provide dispute resolution for all of its members without regard to any of the personal characteristics of disputing parties. The Oregon courts are a place where racial, ethnic, religious, gender or other social and cultural differences are irrelevant to the rights of litigants before the law."

—The Future of the Courts Committee, *Oregon Courts Statement of Values*, Final Report 3 (Jan. 1995).

INTRODUCTION

The other chapters describe implementation efforts relating to systemic changes. This chapter focuses on people. The legal profession's human component is critical to the goal of achieving a truly fair justice system because it is people, not programs or rules, who act, decide, counsel, represent and most directly inspire confidence. Programs and rules are necessary, but it is people working within the justice system that form its cornerstone. In a diverse society, the only way to achieve a truly fair justice system is to ensure that the people working within it are representative of the community served, enlightened to the value of viewpoint and cultural diversity and open to the possibility that subtle prejudices may influence their actions.

Thirty-one of the Task Force recommendations (almost half) addressed the justice system's human side. The recommendations appeared in four chapters of the Task Force Report, addressing the responsibility of law schools, justice system employers and professional groups to contribute to the diversification effort. Because the recommendations similarly addressed the human component, the implementation human component efforts appear here in one chapter. This chapter shows that the work in the "people" area requires more than employment and educational programs and recruitment strategies. It requires the commitment of several organizations—law schools, legal employers and professional groups—each doing its part to diversify and enlighten the justice system's work force.

The chapter's three sections—(1) Law Schools; (2) The Work Force; and (3) Professional Groups—represent the three converging paths necessary to achieve a justice system in which policy and decision-makers are racially diverse and culturally aware. For example, to create a more diverse work force, legal employers must hire more minority attorneys. But because the number of minority attorneys who seek to practice in Oregon is low compared to nonminority lawyers, the pool of qualified minorities must be enlarged and legal employers must actively recruit those currently available. To enlarge the pool, law schools must attract more minority students, graduate them in higher numbers and ensure that they are prepared for the bar examination. To ensure that the students stay in Oregon to practice law, law schools must recruit more Oregon minorities and employers must demonstrate a receptivity to minority attorneys.

The first section describes the implementation efforts of the three Oregon law schools and the Oregon State Bar (OSB) to enlarge the pool of qualified, racially diverse and culturally competent attorneys. The second section records the efforts of Oregon's legal employers to diversify and educate the legal work force and outlines the work of the OSB and the Oregon Supreme Court (OSC) to amend the attorney and judicial professional codes of conduct to prohibit the manifestation of bias. The third section describes the efforts of the OSB and other professional organizations to diversify their ranks, committee memberships and other high profile positions. The Implementation Committee met with the OSB, the Chief Justice of the OSC, the State Court Administrator, the Department of State Police, the Board on Public Safety Standards and Training, the deans, professors and staff of the three Oregon law schools and the leaders of Oregon's three Minority Lawyer Organizations to discuss the recommendations.

LAW SCHOOLS

Most new members of the Oregon State Bar (OSB) are recent graduates from the three Oregon law schools. Consequently, as the Task Force noted, the law schools have a "unique opportunity to influence future Oregon attorneys" and the racial composition of the OSB's membership. The two primary methods the Oregon law schools can use to exercise this influence is in their recruitment strategies and educational programs. As highlighted in the first section below, the Oregon law schools and the OSB are implementing programs not only to recruit more minority and bilingual students to law schools in Oregon, but also to increase the interest of Oregon minorities in a legal career. In the second section, the law schools' efforts to graduate prepared and culturally competent law students are described.

ENLARGING THE POOL OF QUALIFIED OREGON MINORITY ATTORNEYS

- **Increasing the Interest in a Legal Career Among Oregon Minorities**
- **Recruiting Minority and Bilingual Law Students To Oregon**
- **The Oregon Law Foundation's Minority Law Student Scholarship Program**

The Task Force noted that nationally, the percentage of minority law school applicants is much less than the percentage of minorities in the general population. Consequently, law schools and law firms across the country compete for a limited number of minority students and attorneys. The Task Force recommended that the Oregon State Bar and members of the legal profession work together to increase the pool of Oregon minorities interested in a legal career to improve the chances that minority law students and lawyers will study and practice in Oregon. As the following examples illustrate, the effort to enlarge the pool of minority persons interested in a legal career is a cooperative effort. The Task Force also encouraged law schools to continue and increase their efforts to actively recruit minority law students and to weigh bilingual ability in law school admissions. The recruitment strategies of the various law schools are described below.

INCREASING THE INTEREST IN A LEGAL CAREER AMONG OREGON MINORITIES

The effort to increase the interest in a legal career among Oregon minorities requires parallel efforts by law schools, the state bar and individual attorneys because although each group can provide an effective service, individual efforts alone will not achieve the desired results. With the cooperation of these three groups, all Oregonians will recognize that law schools want them as students, the bar wants them as attorneys and other attorneys will support them once committed to a legal career. The trilateral effort will ensure that Oregon minorities receive a message of inclusion, support and encouragement from the justice system of our state.

The Classroom Law Project. The Classroom Law Project is a nonprofit organization designed to educate grade, middle and high school students in civics studies. Attorneys, business leaders, educators and police officers volunteer their time to assist the Project. The Project has three main components: (1) workshops for educators to train them in current legal events and how to present the issues to students; (2) tours of courthouses; and (3) mock trial competitions. The program works with many minority youth, involves legal issues, exposes the youth to the legal profession and in some cases, sparks a minority student's interest in the possibility of pursuing a legal career. For more information, call the Classroom Law Project at (503) 245-8707.

Oregon State Bar New Lawyers Division. Since 1994, members of the Oregon State Bar (OSB) New Lawyers Division have participated in a program aimed at high school students and designed to motivate them to stay in school. The volunteers conduct a one-hour presentation in high school classrooms showing the "Dropout Prevention" videotape and facilitating a follow-up discussion. Contact the New Lawyers Division at (503) 639-9713 for more information.

The Oregon State Bar's (OSB) Youth-At-Risk Internship Program. In the summer of 1995, the OSB implemented its Youth-At-Risk Internship Program. The work experience program placed economically disadvantaged youth in paid internships with six participating law firms (the firms are listed in this chapter's second section entitled "Work Force"). The bar designed the program to expose lower-income youth to legal careers and to help them develop transferable job skills. For more information call program coordinator Jennifer Maldonado at (503) 620-0222, ext. 377.

The Three Oregon Law Schools. Northwestern School of Law of Lewis & Clark College (Northwestern), the University of Oregon School of Law and Willamette University College of Law are committed to increasing the pool of Oregon minorities interested in a legal career; yet, each addresses the issue in a slightly different manner. The differences are described below. The schools are similar, however, in two efforts: (1) recruitment and (2) support of each schools' Minority Law Student Association (MLSA). Regarding recruitment, each school maintains an active minority recruitment effort and a heavy focus on recruitment from Oregon undergraduate institutions. Northwestern recently implemented an additional effort to include high schools in recruitment visits. Each school supports the public outreach efforts of its respective MLSA. The MLSAs operate mentoring programs with middle schools in their communities and coordinate their school's and the Oregon State Bar's participation in the annual Minority Law Day. The yearly event is designed to expose prelaw minority students to legal careers and increase the awareness of lawyers and law students to multicultural issues. In addition to the initiatives described above, the efforts of the Oregon law schools to increase the pool of Oregon minorities interested in a legal career include the following activities:

(1) Northwestern School of Law of Lewis & Clark College (Northwestern)

* *1993 Pre-Law Conference For Portland's Ethnic Minority High School Students*	In the summer of 1993, Northwestern collaborated with the American Bar Association's (ABA) Young Lawyers Division to sponsor a prelaw conference designed to expose ethnic minority high school students to the legal profession. Northwestern sent invitations to Portland high schools. The schools then selected the students who would attend. Based on the event's success, the director of Northwestern's Academic Enhancement Program, Ms. Stella Manabe, was invited by the ABA's Young Lawyer Division to serve on the national committee for minority prelaw conferences.
* *Participation at Minority Career Symposiums*	In 1994, Ms. Manabe was the keynote speaker at the Multicultural College Fair at the University of Portland and participated in an Oregon Indian Education Association presentation to Native American high school students regarding the legal profession.
* *The Summer Law Camp*	In the summer of 1995, Northwestern conducted a week-long law camp for middle high school minority students. Northwestern designed the program to expose students to the law, the academic requirements necessary to attain a legal degree and minority lawyer role models. The camp based its activities on sports law and included visits with members of the Portland Trail Blazers basketball team.
* *The Street Law Course*	Northwestern's Street Law Course offers students an opportunity to teach high school youth basic legal concepts. Law students enrolled in the course teach a one-hour class twice a week. The classes are taught at local high schools as part of the high school students' regularly scheduled curriculum. Although the program is not specifically designed to increase the interest of local minority high school students in a legal career, the program has this tangential effect because many of the students are minorities with an interest in law and the program provides the students with an opportunity to meet law students and discuss the requirements of a legal education and career possibilities.

For more information on Northwestern minority programs, contact Ms. Stella Manabe at (503) 768-6622.

(2) The University of Oregon School of Law (UOSL)

* *Minority Graduate Program Career Fair*	Each year, UOSL helps coordinate and participates in the University of Oregon's Minority Graduate Program Career Fair. The fair provides information to interested minority persons on law school and other graduate programs. The law school invites minority high school youth, college students and "career changers" to the fair.
* *The Undergraduate Mentoring Program*	UOSL coordinates a mentoring program for University of Oregon undergraduate minority students. The program links minority law students with undergraduate students of color. The law students provide support and insight on the requirements of a legal education.
* *The People's Law School*	UOSL offers law students an opportunity to serve as teachers in the People's Law School program. The program provides basic legal education to members of the Eugene, Oregon, community. While not specifically designed to increase the pool of Oregon minorities interested in a legal career, the program exposes minority persons to the law and law students and to the possibilities of pursuing a legal career.
* *Summer Community College Classes*	Since 1992, Associate Dean Jane Gordon has taught a five-week summer community college class covering legal issues of particular interest to minorities. Through the courses, minority students gain exposure to pertinent legal issues, how the law can be used to address such concerns and possibly become interested in pursuing a legal career.
* *Undergraduate Courses Taught by Law Professors*	During the 1994-95 school year, two of UOSL's minority professors taught undergraduate courses in addition to their law school classes. One course focused on Asians and the law, while the other examined issues concerning Hispanics and the law. In addition to their substantive value, the courses had the effect of increasing interest among minority students in pursuing a legal career due to the relevancy of the subject matter examined and the exposure to the professors as role models.

For more information on UOSL minority programs, contact Associate Dean Jane Gordon at (503) 346-1558.

(3) Willamette University College of Law (Willamette)

* *General Efforts*	Willamette facilitated the inclusion of Oregon professional and graduate schools in the James DePreist Multi-cultural College Fair for high school students in Oregon and works with the Classroom Law Project.
* *Project Summit—A Program to Encourage Hispanic Youth to Pursue a Legal Career*	In June 1995, Willamette, in partnership with the Salem/Keizer School District, provided local Hispanic high school students an opportunity to discuss legal issues of interest to them, conduct legal research and participate as a jurors in a mock trial. Ten faculty members and several alumni participated in the one-day event. Project Summit is a statewide initiative designed to encourage Hispanic youth to seek a variety of leadership positions. The program at Willamette was specifically designed to encourage Hispanic youth to pursue a legal career.

For more information on Willamette minority programs, contact Mr. Larry Seno at (503) 370-6282 or Professor David Cameron at (503) 370-6718.

RECRUITING BILINGUAL AND MINORITY LAW STUDENTS

Each Oregon law school uses two primary minority recruitment tools: (1) regional law forums; and (2) the Law Services Candidate Referral Service (CRS). The law forums are events designed to inform undergraduate students interested in a legal career about various law schools, the admission policies and academic environment. The CRS is a recruiting tool that provides, based on search criteria, mailing labels of prospective law students. The Oregon law schools use the CRS to obtain, in addition to other potential applicants, a list of all prospective minority law students. Each school uses the two recruitment tools in a slightly different manner and the variations are highlighted below. Because scholarships play a significant role in recruiting minority students, each school's scholarship opportunities are also discussed.

Northwestern School of Law of Lewis & Clark College (Northwestern). Northwestern conducts three activities regarding minority recruitment—CRS mailings, personal contacts and representation at law forums—and makes it a priority in the school's overall recruitment strategy. The school also makes three scholarship funds available to minority students.

- ***Recruitment.*** Northwestern divides its recruitment efforts among three individuals: the Director of Admissions, the Recruitment Director and the Director of the Academic Enhancement Program (AEP). The Director of Admissions has the responsibility of using the CRS and accordingly contacts all prospective minority candidates with a mailing that includes a letter from a minority alumnus, a letter from the AEP Director and other general informational material. The Recruitment Director has general and full time recruitment responsibilities, while the AEP Director has a specific minority recruitment role.

  The AEP Director has two duties regarding minority recruitment: (1) represent Northwestern at law forums in regions with large concentrations of minority students; and (2) personally contact, or arrange for minority alumni or law students to communicate with, prospective minority applicants. Regarding the first duty, the Director attends five of the six law forums in regions that contain large numbers of ethnic minorities. During the events, she participates in panel discussions designed to inform minority prelaw students about the admissions process. She also represents Northwestern at the annual Morehouse-Spellman Prelaw Society Mini Law School Forum and Thurgood Marshall Breakfast in Atlanta, Georgia, and participates in the Chicago State University Law School Forum. African-American prelaw students comprise the majority of the participants at the two events. Additionally, the Director attends the Graduate and Professional School Fairs of New Mexico University and the University of New Mexico. Each school serves large numbers of Hispanic and Native American students. And finally, the Director includes high schools in her recruitment visits.

- ***Scholarships.*** Northwestern awards scholarship funds to ethnic minority students from three sources: (1) the general scholarship fund; (2) the Oregon Law Foundation (OLF) scholarship fund; and (3) the Quinalt Allottees Association Scholarship Program. The school awards general fund scholarships to all entering students based on incoming academic credentials. In the entering class of 1994-95, Northwestern awarded 51 scholarships ($219,750) to admitted minority students (not all students accepted admission). The school also awards scholarships funds from

the OLF fund to any upper division student who demonstrates a financial need. The Quinalt Program ($4,000 per year) is specifically earmarked for Native American students. Northwestern is also in the preliminary stages of developing a large ethnic minority scholarship endowment.

The University of Oregon School of Law (UOSL). UOSL uses four tools to recruit minority law students of color—CRS mailings, personal contacts, representation at law forums and outreach with the undergraduate campus. The law school is also developing a recruitment strategy to increase the number of minority law students, with a special emphasis on Hispanic candidates, through the development of relationships with undergraduate institutions serving large numbers of minority students. Further, UOSL is considering inclusion of a candidate's bilingual ability in the application process. And finally, UOSL provides two scholarship funds to minority students.

- ***Recruitment.*** UOSL's Director of Admissions has full responsibility for minority recruitment. Regarding the CRS, the Director seeks information on the ethnicity of prospective students. Once qualified minority candidates are identified, she sends them an application packet. If the student expresses interest in the school, the Director coordinates a follow-up phone call by a minority student or alumnus. If the prospective student decides to visit the campus, the Director coordinates a viewing of the campus with a minority student, housing in a minority student's home and, if possible, a meeting with local minority alumnus. The Director also distributes the Law Services booklet entitled "Thinking About Law School: A Minority Guide" to all minority applicants. The 105-page guide addresses some of the problems minority applicants encounter when preparing for and applying to law school.

  The Director also represents UOSL at all the regional Law Forums and invites a minority law student to participate in the events in regions with large percentages of minority candidates (e.g., Chicago, New York, Atlanta and Los Angeles). In 1993, the law school also participated in the Yakima Nations law forum. UOSL also maintains an active networking and outreach program with the University of Oregon's undergraduate campus.

  Finally, the Minority Student Program Committee is developing a strategy to attract more minority students, particularly of Hispanic origin, and to weigh bilingual ability in the admissions process. To implement its strategy, the school has taken preliminary steps in the following two areas. First, it is beginning a program of targeting schools and prelaw advisors who work with minority students. In the fall of 1994, the Director made a successful visit to Howard University to discuss the idea. In late 1994, the Director initiated discussions with Law Services (the administrator of the Law School Admissions Test) regarding the possibility of including information on a candidate's bilingual ability. Law Services was open to the idea but has not made any decision.

- ***Scholarships.*** UOSL's general scholarship fund is open to all entering students. The school selects students based on their incoming academic credentials. The law school also has a specific minority scholarship program. Through the program, UOSL can provide $2,000 per year to minority students who show a financial need.

Willamette University College of Law (Willamette). Willamette uses three minority recruitment tools—the CRS, Law Forums and prelaw advisors. Further, the school's acting dean is developing an innovative recruitment strategy with African American ministers from California. The school also has two scholarship opportunities for minority law students.

- *Recruitment.* Willamette's Director of Recruitment is responsible for general and minority recruitment. He uses the CRS, participation at the regional Law Forums and communication with prelaw advisors that counsel large numbers of minority students to identify qualified candidates. Once identified, the Director sends the prospective minority students a letter drafted specifically for ethnic minorities that describes the advantages and disadvantages of attending law school at Willamette and in Salem. The Director attends all the regional Law Forums and participates in panel discussions at the events. The panel discussions are geared toward orienting minority prelaw students to the law school admissions process. With six Northwest law schools, he also organized a recruiting event at the University of Oregon.

  The Director uses a telephone list of minority alumni as an additional recruitment tool. He developed the list to distribute to prelaw minority students at the Law Forums and to send directly to minority students who have expressed an interest in Willamette. The prospective students can call an alumnus for a personal analysis of attending law school at Willamette. Finally, the acting Dean of the College of Law is working to establish a recruitment relationship with African American ministers from California.

- *Scholarships.* Willamette has two full-tuition waivers and one half-tuition waiver specifically available for minority law students. The Director tries to distribute the waivers to as many minority students as possible by offering, for example, five half-tuition waivers. The waivers are not based on a student's financial need, but rather, on Willamette's judgment regarding a minority's ability to succeed at law school. Willamette also has the Watanabe Scholarship which is a scholarship specifically earmarked for Japanese-American students.

THE OREGON LAW FOUNDATION'S MINORITY LAW STUDENT SCHOLARSHIP PROGRAM

For several years, the Oregon Law Foundation (OLF) has had an active program to fund minority law student scholarships. The Oregon State Bar (OSB) Affirmative Action Program administers the scholarship program. Any minority law student who attends an Oregon law school and plans to practice law in Oregon upon graduation is eligible to apply. On July 7, 1994, the OLF wrote the OSB to note its ongoing commitment to the program, and to express its interest in participating in the process of correcting the problems identified by the Task Force report. The OLF stated that during the 1993-94 grant years, a shortage of funds severely restricted the OLF's grant program. Consequently, the OLF is considering the implementation of the following two-part process to increase its financial resources: (1) the development of a better system to collect check-off funds; and (2) a program to encourage bar members to make a $15 contribution to the OLF at the time of paying their bar dues.

In 1995, the OLF awarded $449,000 in grants, a 38 percent increase from its 1994 award total. The OLF awarded most of the grants to organizations dedicated to delivering legal services to low income individuals. Regarding the OLF's commitment to diversifying the legal profession, it awarded Northwestern $22,500, Oregon $22,500 and Willamette $15,000 to fund minority law student scholarships.

Related Task Force recommendations: R 8-1, 8-2, 8-3, 8-4, 8-7, 9-1 and 9-2

GRADUATING PREPARED AND CULTURALLY COMPETENT LAW STUDENTS—THE OREGON LAW SCHOOLS

- **The Academic Support Programs**
- **The Mentoring Programs**
- **Institutionalizing Cultural Awareness**

Although efforts to increase the pool of qualified minority attorneys in Oregon is a necessary part of the law schools' responsibility to help diversify the legal profession, it is only the first step. Increasing minority enrollments at law schools will not affect the bar's diversity unless the enrolled students ultimately become practicing attorneys. Consequently, the law schools have an additional, important and unique role in the diversification process: to graduate prepared and culturally competent law students. More specifically, the schools must achieve two additional goals to complete their role in the diversification effort: (1) ensure that admitted minority students graduate and are prepared to pass the bar exam; and (2) ensure that nonminority students who graduate possess an increased sensitivity to cultural issues that permeate the legal profession.

Regarding graduation and bar exam passage rates, the Task Force noted that the law schools recruit and admit minority law students in numbers that meet or exceed their percentage representation in the general population but do a much poorer job in graduating and preparing the students for the bar exam. Consequently, the Task Force recommended that the law schools improve the academic support programs in the areas of bar courses during the second and third year of law school and bar exam review after graduation. Regarding cultural awareness, the Task Force recommended that law schools offer more lectures or seminars that directly focus on how cultural differences affect legal rights and attempt to weave more cultural issues into course materials. Northwestern School of Law of Lewis & Clark College, the University of Oregon School of Law and Willamette University College of Law are addressing the Task Force's concerns by continuing to provide strong academic support programs, attempting to add a bar preparation component, supporting mentoring relationships with minority students and alumni and enhancing their cultural awareness activities by attempting to weave cultural issues into the general academic environment.

THE ACADEMIC SUPPORT PROGRAMS

Northwestern, Oregon and Willamette operate formal academic support programs for minority law students. Although the specific components of each program are slightly different, four common elements exist. First, each school's year-round support program is voluntary, but participation is strongly encouraged. Second, each school offers an orientation prior to first year. Third, the primary focus of each program is first-year academic support. Fourth, the teaching assistants are paid second- and third-year law students.

Northwestern School of Law of Lewis & Clark College (Northwestern). For nineteen years, Northwestern has operated an academic support program for minority law students, international students and students with disabilities. Over the years, it has improved the program by allocating the funds necessary to hire a full-time director, changing its focus from tutorials to skills building and changing the program's name from the Academic Support to the Academic Enhancement Program

(AEP) to reflect its new focus and to recognize the high quality of incoming minority students. The AEP provides three services designed to improve the skills necessary to succeed in law school and pass the bar exam: (1) the Summer Institute; (2) the first year AEP; and (3) the Bar Support Program.

- ***The Summer Institute.*** The Summer Institute (the Institute) is an eight-day program offered prior to the beginning of the first year of law school. Northwestern designed the program to give incoming minority students an experience like law school and to engender a sense of community among the students. During the first five days, the Institute focuses on skills building and an orientation to the legal profession, devoting two days to legal writing and three days to briefing, note-taking and outlining. During this time, the students also receive an ethics and professionalism mini-course and spend a morning in court. The Institute's final three days include a noncredit class taught by two tenured professors, a two-hour final exam and a personalized critique of the test by one of the professors.

- ***The First Year AEP.*** The First Year AEP provides weekly skills-building sessions and individual assistance if necessary. Four second- and third-year law students (many of whom participated in the AEP) serve as paid program directors, dedicating 15 hours per week to the program. They work with the students on outlining and note-taking skills, provide scheduled practice exams and critique and encourage substantive discussions.

- ***The Bar Support Program.*** Eight weeks prior to each bar exam, the AEP Director conducts the Bar Support Program (BSP). The program meets once a week for three hours and provides substantive review and a community support network. Families are encouraged to participate to raise their awareness to the heavy demands bar study places on an individual. Because the Director did not design the BSP to serve as a replacement for the bar review course, participation in the program is limited to those graduates also enrolled in, or who have previously completed, an official bar review course. The BSP also offers an emotional support program for minority students who recently failed a bar exam. The program meets once a week during lunch.

The University of Oregon School of Law (UOSL). UOSL's Academic Support Program (ASP) is a voluntary program open to minority, disabled and other nontraditional students with all levels of academic credentials. Its mission is to help students improve from wherever they begin, which may mean increasing a student's grades from a B to an A or from a D to a C. The ASP has two facets: (1) a summer orientation program; and (2) an academic support component. UOSL's Minority Student Program Committee (MSPC) recently decided to improve the ASP by seeking the involvement of minority alumni to assist in long term academic support, promoting mentoring relationships between minority law students and professors and providing upper level bar course tutorials. The MSPC believes that individual mentoring situations are more effective than substantive tutorials in improving a student's academic achievement because what minority students need most are study skills, not substantive knowledge.

- ***The Summer Orientation.*** One week prior to the beginning of first year, UOSL's offers incoming minority law students a week-long orientation program designed to prepare the students for the academic voyage on which they will soon embark. The program provides students with mock classes, background information on the law, study methods, legal writing techniques and community building social events.

- ***The Academic Support Component.*** During the school year, the UOSL's provides biweekly review sessions. The program is staffed by paid student instructors who received a B+ or better in the same class in which they tutor. Prior to serving as instructors, the school trains the student tutors in effective teaching methods. In the past, when resources were more abundant, the program also provided academic support for second- and third-year students.

Willamette University College of Law (Willamette). Willamette's Academic Support Program (ASP) has three components: a three day orientation, the traditional academic support program and the Academic Circles (AC) program. During the 1994-95 school year, Willamette inaugurated the three day orientation and AC program. The three day orientation and ASP is open only to those students (minority and nonminority) whose entering academic credentials are at, or below, a certain level. The AC program is open to all students. Further, the chair of the Willamette's Minority Affairs Committee is pursuing a collaborative effort between the bar and the other two Oregon law schools to provide all minority law students with additional academic and bar support. Finally, Willamette also promotes mentoring relationships between students and faculty members, judges from the Oregon Court of Appeals and members of the legal community that are intended to improve students' academic skills.

- ***The Three-Day Summer Orientation.*** Willamette provides the three-day summer orientation prior to the commencement of the students' first year. Willamette designed the event to help students develop a program of study for their first year tailored to reflect the individual's learning style. The program introduced students to the Socratic method and typical homework assignments, note-taking and outlining skills and exam preparation. The law school provided three follow-up sessions during the fall semester to reinforce the study techniques learned during the summer session. During the program, Willamette also coordinated three luncheons with the students and faculty members, minority alumni and other minority students to develop a sense of community in the Willamette environment.

- ***The Traditional Academic Support Program (ASP).*** Throughout the first year, Willamette conducts biweekly tutorial sessions for all minority and nonminority students whose academic credentials are at or below a specified level. Second- and third-year student tutors staff the ASP. Faculty members who teach the subject area which will be covered in the ASP recommend the student tutors. The program focuses on analytical skills through writing and exam taking techniques.

- ***The Academic Circles Program (ACP).*** In the 1994-95 school year, Willamette inaugurated the ACP. The ACP was open to all students who chose to participate. The school's administration organized the participating students into groups, designing them to be diverse in terms of age, race and academic credentials. The administration also assigned a faculty member to each group. The circles meet periodically to provide academic assistance, teach study techniques and improve the interpersonal relationships among the students.

THE MENTORING PROGRAMS

The three Oregon law schools, the Oregon State Bar, Oregon Women Lawyers and Oregon attorneys value the importance of mentoring programs, particularly regarding minority law students in Oregon. Accordingly, they are committed to implementing, or participating in, such programs. As the Task Force noted, mentoring programs in which minority alumni serve as mentors to minority law students greatly enhance the law school success rate of these students because the programs ameliorate the feeling of isolation many minority students experience while attending law school. Moreover, the programs provide excellent networking and educational opportunities for the participating students, which in turn, support educational success and job retention.

The Oregon State Bar (OSB). Since 1989, the OSB has operated its Professional Partnership Mentoring Program to "provide a bridge between minority law students and members of the professional legal community." The program links first-, second- and third-year law students with active members of the OSB. Through the relationships, students gain exposure to the realities of law practice and receive support and encouragement during the rigors of law school. For more information, call Ms. Rita J. Lucas, Administrator of the OSB's Affirmative Action Program, at (503) 620-0222, ext. 337.

Oregon Women Lawyers (OWLs). OWLs coordinates an active mentoring program in Portland, Eugene and Salem that links law students with practicing attorneys. At each location, an OWLS member, a law school staff person and a member of the local bar association assist in the overall program coordination. The program is open to all law students and provides them with support and networking opportunities. Currently, the program is facilitating over 330 mentoring relationships—80 at Northwestern, 81 at Oregon and 170 at Willamette.

Northwestern School of Law of Lewis & Clark College (Northwestern). In 1994, Northwestern provided a minority law student reception that involved all minority law students in Oregon and members of the Association of Oregon Black Lawyers, the Oregon Minority Lawyers Association and the Asian-Pacific American Lawyers Association. Northwestern designed the program to provide a networking opportunity and to foster a sense of community among the participants. Northwestern is also considering the development of a minority alumni newsletter.

The University of Oregon School of Law (UOSL). UOSL receives many inquiries from minority alumni regarding mentoring possibilities and actively facilitates a connection between interested alumni and minority law students. Additionally, the school publishes a directory that lists all minority attorneys in the state and distributes it to minority law students and attorneys who request it.

Willamette University College of Law (Willamette). Willamette operates a mentoring program that is available to all Willamette students who wish to participate. Willamette coordinates the program with the Marion County Bar and Oregon Women Lawyers. Although the program does not specifically seek minority alumni participation, nor focus primarily on minority students, many such alumni and students partake. Additionally, Willamette organized a luncheon during the summer orientation with incoming minority law students and minority alumni.

INSTITUTIONALIZING CULTURAL AWARENESS

Through course offerings, professors, speakers and other activities, law schools indoctrinate students to the legal profession. Indeed, it is through the law school experience that students transform from undergraduates into lawyers and more importantly, it is through this experience that students develop their perspective of the law's purpose and effects. It is therefore crucial for law schools to recognize the formative nature of the law school experience and accordingly the unique opportunity to ensure that graduating students are culturally enlightened. The Task Force underscored this dynamic by recommending that law schools weave more cultural issues into various courses and to provide more nonclass lectures on issues of cultural diversity and the law.

In its final report, the Task Force highlighted courses the law schools provide that raise students' awareness of cultural issues inherent in the law. For example, Northwestern offers courses covering racism and the law and Native Americans and the law; UOSL provides two summer classes for law students and members of the community that focus on issues of particular concern to minorities, and Willamette provides a civil rights course in which the professor has woven different ethnic issues into the curriculum. The law schools also conduct extracurricular activities that recognize cultural differences and raise cultural awareness. The events range from "Minority Law Day" to Martin Luther King, Jr. birthday celebrations. While these efforts are commendable, they alone are not enough because only the enlightened students and faculty members attend the activities, not those most in need of cultural awareness. The Task Force accordingly recommended that law schools make such activities mandatory to ensure that racial fairness information reaches the "unaware."

The Implementation Committee learned that the deans disagreed with the mandatory requirement. Notwithstanding the disagreement, the deans appreciated the problem and were seeking to implement an alternative solution: the institutionalization of cross-cultural issues into the law school culture. Under this scheme, all students and faculty members receive the information despite their area of academic interest or level of cultural awareness. For example, Northwestern's Dean James Huffman noted that he was seeking to create an academic environment in which the concerns were not primarily discussed as separate units but rather as part of an ongoing dialogue. At UOSL, the Minority Student Program Committee recommended that the school train professors at its annual Teaching Effectiveness Course on methods to weave cultural issues into their standard course offerings, that it pursue a new series of "Cultural Enhancement Lectures" and that the school offer two new courses of special concern to minority students. And finally, acting Dean David Kenagy noted that weaving cultural issues into the academic curriculum was a fundamental component of legal education at Willamette.

Related Task Force recommendations: R 8-5, 8-6, 8-8, 8-9 and 8-10

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
8-1	Oregon law schools should intensify their efforts to recruit more minority students, especially Hispanic students.	• All Oregon law schools target minority students for recruitment using the CRS, personnel contacts and participation in law forums in regions with many minorities. • Each school recruits from colleges in the Southwest that enroll many Hispanic students. • Willamette hosted an event to encourage Hispanic youth to pursue a legal career.
8-2	Organizations that provide funding for minority scholarships should increase their efforts to provide funds to Oregon law schools.	For years, the Oregon Law Foundation (OLF) has had a minority law student scholarship program. OLF hopes to increase the fund by improving its collection system and implementing an active contribution program.
8-3	Law schools should commit more of the money they obtain from their fund raising efforts to programs targeting minority students and applicants.	All Oregon law schools are committed to R 8-3 but face financial challenges. Each school uses money for minority scholarships and programs. Northwestern dedicated funds to employ a full-time director for its minority program and develop a summer law camp for minority middle school youth.
8-4	Law schools should increase their efforts to enlarge to pool of Oregon minorities interested in a legal career.	• All schools participate in the annual Minority Law Day and recruit from local colleges. • Northwestern and UOSL operate programs in which law students teach law to high school youth. • In 1995, Northwestern operated a summer law camp for local middle school minorities. • UOSL organizes and participates in a "professional school" career fair and operates a mentoring program between minority law and undergraduate students. Two minority law professors taught college courses. • Willamette facilitated the participation of law schools in the James DePreist Multi-cultural College Fair for high school students and hosted "Project Summit—A Program to Encourage Hispanic Youth to Pursue a Legal Career."
8-5	Law schools should address the lower graduation rates among minority law students.	Each law school recognizes this as a problem and is realigning its academic support program to address it. (See R 8-6 below.)

Rec. #	Description	Implementation Status
8-6	Law schools should guarantee academic support for all minority students who need it, including bar courses.	• All three law schools promote mentoring relationships between minority students and professors. • Northwestern provides three related services: (1) an eight-day Summer Institute; (2) a first-year skills building program; and (3) a Bar Support Program. • UOSL provides two services: (1) a week-long summer orientation; and (2) a first-year skills building program. UOSL is strategizing on how to provide second- and third-year academic support. • Willamette offers three services: (1) a three-day summer orientation; (2) a first year skills building program; and (3) an Academic Circles Program. Willamette is also collaborating with the bar and the other two Oregon schools to provide all minority law students with more academic and bar support.
8-7	Each law school should consider weighing bilingual skills in the admissions process.	Each law school appreciates the growing need for bilingual skills in the practice of law and is considering R 8-7. UOSL is developing a strategy to weigh bilingual ability in the admissions process. Its Director of Admissions contacted Law Services to discuss the possibility of obtaining information on an applicant's bilingual ability via the LSAT.
8-8	Law professors should attempt to weave more legal issues affecting minorities into their curriculum.	The deans from each law school agree with R 8-8. Each school provides courses addressing racial bias in the law; however, they are also attempting to institutionalize cross-cultural issues into their law school's culture so that bias issues are a natural part of all courses.
8-9	Law schools should offer more lectures focusing on how cultural differences affect legal rights and should require attendance by nonminority faculty and students.	• See R 8-8 above. • UOSL plans to provide a series of "Cultural Enhancement Lectures" and offer two courses of special concern to minority students.

Rec. #	Description	Implementation Status
8-10	Minority alumni from all Oregon law schools should be encouraged to support minority law students.	• **Law Schools.** All schools encourage mentoring relationships with minority alumni and students. The schools encourage their minority students to participate in the OSB's mentoring program and help facilitate the OWLs program. Northwestern hosted a minority law student reception and is considering the development of a minority alumni newsletter. UOSL publishes a directory of minority lawyers in Oregon and distributes it to minority law students and attorneys. Willamette runs a mentoring program and hosted a luncheon with incoming minority law students and alumni. • **The OSB.** The OSB coordinates a Professional Partnership Mentoring Program that links minority law students with practicing attorneys. • **Oregon Women Lawyers.** OWLs coordinates a mentoring program in Portland, Eugene and Salem. The program established over 330 mentoring relationships.
9-1	The Oregon State Bar, other bar organizations and attorneys should expose junior and high school minority students to the legal profession and the academic requirements.	• The Classroom Law Project is an organization designed to educate grade, middle and high school students in civics studies. Because the Project involves legal issues and works with a diverse group of youth, it exposes many minority students to the legal profession. • The OSB helps the Classroom Law Project coordinate its mock trial competition. • The OSB New Lawyers Division conducts presentations of the "Drop Out Prevention" video to local high school students. • Northwestern and UOSL offer classes for law students in which the students teach law to high school students. • Northwestern conducted a summer law camp for minority middle school students. • Willamette hosted a program called "Project Summit—A Program to Encourage Hispanic Youth to Pursue a Legal Career." • The Minority Law Student Associations at each Oregon law school coordinate mentoring programs with local middle schools.
9-2	Law schools should encourage law students and faculty to volunteer in programs that encourage minority high school youth to consider a legal career.	The deans from each law school have distributed copies of the Task Force report to, and discussed it with, all faculty. Also, each school's minority student affairs committee has discussed the report and developed strategies to address the relevant recommendations. (Also, see R 9-1 above.)

THE WORK FORCE

As noted in the previous sections, an enlarged pool of qualified minority attorneys and culturally competent nonminority lawyers is important to the diversification effort; however, enlarging the pool is only one component of an effort to achieve a truly representative and culturally competent justice system. An additional and essential step is hiring those in the pool and educating the current work force because without such efforts a diversity of viewpoints and an increased cultural understanding will not enter the various decisionmaking processes of the justice system. Additionally, the professional codes regulating the conduct of attorneys and judges need to safeguard the decisionmaking processes by explicitly prohibiting the manifestation of bias. This section describes the efforts of the Oregon State Bar, Oregon's legal employers, the Judicial Department, law enforcement agencies and the Department of Corrections to create a culturally diverse, competent and bilingual work force. The last part of this section also describes the implementation progress made regarding professional codes of conduct for judges and attorneys.

A CULTURALLY DIVERSE & BILINGUAL WORK FORCE

- **The Oregon State Bar's Employment Programs**
- **The Commitment of Oregon's Legal Employers**
- **The Judicial Department**
- **Law Enforcement Agencies**
- **The Department of Corrections**

OREGON STATE BAR'S MINORITY LAW STUDENT AND ATTORNEY EMPLOYMENT PROGRAMS

Since 1971, the Oregon State Bar's (OSB) Affirmative Action Program (AAP) has been engaged in an effort to address the problem of underrepresentation of minorities in the legal profession. To this end, the AAP provides a wide range of services to minority prelaw and law students and attorneys. The services include financial aid, a mentoring program, bar study assistance and employment programs. During its existence, the percentage of minorities in the OSB has risen from .5 percent to 2.5 percent. While still well below parity with the percentage of minorities in the total population (10 percent), the 400 percent increase represents a significant and commendable improvement. Moreover, the AAP is constantly reviewing and improving its programs to further increase the percentage of minority attorneys practicing in Oregon. The program's impressive 24-year effort has earned it a reputation as a model program of its kind in the country. The AAP's ultimate goal regarding its employment programs is to increase the number of minority attorneys who practice in Oregon. The AAP provides the following six programs:

The Diversity Task Force. In 1995, the Affirmative Action Committee proposed, and the Board of Governors approved, the creation of a Diversity Task Force. The Task Force's purpose will be to reassess and reexamine the bar's entire Affirmative Action Program. The Task Force will accomplish its purpose by engaging in the following four activities: (1) reviewing the current diversification efforts of the Oregon State Bar; (2) gathering information from and analyzing the gains made by the affirmative action programs of other bar organizations; (3) assessing the cultural barriers to retention of minority lawyers in law firms and the bar as a whole; and (4) assisting the bar's Board of

Governors and Affirmative Action Committee in expanding and improving their efforts to diversify the bar's membership.

The Minority Law Student First Year Honors Program. The AAP designed the First Year Honors Program to improve the employment opportunities for outstanding minority law students who attend one of the three Oregon law schools. The program's ultimate goal is to increase the opportunities for minority law students who, upon graduation, choose to practice law in Oregon. Faculty Selection Committees at each Oregon law school select minority students to participate in the program based on academic achievement, leadership skills and community service. The participating employers then receive the candidates' resumes and select students for law clerk positions.

In the summer of 1995, eighteen first-year minority law students participated in the program. As a sign of the program's success, and the quality of minority law students in Oregon, one participating employer (a partner in a large Portland law firm) had this to say in a 1995 letter to the AAP's director: "For what it's worth—I have the task of reviewing resumes for summer clerk positions that come in from all over the country. *Your first-year honors program candidates are equal to, if not superior to the resumes that I have received from around the country, even from the 'best' schools."* (Emphasis added.)

The First-Year Minority Clerkship Program. The AAP designed the Clerkship Program to provide job opportunities for minority law students and an incentive for prospective employers to hire these students. The student applicant must be committed to practicing law in Oregon and possess a financial need. The Bar provides participating employers a wage stipend to partially cover the student's wages. In the summer of 1995, thirteen first-year minority students received law clerk positions through the program.

The Public Honors Fellowship Program. In 1995, the AAP implemented a new program entitled the Public Honors Fellowship Program. Through the program, the AAP funds fellowships with prestigious public employers (e.g., the Oregon Supreme Court and Court of Appeals) for second-year minority law students who have a strong interest in public sector law practice. The program provides the students an opportunity to acquire skills and experience in public sector law, which in turn enhances their ability to secure permanent legal employment upon graduation. It also provides participating employers an opportunity to work with academically successful and committed minority law students. In 1995, two second-year minority law students received positions through the program.

The Professional Partnership Mentoring Program. In 1989, the AAP developed the Mentoring Program to link minority law students with practicing attorneys. The program's goal, while not designed as an employment program, is to provide students with the support and encouragement needed to make successfully the transition from law student to practicing attorney.

The Minority Attorney Employment Project. In January 1995, the AAP implemented the Employment Project to assist minority lawyers in Oregon in securing full time employment. The AAP provides the program free of charge to employers and participants and offers job search and interview preparation assistance. The Project's goal is to develop a market for the employment of minority attorneys. Minority attorneys also have access to the bar's job notice mailing service.

THE COMMITMENT OF OREGON'S LEGAL EMPLOYERS

The commitment of Oregon's public and private legal employers to diversifying their work forces is demonstrated by their participation in the OSB's minority employment programs and recently developed Youth-At-Risk Internship Program, sponsorship of a minority job fair and a pledge by nine of Portland's largest law firms to increase the diversity of their work forces.

Participation in the Bar's Minority Law Student Employment Programs. The following thirty public and private legal employers have participated in the bar's Minority Law Student Employment Programs:

Private Firms	Public or Public Interest Employers
Bullivant, Houser, Bailey, Pendergrass & Hoffman	Juvenile Rights Project, Inc.
Cosgrave, Vergeer & Kester	Lane County District Attorney
Cramer & Mallon	Lane County Legal Aid
Davis Wright Tremaine	Multnomah County Counsel
Harrang Long Gary & Rudnick, P.C.	Multnomah County District Attorney
Lane Powell Spears Lubersky	The Native American Program of OLS
Law Firm of Emily Cohen	The Oregon Department of Justice
Law Office of Jana Toran	The Oregon Judicial Department
Legacy Health System	Portland City Attorney's Office
Linda Friedman Ramirez, P.C.	Western Environmental Law Center
Luvaas, Cobb, Richards & Fraser, P.C.	
Miller, Nash, Wiener, Hager & Carlsen	
Perkins Coie	
Pozzi Wilson Atchison	
Preston Gates & Ellis	
Rosenthal & Greene, P.C.	
Schwabe, Williamson & Wyatt	
Stoel Rives Boley Jones & Grey	
Tonkon, Torp, Galen, Marmaduke & Booth	

Participation in the Black Law Students Association (BLSA) Northwest Regional Job Fair. The BLSA organized the Northwest Regional Job Fair to increase the representation of minority attorneys practicing in the Pacific Northwest. In 1994, these thirteen public and private legal employers of Oregon participated in the fair:

Private Firms	Public or Public Interest Employers
Bullivant, Houser, Bailey, Pendergrass & Hoffman	Metropolitan Public Defender
Davis Wright Tremaine	Multnomah County District Attorney
Foster Pepper & Shefelman	Oregon Legal Services Corp.
Lane Powell Spears Lubersky	Portland City Attorney's Office
Miller, Nash, Wiener, Hager & Carlsen	
Perkins Coie	
Pozzi Wilson Atchison	
Schwabe, Williamson & Wyatt	
Stoel Rives Boley Jones & Grey	

Sponsorship of Northwest Minority Job Fair. In September 1995, Davis Wright Tremaine hosted the 9th Annual Northwest Minority Job Fair in its Seattle, Washington office. Last year, fifty employers participated and interviewed over three hundred minority law students. For more information, call Kathleen Anamosa or Carol Yuly at (206) 622-3150.

The Bar's Youth-At-Risk Internship Program. The following six Portland area law firms agreed to participate in the bar's Youth-At-Risk Internship Program by providing a work experience for youth: (1) Foster Pepper Shefelman; (2) Kell, Alterman & Runstein; (3) Markowitz, Herbold, Glade & Mehlhaf, P.C.; (4) Pozzi Wilson Atchison; (5) Schneider Hooton; and (6) Tonkon, Torp, Galen, Marmaduke & Booth. The program is described in more detail in the section above entitled "Enlarging the Pool of Oregon Minorities."

Pledge to Increase Diversity by Nine of Portland's Largest Law Firms. In December 1994, two members of the Implementation Committee (IC) met with the managing partners of the following nine Portland law firms: (1) Ater Wynne Hewitt Dodson & Skeritt; (2) Cosgrave, Vergeer & Kester; (3) Davis Wright Tremaine; (4) Dunn, Carney, Allen, Higgins & Tongue; (4) Lane Powell Spears Lubersky; (5) Miller, Nash, Wiener, Hager & Carlsen; (6) Perkins Coie; (7) Pozzi Wilson Atchison; (8) Stoel Rives Boley Jones & Grey; and (9) Tonkon, Torp, Galen, Marmaduke & Booth. After discussing the Task Force report and the importance of resolving the issues identified therein, the managing partners agreed to make it their goal to increase the number of minorities on each of their firm's staff at all levels. The IC and the partners met again in July 1995 to discuss the progress.

On July 28, 1995, the IC and the partners conducted their second meeting. The partners described their efforts to diversify their staffs, both in terms of attorneys and support staff. The efforts included participation in the Oregon State Bar's First-Year Honors and Youth-At-Risk Internship Programs, specific recruitment invitations to minority students during on campus interviews and the development of recruitment relationships with minority colleges. The partners identified two obstacles to attracting minorities to practice law in Oregon: (1) the lack of cultural diversity in Portland; and (2) the firms' inability to offer salaries comparable to other larger cities. The partners stated that their firms were in a slow growth mode and focused more on lateral hires than on recent law school graduates.

The partners also recognized that although their firms were influential in the legal community, they only represented three percent or less of all the job opportunities in Oregon's legal profession. Accordingly, they suggested that what was needed was an additional effort to bring more employers into the diversification discussion—i.e., the small to medium size firms. The partners decided to identify many smaller firms, divide them into discussion groups and organize several smaller meetings. The partners will conduct the future meetings in November or December of 1995.

- ***Implementation Committee Proposal 4.1.*** The IC supports the commitment that legal employers in Oregon have demonstrated regarding the diversification of their work forces. The IC commends, in particular, the public and private participation in the bar's minority law student programs. However, because the ultimate, and most important, goal of these programs is the full-time employment of minority attorneys, the IC encourages all public and private legal

employers to make a concerted effort to attract and hire qualified minority attorneys for full-time positions.

IMPLEMENTATION COMMITTEE PROPOSAL 4.2—THE DEMAND SIDE APPROACH

The IC applauds the above efforts and supports their improvement and continuation. However, because the programs largely focus on the supply-side of legal services, the IC notes that these efforts address only half of the legal market (i.e., the legal suppliers). The programs seek to increase the placement opportunities of qualified minority applicants with established legal employers, while making no direct attempt to address the needs and perceptions of the legal consumers who drive the firms' business and ultimately influence hiring decisions.

When firms realize that a diversified work force is valued by legal consumers, they will make meaningful efforts to recruit, hire and promote more minorities. Accordingly, 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 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.

The Minority Counsel Demonstration Project (the Project). The Project grew out of a conclusion of the American Bar Association's (ABA) Commission on Opportunities for Minorities in the Profession (the Commission) incident to its examination of the obstacles minority attorneys and firms faced when they attempted to compete for the nation's legal business: the perception that corporate consumers of legal services did not want minority attorneys to handle their legal affairs. The Commission recognized that if majority firms operated from such a perspective, the firms would be less likely to hire minority attorneys, engage in joint ventures with, or refer "conflict" cases to, minority firms. Based on the recognition, the Commission specifically designed the Project to address the perception issue.

The Commission inaugurated the program in 1988 and initially planned that it would operate for three years. The program did not use the forced mandates of a set-aside or affirmative action program. Rather, the Project participants (corporations or law firms) voluntarily chose to take part in the program simply by announcing their commitment to the project's goals. The goals were to increase the business opportunities for minority attorneys, expand minority lawyers' potential for professional growth and to provide a model that could be adopted by local and state bar associations.

To realize its goals, the Committee encouraged participating corporations to retain minority-owned law firms and use minority lawyers from majority firms. It also encouraged majority law firms to develop joint ventures between themselves and minority law firms, to refer work between majority

and minority law firms and to increase the number of minorities they recruit, hire, retain and promote to partnership. As an example, in Seattle, Washington, a majority and minority law firm entered a joint venture under the auspices of the national demonstration project. The venture provided the minority firm with access to the majority firms' law library, word and data processing services, conference rooms, a "visiting" office and established informal consulting relationships with the majority firm's senior attorneys. The goal of the collaboration was to make the minority-owned firm a more competitive bidder for major legal services contracts by extending many of the benefits of a large association to the smaller law practice.

At the end of the initial three-year cycle, the Commission surveyed the participating corporations and law firms. The results of the survey showed that 98 percent of the participants felt that the project should continue and over 80 percent said they were satisfied with the program. Because of the overwhelmingly positive response to the project, the Commission decided to expand, and continue, the program. The state bars of New York and Georgia have recently implemented local projects. For more information call the ABA Commission on Opportunities for Minorities in the Profession at (312) 988-5643.

The City of Portland—An Example of a Demand Side Initiative. The City of Portland uses outside legal counsel for its municipal bond legal work. The solicitation process includes a request for proposals from interested firms. In the requests, the City specifically requires the applicant to answer several questions. In its 1994 request for proposal, the City included among other qualifying factors a question concerning the applicant's participation in the Oregon State Bar's Affirmative Action Program, the percentages of an applicant's minority staff members by position, a description of the applicant's minority outreach and recruitment efforts and any other related information. The City's request for proposal represents a demand-side initiative because the City, as a legal consumer, is sending a message to legal suppliers that it will view more favorably the firms committed to diversifying the legal profession than those lacking this goal.

Oregon's Effort. The Implementation Committee is working with minority attorneys to develop a similar project in Oregon. Although in the planning stage, the program will be similar to the project developed by the ABA.

THE JUDICIAL DEPARTMENT

With administrative control over the state trial and appellate courts, the Judicial Department has a unique responsibility to promote a court system in which court staff represent the diversity of Oregon's population, understand and respect different cultures and can communicate with public members who do not speak English. The *Oregon Judicial Department—Affirmative Action Plan* documents the department's efforts to achieve this goal. The 1995 plan concluded that "the [Oregon Judicial Department] needs to improve its minority work force representation." To this end, the Judicial Department's Personnel Division has implemented, or continues to provide, the following hiring and education programs.

Hiring. The Personnel Division will issue job announcements that include a preference for bilingual applicants. The Personnel Division advertises the Judicial Department's job openings through a

listing service of the Department of Administrative Services (DAS). The DAS sends all job announcements to Employment Division (the Division) offices statewide and provides them directly to over 100 minority organizations. Additionally, the Division is currently installing 169 electronic information kiosks at shopping malls, colleges and government agencies around the state to expand citizen access to state job announcements. The Division will list the Judicial Department's job openings on the kiosk system.

The Personnel Division also plans to implement a training program for supervisors which will teach the techniques of community outreach recruitment. The division believes that local outreach recruitment, in addition to the statewide dissemination of job announcements, is an effective method to successfully recruit more minorities because it fosters linkages between the county courts and local minority organizations. Although training for judges is not under the Personnel Division's responsibility, the division welcomes participation by any judge who wishes to attend the supervisory or other training.

Finally, the Personnel Division continually reviews, and improves if necessary, the Judicial Department's hiring procedures and practices to ensure that such recruitment methods are not racially biased and are most effective in recruiting minority candidates. It has developed a standardized *Recruitment and Selection Manual* to ensure uniformity in all hiring practices and trained supervisors and managers in how to conduct bias-free recruitment and selection. The Division also reviews the application form to avoid any requests for potentially discriminatory information.

Education. The Personnel Division recently implemented a diversity training module. It is described in more detail in the next section. One goal of the program is to raise the cultural understanding of all court staff so that each person values and promotes a diverse work force. Additionally, regarding language training, trial courts may authorize and pay for staff enrollment in language classes from their local budgets.

Implementation Committee Proposal 4.3. The IC commends the Judicial Department on its recruitment practices and education programs. However, it also recognizes the need to monitor these programs for effectiveness. Thus, the IC proposes that the Personnel Division 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.

The Judiciary. Although judges are elected, rather than hired, they are an integral part of the Judicial Department. Thus, it is fitting to discuss the progress regarding the racial composition of the judiciary in this section. The Task Force found that of the 172 judges in the judicial system, only four were minorities. Since the publication of the Task Force's report, two additional minority attorneys have become judges. District Judge Michael Loy now presides in Multnomah County Juvenile Court and Judge Marco Hernandez serves as a District Court Judge in Washington County.

- ***Related Publication.*** In 1994, the American Bar Association published *The Directory of Minority Judges in the United States.* The directory has four sections listing all the African American, Asian/Pacific Islander, Hispanic and Native American federal, state and administrative law judges in the United States. The directory lists 2,390 minority judges. The ABA designed the

directory to serve as a resource and networking tool for minority judges and attorneys. To receive a copy of the directory, write to the Judicial Administration Division, The Task Force on Opportunities for Minorities in the Judiciary, American Bar Association, 541 North Fairbanks Court, Chicago, Illinois 60611-4497.

LAW ENFORCEMENT AGENCIES

In its final report, the Task Force concluded that the public's perception regarding bias of law enforcement personnel could be addressed if more police officers were minorities and bilingual. The Task Force accordingly recommended that state, county and city law enforcement agencies implement a hiring program to attract more minority and bilingual officers. The IC found that the Oregon State Police and county and city police departments are committed to diversifying their personnel at all levels and are implementing aggressive minority recruitment campaigns. For example, the State Police Personnel Division works with Portland's Northeast Coalition members and other groups representing minorities in its recruitment efforts. Also, the Multnomah County Sheriff recently promoted Day Shift Lieutenant Vera Poole to Commander of the Corrections Support Division in the Sheriff's Office. Commander Poole is Oregon's first African American female to become Commander of Corrections. Additionally, all law enforcement agencies request information on an applicant's bilingual ability and consider the skill a positive screening factor. The agencies provide language training or funds for language classes. A spokesperson for the State Police noted that after graduation from basic training, many officers voluntarily enroll in language courses at local colleges.

THE DEPARTMENT OF CORRECTIONS

In its final report, the Task Force concluded that while the Department of Corrections (DOC) had generally achieved a representational work force, upper level positions were filled primarily by nonminorities. It accordingly recommended that the DOC develop a program to improve the retention rate of and promotional opportunities for minority employees in the DOC. The DOC agreed with the Task Force's conclusion and is developing innovative recruitment and promotional incentives to address the issue. Regarding recruitment, the DOC recently implemented a hiring strategy actively seeking minority candidates. To reach these applicants, the DOC is creating an interactive recruitment program using community outreach to public and private sector groups (e.g., churches, schools, professional organizations and state and local agencies). The interactive model will use the following five techniques to aggressively recruit minority candidates: (1) make personal follow-up phone calls to minority applicants; (2) send DOC representatives who are minorities to job fairs; (3) develop job announcements specifically targeted to minority groups; (4) give DOC representatives the authority to make direct appointments during recruitment efforts on college campuses; and (5) conduct quarterly "open houses."

Regarding retention and promotion, the DOC will implement the following four initiatives: (1) facilitate job rotations; (2) identify qualified minority employees for promotional opportunities; (3) propose extra compensation for employees who are bilingual and use their language skills in job activities; and (4) develop a special compensation and housing reimbursement package to

encourage minority employees to relocate to areas where promotional opportunities are present but racial and ethnic diversity is lacking. In its November 16, 1995 report entitled *Racial/Ethnic Issues in Oregon Corrections: An Update*, the DOC reported that minority employees leave their jobs at rates lower than the departure rates of white employees and that it recently appointed two minorities as superintendents of two of Oregon's nine correctional facilities. One of the appointees, an African American, is in charge of Oregon's largest prison, the Oregon State Penitentiary.

Related Task Force recommendations: R 2-3, 3-1, 3-2, 3-3, 3-6, 3-9, 4-2, 4-15 and 9-3

CULTURALLY COMPETENT STAFF

- **Cross-cultural Education**
- **Professional Standards**

The previous section discussed efforts to develop a work force that roughly matches the racial composition in the society at large. This section addresses the other side of the diversification coin: cultural competency. Numerical parity, while critical to a diversification effort, will not alone achieve a judicial system in which all forms of racial prejudice (conscious and subconscious) no longer exist. For example, in Oregon, racial minorities comprise roughly 10% of the state's population. Therefore, a diversification effort focused primarily on achieving racial parity will result in a work force with a 10% minority, 90% nonminority split. After parity is achieved, unless the remaining 90% nonminority employees raise their awareness, a vast majority of the work force will continue to possess the prejudices that existed prior to the numerical parity diversification effort. Consequently, because our goal is to achieve a heterogeneous judicial system in which bias in all its forms (intended and unintended) no longer exists, cross-cultural education is necessary to success.

The Task Force also recognized that in addition to the positive prospects the hiring and educational efforts provide, Oregon's judicial system must implement a mechanism to safeguard the public against the manifestation of bias by those in the work force who remain unenlightened. Because bias manifests itself in the judicial system through the actions of lawyers and judges, the Task Force appropriately recommended that the enforceable professional codes of conduct for lawyers and judges be amended to include specific prohibitions on manifestation of bias. Such amendments serve not only an educational and policing purpose; they also increase public trust of the judicial system because the anti-bias rules of conduct publicly state a zero-tolerance policy regarding bias and accordingly reflect the system's overriding commitment to fairness.

CROSS-CULTURAL EDUCATION

In four chapters of the Task Force Report, the Task Force emphasized the need for cultural competency training. But only in chapter three did the Task Force succinctly summarize the goal of the diversification effort: a truly heterogeneous culture. After posing the question of how to achieve such a culture, the Task Force summarily answered "by *education, education and more education.*" As the following examples demonstrate, the many organizations involved in the justice system agree and have accordingly implemented or maintained cultural diversity educational programs.

The Judicial Department. In April 1995 the Oregon Judicial Department (OJD) implemented a diversity training program for all interested OJD staff and judges. OJD intended the four-hour training sessions to help foster a work environment in which diversity is valued. The goal was to create an atmosphere of mutual respect in which OJD employees treat each other and the public with fairness and value individual differences. The training examined many stereotypes and beliefs—race, gender, age, lifestyle differences, religion, marital status and physical capacity—to demonstrate the breadth of "diversity" and to identify the wide range of personal filters individuals use to "prejudge" people. OJD offered sixteen training sessions at six locations throughout the state.

Additionally, the OJD provided managers and supervisors specific information on how to manage a diverse work force. OJD presented this information at supervisory follow-up training sessions. OJD revisited these issues during a supervisory training session in September 1995. And finally, the OJD's Judicial Education Committee has provided judges with training on cultural issues. These judicial educational efforts are described below in the section on the judiciary.

The Oregon State Bar. For many years, the Oregon State Bar (OSB) has been committed to increasing the cultural awareness of its members, staff and Board of Governors (BOG). The bar frequently provides its staff and the BOG diversity training seminars or workshops. For example, in January 1995, the OSB's Board of Governors, and other leaders in the bar, attended a two-hour Leadership Workshop For Diversity Training. The bar also provides several educational vehicles to raise the cultural awareness of Oregon lawyers—minority employment programs and educational seminars. The programs educating attorneys through professional interactions with minorities were discussed in a previous section entitled "The Oregon State Bar's Minority Law Student and Attorney Employment Programs." The other educational tool the bar uses to raise the cultural awareness of Oregon attorneys is the MCLE program.

All Oregon lawyers are required to take a certain number of continuing legal education classes each year. As part of this program, the bar continually has provided courses for attorneys designed to raise their awareness of diversity issues. For example, in the past three years, the OSB Minimum Continuing Legal Education (MCLE) program approved for credit the following nine continuing legal education classes concerning issues of cultural diversity and bias in the legal profession: (1) Working Together: A Presentation on Workplace Diversity (1992); (2) Diversity Hiring (1992); (3) Eliminating Gender Bias in the Legal Profession (1992); (4) Elimination of Bias (1993); (5) Diversity and Harassment Training (1993); (6) Race Fairness, Ethnic & Cultural Awareness Faculty Development Workshop (1994); (7) Diversity: It's Not Just the Law (1994); (8) Celebrating Diversity (1994); and (9) Climbing Toward Justice: Summit '95 (1995).

Although the bar's educational efforts are commendable, the Task Force concluded that many of the lawyers attending the diversity classes were attorneys who were already culturally aware. Consequently, the training was not reaching those most in need of cultural awareness education. The Task Force accordingly recommended that the MCLE Committee amend the continuing education rules to make diversity training courses a mandatory component of the MCLE program. In January 1995, the BOG asked the MCLE Committee to consider the Task Force's recommendation. At the same time, the IC met with the MCLE Committee to discuss the recommendation. The MCLE

Committee noted its support of the recommendation but wanted to analyze the administrative issues related to a mandatory requirement. In March 1995, the MCLE Committee completed its analysis concerning the recommendation and concluded that a mandatory requirement was not appropriate. However, it decided to include new language in the MCLE rules highlighting the importance of cultural awareness training and encouraging attorneys to take at least three credit hours of diversity training per reporting period. The bar will publish the new MCLE policy statement in the 1996 bar directory. For more information on the MCLE program, contact Ms. Lisa D. Williams, the MCLE Administrator, at (503) 620-0222, ext. 368.

The Judiciary. All Oregon state court judges must be members of the OSB. Consequently, many have attended the above MCLE courses. Judges have also participated in educational programs offered by the Oregon Judicial Conference's Judicial Education Committee and the Oregon Judicial Department's Personnel Division, the American Inns of Court, the National Judicial College and other judicial education organizations.

- ***The Oregon Judicial Department.*** The Oregon Judicial Conference's Judicial Education Committee (JEC) provides judges with continuing educational opportunities to improve their ability to perform judicial functions. One of the JEC's five goals is to "preserve the integrity and impartiality of the judicial system through eliminating bias and prejudice and the appearance of bias and prejudice." The JEC seeks to accomplish this goal through the provision of in-state judicial training or the reimbursement of tuition at out-of-state conferences. The JEC is also developing a strategy to make the issue of racial fairness a part of all educational activities, in addition to addressing it as a separate topic, to ensure that information on issues of racial fairness in the courts is disseminated widely and to reflect the reality that bias can affect all areas of judicial activities. Further, the Judicial Department provides all judges up to $300 per year for membership in nonprofit, nonpolitical organizations relevant to the judiciary. Many judges belong to organizations that provide their own training and symposiums on issues of cultural fairness in the courts (e.g., the National Bar Association and the Inns of Court).

  In the last three years, the JEC conducted two symposiums on cultural issues in the courts and implemented a mandatory week-long orientation for new judges that includes a discussion of racial fairness in the judicial system. In 1992, the JEC provided judges training entitled "The Effective Use of Interpreters and Working with Multicultural Populations." During this program, the program presenters discussed fairness issues and methods judges might use to improve the ability of multicultural populations to access justice. In 1993, the JEC coordinated a judicial training program entitled "Cultural Diversity in the Justice System: New Times, New Questions." The program was designed to better equip judges to assess the impact of cultural values on decisions and to create a judicial environment that embraces and incorporates diverse cultural values. The JEC sent audio tapes of the 1992 program and audio and video tapes of the 1993 program to all judicial districts for use by new judges, staff, pro tem judges and special court judges. In 1995, the JEC's week-long New Judge Seminar included a program entitled "Courts and Community: Access to Justice." The program was designed to help judges identify factors that negatively affect a minority's ability to access the court system and suggested methods to eliminate any identified barriers. By letter, the JEC informs all new judges that the court's

library has audio and video tapes on racial fairness in the courts and encourages the judges to review the material.

- ***The American Inns of Court.*** The American Inns of Court is a national organization with local chapters composed of judges, attorneys and law students. Its purpose is to enhance trial practice skills and professionalism. The local chapters meet monthly at dinner gatherings where important court issues are presented and discussed. In 1994, the two Portland Inns of Court chapters featured programs on racial and ethnic issues in the court and the Eugene chapter presented a symposium entitled "Celebrating Diversity." In 1995, the Salem chapter conducted a similar presentation on issues of racial fairness in the courts and the Bend chapter presented a symposium on the discriminatory use of peremptory challenges.

- ***The National Judicial College.*** The National Judicial College (the College) is an organization dedicated to "achieving justice through quality judicial education." The College is located on the campus of the University of Nevada, Reno, and offers over 56 resident and extension courses to interested judges worldwide. In 1994, it implemented a special faculty development project entitled "Race Fairness and Cultural Awareness Development Workshops." The purpose of the new project was to teach judges and judicial educators how to integrate race, ethnic and cultural issues into local training programs. Oregon Supreme Court Associate Justice Richard L. Unis attended the program. The College also offered courses concerning equal justice and other diversity issues in 1992, 1993 and 1994. All courses were attended by some judges from Oregon.

- ***Other Judicial Education Organizations.*** In the last year, judges from Oregon also attended two national conferences on racial and ethnic bias in the court system. In December 1994, the National Council of Juvenile Family Court Judges (NCJFC) conducted a conference on disproportionate overrepresentation of minority youth in confinement. The NCJFC's program included an analysis of the overrepresentation problem and the development of possible solutions. Two Oregon judges attended the three-day conference. In March 1995, the National Center for State Courts (NCSC) coordinated the First National Conference on Eliminating Racial and Ethnic Bias in the Courts. The NCSC designed the conference to help judicial leaders identify racial and ethnic bias in the court system and develop innovative strategies for its elimination. Three Oregon judges participated in this three-day national conference.

Law Enforcement Agencies. See chapter two, "The Criminal Justice System—An Issue of Public Trust," page 43.

The Department of Corrections. See chapter two, "The Criminal Justice System—An Issue of Public Trust," page 43.

Two Related Publications. The following two publications provide useful resource information on cultural diversity training:

- FEDERAL JUDICIAL CENTER, DIVERSITY IN THE COURTS: A GUIDE FOR ASSESSMENT AND TRAINING (March 1995). The Federal Judicial Center designed this 147-page guide to assist courts in planning cultural diversity education programs. It provides step-by-step instructions on how to design

and implement a diversity training program, complete with sample questionnaires, agendas, curriculum components and evaluation forms. The guide's five main sections are: (1) Assessing Readiness and Needs for Diversity Training; (2) Designing the Program; (3) Finding and Working with Outside Experts on Diversity; (4) Promoting the Program; and (5) Evaluating the Program. To obtain a guide, write to the Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, DC 20002-8003.

- METROPOLITAN HUMAN RIGHTS COMMISSION, ROAD MAP FOR THE JOURNEY TOWARD DIVERSITY—A DIVERSITY TRAINING RESOURCE GUIDE (1994). The Metropolitan Human Rights Commission (MHRC) designed this 29-page guide to provide organizations with a cultural diversity training "road map." It identifies fourteen questions organizations should ask before calling a diversity trainer, lists five reasons why diversity training is important, provides a historical look at diversity training, describes five case studies of organizations that have diversified their staffs and offers information on how to locate an effective diversity trainer that meets an organization's particular needs. The MHRC also compiled a list of 43 diversity trainers from the Portland Metropolitan area. For more information, or to obtain a guide, write to the MHRC, 1120 S.W. Fifth Avenue, Rm. 516, Portland, OR 97204-1989 or call (503) 823-5136.

Implementation Committee Proposal 4.4.—Cultural Diversity Training In Private Law Firms. The Implementation Committee (the IC) commends the efforts of the Oregon State Bar, the Oregon Judicial Department and other public agencies to raise the awareness of its members and employees. The IC is concerned, however, about the lack of any program specifically designed for private law firms to educate their nonminority lawyers. In January 1995, the IC met with the leaders of Oregon's three minority lawyer organizations (MLOs) to discuss this and other concerns. At the meeting the IC proposed that a nonprofit foundation be created to raise the awareness of nonminority lawyers and conduct other programs. The foundation would seek funding to prepare an educational program designed to educate attorneys 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 IC is working with the MLOs to develop a funding proposal for this project.

PROFESSIONAL STANDARDS

As noted above, ongoing cross-cultural education is necessary to raise the cultural awareness of nonminority staff, lawyers and judges and thereby achieve a culturally competent, heterogeneous and fair justice system. But, diversity training provides no guarantees. The profession needs a mechanism to regulate attorneys' or judges' conduct to ensure that their conduct conforms to the standards of fairness and are not clouded by racial stereotypical beliefs or racial bias.

Professional codes of conduct govern actions of lawyers and judges. The codes mark the lines between ethical and unethical conduct and are enforceable if violated. Consequently, these rules are the logical place to establish safeguards against racial bias in the actions of lawyers and judges. The Task Force discovered, however, that despite Oregon's ethical codes prescribing a responsible,

ethical and fair code of conduct, they contained no specific prohibitions on the manifestation of racial bias. The Task Force accordingly recommended that the Oregon Code of Professional Responsibility for Lawyers and the Oregon Code of Judicial Conduct be amended to include specific prohibitions of racial bias.

The Oregon Code of Professional Responsibility for Lawyers. The Oregon State Bar (OSB) is responsible for developing the Code of Professional Responsibility for Lawyers. In January 1995, the OSB's Board of Governors assigned the bar's Legal Ethics Committee (EC) the task of developing and recommending for adoption two disciplinary rules based on the Task Force's recommendations. In March 1995, the EC developed proposed disciplinary rules. One rule would make it professional misconduct to exercise a peremptory challenge "for reasons judicially determined to be constitutionally impermissible." The other disciplinary rule would prohibit the manifestation of bias or prejudice based on "race, color, creed, gender, national origin or sexual orientation." In May 1995, the EC submitted the proposed rules to the Chief Justice's Disciplinary Rules and Procedures Committee (DRPC) for review at its meeting on July 21, 1995. The DRPC concluded that the proposed rule relating to peremptory challenges was not needed because what a lawyer can and cannot do regarding the exercise of such challenges is spelled out in case law and in the Oregon Rules of Civil Procedure. Regarding the manifestation of bias rule, the DRPC felt it was too broad and postponed a rewrite until the Supreme Court adopts a similar rule for the Judicial Code. The DRPC postponed a rewrite because it wanted the rules to be consistent.

The Oregon Code of Judicial Conduct. The Oregon Supreme Court is responsible for developing and adopting the Oregon Code of Judicial Conduct. In December 1994, the Oregon Supreme Court began the task of reviewing Task Force recommendations 3-10 and 3-11 and developing an appropriate judicial canon prohibiting the manifestation of racial, ethnic, gender and socioeconomic bias. On April 25, 1995, the Oregon Judicial Conference (Conference) approved a Proposed Revised Oregon Code of Judicial Conduct. The Conference proposed a section be included in *Judicial Rule 2: Impartial and Diligent Performance of Judicial Duties* (JR 2-110) that would address Task Force recommendations 3-10 and 3-11. It would prohibit actions of judges, and those under a judge's control, that may reasonably be perceived as biased. The rule would not "preclude consideration or advocacy of any issue relevant to the proceeding." The Chief Justice signed an order adopting the revised code on November 22, 1995.

Related Task Force recommendations: R 3-4, 3-5, 3-10, 3-11, 7-14 and 7-15

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
2-3	Trial courts should increase the number of bilingual and bicultural employees.	• OJD uses applications with a preference for bilingual ability. • OJD authorizes trial courts to pay costs of language classes for staff and judges. • See R 3-2 below.
3-1	Judicial selection committees should include diversity as a factor in making judicial appointment recommendations to the Governor.	• Judicial selection committees are committed to diversity in the judiciary. Recently, two new minority judges were recommended and elected.
3-2	The Judicial Department should seek to reach more minority applicants.	• OJD sends job announcements to all Employment Division (ED) offices statewide and to over 100 minority organizations. • OJD will include job notices in the ED's new electronic kiosk system. • OJD is implementing a training program for supervisors to teach them the techniques of community outreach recruitment. • OJD periodically reviews applications and has developed a standardized recruitment manual.
3-3	The Judicial Department should train presiding judges and administrators in how to attract qualified minority applicants.	• See R 3-2 above.
3-4	Judges, administrators and all court personnel must be convinced, through education, of the need for and value of increasing diversity of the work force at all levels.	In April 1995, OJD implemented a four-hour diversity training module for all OJD staff and judges. It offered 16 training sessions at six locations statewide. OJD also provided managers and supervisors specific information on how to manage a diverse work force.

Rec. #	Description	Implementation Status
3-5	OJD should establish an ongoing cross-cultural awareness training for judges and court staff.	• See R 3-4 above. • **Oregon Judicial Conference Judicial Education Committee (JEC).** JEC provides in-state judicial training or the reimbursement of tuition at out-of-state trainings and is attempting to weave fairness issues into all course offerings to accomplish one of its five goals: to "preserve the integrity and impartiality of the judicial system through eliminating bias and prejudice and the appearance of bias and prejudice." • **The American Inns of Court.** Recently, the Portland, Salem, Eugene and Bend chapters conducted programs on issues of racial fairness. • **The National Judicial College.** Oregon judges attended courses concerning racial fairness in 1992, 1993 and 1994. • **Other Judicial Education Organizations.** In the last year, Oregon judges attended two national conferences on racial fairness.
3-6	OJD should increase its efforts to train and attract bilingual employees.	See R 2-3 above.
3-9	The Chief Justice (CJ) and the State Court Administrator (SCA) should monitor the efforts to diversify court staffing and develop standards to measure the effectiveness of its diversification effort.	The CJ and the SCA were initially more concerned about implementing the necessary diversification programs. Now that implementation efforts are underway, the CJ and the SCA are committed to improving OJD's monitoring efforts. The IC also serves a monitoring role and will work with OJD to develop a formal monitoring system for the "Phase 2" implementation effort.
3-10	The Supreme Court, the Chief Justice and the State Court Administrator should adopt a canon for judges and administrative rules for staff that explicitly prohibit the manifestation of racial bias.	• **Judicial Canon**: The Supreme Court is developing a canon for judges that will prohibit the manifestation of racial and gender bias. • **Administrative Rules**: OJD's personnel policy prohibits discrimination on any basis.
3-11	Canon 2 of the Code of Judicial Conduct should be amended to provide: "A judge should not engage in conduct, on or off the bench, that reflects or implements bias on the basis of race, sex, religion, ethnic or national origin, or sexual orientation (including sexual harassment)."	See R 3-10 above.

Rec. #	Description	Implementation Status
4-1	BPSST and the State Police should ensure that all state, city and county police officers receive cross cultural awareness training. BPSST should make such training a prerequisite to certification.	• See chapter two. • BPSST mandates cross-cultural training as part of Police Academy curriculum. • The State Police also trains new recruits on cultural issues. • LALEA and BPSST are cooperatively engaged in a community policing project designed to improve the relationship between Hispanic communities and local law enforcement.
4-2	All law enforcement agencies should implement a hiring program designed to attract minority and bilingual police officers.	The State Police and county and city police departments are committed to implementing (or improving an existing one) an aggressive minority recruitment campaign, request information on an applicant's bilingual ability and provide language training or pay for language classes.
4-15	The Department of Corrections (DOC) should develop a program designed for employees to enhance retention and promotional opportunities of minorities.	• The DOC is implementing five innovative recruitment techniques and initiating four new programs to improve job retention and promotional opportunities for minorities. • The DOC recently has appointed two minorities as superintendents of two of Oregon's nine correctional facilities.
6-5	The Oregon State Bar and the Supreme Court should require all lawyers to certify completion of at least three hours of cross-cultural diversity training during each MCLE reporting period.	In January 1995, the OSB's MCLE Committee reviewed R 6-5 and concluded that a mandatory requirement was not appropriate; however, it also decided to include language in the MCLE rules that highlights the importance of cultural awareness training and encourages attorneys to take at least three credit hours. The OSB will publish the policy statement in the 1996 bar directory.
7-14	The Oregon State Bar and the Supreme Court should develop disciplinary rules making it unethical to use peremptory challenges solely on the basis of race.	In March 1995, the OSB's Legal Ethics Committee developed a draft rule that would make it professional misconduct to exercise a peremptory challenge "for reasons judicially determined to be constitutionally impermissible." After comment and review by other groups, the Committee concluded that such a rule was not necessary because the ORCPs satisfactorily govern an attorneys conduct during the jury selection process.

Rec. #	Description	Implementation Status
7-15	The Oregon State Bar (OSB) should develop a rule of professional responsibility prohibiting lawyers from manifesting, by words or conduct, bias based upon race, sex or socioeconomic status.	In March 1995, the OSB's Legal Ethics Committee developed a draft rule that would prohibit the manifestation of bias or prejudice based on "race, color, creed, gender, national origin or sexual orientation." After comment and review by other groups, the Committee will seek the Board of Governor's approval in August 1995.
9-3	Law firms, state agencies and other employers of lawyers should evaluate their hiring practices to avoid bias in the hiring process. The Oregon State Bar (OSB) should have a program to assist these organizations in ensuring that their hiring practices are free of racial bias.	Oregon's legal employers (public and private) have demonstrated a commitment to R 9-3. For example, over 30 public and private legal employers have participated in the OSB's minority law student employment programs. Also, in December 1994, nine of Portland's largest private law firms met with the IC and made a pledge to increase their firm's diversity at all levels. Part of these efforts includes a constant review of hiring practices to avoid bias. The OJD continuously reviews its hiring process to avoid bias and has accordingly enacted a policy to ensure uniform hiring practices statewide, trained supervisors in how to conduct bias-free recruitment and ensured that OJD applications are free of any requests for potentially discriminatory information. The Oregon Department of Justice likewise reviews its hiring practices and recently enacted three process improvements.

PROFESSIONAL GROUPS

This section describes the implementation efforts of various bar and professional organizations to diversify their groups and increase minority representation on committees and as continuing legal education authors or speakers.

IMPROVING THE DIVERSITY OF PROFESSIONAL ORGANIZATIONS

The last piece in the puzzle of a representative and culturally sensitive justice system is the diversification of bar and other professional organizations because these organizations play an influential role in the legal profession. For example, the Oregon State Bar (Oregon's largest and most influential bar organization) participates in legislative activities, develops ethical rules, sets the minimum continuing legal education requirements, prepares and gives the bar examination, determines how bar resources are to be allocated for community-related activities and plays an active and influential role in other legal policy decisions. Local bar organizations likewise provide useful and educational services to local attorneys and the surrounding communities.

Additionally, Oregon has a number of professional organizations of attorneys in similar fields or who share common interests. For example, the criminal defense lawyers in Oregon formed the Oregon Criminal Defense Lawyers Association and the state's women lawyers organized the Oregon Women Lawyers association (this organization is open to male and female attorneys). These organizations provide strong networking and educational opportunities for their members. Because these bar and other professional organizations influence legal policy, educate the communities and lawyers within our state and provide significant networking opportunities, it is important that these groups be culturally diverse to ensure that different perspectives are included in all decisionmaking processes.

The Minority Lawyer Associations. There are three Oregon minority lawyers organizations: (1) the Asian-Pacific American Lawyers Association; (2) the Association of Oregon Black Lawyers; and (3) the Minority Lawyers Association. These groups also play an important role in the diversification effort. They provide a venue though which information concerning employment and other opportunities can be disseminated and a forum for the development of relevant implementation projects. In addition to disseminating information, the minority lawyer organizations also serve an important support role in which they encourage their members to actively pursue judicial, political, bar committee and other opportunities.

In its previous sections, the report noted the implementation efforts of the minority lawyers organizations (MLO) regarding public education and employment. In this section, the MLO's efforts to increase the participation of minorities on bar committees and as Continuing Legal Education (CLE) speakers will be highlighted. At a meeting with the Implementation Committee (IC) in January 1995, the MLO noted that few minorities currently seek Oregon State Bar (OSB) committee positions or opportunities to author CLE materials or serve as CLE speakers because many attorneys of color felt the bar had been less than receptive to their past requests. The IC noted its meeting with the OSB and the contrasting message it had received from the bar, namely, the bar's expressed desire to increase the participation of minority attorneys in both these areas.

The IC and the MLO agreed that a breakdown of communication regarding opportunities for attorneys of color on bar committees and as CLE authors and speakers had given rise to the current state of disinterest. The IC and the MLO further agreed to take steps to open the lines of communication and inspire more minority lawyers to submit applications for bar committee or CLE positions. The MLO agreed to discuss the opportunities with their interested members and encourage them to apply for influential committee positions and CLE opportunities. The IC agreed to discuss the need for the bar to solicit actively the participation of minority attorneys.

The Lane County Bar Association. In 1994, the Lane County Bar Association formed a Racial Bias Committee to respond to the recommendations contained in the Task Force Report. The Committee is developing three projects to further the goals of the Task Force report: (1) a survey regarding the employment of minorities in the Lane County legal community; (2) a translation project in conjunction with the local municipal courts; and (3) a publicity campaign to highlight issues of racial fairness in the courts by placing related articles in the local bar newsletter. The Committee also coordinated a luncheon with the bar members and minority law students from the University of Oregon School of Law and is discussing methods to become more involved in their academic progress.

The Multnomah Bar Association. In July 1994, the Multnomah Bar Association (MBA) formed a Committee to Advance Equality in the Profession and the Justice System (Equality Committee). Two of its five charges focused on problems identified by the Task Force. The relevant charges directed the Equality Committee to "identify a pool of possible . . . ethnic minority MBA member Continuing Legal Education (CLE) speakers . . . in the largest practice areas" and "review . . . the Oregon Supreme Court Race Bias Task Force report [and] . . . identify related, potential action items . . . which the MBA could assist in remedying within the next year."

In accordance with the first charge, in January 1995, the Equality Committee sent a letter to all minority MBA members requesting their participation as CLE speakers or recommendations for other speakers of color. Regarding the second charge, in March 1995, the Equality Committee established a Young Lawyers Section Task Force on Improving Diversity with the MBA (the Diversity Task Force) to remedy the lack of diversity in the MBA. In June 1995, the Diversity Task Force completed its report and made nine recommendations to improve the diversity of MBA's membership. The MBA's Young Lawyers Section Board will review the recommendations and seek to implement them in 1996.

Oregon Criminal Defense Lawyers Association. In July 1994, the Oregon Criminal Defense Lawyers Association (OCDLA) formed the Committee on Race, Gender and Ethnicity (the Ethnicity Committee). The Ethnicity Committee's purpose is to promote racial and gender diversity within OCDLA at all levels and raise the cultural and gender awareness of all those involved with the criminal justice system. For more information contact the Ethnicity Committee chairperson, Ms. Linda Friedman Ramirez, at (503) 227-3717.

The Oregon State Bar. Because membership in the Oregon State Bar (OSB) is mandatory for all Oregon attorneys, the OSB's primary concern regarding minority representation in its organization relates to committee assignments and other leadership positions within the bar. In December 1994, the Committee met with Ms. Sylvia Stevens, Assistant General Counsel to the OSB, to discuss these,

and other, issues. Ms. Stevens noted the bar's concern about the lack of minority representation on influential bar committees, in other leadership positions and as CLE authors and speakers. She stated that the bar is anxious to have minority attorneys serve as committee leaders, but that few had expressed interest. Further, Ms. Stevens stated that she would be willing to work with minority attorneys to show them, step-by-step, how to obtain a committee appointment.

Ms. Stevens also made the following four recommendations to the bar's Board of Governors (BOG) regarding these issues: (1) the BOG Appointments Committee should work to "bring more minority lawyers into positions of responsibility on committees;" (2) the BOG should "encourage [bar] sections . . . to increase minority participation in positions of responsibility within sections;" (3) the BOG should "encourage greater participation by minorities on the BOG, in both the public and lawyer positions;" and (4) the bar's Executive Director should "reaffirm the bar's affirmative action policy as it regards staff, and work to bring more minorities into position of responsibility within the bar staff."

Regarding Ms. Steven's first recommendation, in June 1995, the chair of the Appointments Committee of the BOG sent a letter to leaders of the three minority lawyer organizations and Oregon Women Lawyers requesting names of minority and women attorneys who might be interested in serving on the Council on Court Procedures. The Council, one of the most influential bar committees, currently lacks significant diversity and the pool of attorneys expressing an interest for the Council's next term was exclusively white male. Consequently, the Appointments Committee postponed its selection process until it could send the June letter and possibly inspire interest among minority and women lawyers.

Oregon Women Lawyers. In 1994, Oregon Women Lawyers (OWLs) developed a five-year strategic plan "to promote the advancement of women and minorities in the legal profession." To carry out its mission, OWLS developed five general goals and forty-five specific recommendations. Goal two is to "increase [OWLS] collective power and influence organizationally and as member of the legal community." In addition to five other objectives, OWLS seeks to accomplish this goal by "increas[ing] the presence of women/minorities in elected/appointed government positions, bar leadership positions and on the bench." In July 1995, OWLS met with the IC to discuss how it could best aid the implementation process.

At the meeting, the IC helped OWLS prioritize its strategies listed in its five-year strategic plan as they related to racial fairness. The IC concluded that OWLS should focus on three areas: (1) career advancement; (2) increasing the power of minority attorneys as members of the legal community; and (3) mentoring. Regarding career advancement, the IC suggested that OWLS publicize minority attorneys and their success stories in its newsletter, encourage the formation of minority-owned firms, market minority firms to minority clients and encourage legal consumers to request that their legal providers employ minority attorneys.

To increase the power of minority attorneys in the legal community, the IC encouraged OWLS to prepare a pamphlet on how to obtain bar committee positions and how to become a MCLE author or speaker. The IC also suggested that OWLS educate minority attorneys on how to groom themselves for judicial appointments and that OWLS, in conjunction with the minority lawyer

organizations, develop and maintain a list of qualified minority judicial candidates to provide to judicial selection committees. Finally, the IC encouraged OWLS to maintain its high quality mentoring program and increase its efforts to develop relationships with minority law students.

Related Task Force recommendation: R 9-4

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
9-4	The Oregon State Bar (OSB) and other bar-related organizations should implement plans to involve more minority lawyers in positions of responsibility.	The following six groups have taken specific action to improve the diversity of bar committee positions or their groups: • The Oregon State Bar • The Multnomah Bar Association • Oregon Criminal Defense Lawyers Association • The Three Minority Lawyer Associations • The Lane County Bar Association • Oregon Women Lawyers

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:

  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 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.	• 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.	• 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.	• 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.	• 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.	• 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.	• 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.	• 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.	• 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.	• 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.	• See R 3-7 above.

CHAPTER SIX

MINORITIES AND JURY SERVICE

THE GOAL: A JURY OF ONE'S PEERS

"[T]he opportunity for jury service shall not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation or any other factor that discriminates against a cognizable group in this state."

—Oregon Revised Statutes § 10.030(1) (1994).

INTRODUCTION

It is an axiom of popular culture to claim one has a right to be judged by a "jury of one's peers." That guarantee notwithstanding, the Task Force concluded that the efforts of Oregon's judicial system to achieve inclusive juries was inadequate. The Task Force received testimony and survey responses that juries were not representative of the communities served. Further, the Multnomah Bar Association 1993 Jury Pool Report concluded that in Multnomah County white, college-educated and married people, home owners and those aged 35 to 74 were overrepresented in jury pools. The Task Force determined that procedural mechanisms used to compile jury pools and to select final juries could be improved to help achieve more inclusive juries. This chapter's two sections—"Compiling Jury Pools" and "Jury Selection"—reflect the dual focus of the Task Force recommendations designed to improve the procedural mechanisms used at each stage of jury composition.

In the pages that follow, the implementation efforts illuminate the recognition by our justice system that the procedural status quo is no longer sufficient. The reader will note that although this recognition has motivated some action, much still needs to be done, particularly with regard to the jury experience (e.g., juror waiting periods, juror compensation and child care expenses). However, because the most important hurdle has been overcome (i.e., the recognition of the need for change), a continuum of the effort already underway will ensure that Oregon's judicial system maintains its progress toward guaranteeing that all litigants in the Oregon courts are judged by juries of their peers. Success in this area is critical to the effective administration of justice because it is this goal that supports in large measure the overriding ambition of our justice system—fair and equal justice for all.

The Implementation Committee reviewed the recommendations with the Chief Justice, the State Court Administrator, several trial court administrators, legislators and the Oregon State Bar. It also reviewed the Multnomah Bar Association's 1993 Jury Pool Report and other relevant literature on juries to help it develop various implementation proposals.

COMPLYING JURY POOLS

This section describes the efforts to ensure that the pool from which jurors are selected is representative of the community served. In other words, it concerns an issue the Task Force described as one of "getting minority jurors to the courthouse." The next section, "Jury Selection," records the efforts to ensure that minorities, once in the pool of prospective jurors, are selected and retained on juries.

The jury pool issue has three parts—the jury source master list, the summons process and the juror's experience—all of which affect the representativeness of jury pools. Based on its analysis of the current jury pool compiling process and discussions with the Chief Justice, the State Court Administrator and several trial court administrators, the Implementation Committee concluded that efforts to improve the juror experience and the jury summons process were most important and would accordingly have the most significant effect on the inclusivity of juries.

THE JURY MASTER SOURCE LIST

The Master Source List. Jury selection begins with the source list. Once a year, the State Court Administrator (SCA) compiles a master source list. To create the master list, the SCA merges a list of registered voters and a list of Department of Motor Vehicles (DMV) driver's license and state identification and handicap card holders and sorts the combined list to remove duplicate names and ineligible persons. The SCA sorts the master list by county and then randomly sorts the individuals on the list, assigning a number to each person that designates her place in "line." The SCA provides the master source list to counties. The counties then conduct their own random selection routine to create a jury pool.

Task Force Recommendations 7-1 and 7-2. The Task Force concluded that, based on national research and a 1993 study conducted by the Multnomah Bar Association, "the failure of juries to represent their communities is largely a function of the selection process." The Task Force accordingly made two recommendations designed to increase the number of people on the source list by expanding the lists from which potential jurors are drawn.

The Implementation Status. The Implementation Committee (IC) met with the Chief Justice and the SCA to review recommendations 7-1 and 7-2. The IC's subcommittee on juries also independently analyzed the relationship of the jury source list to the representativeness issue to determine whether it should develop legislation to expand the source list. The IC concluded that although not perfect, the merged voter registration and DMV driver's license and state identification and handicap card holders list was, as described by one commentator, "quite inclusive." The IC found that the number of persons captured by the source list nearly matched, and in some cases exceeded, the numbers present in the general population.

Based on the discussions and analysis, the IC, the Chief Justice and the SCA agreed that the lack of minority representation on juries was not a source list issue, but rather was related to the summons process and jury experience. Consequently, the IC decided not to pursue legislation in this area or request that the Chief Justice make changes to the source list that were permissible under current law. The IC's conclusion in no way suggested that jury representativeness was not a problem. It simply concluded that the most effective way to address the lack of minority representation on

juries was to dedicate resources to improving the summons process and jury experience. The efforts in these two areas are described below.

Related Task Force recommendations: R 7-1 and 7-2

THE JURY SUMMONS PROCESS—CREATING AN ATMOSPHERE OF COMPLIANCE

The Summons Process. Oregon's jury summons and selection process is governed by ORS 10.225 to 10.265. The excuse and deferral rules are set forth at ORS 10.050 and ORS 10.055 respectively. The related penalties for failure to respond to a subpoena are prescribed at ORS 10.990. The summons process begins after a county identifies its list of potential jurors from the SCA's master source list. The county's smaller list is called a term jury list. ORS 10.255(5) requires that not less than ten days prior to the beginning of a jury service term the court clerk "summon the persons . . . on the term jury list" by sending them a subpoena for service. A juror's service term is usually ten days but may be as long as two months (see ORS 10.105).

Once subpoenaed, a potential juror must complete her service unless she can obtain an excuse or a deferral. ORS 10.050 requires a judge or clerk to excuse a person from jury service if the person can show "undue hardship or extreme inconvenience" and ORS 10.055 authorizes a court to defer a person's service, for good cause, to a later jury term within one year. ORS 10.050 allows courts to accept and grant requests for an excuse over the phone or through the mail. Some courts have limited phone requests to deferrals.

If a person subpoenaed for jury service fails to respond or attend as required, ORS 10.990 mandates that a judge order the person to appear and explain why she failed to respond or attend. If the person then fails to appear as required by the order, or appears and fails to provide an adequate explanation, the judge may punish the person for contempt.

The Problem: An Atmosphere of Leniency. The problem, simply put, is that Oregon courts have created an atmosphere of noncompliance or leniency regarding jury service. In its final report, the Task Force concluded that the courts excuse "[j]urors . . . too readily . . . for reasons that are not legitimate," and that "some of those sent subpoenas do not respond at all." Empirical data gathered by the Multnomah Bar Association (MBA) Jury Pool Selection Subcommittee for its 1993 Jury Pool Report corroborates these conclusions. For example, in 1992, 57 percent of those subpoenaed for jury service in Multnomah County requested and received an excuse or deferral and 13 percent failed to respond at all. In Washington County, the 1993 figures are similar (60 and 10 percent). In each example, the combined percentages show that over half of those persons originally subpoenaed for jury service are, on average, eliminated from the jury pool even before they get to the courthouse. As highlighted by the Task Force, only a small percentage of those summoned actually appeared for service.

Because Oregon's master list is inclusive yet juries remain unrepresentative, such hemorrhaging contributes in a direct way to the lack of community representation on juries. Consequently, courts need to heighten the care with which they administer the summons process. In so doing, the courts will create an atmosphere of compliance regarding jury service and cause the public to seek excuses and deferrals only when absolutely necessary. And the overall quality of juries will improve!

Task Force Recommendations 7-5 and 7-6. The Task Force recommended two improvements to the summons process by encouraging the development of guidelines for stricter enforcement of excuse and deferral rules (making excuses the exception, not the rule) and the implementation of a follow-up procedure to contact jurors who do not respond to the subpoena.

The Implementation Status. The Implementation Committee (IC) met with the Chief Justice and the State Court Administrator to review the summons process and recommendations 7-5 and 7-6 and reviewed the MBA's 1993 Jury Pool Report and other relevant literature. The IC learned that the Chief Justice and the SCA agreed with recommendations 7-5 and 7-6 but considered improvements to the juror experience as the highest priority. The SCA noted that although she reviewed the Task Force Report with all trial court administrators and received broad support for an improved summons process, the improvements called for by recommendations 7-5 and 7-6 would require significant additional resources (money and people). Recognizing the lack of available resources, the SCA concluded that funding and staff time should go first to improving the juror experience because it is her opinion that increased juror compensation, child care expenses and shortened jury terms would do more to improve the representativeness of juries than a stricter summons process.

- ***Implementation Committee Proposal 6.1.*** The IC agreed with the SCA's conclusion. Notwithstanding, the IC proposes an inexpensive improvement to the summons process: send the public a message of compliance regarding jury service. An example of a comparatively inexpensive and effective juror summons process that operates from a perspective of compliance is that used by Clackamas County. It limits all phone requests to deferrals and encourages court staff to dissuade potential jurors from seeking excuses. According to the MBAs 1993 Jury Pool Report, Clackamas County's excuse and deferral rate was 44 percent. A percentage that is still too high, but lower than many other counties.

  In contrast, Multnomah County's excuse and deferral rate was 57 percent. Its clerks reported at page 4 in the MBA's 1993 Jury Pool Report that "they [were] not forcing people to serve." Further, although Multnomah County court requires documentary support for most excuses (e.g., medical) and discourages the granting of excuses over the telephone, the court has authorized clerks to grant such requests by phone. The IC recognizes that this policy may be necessary due to the large volume of jurors processed by Multnomah County. However, when the policy is viewed in light of the 57 percent excuse and deferral rate, the conclusion is inescapable that it creates an atmosphere of noncompliance regarding jury service and thereby contributes to the higher excuse and deferral rates.

  Research in jurisdictions with strict excuse and deferral policies and follow-up procedures showed that these jurisdictions compiled jury pools closely resembling the number and characteristics of persons on their master source lists. The IC believes Oregon courts can inexpensively

achieve a similar result by changing the message sent to the public. The elimination of excuses and deferrals from the jury pool process, within prevailing financial and other resource constraints, will help ensure that more minorities at least make it to the courthouse.

Related Task Force recommendations: R 7-5 and 7-6

THE JURY EXPERIENCE—JURY SERVICE SHOULD BE EASIER AND MORE REWARDING

- **Length of Jury Service**
- **Juror Compensation**

The jury experience is an important issue relating to jury representativeness because it has the potential to affect the interest level of people within the community in serving on juries. If the experience is known to be boring, disruptive and economically unrewarding, people will attempt to avoid serving. In Oregon's trial system, many potential jurors avoid jury service by requesting excuses and deferrals or not responding to a subpoena at all. For example, the MBA 1993 Jury Pool Report found that in Multnomah County only 13 percent of those summoned for service actually appeared. The report also found that of those appearing for service, many were dissatisfied. These persons most often claimed boredom as the reason for their dissatisfaction. The high percentages of persons seeking excuses for untenable reasons and not responding to a subpoena at all likely is related to the jury experience because, as the Task Force wrote, the unsatisfying jury experience is "no doubt communicated to other potential jurors in the community."

To improve the jury experience, and build upon the research done by the Multnomah Bar Association, the Task Force identified two aspects of jury service that needed attention: (1) juror compensation (including child care expenses); and (2) the use of a juror's time while waiting for trial. The Task Force also recommended communicating to the public the importance of jury service as a means to motivate service. To this end, it recommended that the juror orientation include such a message and that a related public relations campaign be implemented.

LENGTH OF JURY SERVICE

ORS 10.105 limits jury service terms to ten days or those necessary to complete a trial; however, a subpoena for jury duty does not guarantee that the person will serve in a trial. A person may complete her term of service in the jury pool room awaiting trial or might appear for service, be assigned to a short trial and complete her term on the same day. Although the shorter terms are possible and at times do occur, it is the long waiting periods that contribute to juror dissatisfaction. The MBA 1993 Jury Pool Report accordingly concluded that "a large potion of juror dissatisfaction [could] be attributed to the current service term."

Task Force Recommendation 7-3. In an effort to shorten jury terms, the Task Force recommended that the Chief Justice, the State Court Administrator, presiding judges and trial court administrators implement the one-trial/one-day system wherever practicable.

- ***One-trial/One-day Jury Service.*** The one-trial/one-day system describes a practice in which a juror reports for a jury service term of one trial or one day. In other words, if a potential juror appears and is selected for trial that day, she must complete the trial to satisfy her service duty; however, if she is not selected for trial that day, at the day's end she has satisfied her jury service obligation. The one-trial/one-day practice lessens the burden and boredom associated with jury service because the most a person will have to wait for trial is a single day. The lowered burden translates into a more satisfying experience for the potential juror. And an improved jury experience will result in fewer excuses and absences.

The Implementation Status. Marion and Multnomah County courts are planning to change their jury service process to the one-trial/one-day system. Marion County is developing an implementation strategy and hopes to begin operating the new system in the early part of 1996. Multnomah County implemented a one-trial/one-day system in October of 1995. Further, the State Court Administrator encourages all courts similarly to implement a one-trial/one-day system and will assist any court that wishes to do so.

JUROR COMPENSATION

ORS 10.060 sets the compensation amount for jurors at $10.00 per day served. In addition, ORS 10.065 provides jurors $.08 per mile for travel to and from the courthouse. ORS 10.060(2) also authorizes counties to pay more than $10.00 per day and the $.08 mileage reimbursement; however, few counties can afford to pay higher amounts. Although designed not to replace working income, but rather to cover out of pocket expenses attributable to jury service, the compensation provided jurors hardly meets such needs. Moreover, as noted at page 30 of the MBA 1993 Jury Pool Report, "the compensation for jurors has changed very little over the last 40 years." Consequently, the Task Force concluded that this level of juror compensation was inadequate given inflation and increased travel, parking and child care needs.

Task Force Recommendation 7-4. The Task recommended that ORS 10.060 be amended to increase juror compensation. The Task Force suggested that the increase be combined with other procedural changes (e.g., the one-trial/one-day practice) to use jurors more efficiently and thereby minimize the total cost of an increase in juror compensation.

The Implementation Status. In the 1995 legislative session, the State Court Administrator (SCA) drafted and pursued the passage of Senate Bill (SB) 189. SB 189 would have increased juror compensation to $20.00 per hour, established a minimum $.10 per mile travel reimbursement and mandated the payment of parking fees and child and dependent care expenses. The SCA estimated that the increases would have required an additional $2.5 million in the 1995-97 biennium. The Senate Judiciary Committee provided the bill a public hearing and work session. The Committee approved an amended bill with a "do pass" recommendation and subsequently referred it the Joint Ways and Means Committee due to the associated fiscal impact. However, SB 189 died in Ways and Means.

- ***Implementation Committee Proposal 6.2.*** Based on discussions with several trial court administrators and the SCA and an independent review of relevant literature, the IC concludes that an

increase in juror compensation and the provision of child and dependent care expenses is an important step toward addressing the jury representativeness issue. Accordingly, the IC proposes that interested parties should work with the SCA to continue to pursue legislative amendments to ORS 10.060 to increase juror compensation and provide for child and dependent care expenses. The IC commends the SCA's ongoing commitment to this end.

Related Task Force recommendations: R 7-3 and 7-4

A PUBLIC EDUCATION EFFORT REGARDING JURY SERVICE—MOTIVATING SERVICE

The Task Force concluded that not only were many jurors dissatisfied with jury service but also that the public possessed a negative attitude toward jury duty. As noted above, the Task Force found that long service terms, inefficient use of jurors and inadequate compensation for jury service (including a failure to pay for child and dependent care expenses) contributed to the negative attitudes. The Task Force developed recommendations to address these concerns and, as the above sections illustrate, changes are being made. However, to get the message of change to the public, as well as the general message regarding the importance jury service, a public education effort is needed.

Recommendation 7-7. The Task Force accordingly recommended that the Oregon State Bar, in cooperation with the Office of the State Court Administrator, lead an intensive public relations campaign regarding the importance of jury service, the logistical concerns associated with serving as a juror and the fact that employers may not retaliate against an employee who takes time off to serve on a jury.

The Implementation Status. In January 1995, the Oregon State Bar Board of Governors asked the bar's Public Service & Information (PS&I) Committee to develop an implementation plan for a statewide public education campaign regarding the importance of, and administrative concerns associated with, jury service. In February 1995, the PS&I Committee developed a preliminary plan. The core of the PS&I Committee's public education campaign strategy would be to distribute more widely the bar's "Handbook for Jurors." The PS&I Committee suggested that the booklet be distributed at Department of Motor Vehicles offices and by other resource groups. The Committee noted that wider distribution would require additional resources and was awaiting a funding decision.

- ***Implementation Committee Proposal 6.3—A Short Public Service Announcement for Radio.*** The Implementation Committee (IC) commends the PS&I Committee's efforts and encourages the allocation of sufficient funds to implement the distribution strategy. Additionally, the IC proposes that the SCA work with the PS&I Committee to develop a short public service announcement for public broadcasting and local radio stations, including minority-focused stations. The IC believes such an effort effectively will disseminate jury service information to minorities because broadcasted information would reach a large audience and the method of communication would merge with an ongoing activity (i.e., listening to the radio), rather than require an additional task (i.e., reading a booklet).

The IC also encourages Multnomah and Marion counties, because they are implementing one-trial/one-day jury term practices, to implement recommendation H of the MBA 1993 Jury Pool Report. Recommendation H suggests that Multnomah County hold a press conference regarding changes made to the jury service process, prepare a brochure explaining the changes for inclusion in the Voters' Pamphlet and mail the brochure to all large employers.

Related Task Force recommendation: 7-7

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
7-1	Pursuant to ORS 10.215(1), the Chief Justice should increase the number of minorities on the source list and implement changes permissible under existing law.	• IC discussed with the Chief Justice and the SCA, independently reviewed the source list issue and determined that implementation was not necessary because the lack of minority representation on juries more directly related to the summons process and juror experience.
7-2	The 1995 Legislative Assembly should consider legislation to change the method of selecting persons to be included in the "source list" for possible jury service in order to include more minorities in the jury pool.	• See R 7-1 above.
7-3	The Chief Justice, presiding judges, State Court Administrator and trial court administrators should shorten jury terms and implement one-trial/one-day practices wherever practicable.	• Multnomah and Marion County Courts will implement one-trial/one-day practices in October 1995 and early 1996 respectively. • SCA encourages all trial courts to implement similar system and will provide assistance.
7-4	ORS 10.060 should be amended to increase juror compensation.	• SB 189 (not enacted).
7-5	The Judicial Department should promulgate guidelines for stricter enforcement of excuse and deferral rules. Excuses should be the exception not the rule and if granted, service should be deferred rather than excused altogether.	• The IC reviewed the summons process and recommended improvements with the Chief Justice and the SCA and concluded that while a stricter process is necessary, improvements to the juror experience took priority. • The IC also proposed that trial courts inexpensively tighten the summons process by sending the public a message of compliance.
7-6	The State Court Administrator or trial court administrators should implement a follow-up procedure to contact jurors who do not respond to the subpoena.	• See R 7-5 above.
7-7	The Oregon State Bar, in cooperation with the State Court Administrator, should lead an intensive public relations and education effort regarding the importance of jury service.	• In February 1995, the OSB's Public Service & Information Committee developed an implementation strategy that emphasized wider distribution of its "Handbook for Jurors." • The IC proposes the development of a short public service announcement for radio and that Marion and Multnomah counties implement recommendation H of the MBA 1993 Jury Pool Report.

JURY SELECTION

This section addresses the other half of the effort to compose unbiased and representative juries: jury selection. The Task Force found that despite the goal of the jury pool and selection process, it does not always produce ideal juries. In some cases biased individuals find their way to final juries and in others, lawyers improperly remove potential jurors solely on account of race. The Task Force accordingly recommended five procedural improvements to the process designed to help identify and remove potentially biased jurors and to limit the improper removal of jurors. The recommendations and related implementation efforts are described below.

THE JUROR'S DUTY TO DISCLOSE BIAS

- **Juror Orientation**
- **Voir Dire**

It is axiomatic to note that potential jurors must honestly and completely respond to questions during jury selection in order for the lawyers to be able to identify and remove biased jurors. But more subtle than that is the duty of potential jurors to disclose racial bias. If bias exists on a subconscious level, it may go unnoticed by not only the lawyer, but even the juror herself. Consequently, courts need specifically to remind potential jurors of their disclosure obligation. Also, as overseers of the trial process, judges have an obligation to be on guard for potentially biased jurors in case attorneys fail to identify the biased person. The Task Force made two recommendations designed to communicate specifically the importance and obligation of jurors to disclose racial bias during jury selection and one that highlighted the judge's important oversight role.

JUROR ORIENTATION

When potential jurors arrive at the courthouse to begin their jury service term, they are directed to the jury pool waiting room. Although the specific components vary among counties, all courts provide potential jurors a jury service orientation at this time. The orientation is designed to inform potential jurors what jury service will be like and what the court expects of them. For many of the persons, jury service is their first experience with the court system. Consequently, the time presents a unique opportunity to acquaint potential jurors with their duty to disclose racial bias during jury selection, to the importance of their role as the triers of fact and to the necessity that they serve in an unbiased manner.

Task Force Recommendation 7-8. The Task Force recognized the unique opportunity jury service orientation presented and accordingly recommended that all potential jurors receive an orientation that included a statement on why it is essential to disclose personal biases based on race.

The Implementation Status. Jury service orientation usually involves three parts: (1) a brief orientation by a court staff person; (2) the Oregon State Bar's "Handbook for Jurors"; and (3) the State Court Administrator's juror orientation video presentation. In Multnomah County, Judge Robert P. Jones also speaks to the potential jurors about the importance of jury service in the judicial system. Below, the IC describes the three processes and makes a related proposal.

- ***Oral Orientation.*** The oral orientation provides potential jurors an overview of the logistical concerns related to jury service. For example, information ranging from when to call-in to where to park is included. This orientation generally does not include a statement on the importance of disclosing racial bias.

- ***The Oregon State Bar's "Handbook for Jurors."*** The Oregon State Bar provides the booklet to all courthouses. The courthouses make it available to all potential jurors. The 15-page booklet is written at a thirteenth-grade reading level and describes the importance and experience of, and some of the laws and processes related to, jury service. It contains no explicit statement regarding the need to disclose racial bias.

- ***The State Court Administrator's Juror Orientation Videotape.*** In 1988, the Office of the State Court Administrator produced the videotape for courts to use to orient prospective jurors. The tape is 18 minutes long, opens with a statement by Oregon Supreme Court Chief Justice Wallace P. Carson, Jr. and describes the jury process. The tapes discusses the importance of jury service but does not contain a succinct statement regarding the necessity of disclosing racial bias. It is close-captioned for the hearing impaired.

Implementation Committee Proposal 6.4 and 6.5. After a review of the orientation processes, the Implementation Committee (IC) concluded that the oral orientation was effective and well suited to its purpose: logistical information. The IC also found that although the bar's "Handbook for Jurors" contained important information regarding jury service and provided a useful information resource for potential jurors, it lacked a specific reference to a juror's duty to disclose racial bias and was written at a very high reading level—thirteenth grade. The IC concluded that the high reading level likely limited the effective dissemination of the booklet's information and contributed to, as noted by the MBA 1993 Jury Pool Report at page 28, "jurors glanc[ing] at the pamphlet disinterestedly." Finally, the IC concluded that the videotape was an excellent overview of the jury process, its importance and what the juror can expect. The IC commends the fact that it is close-captioned. However, the IC also concluded that the videotape insufficiently informed potential jurors about the importance of disclosing racial bias. The IC proposes the following action regarding the three items:

- ***Oral Orientation.*** No changes needed.

- ***"Handbook for Jurors" (IC Proposal 6.4).*** The IC proposes that the bar's Public Service & Information Committee rewrite the booklet 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 IC also recommends that the revised version 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 and 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.

- ***The SCA's Video Orientation—Postpone Update (IC Proposal 6.4).*** The IC proposes that the SCA update the tape to include a specific statement on a juror's duty to disclose racial bias when the current Chief Justice retires, so the tape's introduction will need to be redone. The

statement could be a part of the Chief Justice's opening remarks. The IC proposes that changes to the videotape be postponed because the current tape is very well done, producing a new videotape or splicing an additional segment into the current one would incur significant costs and a different communication mechanism could be used to inform potential jurors on the importance of disclosing bias during voir dire: the juror oath. Consequently, in lieu of producing a new tape, or splicing into the current one, the IC recommends that the juror oath on voir dire include a statement regarding the necessity and importance of disclosing any racial bias during questioning. This proposal will be discussed more fully in the next section.

VOIR DIRE

An important part of jury selection is the voir dire process. Voir dire describes the process of selecting the jurors who will actually hear the case. The process involves a group of randomly selected potential jurors from the jury pool called a jury panel. From this panel, twelve or six (depending on the type of case) jurors are chosen. During voir dire, lawyers and judges ask potential jurors questions to determine the appropriateness of their sitting on the jury. Prior to answering questions, the clerk administers an oath in which jurors swear to answer truthfully. The judge also has discretion throughout the process to question potential jurors regarding their ability to effectively serve as jurors. Once the questioning and removal process is complete, the remaining jurors compose the jury panel that will hear the case.

Task Force Recommendations 7-9 and 7-10. Because voir dire is but one step away from trial, it presents two unique opportunities to help prevent racially biased persons from serving on final juries: (1) the lawyers' procedural right to question and remove potential jurors; and (2) the judge's discretion to examine them independently. As noted above, in order for the question and removal process to work effectively, jurors must answer questions honestly and disclose personal bias. Accordingly, the Task Force recommended that the juror oath contain a succinct statement, in addition to the general duty to answer truthfully all questions, regarding the obligation to disclose racial bias during voir dire and the duty to try the case free of bias. The Task Force also recommended that trial court judges, in their discretion or at the request of a party, conduct an initial voir dire to determine if any of the potential jurors are racially biased. In this section, the report discusses these two recommendations. Two recommendations addressing the rules of procedure governing jury selection are discussed in the next section.

The Implementation Status. All trial courts administer an oath to potential jurors on voir dire; however, as noted by the Task Force, none includes a succinct statement regarding the duty to disclose racial bias. Further, the substance of the oath seems to be guided by custom rather than rule. Indeed, the Implementation Committee (IC) reviewed the relevant laws and administrative rules governing court procedure and found no discussion of the juror oath on voir dire. In fact, the IC found that only the *Oregon Judges Criminal Benchbook* (1987) at page 9-2 mentioned the oath. In contrast, Rule 57E of the Oregon Rules of Civil Procedure prescribes the timing and substance of the oath given to the final jury panel. The IC was troubled by the absence of any formal guidance regarding the juror oath on voir dire and accordingly concluded that a similar procedural rule

should be developed that governs the substance and timing of this oath. The content and location of the proposed rule is discussed below.

Regarding an independent voir dire by judges, the IC notes that judges presently have this authority. Further, the IC appreciates the need for this power to remain flexible and within the court's discretion. Accordingly, the IC supports the flexibility and discretion inherent in the current system and encourages judges to be on guard for potentially biased jurors and to exercise their authority to question independently these jurors to determine if they harbor any racial prejudice.

- ***Implementation Committee Proposal 6.6.*** The IC proposes that the Chief Justice 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?

  It is important to note that precedent exists for the regulation of the substance of other oaths. As noted above, ORCP 57 E regulates the oath given to the final jurors and UTCR 3.080 addresses the swearing-in of witnesses. ORS 9.250 governs the oath for new attorneys. ORS 1.300(7) prescribes the oath a senior judge must take and ORS 1.635(2) governs the oath to which a pro tempore judge must subscribe.

Related Task Force recommendations: R 7-8, 7-9 and 7-10

THE JURY SELECTION PROCESS—THE OREGON RULES OF CIVIL PROCEDURE

- **Senate Bill 868—Challenges for Cause**
- **Senate Bill 869—Peremptory Challenges**

During the voir dire process, lawyers can use two procedural tools to remove potential jurors from the panel who, in the lawyers' opinion, would be unable to try the case impartially: (1) a removal for cause; and (2) a peremptory challenge. When exercising a challenge for cause, the lawyer must state the reasons why she wishes to remove a potential juror from the panel. The judge then decides whether to grant the challenge. In contrast, the exercise of a peremptory challenge requires no explanation. The Task Force recommended an improvement to each process.

CHALLENGE FOR CAUSE

The Task Force heard testimony indicating that racial bias had played a decisive role in jury determinations and that jurors felt discouraged from reporting such bias to the court because they believed

nothing would be done. Further, the Task Force found that although Oregon law makes it difficult to determine whether bias played a role in jury deliberations, the law represented sound public policy. The Task Force also concluded, however, that the recent Oregon Supreme Court decision in *Erstgaard v. Beard*, 310 Or 486, 800 P2d 759 (1990) presented a more troubling dilemma. The court held that a juror's statements of bias during deliberations could not, without more evidence, be the basis for setting aside the resulting verdict. The decision in *Erstgaard* foreclosed any remedy for a jury decision tainted by evidence of racial bias. Consequently, the Task Force concluded that the lawyers should be able to use statements made by potential jurors suggesting racial prejudice to support that juror's removal from the jury panel. The Task Force concluded that such a tool would effectively limit biased persons from serving as jurors.

Task Force Recommendation 7-11. The Task Force accordingly recommended that the legislature amend ORCP 57 D to establish a specific, actual cause to challenge a juror based on any statement made by the prospective juror that showed prejudice on part of the juror based on race or ethnicity.

The Implementation Status—Senate Bill 868. The Implementation Committee (IC), the Oregon State Bar, the Department of Justice and the State Court Administrator jointly drafted Senate Bill (SB) 868 to implement recommendation 7-11 and accordingly amend ORCP 57 D. SB 868 establishes a specific, actual cause to challenge a juror based on any statement made by the prospective juror that shows prejudice based on race, ethnicity or sex. In so doing, it will prohibit racially biased jurors, and jurors harboring prejudice on the basis of sex, from serving on juries in the first place and thereby safeguard the deliberative process from being corrupted by racial or gender prejudice.

In April 1995, the Senate Judiciary provided the bill a public hearing and work session. The committee approved an amended bill—gender bias was added—and sent it to the Senate floor with a "do pass" recommendation. The Senate unanimously approved the bill. The House Judiciary Committee then provided the bill a public hearing and work session, ultimately approving the bill and sending it to the House floor with a "do pass" recommendation. The House also unanimously approved SB 868. On July 19, 1995, Governor John Kitzhaber signed the bill into law. The new law became effective on September 9, 1995.

PEREMPTORY CHALLENGES

At the Task Force hearings, many minorities testified that they perceived the judicial process as unfair because juries did not contain minority persons. The Task Force also received survey responses indicating a perception among those working in the judicial system that lawyers used the jury selection process to remove minorities from juries. The procedure used in jury selection most susceptible to abuse of this nature is the peremptory challenge because it allows lawyers to remove potential jurors without stating a reason for the removal. The Task Force stated that the use of peremptory challenges solely on the basis race or ethnicity should not be permitted. The Task Force concluded that safeguarding the peremptory challenge process from the influence of racial bias would ensure that juries are more diverse and that litigants are judged by a jury of their peers.

Task Force Recommendation 7-12. The Task Force accordingly recommended that the Judicial Department propose legislation designed to amend ORCP 57 to prohibit explicitly the use of peremptory challenges solely on the basis of race or ethnicity.

The Implementation Status—Senate Bill 869. The IC, the Oregon State Bar, the Oregon Department of Justice and the State Court Administrator jointly drafted Senate Bill (SB) 869 to implement recommendation 7-12. SB 869, which amended ORCP 57 D, establishes an orderly procedure for parties to question the opposition's use of a peremptory challenge to exclude a prospective juror solely on the basis of the juror's race, ethnicity or sex. SB 869 codifies the rationale of *Batson v. Kentucky*, 476 US 79 (1986), a United States Supreme Court case. In *Batson*, the court held that the Equal Protection Clause of the Fourteenth Amendment forbids a party from challenging prospective jurors solely on account of their race.

In April 1995, the Senate Judiciary provided the bill a public hearing and work session. In a manner similar to the treatment of SB 868, the committee and the Senate unanimously supported an amended SB 869 (amended to include gender bias). The House likewise supported the bill and on July 7, 1995, Governor John Kitzhaber signed the bill into law. The new law became effective on September 9, 1995.

Related Task Force recommendations: R 7-11 and 7-12

IMPLEMENTATION PROGRESS "AT A GLANCE"

Rec. #	Description	Implementation Status
7-8	Every potential juror should receive an orientation (perhaps by videotape) that not only describes the jury process, but that also includes a succinct statement regarding the necessity of revealing bias.	• Courts generally use three orientation tools: * SCA Juror Orientation videotape * Verbal orientation by court clerk * OSB's "Handbook for Jurors" • The IC concluded that while the tools effectively communicated the importance and logistics of jury service, none specifically addressed the necessity of disclosing bias. • The IC proposed that the "Handbook for Jurors" should be rewritten at an eighth-grade reading level and should contain a statement on a juror's duty to disclose bias during voir dire. • The IC also proposed that the SCA postpone the addition of a similar statement to the video until the current Chief Justice retires and his introductory statement will need revision.
7-9	The oath given to potential jurors should include a specific reference to the duty to disclose to the court, during the jury selection process, a juror's racial bias and the duty to decide the case free of bias.	• The IC proposed a rule governing the substance of the juror oath on voir dire be added to chapter six of the Uniform Trial Court Rules.
7-10	Prior to voir dire, when requested by a party or in the court's discretion, a judge should conduct an initial voir dire of potential jurors to determine if any of the potential jurors are racially biased.	• The IC supports the flexibility and discretion inherent in the current system and encourages judges to be aware of potentially biased jurors and exercise their authority to question them if necessary.
7-11	The legislature should amend ORCP 57 D to establish a specific, actual cause to challenge a juror based on any statement made by the prospective juror that showed prejudice on part of the juror based on race or ethnicity.	• Senate Bill 868 (signed by the Governor on July 19, 1995 and became effective on September 9, 1995).
7-12	The Judicial Department should propose legislation designed to amend ORCP 57 to prohibit explicitly the use of peremptory challenges solely on the basis of race or ethnicity.	• Senate Bill 869 (signed by the Governor on July 17, 1995 and became effective on September 9, 1995).