

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.