

RACIAL FAIRNESS
IMPLEMENTATION
TASK FORCE

Action
Plan

Charged with Implementing the Recommendations
of the Ohio Commission on Racial Fairness

September 2002

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Acknowledgments

Members of the Racial Fairness Implementation Task Force would like to thank the Supreme Court of Ohio for its support throughout this process. A special thank you is extended to Keith Bartlett, the Court's staff liaison to the Task Force, who worked to keep the project on track by serving to coordinate the Task Force's efforts. Finally, members of the Task Force recognize the Ohio Common Pleas Judges' Association for providing invaluable assistance and input on the project.

Preface

*“Now is the time to make justice
a reality for all of God’s children.”*

Martin Luther King Jr., Washington, D.C., August, 1963

It has been 39 years since Dr. King’s historic “I Have a Dream” address, and yet many of the dreams he spoke about have yet to be realized. That is why the Ohio Commission on Racial Fairness was created – “to identify racial bias where it exists and propose methods for eliminating it from the legal profession and the justice system.”

After much hard work, the Commission in 1999 issued an 83-page report detailing specific problems and making a series of recommendations to move Ohio toward a system of justice recognized as fair. The Racial Fairness Implementation Task Force was created to develop an action plan to implement those recommendations. This is that Task Force’s action plan.

This report contains verbatim each of the Commission’s recommendations in six specific areas. It then provides the Task Force’s action plan for addressing each recommendation and a brief narrative of why the Task Force decided upon that course of action. For ease of use, there is a reference chart at the end of each chapter with the recommendations and action plans. The Task Force did not see a need to restate the specific research that sparked each Commission recommendation, but that information can be obtained by reading the original report.

As the Task Force went about its work, there were both moments of great encouragement and discouragement. Encouragement came from recognizing that dedicated members of the legal profession in every corner of this state are accomplishing much good. Discouragement came from recognizing that much still needs to be done.

However, the most important theme that emerged from the Task Force’s work is that this action plan can be achieved and its goals accomplished.

It must be made clear that accomplishing these action plans and promoting the fair treatment of citizens is not an issue just for African-Americans, Hispanics, Native Americans and Asian-Americans. It is a critical issue for all Ohioans.

Our nation’s founding fathers had the great wisdom of creating three branches of government that provide the essential balance we must have to maintain our freedom. Our judicial system, however, provides the cornerstone on which all of that rests. And as Daniel Webster said, “Justice is the ligament which holds civilized beings and civilized nations together.”

If a majority of our citizens lose faith in our system of justice, democracy crumbles. It is incumbent upon us to take the steps necessary so that justice does become a reality for all Ohioans.

The Racial Fairness Implementation Task Force

Introduction

In the Spring of 2000, Chief Justice Thomas J. Moyer approached me with the idea of forming a task force to devise a plan to implement the recommendations of the Ohio Commission on Racial Fairness. Established in 1993 by the Ohio Supreme Court in conjunction with the Ohio State Bar Association, the Commission was to study the issue of racial bias — real or perceived — in Ohio's legal profession and justice system. As set forth by the Court and the Bar Association, the Commission had the following charge:

". . . to identify racial bias where it exists and propose methods for eliminating it from the legal profession and the justice system. This will include gathering information about the perception and reality of disparate treatment toward African-Americans, Hispanics, Native Americans and Asian-Americans, and recommending methods of addressing and eliminating those perceptions and realities.

The commission is charged to: (1) study every aspect of the state court system and the legal profession to ascertain the manner in which African-Americans, Hispanics, Native Americans and Asian-Americans are perceived and treated as parties, victims, lawyers, judges and employees; (2) determine public perceptions of fairness or lack of fairness in the judicial system and legal profession; and (3) make recommendations on needed reforms and remedial programs."

(The Report of the Ohio Commission on Racial Fairness, 1999, p. 1)

The 33-member Commission, composed of members of the judiciary, the bar and the community-at-large, parsed the study of racial fairness in the legal system into six discreet areas: (1) judges' and attorneys' perceptions; (2) employment and appointment practices in the courts; (3) jury issues; (4) criminal justice and sentencing; (5) law schools; and (6) interpreter services.

After conducting public hearings throughout the state and engaging in comprehensive research, the Commission issued its report in 1999. In the report, the Commission identified problems within the six defined areas and made recommendations on how to remedy these problems. It is against this backdrop that the Task Force was conceived.

The Task Force, like the Commission, was comprised of members of the

judiciary, lawyers, and lay persons. Each was selected because of his or her diverse professional background, geographical background and commitment to the public weal. Each part of Ohio was represented: urban, suburban, and rural. There were nine men, five women, two Hispanics, seven African-Americans, one Asian-American, and four European-Americans. In selecting the Task Force, the Chief Justice and I wanted it to reflect Ohio's diverse population.

The mandate of the Task Force was to implement the recommendations of the Commission. It was agreed upon from the outset that the Task Force would not question the underlying data supporting the Commission's recommendations, nor would it attempt to revise those recommendations. In effect, the Task Force adopted the Commission's recommendations and used them as the predicate for this Action Plan.

Additionally, the Task Force considered itself an independent body. It was understood that the Task Force, bereft of legislative or rule-making authority, could only devise an Action Plan to submit to the Supreme Court. The Court would then determine whether to implement any facet of the Action Plan.

The Task Force was divided into six subcommittees, each with responsibility for the areas in which the Commission made its recommendations: (1) Judges' and attorneys' perceptions; (2) employment and appointment practices in the courts; (3) jury issues; (4) criminal justice and sentencing; (5) law schools; and (6) interpreter services. Each Task Force member served on at least two subcommittees. Over the course of eighteen months, the subcommittees met and studied the recommendations and devised methods to implement the Commission's recommendations.

The subcommittees gathered information and perspectives not only from other members, but from outside resources as well. Judge Lillian Greene of the Cuyahoga County Court of Common Pleas, for example, served as chairperson of the jury issues subcommittee, and gathered information by consulting with jury commissioners from urban as well as rural counties throughout the state. Diana Ramos-Reardon, chairperson of the interpreter services subcommittee, solicited input from The National Center for State Courts and Ohio Commission on Hispanic/Latino Affairs and some Hispanic lawyers from Northeast Ohio. Karen Frees of the Ohio Judicial Conference attended several meetings and provided valuable input from her perspective as the Assistant Director of Community Outreach for the Ohio Judicial

Conference. A number of Supreme Court staff members provided valuable insights from the administrative side of the Supreme Court and, equally importantly, one of our own Task Force members, Tom Bonasera, bridged the gap between the Commission and the Task Force, as he was one of the Commission members who wrote the underlying Report.

The Task Force itself met bimonthly over the course of eighteen months. At our meetings, the subcommittees would report their preliminary ideas and suggestions, and the members of the Task Force would critique, revise, and modify the suggestions until we came to a consensus as to a workable plan.

At the completion of the subcommittees' action plans, and the adoption of those plans by the Task Force, the Task Force prepared a draft Action Plan that was submitted to Chief Justice Moyer. The Task Force also received input and comments from Judge Margaret Weaver of the Sandusky County Common Pleas Court, then president of the Ohio Common Pleas Judges' Association.

In fact, one of our members, Dean Richard Aynes, participated in a seminar discussion and panel discussion before the annual meeting of the judges' association to address some of the issues that were raised in the Commission's report and to discuss ideas under consideration by the Task Force. In formulating its Action Plan, the Task Force received written comments from the Judges' Association and, as the judiciary is pivotal in the justice system and was a key feature in the Commission's findings, their comments were of great import to the Task Force in formulating its Action Plan.

The Action Plan that the Task Force has developed for the Supreme Court to act upon is, we hope and believe, the most effective and most efficient means to implement the Commission's recommendations. The Task Force is aware that not every aspect of the Action Plan will meet with universal acceptance, just as the Commission's report was not without its critics. What those who read this Action Plan must bear in mind is that the Commission's findings represent others' perceptions and, in some cases, their realities of the legal profession – perceptions and realities difficult for many of us who are in the legal profession to fathom. While there may not be a consensus about the validity of those realities and perceptions, we are duty bound to address them, and, when necessary, to take affirmative steps to change them. We believe this Action Plan is another affirmative step in that direction.

-Judge Algenon Marbley, Chair

CHAPTER 1

Judges' and Attorneys' Perceptions

Judges' and Attorneys' Perceptions

I. INTRODUCTION

The Ohio Commission on Racial Fairness surveyed 436 judges and 2,339 attorneys in Ohio as to their perceptions of racial bias in the legal profession, career advancement opportunities and treatment in the courtroom environment (the report of the Ohio Commission on Racial Fairness, pg. 14 -15).

The Commission also reported the results of similar commissions in other jurisdictions. The Commission reported "an enormous chasm" between the perceptions of the majority community and the perceptions of various minority communities as to fairness in Ohio's courts, law schools and legal employment opportunities.

As a result of its surveys, public hearings and other studies, the Commission made recommendations in connection with the judiciary and attorneys "designed to lead to a better use of our human resources and an increased perception that the legal system is fair to all." (Ibid, pg.13)

Under the chapter titled "Judges' and Attorneys' Perceptions," the Commission made six recommendations. Several of these have already been accomplished. First, the Commission recommended that the Supreme Court establish an implementation task force to implement the Commission's recommendations to eradicate racial bias problems in the legal profession and in the courts. Chief Justice Thomas Moyer appointed such a body composed of lawyers, judges, a law school dean and lay citizens. The Racial Fairness Implementation Task Force was appointed in July 2000. Following the Commission's divisions of its recommendations, the Task Force worked in subcommittees to develop implementation plans.

A second of the Commission's recommendations was also acted on by the Supreme Court in March 2001 when the Court modified its attorney registration form to include racial and ethnic status. Deemed unnecessary by the Task Force in light of existing Disciplinary Rule 1-102(B)¹ was the recommendation to revise the Code of Professional Responsibility to avoid discrimination based upon race, gender, religion, national origin, disability, age, sexual orientation or economic status.

¹Disciplinary Rule 1-102 (B) reads: A lawyer should not engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability. This prohibition does not apply to a lawyer's confidential communication to a client or preclude legitimate advocacy where race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability is relevant to the proceeding where the advocacy is made.

These actions represent important steps. The balance of the recommendations in this chapter calls for major commitments of time and resources from judges and attorneys. The heart of the efforts to reduce the perception of racial bias in the courts and in employment is contained in recommendations three and five, where the Commission called for the development of more effective working relationships among courts, bar associations and minority attorneys, and urged the adoption of an anti-racism component for continuing legal education for judges and attorneys.

While implementation of these recommendations will require change and the expenditure of limited time and resources, it is critical to ensuring justice for all who enter or work within the system. In its recommendations, the Task Force considered the issue of racial fairness to be as important as those of ethics, professionalism and substance abuse, which are the subject of current mandatory continuing legal education.

II. TASK FORCE ACTION PLAN

A. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should establish an implementation task force on racial bias in the legal profession to consider and implement recommendations suggested in this report, as well as other methods to eradicate racial bias problems in the legal profession and courts.*

TASK FORCE ACTION PLAN: Chief Justice Thomas Moyer accomplished this through the appointment of the Racial Fairness Implementation Task Force in July 2000.

Discussion: The work of the Ohio Commission on Racial Fairness was a landmark accomplishment for the judicial system in Ohio. As noted in its report, other states had undertaken similar exercises but the Commission study, including the series of public hearings held across the state, broke new ground in Ohio by providing a focused look at what the Commission called the "enormous chasm between the perception of our state's majority and minority communities on this issue."

Likewise, the Supreme Court's decision to establish an implementation task force on racial bias in the legal profession was historic. Chief Justice Moyer appointed a diverse group of people from within the legal community and from outside the legal community to recommend steps that could be taken to move Ohio toward a justice system that not only treats all citizens fairly but does so in a way that all Ohioans believe that justice is fairly dispensed.

B. COMMISSION RECOMMENDATION: *The Supreme Court should revise the Code of Professional Responsibility similarly to the Code of Judicial Conduct, specifically Canon 3(B)(5) and (6).*

TASK FORCE ACTION PLAN: **The Task Force believes that existing Disciplinary Rule 1-102 (B) is sufficient to accomplish the purpose.**

Discussion: The Task Force wholeheartedly agrees that it is the responsibility of attorneys and judges to avoid all behavior that tends to denigrate public respect and confidence in the legal system, including avoiding discriminatory conduct on the basis of any person's race, gender, religion, national origin, disability, age, sexual orientation or economic status.

While the Commission suggested the Code of Professional Responsibility be revised to provide a more formal means of receiving complaints and investigating and disciplining judges and attorneys who engage in racially biased language or behavior, the Task Force determined that it is not necessary to add additional regulations and resulting paperwork to the process.

The current Code of Professional Responsibility is designed to give the Supreme Court of Ohio the clear authority to take action in instances where attorneys act in such a way that is unbecoming to the legal profession. Certainly, actions that show evidence of racial bias are unbecoming to the legal profession and fall within the current purview of the Supreme Court of Ohio.

C. COMMISSION RECOMMENDATION: *Bar associations and the Court should develop more effective working relationships with minority attorneys, such as: (1) joint minority and bar association career related activities; (2) joint sponsorship of a centralized placement service targeting the recruitment of minority attorneys in private industry, government, firms, non-profit organizations and law schools; and (3) the availability of recruitment and job placement information on the OSBA web site and in other professional media and publication networks. Various bar associations, local and state clerkship and mentoring programs should continue.*

TASK FORCE ACTION PLAN: **The numerous efforts of bar associations and private organizations in metropolitan areas should continue. The state bar association should continue its leadership role in this area. The Task Force believes this could be expanded so that each bar district could have its own programs on diversity.**

Discussion: A great deal of progress has been made in certain cities across the state, but efforts need to be intensified to see that the number of minorities working in the legal profession increases all across Ohio. While the goal is easy to understand and is one that receives widespread support across the legal profession, identifying and implementing concrete action items can prove difficult. This is especially true in the many rural areas of our state, which might have a low number of minority residents and which, in turn, may find it difficult to recruit and retain minorities in any particular profession.

Bar associations, state and local, have done much to further the goals of this recommendation. For example, the Columbus Bar Association in May 2001 issued the final report and action plan of the Columbus Managing Partners' Diversity Initiative. The Columbus Bar Association developed the plan with the John Mercer Langston Bar Association (an African-American association), representatives of 20 local law firms and leaders of The Ohio State University College of Law and the Capital University Law School. The plan sets forth clear objectives and action steps to increase diversity within the ranks of the legal profession, law schools and law firms within Central Ohio.

One example of the Cincinnati Bar Association's effort is the Greater Cincinnati Minority Counsel Program, which the bar co-sponsors to increase opportunities for minority attorneys in corporate legal work. The program is modeled after the American Bar Association's Minority Counsel Demonstration Program and has gained support from the corporate community, majority law firms, minority law firms and public sector organizations.

The Dayton Bar Association continues its efforts with its Conversation on Race seminars, which are meant to bring together a diverse group of individuals to discuss issues of race and diversity in the legal profession. The 2001 seminars focused on the legal community's hiring of African-American lawyers and non-lawyers.

The Ohio State Bar Association sponsored its first Open Doors Conference on Feb. 22, 2000, and invited leaders from law schools, law firms, bar associations, government groups and corporations to attend. The conference developed a number of initiatives for the bar association, including a policy on racial and ethnic diversity and a committee to encourage new initiatives designed to promote full and equal participation of racial and ethnic minorities in the legal profession. The committee will be chaired each year by the president-elect of the bar association.

The Akron Bar Association has sponsored a minority summer clerkship program to place minority students in major firms, the courts of Common Pleas and the Akron Law Director's Office. The Akron Bar has participated in the award-winning "Coming Together Project," sponsored by the Akron Beacon Journal, in which lawyers of different races were paired for a year of professional and social events, the latter involving their entire families. Additionally, the Akron Bar offers continuing legal education relating to diversity and sponsors a weekly lunch brown bag program on diversity for students at the Akron Law School.

Like other metropolitan bar associations, the Toledo Bar Association sponsors a minority clerkship program. With the assistance of the Toledo College of Law, this program places minority students with participating law firms and employers in legal clerkship positions. Additionally, the bar association's Lawyer's Roundtable supports long-range goals and programs related to diversity issues.

The Task Force applauds bar associations' and other groups' efforts to develop programs to increase diversity in the legal profession. The Task Force believes that increased cooperation and coordination among bar associations and other professional organizations hold great promise. Joint ventures, perhaps organized along the line of OSBA districts, could provide necessary services across the state.

D. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should include in the attorney registration materials questions soliciting information on ethnic status.*

TASK FORCE ACTION PLAN: **The Task Force commends the Supreme Court of Ohio for placing on the attorney registration form categories similar to the U.S. Census categories.**

Discussion: In March 2001, the Supreme Court adopted this recommendation and the most recent registration form includes questions about racial and ethnic status. The gathering of such information will provide the data necessary to help determine where progress is being made and where additional action steps need to be taken.

E. COMMISSION RECOMMENDATION: *The Implementation Task Force should develop an anti-racism workshop curriculum that would be implemented by the Ohio Judicial College, OSBA and the Ohio Continuing Legal Education Institute as an annual workshop offered to judges, attorneys and courthouse personnel.*

TASK FORCE ACTION PLAN: The Task Force recommends that two hours of anti-racism/diversity training be added to the continuing legal education requirement for judges and attorneys for each biennial reporting cycle. The total number of hours would not be increased.

Discussion: The Task Force clearly recognizes a need for increased education in this area, but also recognizes that members of the legal profession are already devoting considerable time and energy to continuing education. Therefore, it is the Task Force’s recommendation to add a mandatory component of anti-racism/diversity training while maintaining the same number of total hours.

The Task Force recognizes racial issues – including race-based perceptions – among those factors seriously influencing the legal system’s ability to guarantee justice for all people. As continuing legal education is a widely accepted and utilized resource for improving the system, it makes sense that race issues would be included among other mandatory topics addressed, such as ethics and substance abuse.

F. COMMISSION RECOMMENDATION: *The Supreme Court should conduct a survey of county and appellate court administrators throughout the state to determine the language needs of non-English speaking court participants.*

TASK FORCE ACTION PLAN: This recommendation is addressed under the Interpreter Services chapter.

Judges' and Attorneys' Perceptions

Commission Recommendation	Action Plan
<p>A) The Supreme Court of Ohio should establish an implementation task force on racial bias in the legal profession to consider and implement recommendations suggested in this report, as well as other methods to eradicate racial bias problems in the legal profession and courts.</p>	<p>This recommendation was accomplished with creation of the Task Force.</p>
<p>B) The Supreme Court of Ohio should revise the Code of Professional Responsibility similarly to the Code of Judicial Conduct, specifically Canon 3 (B)(5) and (6).</p>	<p>The Task Force believes that existing Disciplinary Rule 1-102 (B) is sufficient to accomplish the purpose.</p>
<p>C) Bar associations and the Supreme Court of Ohio should develop more effective working relationships with minority attorneys, such as: (1) joint minority and bar association career related activities; (2) joint sponsorship of a centralized placement service targeting the recruitment of minority attorneys in private industry, government, firms, non-profit organizations and law schools; and (3) the availability of recruitment and job placement information on the OSBA web site and in other professional media and publication networks. Various bar associations, local and state clerkship and mentoring programs should continue.</p>	<p>The numerous efforts of bar associations and private organizations in metropolitan areas should continue. The state bar association should continue its leadership role in this area. The Task Force believes this could be expanded so that each bar district could have its own programs on diversity.</p>
<p>D) The Supreme Court of Ohio should include in the attorney registration materials questions soliciting information on ethnic status.</p>	<p>The Task Force commends the Supreme Court of Ohio for placing on the attorney registration form categories similar to the U.S. Census categories.</p>
<p>E) The implementation task force should develop an anti-racism workshop curriculum that would be implemented by the Ohio Judicial College, OSBA and the Ohio Continuing Legal Education Institute as an annual workshop offered to judges, attorneys and courthouse personnel.</p>	<p>The Task Force recommends that two hours of anti-racism/diversity training be added to the continuing legal education requirement for judges and attorneys for each biennial reporting cycle. The total number of hours would not be increased.</p>
<p>F) The Supreme Court of Ohio should conduct a survey of county and appellate court administrators throughout the state to determine the language needs of non-English speaking court participants.</p>	<p>This recommendation is addressed under the Interpreter Services Chapter.</p>

CHAPTER 2

Employment and Appointment Practices in the Courts

Employment and Appointment Practices in the Courts

I. INTRODUCTION

Courts in the United States wield considerable influence and power because our country is built on the foundation of the rule of law. Even if the courts dispense justice in a completely fair manner, the appearance of bias based on the racial composition of the work force and perceived sentencing inequities continue to be problematic.

Though many courts in Ohio have some type of "equal opportunity" policy statement, mere words are generally ineffective in attracting minority employees, addressing the appearance of bias or exhibiting sensitivity to minority persons. The issue is exacerbated by virtue of the fact that court administrators and persons responsible for hiring employees may not recognize that the paucity of minorities employed in the court system is, in fact, a problem. Though quotas are an unacceptable solution, establishing goals for increasing minority employment is a worthwhile objective that has not been generally pursued.

The problems will not be resolved unless there is recognition that the under-representation of minority employees is actually a problem and there is a commitment to address the issue in a comprehensive manner.

II. TASK FORCE ACTION PLAN

A. COMMISSION RECOMMENDATION: *The court system (beginning with the Supreme Court and with its requirements, where appropriate, of lower courts) should recruit, hire and retain increased numbers of minorities in all positions in the court system: appointive, administrative, managerial and professional personnel, especially in middle-and senior-management and policy-making positions.*

TASK FORCE ACTION PLAN: **The Supreme Court of Ohio should develop and issue an equal opportunity policy for dissemination, posting and use by all courts in the state.**

Discussion: The Supreme Court of Ohio should require that all state courts adopt an equal opportunity policy and pledge that it will be used in the employment process.

The Supreme Court of Ohio should appoint a standing committee for the development of a focused recruiting plan for use in geographical areas that have a significant number of minorities.

The Supreme Court of Ohio should advertise for minority employees in major newspapers that are published in the state. Such advertisements should also be placed with media outlets serving minority communities. All courts should report on an annual basis the use of the electronic and printed media in recruiting minority employees.

B. COMMISSION RECOMMENDATION: *The diversity goal-setting plans of managers, and the extent to which their goals are met, should be strongly evaluated in their merit and promotion reviews.*

TASK FORCE ACTION PLAN: Funds should be budgeted for the retention of employment specialists to develop uniform evaluation criteria.

Discussion: The employment specialists would be responsible for developing an appropriate evaluation form that the Supreme Court of Ohio would adopt for utilization by all state courts.

The purpose of this recommendation is to provide a reliable and authentic method for evaluating the efforts of managers to promote diversity in the workplace. Once the evaluation is in place, courts could provide financial and symbolic incentives (e.g., letters of commendation, awards, etc.) for effectively mentoring, developing and managing an ethnically and racially diverse work environment.

C. COMMISSION RECOMMENDATION: *The Supreme Court should, by rule, require that each court within the state complete a written report each year, on a form prescribed by rule, listing statistics on the race and gender of all employees of the court system. The reports should then be compiled, reported and published annually by the Supreme Court.*

TASK FORCE ACTION PLAN: A part of the responsibility of the employment specialists would be the development of the data reporting form and the format for the publication of the annual data.

Discussion: The Supreme Court of Ohio should require by rule the adoption and utilization of the form by all state courts. The data reported on the form would be used in conjunction with other demographic data to determine which courts have the most diversity and which courts are in need of improvement. Specifically, the data would be used by the task force established below in the Task Force Action Plan for Commission Recommendation H.

D. COMMISSION RECOMMENDATION: *The Supreme Court should, by rule, require that all judges and lawyers use their best efforts to guarantee a bias-free workplace.*

TASK FORCE ACTION PLAN: The Task Force recommends the immediate adoption of this recommendation, i.e. the adoption of a rule requiring all judges and lawyers to use their best efforts to guarantee a bias-free workplace.

Discussion: This rule reflects the sentiment expressed in Recommendation A of this chapter – it is time to adopt a policy increasing minority employment and everyone in the legal system must be committed to that goal. Recommendation H, discussed later in this chapter, also reflects that sentiment by calling for the establishment of task forces to see that action is taken.

E. COMMISSION RECOMMENDATION: *The Supreme Court should instruct the Ohio Judicial College to develop an interactive diversity training class required for all employees.*

TASK FORCE ACTION PLAN: The Supreme Court of Ohio should recommend that the Ohio Judicial College develop an interactive diversity training class with the provision that all employees are required to participate during normal work hours.

Discussion: The Task Force recognizes the need for increased education in racial diversity but also acknowledges that employees of the legal system already devote considerable time and energy to their daily work. Therefore, it is the Task Force’s recommendation to add a mandatory component of anti-racism/diversity training during regular work hours.

F. COMMISSION RECOMMENDATION: *The Attorney General should create a position in the attorney general’s office with legal authority and responsibility to bring lawsuits in the name of the state against individuals and state agencies, including law enforcement or court agencies, that engage in discrimination or harassment against minorities.*

TASK FORCE ACTION PLAN: The Task Force agrees with the sentiment expressed by the Commission that greater attention needs to be paid to taking appropriate legal action against individuals and state agencies that engage in discrimination or harassment against minorities.

Discussion: As a matter of law, the Supreme Court of Ohio does not have the authority to require the Attorney General to create such a position as recommended by the Commission. However, the Task Force determined that the existing Civil Rights Division of the Attorney General’s office has the power and authority to reach the desired goal.

G. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio and the Ohio State Bar Association should: (1) increase the representation of minorities among appointees to court boards and commissions to improve the judiciary's ability to relate effectively with culturally diverse groups; (2) assure adequate minority representation on judicial screening and nominating committees; (3) set standards in court appointments and court volunteer programs to more accurately reflect the population to be served; (4) promote minority judges and lawyers into more responsible positions and policy-making assignments and promote the recruitment of minority law clerks, magistrates and judicial system personnel.*

TASK FORCE ACTION PLAN: **These recommendations are all goals that are designed to assure adequate representation on boards, commissions, committees and other important areas within the legal system and should be implemented.**

Discussion: For this recommendation to have real meaning, it should be coordinated with Recommendation C in this chapter, which recommended that employment specialists develop a data reporting form and format for the publication of annual employment data. The reporting form should include data relative to the number and percentage of minorities serving on the various state boards, commissions, judicial screening and nominating committees, and court volunteer programs.

The Supreme Court of Ohio does have appointing authority with regard to certain state boards that are part of the legal/judicial system (e.g. the Board of Bar Examiners, the Ohio Public Defender Commission and the Criminal Sentencing Commission), and the Task Force urges the Court as well as the Ohio State Bar Association and other legal groups to take such action as outlined in the Commission recommendation.

H. COMMISSION RECOMMENDATION: *Each appellate court district should establish a task force on the eradication of racial bias in court employment composed of: judges, attorneys, court administrators and other citizens.*

TASK FORCE ACTION PLAN: **This recommendation should be implemented within the next 12 months.**

Discussion: Under the Rules of Superintendence, the Chief Justice should direct the chief judges of the appellate courts to create task forces. It is this Task Force's expectation that these appellate level task forces will review the data pertaining to the courts in that district as collected in the annual report created in Recommendation C of this chapter.

Employment and Appointment Practices in the Courts

Commission Recommendation

A) The court system (beginning with the Supreme Court and with its requirements, where appropriate, of lower courts) should recruit, hire and retain increased numbers of minorities in all positions in the court system: appointive, administrative, managerial and professional personnel, especially in middle- and senior-management and policy-making positions.

1. The court system should establish policies designed for equal opportunity, recruitment and promotion of minorities.
2. The court system at every level should advertise all employment and court volunteer vacancies widely.
3. The court system should develop a system for adopting performance standards for all of its employees and for the employees of lower courts on the handling of racially, culturally and ethnically sensitive issues.
4. The Supreme Court of Ohio should require all courts to review employment-testing procedures.
5. The court system should provide all employees with formal general management and leadership training to increase the likelihood of their success and promotion.
6. The court system should increase the number of bilingual and multilingual court employees and encourage these employees to be trained in court interpretation.
7. The court system should develop mechanisms to monitor employment opportunities for minorities in the court system.

Action Plan

The Supreme Court of Ohio should develop and issue an equal opportunity policy statement for dissemination, posting and utilization by all courts in the state.

Employment and Appointment Practices in the Courts

Commission Recommendation	Action Plan
<p>B) The diversity goal-setting plans of managers, and the extent to which their goals are met, should be strongly evaluated in their merit and promotion reviews.</p>	<p>The Task Force recommends the immediate adoption of this recommendation. Funds should be budgeted for the retention of employment specialists to develop uniform evaluation criteria.</p>
<p>C) The Supreme Court should, by rule, require that each court within the state complete a written report each year, on a form prescribed by rule, listing statistics on the race and gender of all employees of the court system.</p>	<p>The Task Force recommends the immediate adoption of this recommendation. A part of the responsibility of the employment specialists would be the development of the data reporting form and the format for the publication of the annual data.</p>
<p>D) The Supreme Court of Ohio should, by rule, require that all judges and lawyers use their best efforts to guarantee a bias-free workplace.</p> <ol style="list-style-type: none"> 1. The Code of Judicial Conduct should be amended to create sanctions for tolerating a racially hostile work environment. 2. The Code of Professional Responsibility should be amended to encourage lawyers to recruit, hire, promote and retain minorities. 3. The statistics of the racial composition of each court's employees shall be compiled and published as set forth above. 4. Local bar associations may establish committees to monitor local courtrooms and court offices and to file their reports of observations with the Supreme Court. 	<p>The Task Force recommends the immediate adoption of this recommendation, i.e. the adoption of a rule requiring all judges and lawyers to use their best efforts to guarantee a bias-free workplace.</p> <p>(D, 4) The Task Force recognizes that the Supreme Court of Ohio does not have the authority to order such a step, but believes the Court should work with the bar associations to achieve this goal.</p>
<p>E) The Supreme Court should instruct the Ohio Judicial College to develop an interactive diversity training class required for all court employees.</p>	<p>The Supreme Court should immediately forward instructions to the Ohio Judicial College to develop an interactive diversity training class with the provision that all employees are required to participate during normal work hours.</p>

Employment and Appointment Practices in the Courts

Commission Recommendation	Action Plan
<p>F) The Attorney General should create a position in the Attorney General’s office with legal authority and responsibility to bring lawsuits in the name of the state against individuals and state agencies, including law enforcement or court agencies, that engage in discrimination or harassment against minorities.</p>	<p>The Task Force determined that the existing Civil Rights Division of the Attorney General’s office has the power and authority to reach the desired goal.</p>
<p>G) The Supreme Court of Ohio and the OSBA should:</p> <ol style="list-style-type: none"> 1. Increase the representation of minorities among appointees to court boards and commissions to improve the judiciary’s ability to relate effectively with culturally diverse groups. 2. Assure adequate minority representation on judicial screening and nominating committees. 3. Set standards in court appointments and court volunteer programs to more accurately reflect the population to be served. 4. Promote minority judges and lawyers into more responsible positions. 	<p>These recommendations are all goals that are designed to assure adequate representation on boards, commissions, committees and other important areas within the legal system and should be implemented.</p> <p>This recommendation should be coordinated with the Recommendation C in this chapter.</p>
<p>H) Each appellate court district should establish a task force on the eradication of racial bias in court employment composed of: judges, attorneys, court administrators and other citizens.</p>	<p>This recommendation should be implemented within the next 12 months.</p>

CHAPTER 3

Jury Issues

Jury Issues

I. INTRODUCTION

EDITOR'S NOTE: *Since the Task Force completed its work, the Supreme Court of Ohio has appointed a Task Force on Jury Service. Many issues identified by the Commission and spoken to in the Task Force's Action Plan may also be addressed by this Task Force. This document can serve as a blueprint for their work.*

In its original report (pg. 30), the Commission on Racial Fairness noted that "because the American legal system is based upon peer decision-making, it is imperative that criteria and procedures of jury selection and treatment of juries within the administration of justice be democratic and free from unfair treatment and bias."

When citizens are called for jury service, they are told it is one of the most important duties they can perform and that trial by jury is one of the most valuable American rights. All of us, as judges, attorneys and private citizens, bear the burden to improve the most valued American system and indeed the perception of the system to ensure that all who participate see the playing field as level.

Yet, there is the perception, if not the reality, that this standard is not being met in the state of Ohio. Different racial fairness issues can emerge depending upon widely diverse demographics of the state. The Commission noted that it is entirely possible for a person to be involved in a court action in a part of the state in which they do not reside. This suggests that while sensitivity to differing demographics is important, an appropriate standard of information and education in racial diversity is not only essential but also demanded.

II. TASK FORCE ACTION PLAN

A. COMMISSION RECOMMENDATION: *The sources for jury selection should be further expanded. While currently the source for jurors is the voter registration list, we recommend that driver's license records, state identification records and other appropriate sources also be used as lists of potential jurors.*

TASK FORCE ACTION PLAN: **The Task Force recommends including driver's license records as sources for voter registration lists, and excluding state identification records.**

Discussion: Although both driver's licenses and state identification cards are issued by the state, the Task Force believes state identification cards are more easily obtained with less verifiable information such as residency, age

and identity. The driver's license lists, however, would greatly expand the jury pool's representation and provide greater opportunity for obtaining a cross-section of the community.

B. COMMISSION RECOMMENDATION: *The state law restriction of \$40 maximum compensation a day should be periodically reviewed for fairness and the amount increased where appropriate to meet jurors' economic needs.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio review juror compensation periodically.**

Discussion: The compensation of jurors is established by the board of county commissioners in each of Ohio's 88 counties. Section 2313.34 of the Revised Code sets the maximum compensation for jurors at \$40 per day. This amount was increased in 1998 from \$15 per day at the urging of the Supreme Court.

Although the Task Force is not aware of any empirical data on the subject, anecdotal evidence (such as everyday observations/experiences) suggests that jury service, at least for some of our citizens, can pose a financial hardship. Therefore, the Task Force recommends that the Supreme Court of Ohio periodically review not only the state maximum juror compensation, but also the actual compensation that is paid in the different counties and, if appropriate, urge the General Assembly to increase the statewide maximum.

C. COMMISSION RECOMMENDATION: *Research should be conducted to determine accurately the pattern of minority under-representation in juries in Ohio state courts.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court facilitate research to determine whether and to what extent there is minority under-representation in Ohio state courts.**

Discussion: There is a perceived under-representation of minorities, especially those of low socio-economic status, throughout the United States. More than likely, Ohio experiences similar patterns of under-representation. This is especially true when it comes to poor people of color.

D. COMMISSION RECOMMENDATION: *Research should be conducted concerning the ways in which minority jurors are treated and their racial perceptions during court proceedings and while deliberating with their peers during a trial. (See Recommendation F.)*

E. COMMISSION RECOMMENDATION: *The Supreme Court should require racial diversity education for jurors as part of their orientation, and for lawyers as part of continuing legal education. (See Recommendation F.)*

F. COMMISSION RECOMMENDATION: *The Supreme Court and the Ohio State Bar Association should institute a comprehensive, statewide community education program on jury duty.*

TASK FORCE ACTION PLAN (D, E, F): **The Task Force recommends the Supreme Court facilitate the production of a video for statewide use designed to address both general jury duty orientation and racial diversity education for jurors. The production will include scenarios featuring people of different races performing various roles in the courtroom and holding various positions in the justice system.**

Discussion (D, E, F): While generally prepared for their roles, jurors are not necessarily oriented or educated for the cross-cultural environment they might encounter in the courtroom and jury room. The jury education process should, therefore, be scrutinized from a racial fairness perspective.

In arriving at a plan to implement juror orientation and racial diversity education, the Task Force took into consideration the following concerns:

- Ohio is made up of 88 counties, many of which employ divergent juror convening procedures. Larger counties such as Cuyahoga summon jurors for one week's service, while smaller counties may summon jurors on a day-to-day basis or as needed.
- Some counties have little racial diversity, while others are very diverse.

Therefore, the practical aspect of uniform jury racial diversity education was a primary topic for the Task Force. The Task Force worked to determine how meaningful, effective racial diversity education or training could be presented to jurors throughout the state given the above-noted factors and limitations.

The Task Force determined that a visual presentation would be the most practical vehicle for impacting prospective jurors statewide. All jury commissions can set their schedules to accommodate the viewing of the video. The courtroom scenarios, as well as the audio instructions presented in the video, will be designed to expose jurors, especially those in counties with little or no racially diverse populations, to a diverse population participating in the courtrooms and the courthouse on the same level and in the same capacity. The presentation will also instruct on basic juror orientation and advise the purposes and duties of juror service under the law.

The Task Force recognizes that all negative juror perceptions cited by the Commission will not be erased or "cured" by this implementation plan. However, by employing this video in conjunction with other Task Force implementation plans, some progress in this area of the justice system is probable.

Jury Issues

Commission Recommendation	Action Plan
<p>A) The sources for jury selection should be further expanded. While currently the source for jurors is the voter registration list, we recommend that driver’s license records, state identification records and other appropriate sources also be used as lists of potential jurors.</p>	<p>The Task Force recommends including driver’s license records as sources for voter registration lists, and excluding state identification records.</p>
<p>B) The state law restriction of \$40 maximum compensation a day should be periodically reviewed for fairness and the amount increased where appropriate to meet juror’s economic needs.</p>	<p>The Task Force recommends the Supreme Court review juror compensation periodically.</p>
<p>C) Research should be conducted to determine accurately the pattern of minority under-representation in juries in Ohio state courts.</p>	<p>The Task Force recommends the Supreme Court facilitate research to determine whether and to what extent there is minority under-representation in Ohio state courts.</p>
<p>D) Research should be conducted concerning the ways in which minority jurors are treated and their racial perceptions during court proceedings and while deliberating with their peers during a trial.</p> <p>E) The Supreme Court of Ohio should require racial diversity education for jurors as part of their orientation, and for lawyers as part of continuing legal education.</p> <p>F) The Supreme Court of Ohio and the Ohio State Bar Association should institute a comprehensive, statewide community education program on jury duty.</p>	<p>The Task Force recommends the Supreme Court facilitate the production of a video for statewide use designed to address both general jury duty orientation and racial diversity education for jurors. The production will include scenarios featuring people of different races performing various roles in the courtroom and holding various positions in the justice system.</p>

CHAPTER 4

Criminal Justice and Sentencing

Criminal Justice and Sentencing

I. INTRODUCTION

In a democratic society, the strength and stability of the society and the government is directly related to the extent to which the government is perceived as a fair one that abides by the rule of law itself. While this truism applies to all aspects of government, nowhere is it more important that government actors be both fair and perceived as fair than in the criminal justice system. This is because the way in which the government deals with individuals accused of having committed a crime is a living example of the extent of our convictions with respect to fairness. Further, by its own actions, government becomes what Justice Louis Brandeis called the "potent, omnipresent teacher" that, for "good or for ill ... teaches the whole people by its example..."¹

A criminal justice system that is both fair and perceived as fair will increase support for the institutions of society and aid in the efficient and effective prevention and prosecution of crime. A population that has confidence in the fairness of the criminal justice system is more likely to report crimes rather than resorting to self-help, to cooperate with investigating authorities, to step forward as witnesses, and to be willing to serve upon juries. A population that perceives a lack of fairness in the criminal justice system – even if that perception is incorrect – is less likely to turn to the police or the courts in solving disputes, less likely to cooperate with investigating authorities, less likely to come forward or even be willing to serve as witnesses, and less likely to willingly serve on juries.

While perception may not be reality, there are many times when perception has the same effect as reality. For example, a grocery or retailer whose prices are perceived as being high may lose as much business as it would if the prices were actually high. Similarly, a criminal justice system that is perceived as lacking in fairness may actually be fair and still suffer all of the detriments of an unfair system because of perception. In order to maximize the effectiveness of the criminal justice system, it is vitally important that all participants continue to work on continuous quality improvement – to make improvements in both the fairness and the perception of fairness of the system.

Recognizing that the American criminal justice system may well be the fairest in the world and in history, the Commission on Racial Fairness, nevertheless, also recognized that, like all human institutions, the criminal justice system is capable of improvement and progress. Accordingly, the Commission offered eleven recommendations concerning ways in which both the fairness and the perception of fairness of the criminal justice system could be improved. In large part the Task Force has adopted those recommendations and submitted the following specific suggestions for implementation.

¹Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J. dissenting)

II. TASK FORCE ACTION PLAN:

A. COMMISSION RECOMMENDATION: *All groups and organizations involved in the criminal justice system – e.g., police, prosecutors, defense counsel, pre-trial release personnel, probation personnel, judges – engage in a continuing process of study and discussion with the objective of identifying and eradicating race-based attitudes and practices.*

TASK FORCE ACTION PLAN: **The Task Force recommends that the Supreme Court of Ohio offer continuing legal education courses for lawyers and judges with the aim of eradicating race-based attitudes and practices throughout the system.** *(Affirmation of Recommendation E in the Judges' and Attorneys' Perceptions chapter of this report.)*

Discussion: The ideal of a republican form of government, committed to the rule of law, implies that all people are equal before the law. We confirm this view of equality in the oath of office required of judges, the ethical considerations that govern lawyers, and the Fourteenth Amendment to the U.S. Constitution. Continuing education programs aimed at eliminating racial stereotypes, racism, and unfair practices should be part and parcel of the ethical and professional training of all professionals. Such programs would be a subset of the ethical training currently required and would undoubtedly touch more lives and may have more effect than some other current requirements. Such educational programs would provide tools for lawyers and judges to use in the practice of their profession and to enhance their inventory of skills and knowledge. Further, the very existence of such training would help deflect some inaccurate perceptions concerning the legal profession and the judiciary.

B. COMMISSION RECOMMENDATION: *Statistical data as to race [should] be collected as to pre-trial bond decisions.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio require the collection of racial data on pre-trial bond decisions.**

Discussion: The Eighth Amendment to the U.S. Constitution and Article I, Section 9 of the Ohio Constitution both prohibit excessive bail. These prohibitions were a direct response to the practices under the English monarchy of using exorbitant bail to deny release pending trial. A multi-cultural society has an interest in ensuring that bail is equally available to similarly situated individuals of all races and ethnic backgrounds. Yet, the Commission Report documented the perception of a significant number of people in Ohio that unfairness exists in decisions with respect to pre-trial bonds. There is currently

no effective mechanism through which to access data that – after fully exploring the context – would allow one to produce facts that would either dispel or confirm the accuracy of the perception.

This proposal calls upon the Supreme Court of Ohio to require by rule the collection of such data. The collection of such data would be valuable for purposes of allowing each judge involved in such decisions to conduct a systematic self-audit of his/her practices and to allow for the Supreme Court and others to analyze the data to determine whether there are any state-wide patterns that would be useful in dispelling unfavorable perceptions or planning future courses of actions for improvement.

C. COMMISSION RECOMMENDATION: *Statistical data as to race [should] be maintained in connection with sentences, including community-based sentences, in all criminal cases, including misdemeanor, juvenile and traffic cases.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio require compliance with all reporting requirements of Senate Bill 2 to ensure that statistical data regarding race is maintained in connection with sentences, including community-based sentences, in all criminal cases.**

Discussion: In 1995, the General Assembly enacted Senate Bill 2, which requires the reporting of statistical data regarding race with respect to sentencing, including community-based sentences, in all criminal cases. To date this provision has not been implemented. However, this data could provide the building blocks upon which self-assessment, court-wide assessment and sentencing reform could be based. It is likely to be of use to the statutorily created Ohio Criminal Sentencing Commission (See R.C. 181.21), to the courts, and to the General Assembly. The Supreme Court of Ohio should place a high priority upon the immediate implementation of these provisions.

D. COMMISSION RECOMMENDATION: *Law enforcement agencies [should] maintain statistical data as to race in connection with all arrests. (See Recommendation E.)*

E. COMMISSION RECOMMENDATION: *Implementation of the recommendations of the Ohio Commission on African-American Males, as stated at pg. 12 –13 of its Executive Summary. (See Appendix I, "Ohio's African-American Males: A Call to Action")*

TASK FORCE ACTION PLAN (D, E): The Task Force recommends that law enforcement agencies be encouraged to continue or implement the collection of statistical data about race in connection with all arrests and stops.

Discussion (D, E): The Supreme Court of Ohio's jurisdiction on matters of policy and procedure only covers lawyers and judges working within Ohio's justice system. It does not include every group involved with the courts, such as the General Assembly, law enforcement, probation personnel or pre-trial release personnel. However, the Task Force believes that it is proper for the Supreme Court of Ohio to support the collection of data, including arrests and stops, which would be extremely valuable to those working towards a racially fair legal system.

F. COMMISSION RECOMMENDATION: *All attorneys who wish to do criminal defense work [should] receive formal training in the basics of criminal defense, and only be permitted to do so upon obtaining certification as to proficiency.*

TASK FORCE ACTION PLAN: The Task Force recommends that all attorneys wanting to perform criminal defense work (especially those who are court-appointed) receive formal training in the basics of criminal defense.

Discussion: There are already training requirements for attorneys working on death penalty cases and, in some counties, for those receiving court appointments to work in criminal defense in order to prepare them to be effective and fair in a challenging field. This is already being done in at least one community: the General Division of the Montgomery County Common Pleas Court and the Dayton Bar Association conduct an annual one-day criminal law certification seminar.

G. COMMISSION RECOMMENDATION: *The Bowling Green State University study [should] be reviewed and its recommendations be implemented.*

TASK FORCE ACTION PLAN: The Task Force supports the recommendations of the 1993 Bowling Green State University study entitled "Race and Juvenile Justice in Ohio" and encourages adoption of its recommendations. *(See Appendix II)*

Discussion: While most of the Commission's recommendations are related to the criminal justice system for adults, the Commission recognized that many of the same race-based issues exist in the juvenile justice system as well. As a result, the Commission recommended the adoption and implementation of eight recommendations that came from a 1993 study by Bowling Green State University entitled "Race and Juvenile Justice in Ohio."

The Task Force finds these recommendations to be ones worthy of support and also endorses them. While not all of these recommendations are within the jurisdiction of the Supreme Court of Ohio, we believe those that are should be adopted and supported through the Court's rule-making authority.

H. COMMISSION RECOMMENDATION: *The Supreme Court should require that Common Pleas Courts adopt a form for purposes of complying with the requirements of S.B. 2 section 2953.21 (A)(5) of the Revised Code. (See Recommendation I.)*

I. COMMISSION RECOMMENDATION: *The Supreme Court should enforce the mandate of S.B. 2 that the Ohio Criminal Sentencing Commission monitor the effects of S.B. 2 with regard to R.C.2953.21 (A)(5) as outlined in R.C. 181.25, Sentencing Commission Duties as amended by S.B. 2.*

TASK FORCE ACTION PLAN (H, I): The Task Force supports the Commission's recommendations.

Discussion (H, I): The possibility of disparity in sentencing has been a topic of national concern. At the federal level, it has resulted in a comprehensive set of sentencing guidelines and the ability to seek appellate review of sentences.

In Ohio, the General Assembly has also manifested a concern with sentencing by creating the Ohio Criminal Sentencing Commission. Among other duties, the Ohio Criminal Sentencing Commission is to provide a biennial report on sentencing in Ohio to the General Assembly. Undoubtedly, the purpose of such a report is to both monitor the implementation of legislation and also to give the legislature a factual basis upon which to enact any corrective legislation.

Further, in legislation that took effect in 1996, the legislature provided that one of the grounds upon which a sentence could be challenged was that the sentencing judge had "a consistent pattern of disparity" in sentences based upon race, gender, ethnic background or religion. See R.C. 2953.21 (A)(5). Mindful of separation of powers issues, the statute contemplated – but did not attempt to require – the possibility that the Supreme Court of Ohio would require courts of common pleas to collect sentencing data on these factors with respect

to each judge. If such data was collected pursuant to Supreme Court rule, then it is to be filed in any proceeding in which a sentence is challenged upon this basis.

As of this date, the Supreme Court of Ohio has not acted by rule to implement the implied suggestion of the General Assembly. Further, we recognize that as a separate and equal branch of government the Court has no obligation to enact such a rule. Yet, the Commission recommended that, as a matter of policy, such a rule be implemented for purposes of allowing such sentencing challenges and to help further implement the role assigned to the Ohio Criminal Sentencing Commission. *See R.C. 181.25 (A)(2).*

The Task Force fully endorses these two recommendations of the Commission. We believe that the systematic collection of this data will allow for self-audits by the judges themselves, provide the means to implement the statutory right to contest sentences upon these grounds, help refute any false perceptions of sentencing disparity, aid the Sentencing Commission in doing its duty, and provide the legislature itself invaluable data upon which to base the changes in the current legislation or upon which new legislation could be based.

Consequently, the Task Force recommends that the Supreme Court of Ohio adopt whatever rules are necessary to collect such data as soon as possible. The collection of such data need not be intrusive or time-consuming for court officers. Many counties already have forms that allow for the collection of a significant amount of data. In Hamilton County, for example, statistics could be compiled easily by simply adding one line to existing forms, such as the Felony Sentencing Findings form, where a defendant's race can be noted. Relevant forms that are used across the state could be modified to include this same one line – Defendant's race: **Black White Other** – or a similar notation that would allow for the compilation of data.

J. COMMISSION RECOMMENDATION: *The Supreme Court should engage a person or entity with the necessary skill and experience to design meaningful methodologies for the collection and compilation of relevant data as to race at all relevant stages of the criminal justice system, and to monitor the collection and compilation of the data.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio engage a person/entity with the necessary skill and experience to design methodologies for collecting data on race at all relevant stages of the criminal justice system, and to monitor its compilation.**

Discussion: Commission Recommendations B, C, E, H, and I all relate to the collection of criminal justice data with respect to race. The Task Force views Recommendation J as one to help implement the collection of that data. As we know from the work of the Sentencing Commission, there are many complex matters concerning what data will and will not be collected, what additional data must be collected in order to provide a proper context, what amount of data from what sources will be statistically significant and a host of related methodology questions. To determine what sub-sets of data should be collected, in what form it should be collected, how specific questions should be phrased, and a variety of other issues will require data collection expertise that may be beyond what we can expect from members of the bench and bar who do not have specialized training.

K. COMMISSION RECOMMENDATION: *The Supreme Court should establish the responsibility for implementing the recommendations contained in this section in the Office of the Court Administrator for the Supreme Court and require an annual report to the public on the progress obtained.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio establish responsibility for implementing the recommendations contained in this section with the Office of the Administrative Director for the Supreme Court and require an annual progress report to the public.**

Discussion: Commission Recommendations B, C, E, H, I, and J are related to the collection of significant data concerning the workings of the criminal justice system, especially with relation to race. To be successful, a project of this magnitude needs both a champion for its implementation and a central repository for the data collected. This recommendation seeks to ensure the success of the data collection process by asking the Supreme Court of Ohio to designate both a repository for the data and an office whose administrators will champion the implementation of the data collection requirements. Further, the Recommendation provides that this division of the Supreme Court will issue an annual progress report to the public, with the understanding that it will be also of use to the courts. The Task Force endorses this Recommendation and asks that the Court make the necessary designations at its earliest opportunity.

Criminal Justice and Sentencing

Commission Recommendation	Action Plan
<p>A) All groups and organizations involved in the criminal justice system – e.g., police, prosecutors, defense counsel, pre-trial release personnel, probation personnel, judges-engage in a continuing process of study and discussion with the objective of identifying and eradicating race-based attitudes and practices.</p>	<p>The Task Force recommends that the Supreme Court of Ohio offer continuing legal education courses for lawyers and judges with the aim of eradicating race-based attitudes and practices throughout the system.</p>
<p>B) Statistical data as to race [should] be collected as to pre-trial bond decisions.</p>	<p>The Task Force recommends the Supreme Court of Ohio require the collection of racial data on pre-trial bond decisions.</p>
<p>C) Statistical data as to race [should] be maintained in connection with sentences, including community-based sentences, in all criminal cases, including misdemeanor, juvenile and traffic cases.</p>	<p>The Task Force recommends the Supreme Court of Ohio require compliance with all reporting requirements of Senate Bill 2 to ensure that statistical data regarding race is maintained in connection with sentences, including community-based sentences, in all criminal cases.</p>
<p>D) Law enforcement agencies maintain statistical data as to race in connection with all arrests. E) Implementation of the recommendations of the Ohio Commission on African- American Males, as stated at pg. 12 –13 of its Executive Summary. (<i>See Appendix I</i>)</p>	<p>The Task Force recommends that law enforcement agencies be encouraged to continue or implement the collection of statistical data about race in connection with all arrests and stops.</p>
<p>F) All attorneys who wish to do criminal defense work [should] receive formal training in the basics of criminal defense, and only be permitted to do so upon obtaining certification as to proficiency.</p>	<p>The Task Force recommends that all attorneys wanting to perform criminal defense work (especially those who are court-appointed) receive formal training in the basics of criminal defense.</p>
<p>G) The Bowling Green State University study [should] be reviewed and its recommendations be implemented.</p>	<p>The Task Force supports the recommendations of the 1993 Bowling Green State University study entitled "Race and Juvenile Justice in Ohio" and encourages adoption of its recommendations. (<i>See Appendix II</i>)</p>

Criminal Justice and Sentencing

Commission Recommendation	Action Plan
<p>H) The Supreme Court should require that Common Pleas Courts adopt a form for purposes of complying with the requirements of S.B. 2 section 2953.21 (A)(5) of the Revised Code.</p> <p>I) The Supreme Court should enforce the mandate of S.B. 2 that the Ohio Criminal Sentencing Commission monitor the effects of S.B. 2 with regard to R.C.2953.21 (A)(5) as outlined in R.C. 181.25, Sentencing Commission Duties as amended by S.B. 2.</p>	<p>The Task Force supports the Commission's recommendation.</p>
<p>J) The Supreme Court should engage a person or entity with the necessary skill and experience to design meaningful methodologies for the collection and compilation of relevant data as to race at all relevant stages of the criminal justice system, and to monitor the collection and compilation of the data.</p>	<p>The Task Force recommends the Supreme Court of Ohio engage a person/entity with the necessary skill and experience to design methodologies for collecting data on race at all relevant stages of the criminal justice system, and to monitor its compilation.</p>
<p>K) The Supreme Court should establish the responsibility for implementing the recommendations contained in this section in the Office of the Court Administrator for the Supreme Court and require an annual report to the public on the progress obtained.</p>	<p>The Task Force recommends the Supreme Court of Ohio establish responsibility for implementing the recommendations contained in this section with the Office of the Administrative Director for the Supreme Court of Ohio and require an annual progress report to the public.</p>

CHAPTER 5

Law Schools

I. INTRODUCTION

In important ways, law schools play the role of "gate-keeper" to the legal profession. Every law school sits at a critical intersection between a society that produces potential candidates for law school and state supreme courts that determine which graduates will be admitted to practice. A law school that is hostile or indifferent to racial fairness may contribute to real and perceived problems. A law school that is committed to racial fairness and embraces a diverse community can optimize or maximize the number of students who can pursue a legal education.

Similarly, law schools that are restrictive in their employment practices create environments that are unwelcoming for minority students and may deny students who are members of minority groups the hope that they can enter the legal profession and serve as a lawyer, judge or law professor. Those schools that work hard to assemble a well-qualified and diverse staff and faculty create a more welcoming environment and hold out the promise that successful minority students can pursue careers as lawyers, judges and law professors. Not only do law schools determine who actually receives the necessary training to enter the profession, but their policies and practices also set the tone for future lawyers' and judges' attitudes about minority participation in the profession.

While recognizing the limits of the effect that law schools can have, the Commission articulated 11 separate recommendations with respect to law schools because they can nevertheless have a significant effect upon the diversity of the profession and the acceptance in our society of the rule of law. And it is because of the crucial role that law schools play in this process that the Task Force has endorsed, in one form or another, all 11 of those recommendations along with a 12th recommendation designed to monitor the process of implementation.

II. TASK FORCE ACTION PLAN

A. COMMISSION RECOMMENDATION: *Law schools should give priority to efforts to recruit and retain minority students. The Commission strongly supports and encourages affirmative action and diversity programs that attract and retain minority students and staff.*

TASK FORCE ACTION PLAN: The Task Force endorses the Commission's recommendation.

Discussion: In examining the current state of legal education in Ohio, the Task Force discovered just what the Commission did when it began its review of racial fairness within the state justice system in 1993: there has been progress, but there is also more work to be done.

Among the approaches strongly advocated by the Commission were those that have been commonly termed affirmative action. Affirmative action has been an effective strategy through which to increase diversity in the legal profession. Whether that strategy is constitutionally permissible turns upon one's interpretation of the U.S. Supreme Court's decision in *Regents v. Bakke*, 438 U.S. 265 (1978). Though the current Supreme Court has had several opportunities to address the meaning of *Bakke* and the question of its continuing vitality, it has, to date, declined to do so.

The federal Circuit Courts are split, with the 4th and 5th Circuits finding that *Bakke* has been implicitly overruled, while the 6th and 9th Circuits have held that *Bakke* continues to have vitality and supports the use of affirmative action in higher education. Ohio is in the Sixth Circuit where that Court's decision in *Grutter vs. Bollinger* (C.A. 6, 2002), 288 F.3d 732 adopts the view that under *Bakke* the benefits of a diverse education provide a sufficient government interest to support affirmative action.

This legal strategy has been approved by the Circuit Court of Appeals within which Ohio is situated, the Task Force urges law schools to follow the permissible approaches outlined in *Bollinger* to create a diverse learning environment that will increase the quality of legal education and ultimately lead to a more diverse and understanding bar and judiciary.

These concepts are not new to Ohio law schools. Indeed, the American Bar Association accreditation standards require that all law schools "demonstrate or have carried out and maintained, by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of groups, notably racial and ethnic minorities..."¹ Similarly, the by-laws of the Association of American Law Schools (AALS), to which all Ohio law schools belong, provide in part that: "[a] member school shall seek to have a faculty, staff, and student body which are diverse with respect to race, color and sex."² Further, these same objectives have been endorsed and actively pursued by the Law School Admissions Council (LSAC).

¹ Standard 211, Standards for Approval of Law Schools, 2001-2002 (ABA Section of Legal Education and Admission to the Bar) 2001 Edition.

² Section 6-4, C, By-laws of American Law Schools in 2001 Handbook, Association of American Law Schools 2001.

In addition to its principal recommendation, the Commission also outlined seven suggested strategies by which law schools might pursue these efforts.³ Though there are understandable variations from school to school, every law school in Ohio uses most of these strategies and all of the strategies are used by the schools as a group. Further, new strategies for recruiting students are discussed at the annual meetings of the AALS and LSAC, and at a variety of other professional meetings.

One example is the conference "Action & Accountability: Diversity Imperatives for a New Century" jointly sponsored by the ABA Section of Legal Education and Admissions to the Bar, AALS and LSAC in Denver in the fall of 2000. Each of these organizations and conferences produce a wealth of ideas with respect to promoting diversity. For example, the Action & Accountability conference produced 58 specific recommendations, of which 20 were directed towards student identification and recruitment.

All nine Ohio law schools report that they are actively making efforts to recruit and retain minority students. In 2000, the minority population was approximately 15 percent of that of the entire state population. Because one must obtain a bachelor's degree from a college or university before being eligible to attend law school, the proper benchmark for assessing law school performance should be members of minority groups with a bachelor's degree. While we have not been able to obtain that figure, given the substantial barriers to higher education, it is evident that that figure would be somewhere below 15 percent.

Data for the 1999-2000 academic year indicated that there were more than 600 minority students enrolled in Ohio law schools and that this constituted approximately 16 percent of all Ohio law students.⁴ Ironically, though the number of minority students rose in 2000-01 to 674, the percent declined to 13.8 percent apparently because of a greater increase in non-minority students.

In examining the data for 1999-2000, the Task Force found that five of the nine law schools had a minority enrollment that exceeded the state's percentage of minority population, a sixth school was just .3 percent away from that number, and a seventh school, while below the state average, was higher than the minority population in its immediate metropolitan area. The two remaining schools had minority enrollments of 10.3 percent and 8.3

³ These suggestions included using LSAC's candidate referral services to identify potential minority students, using a diverse team of student recruiters, recruiting at schools with high minority representations, using direct contact by phone and mail, applying for LSAC funds to sponsor a minority recruiting program, working with middle schools and high schools in a variety of ways, and ensuring that their publications demonstrate the cultural pluralism commitments of the law schools.

⁴ *LSAC Official Guide To Legal Education For 2001.*

percent. For 2000-01, three schools were above the state average, five schools had an enrollment between 11.4 percent and 13.3 percent and only one school was below 10 percent at 7.2 percent. Again, as noted above, ironically many of the schools whose absolute number of minorities increased this past year saw a decline in their percentage of minority students.

Given the fact that a proper benchmark for measuring minority enrollment could be the minority population with a bachelor's degree, this data would appear to show steady progress. Yet the gap between the population sample and the percentage of law students in law schools for 2000-01 indicates that the law schools must be aggressive and eternally vigilant in following the standards of the ABA, AALS, and the recommendations of the Commission and this Task Force.

That gap also points to a challenge for the entire state of Ohio. The largest minority group in Ohio is African-American. African-Americans comprise approximately 11.5 percent (out of a total minority population of 15 percent) of Ohio's population. Yet data obtained from the Ohio Board of Regents show the percentage of black graduates from Ohio public colleges in 2000 was only 5.9 percent – significantly under what one would expect for a state with Ohio's diversity.

The task set forth by the Commission recommendation is made particularly difficult in Ohio since the state currently ranks in the bottom half of states with respect to the percentage of residents with a college degree. If that trend continues, it may be even more challenging to attract a higher number of minority applicants.

TASK FORCE ACTION PLAN (2): The Task Force recommends the implementation in Ohio of a program similar to the Indiana Supreme Court's Conference for Legal Education Opportunity (CLEO).

Discussion: CLEO is a program that invites minority and disadvantaged college students to a summer institute designed to prepare them for the special nature of law school. Those who successfully complete the institute are entitled to three years of state financial assistance to help them complete their legal educations.

The Task Force endorses the Commission's recommendation and the subsequent efforts of the Supreme Court of Ohio to seek an appropriation of funds to establish an Ohio CLEO program with the purpose of helping promote equal access to justice and upward mobility, and the diversity of the legal profession.

While the legislature initially appropriated funds to support this program as part of the Supreme Court's budget, several state budget cuts and an uncertain budgetary future prevented the implementation of this program in the summer of 2002. However, the Task Force understands that planning will begin after July 1, 2002, so that the Ohio CLEO program can be implemented for students in the summer of 2003. The Task Force commends the Supreme Court of Ohio and the legislature for their efforts on this project and encourages them to continue to pursue the implementation of an Ohio CLEO at the earliest opportunity.

B. COMMISSION RECOMMENDATION: *The Admissions Committee should include minority student representation.*

TASK FORCE ACTION PLAN: **The Task Force endorses the recommendation of the Commission and urges all law schools to comply.**

Discussion: Seven of the nine law schools report that they currently have minority students serving on their admissions committee. The other two schools report that they do not have any students on their admission committees.

Of the schools that have students on the admissions committee, several report that the students serve on the committee as policy-makers, but do not participate in reviewing files because some schools believe there are confidentiality considerations.⁵ The two schools that do not have students on their committee both indicate that they utilize minority students in the recruiting process. Further, at one of those schools, the admissions office reports to an associate dean who is African-American and that associate dean also sits on the admissions committee.

The Task Force recommends that all law schools review their policies on these issues and include minority faculty and student participation to the greatest extent possible.

C. COMMISSION RECOMMENDATION: *Law schools should recruit and maintain minorities to serve as law school faculty and staff and adopt policies aimed at advancement toward tenure and retention of minority faculty members.*

⁵ We also note that because students are not employees of the university, there is some question as to whether state law would provide them with state indemnity and state representation if sued as a result of participating in the decisions to admit and deny applicants. One law school has requested guidance upon this issue from its' general counsel and has not yet received an answer.

TASK FORCE ACTION PLAN: The Task Force endorses the Commission's recommendation.

Discussion: In 1999, the Commission reported that a prevalent student concern was a need to increase the recruitment and retention of minority deans, faculty and administrators. As one Hispanic law student succinctly put it, "if there were more minority faculty, deans and administrators, there would be more minority law students." Minority faculty expressed this sentiment as well.

Recent data from the American Bar Association (ABA) reveals that most Ohio schools are at or above the national average in efforts to recruit minority faculty. For the 1999-2000 school year, the ABA reported 13 percent of all faculties nationally were members of minority groups. In reviewing the 2000-01 data for Ohio law schools, three law schools (Akron, Capital, University of Cincinnati) were above the national average. Four others (Case Western Reserve, Cleveland State, Ohio State and Toledo) were at or above the 10 percent mark and, in each instance, adding a single minority faculty member would place them at the national average. Only two schools lagged significantly behind the national average, the University of Dayton (7.4 percent) and Ohio Northern (0 percent).⁶

The literature in the 1990s referred to the practice of some schools allegedly adopting what was commonly called a "revolving door" policy -- minority faculty members would be hired, but not granted tenure, and new minority faculty members would replace them -- and also be denied tenure. The Commission raised a concern as to whether this was happening in Ohio. This concern was based upon data from only one school (CSU) and national literature. It seems that the Ohio schools have not been part of the "revolving door" phenomena. For example, at CSU, where one tenured African-American faculty member figured prominently in the Commission's 1999 report, there are now multiple minority members of the faculty, several of whom have tenure.

Similarly, the other schools that have minority faculty all reported tenured members of the faculty ranging from one to four. Further, deans who were African-American have led both Akron and Ohio State and several schools have or have had African-American associate deans.

Whatever the experience nationwide, the Ohio law schools seem to have made progress in terms of retaining minority faculty members and granting tenure. Progress in this area can be publicly monitored because data on the

⁶Subsequent to the research conducted for this report, Ohio Northern has hired one minority faculty member. This individual constitutes 6.3 percent of their faculty.

racial composition of law faculty is reported each year in the ABA-LSAC Official Guide to ABA-Approved Law Schools that is available from both organizations, in bookstores, and in libraries. Further, this topic will be one of those monitored through the annual bench/bar/deans conference.

D. COMMISSION RECOMMENDATION: *Law schools should evaluate the graduation rates among students of color and include an objective evaluation of the scope and effectiveness of each school's academic support programs.*

TASK FORCE ACTION PLAN: **The Task Force endorses the Commission's recommendation.**

Discussion: Graduation and attrition data, by ethnic group and race, are reported to the accreditation agency each October and are published in the ABA-LSAC Official Guide to ABA-Approved Law Schools. Graduation and attrition data, by ethnic group and race, are periodically evaluated by internal reviewers as well as by accreditation teams during inspections of law schools every seven years.

E. COMMISSION RECOMMENDATION: *Law schools should review their academic program to assess ways in which diversity values are manifested throughout the institution.*

TASK FORCE ACTION PLAN: **The Task Force endorses the Commission's recommendation.**

Discussion: The law schools report that they are pursuing this in a variety of manners and we know that these topics are explored in the national literature and in national workshops and discussion lists.

F. COMMISSION RECOMMENDATION: *Law schools should continue to review their courses, extracurricular programming, introduction to law programs, student orientation and student life to consider the extent to which diversity values are embedded in their academic and nonacademic programming. (See Recommendation G.)*

G. COMMISSION RECOMMENDATION: *Law schools should continue to review co-curricular programs to ensure minority students are actively sought out for inclusion. Faculty and law review members should make certain the writing competitions and applicant processes are fair and equal to all students.*

TASK FORCE ACTION PLAN (F, G): The Task Force endorses both of these recommendations and urges all law schools to continue to do this on an annual basis, with special attention to the importance of law review status.

Discussion: In 1999, the Commission recommended that law schools review their academic programs to assess ways in which diversity values are conveyed throughout the institution. Task Force follow-up revealed the schools support this effort and are working to achieve it, though they pursue different methods.

Diversity sensitivity training is certainly not a panacea for the elements of racism that exist in law schools and society as a whole. Nevertheless, such training would assist with day-to-day interactions among the students, faculty and administrators.

Extracurricular activities provided to address racial issues, including the Black Law Student Association (BLSA) and the Hispanic Law Student Association (HLSA), could certainly help as well. In response to Task Force follow-up regarding these types of activities, the law schools said they continue to review their extracurricular and student life activities to consider the extent to which diversity values are embedded.

It is important to note, however, that the Commission's 1999 report revealed that not one law school review or journal had more than a few minority student members. Of the law schools responding to the Commission's questionnaire, one school had 16 percent minority representation on the law review; the number dropped to nine percent at the next school before bottoming out at five percent.

Given the importance of service on the law review to the education and future careers of law students, the Task Force urges each law school to review its law review practices and ensure that the process is fair and that there are meaningful opportunities for members of minority groups to participate.

H. COMMISSION RECOMMENDATION: *Placement directors should be encouraged to work with professional associations, bar organizations, minority alumni and the courts to facilitate the entry of minority students into summer clerkships and other opportunities which lead to professional development.*

TASK FORCE ACTION PLAN: The Task Force endorses the Commission's recommendation.

Discussion: According to the Commission's 1999 report, three law schools had special programs that specifically assist minority students seeking summer employment or employment following graduation in 1994-95. In 1998-99, six schools offered such assistance. The Task Force reports today that all Ohio law schools located in urban areas participate in summer minority clerkship programs.

I. COMMISSION RECOMMENDATION: *The Commission recommends all Ohio law schools should continue to annually review their policies and internal procedures for addressing violations of human rights or discrimination and make modifications as necessary to foster confidence and a commitment to racial fairness among faculty, staff and students. If such a policy and procedure does not exist, one should be adopted within one year and reviewed annually.*

TASK FORCE ACTION PLAN: The Task Force endorses the Commission's recommendation.

Discussion: Each school is required to have such a policy by AALS and ABA requirements. All schools report that these policies are reviewed at intervals – some of the policies are university-wide policies and some are unique to the law school. All law schools have external accreditation inspections that review them every seven years.

J. COMMISSION RECOMMENDATION: *The Commission recommends the Supreme Court collect racial and ethnic information on bar examination candidates and monitor the results for race-based discrepancies.*

TASK FORCE ACTION PLAN: The Task Force endorses the Commission's recommendation.

Discussion: For many years, there has been a concern that the bar examination, or certain parts of the bar examination, may have a disparate impact upon minority law school graduates. Because data regarding the race of bar exam takers was never collected, it was difficult, if not impossible, to test this hypothesis. In order to assess the racial fairness of the bar examination, it is critically important to collect the data upon which an initial analysis could be based. This makes it necessary for the Court to collect the data on the racial and ethnic background of the individuals who sit for the examination. It may be that the Ohio bar examination has no disparate impact upon members of

minority groups. Or it may be that it has a disparate impact that is explained on a race-neutral basis. However, the beginning point of any intelligent discussion upon this question is the collection of the relevant data.

It is important that the data be collected by a unit of the Court that does not work with the bar examination and that care is taken to ensure that the racial and ethnic identity of individual applicants will not be known to any decision-maker involved in determining whether a specific student passed the bar examination or not.

K. COMMISSION RECOMMENDATION: *The Commission recommends that each law school should continue to monitor and evaluate student and faculty recruitment and retention. Law schools should report relevant data as may be prescribed by the Supreme Court of Ohio.*

TASK FORCE ACTION PLAN: **The Task Force endorses the first portion of this recommendation and finds that the reporting portion is unnecessary because the relevant data is already publicly available.**

Discussion: As previously noted, each of the law schools files the answers to an extensive annual questionnaire with the American Bar Association each October. That questionnaire contains data on the racial and ethnic status of law students, by class and by school, as well as faculty and student attrition rates. The dean of each school must personally sign a document for each section of this questionnaire. Further, data concerning minority student recruitment and retention and faculty recruitment and retention is publicly available through the annual ABA-LSAC Official Guide to ABA-Approved Law Schools.

* * * * *

Although not addressed by the Commission, the Task Force also adopted the following Action Plan:

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TASK FORCE ACTION PLAN: **The Task Force recommends that progress on fulfilling the recommendations of the Racial Fairness Commission and the Racial Fairness Implementation Task Force be added as a standing agenda item for the bench/bar/deans conference.**

Discussion: In order to ensure that the purpose of the Commission's original work is met, the Task Force recommended that the Chief Justice, OSBA, and law deans add a standing agenda item to the annual bench/bar/deans conference requiring deans of law schools to share schools' progress in

fulfilling applicable recommendations of the Commission on Racial Fairness. This recommendation was adopted at the conference's Feb. 28-March 1, 2002, meeting.

Since law schools already file annual reports with the American Bar Association and raw data with the Association of American Law Schools, this would be a non-burdensome method for deans to report and, simultaneously, provide a measure of accountability to their work by presenting a status report to a meeting of the Chief Justice of the Supreme Court, the president of the Ohio State Bar Association, a representative of the metropolitan bars and their peer deans.

This matter has already been a topic of discussion at the last several bench/bar/deans conferences.

Law Schools

Commission Recommendation

- A) Law schools should give priority to efforts to recruit and retain minority students. The Commission strongly supports and encourages affirmative action and diversity programs that attract and retain minority students and staff.
1. Law schools should use candidate referral service lists to contact minority students who take the LSAT and provide them with information specific to the minority experiences at the law school.
 2. Law schools should attend large law school recruitment forums and pre-law fairs and make certain the team representing the law school includes students of color.
 3. Law schools should visit historically black colleges and other colleges with a high-minority representation.
 4. Law schools should encourage minority students to enroll in law school by showing interest in their matriculation through telephone calls and mailings from the law school dean, faculty and administration.
 5. The Supreme Court of Ohio's support of the report and funding programs similar to the Indiana CLEO program should be adopted by the Ohio General Assembly.
 6. Law schools should maintain contacts with college advisory offices and send updated information regarding the school requirements and admissions process to, at a minimum, local junior high and high schools.
 7. Law schools should design and publish public relations materials about their law schools and law school life that demonstrate the cultural pluralism commitments of the school.

Action Plan

The Task Force endorses the Commission's recommendation.

The Task Force recommends the implementation in Ohio of a program similar to the Indiana Supreme Court's Conference for Legal Education Opportunity (CLEO).

Law Schools

Commission Recommendation	Action Plan
B) The Admissions Committee should include minority student representation.	The Task Force endorses the Commission's recommendation and urges all law schools to comply.
<p>C) Law schools should recruit and maintain minorities to serve as law school faculty and staff and adopt policies aimed at advancement toward tenure and retention of minority faculty members.</p> <ol style="list-style-type: none"> 1. Law schools should involve professors and students of color in the recruitment process for dean, faculty and administrator positions. 2. Law schools should actively seek out and identify minority individuals that may be "faculty material." 	The Task Force endorses the Commission's recommendation.
D) Law schools should evaluate the graduation rates among students of color and include an objective evaluation of the scope and effectiveness of each school's academic support programs.	The Task Force endorses the Commission's recommendation.
E) Law schools should review their academic program to assess ways in which diversity values are manifest throughout the institution.	The Task Force endorses the Commission's recommendation.
<p>F) Law schools should continue to review their courses, extracurricular programming, introduction to law programs, student orientation and student life to consider the extent to which diversity values are embedded in their academic and nonacademic programming.</p> <p>G) Law schools should continue to review co-curricular programs to ensure minority students are actively sought out for inclusion. Faculty and law review members should make certain the writing competitions and application processes are fair and equal to all students.</p>	The Task Force endorses both of these recommendations and urges all law schools to continue to do this on an annual basis, with special attention to the importance of law review status.
H) Placement directors should be encouraged to work with professional associations, bar organizations, minority alumni and the courts to facilitate the entry of minority students into summer clerkships and other opportunities which lead to professional development.	The Task Force endorses the Commission's recommendation.

Law Schools

Commission Recommendation	Action Plan
<p>I) The Commission recommends all Ohio law schools should continue to annually review their policies and internal procedures for addressing violations of human rights or discrimination and make modification as necessary to foster confidence and a commitment to racial fairness among faculty, staff and students. If such a policy and procedure does not exist, one should be adopted within one year and reviewed annually.</p>	<p>The Task Force endorses the Commission's recommendation.</p>
<p>J) The Commission recommends the Supreme Court collect racial and ethnic information on bar examination candidates and monitor the results for race-based discrepancies.</p>	<p>The Task Force endorses the Commission's recommendation.</p>
<p>K) The Commission recommends that each law school should continue to monitor and evaluate student and faculty recruitment and retention. Law schools should report relevant data as may be prescribed by the Supreme Court of Ohio.</p>	<p>The Task Force endorses the first portion of this recommendation and finds that the reporting portion is unnecessary because the relevant data is already publicly available.</p>
	<p>The Task Force recommends that progress on fulfilling the recommendations of the Racial Fairness Commission and the Racial Fairness Implementation Task Force be added as a standing agenda item for the bench/bar/deans conference.</p>

CHAPTER 6

Interpreter Services

Interpreter Services

I. INTRODUCTION

As noted in the Commission's original report, the population of the United States is ever changing. When the Commission began its study, just over 500,000 Ohio residents did not use English as their primary language. That number has grown dramatically. The influx of different cultures enriches our culture and lives. But it also challenges our legal institutions. In the 2000 census, Ohio's Latino/Hispanic population alone had grown to 1.9 percent of the total state population. The percentage may seem rather small, but it translates to 217,123 Ohioans who at some point may have dealings with the legal system and may not be able to communicate with our legal institutions, e.g., courts, law enforcement and prosecutors. The knowledge of the increasing number of individuals who may not be fully conversant in English caused the Commission to express concern regarding interpreter services in the courts.

To date, no formal tracking mechanism has been established to keep precise records of the number of court proceedings in which interpreters are used. An informal survey among selected municipal courts reveals a consistent volume of court-interpreted cases. To cite just a few examples, the New Philadelphia Municipal Court (Tuscarawas County) conducted more than 170 court-interpreted cases during the last quarter of 2000; Franklin County Municipal Court conducted nearly 4,000 court-interpreted cases in 2000; and Hamilton County Municipal Court conducted more than 1,000 court-interpreted cases during the same period.¹ Clearly, there is a growing need for interpreter services.

In order to effectively meet the challenge of providing interpreter services to ensure justice for all within Ohio, the Task Force believes it is vital the Supreme Court of Ohio develop concrete guidelines governing certification and qualifications for interpreters; write and enforce an interpreters' code of conduct; and provide needed tools and resources to courts so as to improve their understanding of the need to provide such services.

The Commission recognized each of these important factors when it issued its report. After careful consideration of each of these factors, the Task Force believes that the following action steps will meet the call of the Commission and be of tremendous benefit to all Ohioans.

¹Since no formal reporting mechanism is in place, courts do not generally collect these data. The reader is cautioned to pay attention to the reporting periods of each of the jurisdictions referred to above as well as to the size of the counties. Franklin and Hamilton counties are more populous than Tuscarawas county.

II. TASK FORCE ACTION PLAN:

A. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should immediately develop, and require the implementation of, concrete guidelines for the certification and qualification of individuals and programs that provide language interpreter services in the courts of Ohio.*

TASK FORCE ACTION PLAN: The Task Force recommends the Supreme Court of Ohio pursue establishing statewide interpretation standards for professionals providing such services in a legal setting. The Task Force further recommends the Supreme Court of Ohio become a member of the State Courts Interpreter Certification Consortium of the National Center for State Courts.

Discussion: Given that Ohio’s non-English speaking population is rapidly growing, the judicial system should promptly move to provide resources to the courts. A key resource the courts need is a recognizable pool of certified and qualified interpreters. Hence, the Supreme Court of Ohio should adopt a standardized certification process for interpreters. By so adopting, local courts will benefit from knowing that an identifiable pool of skilled professionals exists and how to tap into it. In legal settings, especially in courtrooms, the interpreter is viewed as the communication expert. It is imperative, therefore, that interpreters possess appropriate credentials on which courts can rely.

Consequently, a sound standardized certification process must take into account not only the cost, time and resources needed to develop such a process, but must also ensure the proper understanding of modes of interpretation is incorporated. In considering all of the above, the Task Force identified two options. The first option evaluated was to develop an Ohio-specific certification program. The second option considered was to join and adopt the certification standards of an established organization, the National Center for State Courts’ State Courts Interpreter Certification Consortium.

The Task Force concluded that developing an Ohio-specific program was not only very costly – about \$300,000 for developing, administering, and keeping current a single valid test instrument for court interpreting proficiency per language – it would take too much time to develop.

In looking at established organizations, the Task Force identified two viable organizations: the National Center for State Courts’ State Courts Interpreter Certification Consortium (Consortium) and the Registry of Interpreters for the Deaf (RID). After reviewing their services, the Task Force concluded that

joining the Consortium and adhering to the RID standards would produce the desired result by yielding a readily identifiable and skilled pool of trained interpreters.

The Consortium was established in 1995 to provide tools and guidance to implement valid and reliable interpreter certification programs for member states. Consequently, member states pooled their resources to develop court interpretation tests in languages commonly needing interpreter services, e.g., Spanish, Russian, Vietnamese, Korean, Hmong, Polish, Cantonese, Laotian, Arabic, and Haitian-Creole; administration standards for the tests; and testing materials. The tests take into account the three recognized modes of interpretation: simultaneous, consecutive and sight. Through time, the Consortium has further perfected these examination tools.

To date, 28 states are members of the Consortium, including neighboring Tennessee, Kentucky and Michigan. The federal court certification contract has also been awarded to the Consortium. Participation in a standardized testing and certification program would permit interstate reciprocity for Ohio interpreters. Once certified through the Consortium, an interpreter has portability of credentials and is recognized as certified in other member states. In addition, the Consortium maintains a central database of all Consortium-certified interpreters. The clear advantage for Ohio is that the pool of available certified interpreters would automatically increase through access to other states' interpreters; courts previously struggling to find certified interpreters would have a larger pool from which to tap.

Compared to the other option, the cost for joining the Consortium is reasonable at \$25,000 and could be spread over several years. Upon becoming a member, Ohio could take advantage of the following membership benefits:

- Portability of credentials (An interpreter certified in Ohio will be considered certified in other member states.)
- Standard core curriculum and training materials for basic orientation workshops
- Technical assistance from member states
- Availability of several test versions for some of the languages
- Reliable and valid testing tools
- Standardized manuals for test construction
- Test administration (including a candidate information booklet)
- Test rater training
- Cost sharing for the development of new tests
- Information and resources from other member states

Consortium member states also have the option to use the National Center for State Courts as their test administration contractor during their initial round of testing until the certification process in the state is well-grounded. By joining the Consortium, Ohio would benefit immediately from and use resources of other member states, thus making it possible to implement promptly the first recommendation noted in the Racial Fairness Commission's report under Interpreter Services.

Although the original Commission report did not make specific reference to the deaf or hard-of-hearing community, the Task Force believes a comprehensive certification process should also consider the needs of this community. The primary certifying body for interpreters for the deaf and hard-of-hearing in legal settings is the Registry of Interpreters for the Deaf (RID). In November 2000, the Consortium declared the Special Certificate: Legal (SC:L) offered by RID as a functional equivalent to the certification exams developed and administered by the Consortium. The practical implication of this announcement is that member states wanting to provide trained and credentialed legal interpreters for the deaf and hard-of-hearing community can recognize interpreters with the SC:L credential with great confidence. In addition, RID certified interpreters adhere to a strict code of ethics, which is consistent with the one proposed by the Task Force and is stated in the Appendix.

Based on the foregoing discussion, the Task Force recommends that Ohio join the National Center for State Courts' State Courts Interpreter Certification Consortium and recognize RID's credentialing. The Task Force strongly believes that any other course of action would be a costly and unnecessary duplication of efforts the Consortium has already successfully performed.

B. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should develop, and require adherence to, a code of conduct for all individuals who are certified to provide interpreter services in the courts of Ohio.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio develop, and require adherence to, a code of conduct for all individuals who are certified to provide interpreting services in the courts of Ohio.**

Discussion: Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. Because they fill such an essential role, these professionals must be held to a strict standard of conduct and ethics. As officers of the court, interpreters help ensure that individuals

who are non-English speakers, deaf or hard-of-hearing have equal access to justice and court proceedings. Interpreters also help ensure that court support services function efficiently and effectively.

Codes of ethics and modes of interpretation for court interpreters have been established by the profession and legal institutions. The first professional association to implement an interpreter's code of ethics was the RID. Subsequently, the New Jersey Supreme Court, a founding member of the Consortium, adopted a code of ethics, which relied heavily on the RID model. Other Consortium member states have followed the New Jersey interpreter's code of ethics model.

A proposed code (*see Appendix III, Canons of Ethics and Conduct for Court Interpreters*) would guide and bind all persons, agencies and organizations that administer, supervise, use or deliver interpreting services in connection with the judiciary. This code would not be construed to limit in any way the authority of a court to determine the qualifications of a person serving as an interpreter under Evidence Rule 604.²

C. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should require education for judges, referees and court administrators on the importance, availability and proper use of language interpreter services in the courts.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio adopt Rules of Superintendence (*See Appendix IV*) to guide judges in the appropriate use of credentialed interpreters. Furthermore, the Task Force recommends the Court publish and distribute a guidebook for judges about when and how to use interpreters.**

Discussion: Once the Supreme Court of Ohio adopts these implementation strategies, it will be necessary to provide assistance to the courts in order to gauge how well the changes are working and what additional steps may be needed.

Consideration should be given to creation of a multi-disciplinary committee that would ensure all relevant points of view are evaluated. The committee should include representation from the following constituencies:

²Ohio Evidence Rule 604 states: "An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation that he will make a true translation."

1. Appellate court
2. Trial court (common pleas & municipal)
3. Attorneys (defense counsel and prosecutor)
4. Interpreters (spoken and sign languages)
5. Law enforcement
6. Court administrators
7. Staff/administration support from the Supreme Court of Ohio

D. COMMISSION RECOMMENDATION: *The Supreme Court of Ohio should conduct a survey of county and appellate court administrators throughout the state to determine the language needs of non-English speaking court participants.*

TASK FORCE ACTION PLAN: **The Task Force recommends the Supreme Court of Ohio conduct a survey of trial court administrators throughout the state to determine the language needs of non-English speaking court participants. Such a brief survey of court administrators would help gauge their current and forthcoming interpreter services needs.**

Discussion: The recommendation for this survey was referred to Interpreter Services from the Judges' and Attorneys' Perceptions subcommittee of the Task Force. The Task Force does not find an incongruity with the placement of this recommendation at the beginning of the Commission's report, while Interpreter Services was the last chapter of the report. Read in conjunction with the other recommendations, this particular recommendation provides a mechanism to obtain information as to the language needs in courts. Although the Task Force received some anecdotal data as to the most commonly interpreted languages in courts, a survey eliciting this information would validate the order in which the Court adopts or develops language certifications. Similarly important is determining which emerging languages will require court interpreters so that the Court can plan accordingly.

Interpreter Services

Commission Recommendation	Action Plan
<p>A) The Supreme Court of Ohio should immediately develop, and require the implementation of, concrete guidelines for the certification and qualification of individuals and programs that provide language interpreter services in the courts of Ohio.</p>	<p>The Task Force recommends the Supreme Court of Ohio pursue establishing statewide interpretation standards for professionals providing such services in a legal setting. The Task Force further recommends the Supreme Court of Ohio become a member of the State Courts Interpreter Certification Consortium of the National Center for State Courts.</p>
<p>B) The Supreme Court of Ohio should develop, and require adherence to, a code of conduct for all individuals who are certified to provide interpreter services in the courts of Ohio.</p>	<p>The Task Force recommends the Supreme Court of Ohio develop, and require adherence to, a code of conduct for all individuals who are certified to provide interpreting services in the courts of Ohio. <i>(See Appendix III, Canons of Ethics and Conduct for Court Interpreters)</i></p>
<p>C) The Supreme Court of Ohio should require education for judges, referees and court administrators on the importance, availability and proper use of language interpreter services in the courts.</p>	<p>The Task Force recommends the Supreme Court of Ohio adopt Rules of Superintendence (<i>see Appendix IV</i>) to guide judges in the appropriate use of credentialed interpreters. Furthermore, the Task Force recommends the Court publish and distribute a guidebook for judges about when and how to use interpreters.</p>
<p>D) The Supreme Court should conduct a survey of county and appellate court administrators throughout the state to determine the language needs of non-English speaking court participants.</p> <p>NOTE: This recommendation was referred to Interpreter Services from the Judges' and Attorneys' Perceptions subcommittee of the Task Force.</p>	<p>The Task Force recommends the Supreme Court of Ohio conduct a survey of trial court administrators throughout the state to determine the language needs of non-English speaking court participants. Such a brief survey of court administrators would help gauge their current and forthcoming interpreter services needs.</p>

Appendix

Appendix I

Ohio's African-American Males: A Call to Action
Report of The Governor's Commission on Socially Disadvantaged Black
Males
Columbus, Ohio: The Ohio Office of Black Affairs
June 1990

Criminal Justice

As of June 1, 1989, African-American male youth represented 43.3% of the male youth institutionalized by the Department of Youth Services (DYS). As of January 1, 1990, African-American males made up 51.1% of the Department of Rehabilitation and Corrections (DRC) prison population. The African American male population in Ohio is estimated at just over 10%. Clearly, this population is being incarcerated at rates far exceeding its population percentage.

The Criminal Justice Subcommittee addressed three main areas of concern:

1. Juvenile Justice
2. Criminal Justice System Analysis
3. Police/Community Relations and Victimization

1. Juvenile Justice

The increase in the percentage of African-American males in DYS institutions has risen from 34% in 1985 to 43% in 1989. At the same time, the overall male population of DYS institutions grew 13% (from 1,749 to 1,980). The cost of housing youth at a DYS institution increased from \$21,593 in 1985 to \$28,451 per year in 1989, a 32% increase. In 1989, Ohio spent \$92,019,995 operating juvenile justice correctional agencies — fourth in the nation behind California, Florida, and New York.

Recidivism rates, categorized as re-commitments (a DYS felon released and on aftercare who commits a new offense) and prior discharges (a DYS felon released, who completed aftercare and is discharged, who commits a new offense) are increasing for all DYS youth, but at a faster rate for African-American male youth. Revocations (a DYS felon released to aftercare who violates one or more conditions of aftercare) are decreasing, but at a slower rate for African-American male youth than for the overall DYS population.

Two important features of the Ohio juvenile justice system are:

- High rates of procession youth into the system
- Overwhelming conditions of overcrowding

Overcrowding is believed to be linked to the frequency of death and injury accidents in juvenile justice correctional facilities. Ohio is among the top five states in the nation in the frequency of death and injury incidents, along with California, Tennessee, New York and Oregon. Further, overcrowding often results in inadequate treatment, poor supervision and lack of physical safety.

Research has shown that institutionalization may not be the most effective treatment in the early stages of delinquent behavior (i.e., for first and second time offenders). Despite this, Ohio is seriously behind other states in developing effective sentencing alternatives for juveniles.

There is a need for a reassessment of the juvenile justice system, from court processing through institutionalization to re-entry and reintegration processes.

Recommendation Summary — Juvenile Justice

CJ-1 Fund further research into the disproportionate representation of African-American youth in the juvenile justice system.

CJ-2 Develop diversion programs to prevent African-American males from entering the juvenile justice system.

CJ-3 Mandate juvenile offenders' statutory right to treatment provided in the least restrictive, family-centered, community-based environment available.

CJ-4 Provide effective and productive "alternative" programs to the traditional sentence of "lock up" for juvenile felons, and require equal minority access to such programs.

CJ-5 Develop community-based "alternative" programs specifically designed for African-American males that are conceptualized, planned and proportionately staffed by African-American can males.

CJ-6 Establish societal-entry/reintegration programs for juvenile offenders and communities.

CJ-7 Increase African-American male professional employees representation throughout the juvenile justice system.

2. Criminal Justice System Analysis

An analysis of the adult criminal justice system revealed two primary issues of concern:

- The number and proportion of African-American males in the Ohio prison inmate system.
- African-American male attitudes toward the criminal justice system.

As with the juvenile justice system, African-American males are disproportionately represented in Ohio penal institutions. In addition, while incarcerated, African-American males are more likely to commit serious offenses within prisons than their white counterparts, and such offenses are more likely to be more severe.

At the same time, a review of the work force composition at 15 state prisons showed that, with the exception of the Dayton Correctional Institution, none had significant numbers of African-American males on their professional staffs. This lack of African-American cultural input into determining the severity of institutional offenses may be a significant factor in the large numbers of such offenses reported.

Also important is the lack of incentives for inmates to participate in educational and substance abuse programs. The reported average educational level of Ohio's inmates is 7th grade. Improving this educational level could result in lower recidivism rates and higher success rates for inmates who are released.

The final issue is that substance abuse programs in prisons need to be expanded. DRC estimates that 7 out of 10 inmates have a problem with alcohol or drugs. There are not enough treatment programs available to meet the needs of the prison population.

Recommendation Summary — Criminal Justice System Analysis

CJ-8 Expand and upgrade public defenders' offices to ensure equity between the prosecutorial function and defense function.

CJ-9 Provide a uniform, workable system for pretrial release for persons with bailable offenses.

CJ-10 Require selection of juries to be based on both voter registration and drivers license lists.

CJ-11 Mandate presentence investigations for all convicted felons.

CJ-12 Establish a Sentencing Commission, as recommended by the Governor's Committee on Prison and Jail Crowding, to research and review sentencing patterns in Ohio courts.

CJ-13 Provide incentives to inmates for productively participating in educational programs.

CJ-14 Increase and expand substance abuse programs in prisons.

CJ-15 Require community-based corrections programs to develop programs specifically addressing the needs of African-American males.

CJ-16 Establish parole guidelines in the Ohio Administrative Code.

CJ-17 Increase funding for development of programs for both communities and inmates for re-entry/reintegration of inmates into the community.

Appendix II

Bowling Green State University
Race and Juvenile Justice in Ohio
June 1993
Policy Issues and Recommendations

Issue #1 Police referral patterns

Since minority youth are overrepresented upon referral to juvenile court, it is clear that police enforcement practices and referral patterns have a lot to do with overrepresentation. Referral by police is ultimately related to more frequent detention of minority youth and more frequent confinements in DYS. However, it is not known what aspects of law enforcement policy or practice may contribute to overrepresentation. City crime patterns, patrol manpower allocation assignments, and police decisions to arrest or release need to be examined to see why arrests produce more minority youth than white youth.

Recommendation #1: Studies should be encouraged by local criminal justice planning teams in consultation with persons knowledgeable about crime distribution and manpower allocation patterns. Police data on arrest or release of youth need to be made available to qualified research teams on a redacted basis and innovative patrol observation studies should be developed.

Issue #2 Records of informal referrals

Ohio needs to decide upon a uniform policy with respect to records of informal sanction processes ranging from school discipline to unofficial handling of referrals to juvenile court. These records would be especially useful for addressing early warning signs of youth involvement in antisocial behavior and for its opposite: identifying the factors related to desistance from continued involvement in trouble.

Recommendation #2: State statutes and agency policies need to be reviewed in order to provide for a consistent policy with respect to youth records. There is no doubt that the protection of privacy, the assurance of accuracy, and the scope of availability are difficult issues that cut on both sides of the question. However, if effective monitoring of race differences in informal sanction processes is to be achieved, it will require availability of better information about what happens to youth when they first begin to get into trouble with authority. The common sense approach embodied in the old statement, "An ounce of prevention is worth a pound of cure," is surely applicable here.

Issue #3 Developing guidelines for and monitoring detention decisions

Since detention is so highly associated with confinement decisions and since minority youth have so much greater risk of being detained, effective guidelines need to be developed to bring greater awareness of the disparity and meaningful reforms to reduce the disparity to detention decision makers. Ultimately, this may require changing state law regarding the criteria necessary to detain a youth or developing effective community monitoring programs to take the place of a parent who can't both support her family and monitor adolescent children at the peak of their strides for independence.

Recommendation #3: Develop and evaluate some model community-based alternative preadjudicatory release and monitoring programs or adaptations of existing programs like electronically monitored house arrest.

Recommendation #4: Study the merits of changing the state statutory or local operating policies, specifically related to guardian issues, that indirectly place minority youth more at risk for detention.

Issue #4 DYS dispositions

Findings from this study suggested that more severe dispositions may be accorded in counties that lack resources to provide community-based alternatives. Furthermore, despite the absence of an overall race effect on confinement controlling for relevant factors such as prior confinements, seriousness of the offense, and others, the type of confinement is strongly related to race. For every two out of four white youth who receive a DYS confinement, three out of four minority youth will receive a DYS confinement. The average number of prior court referral preceding a DYS confinement is three for minority youth, five for white youth. Minority youth get DYS in greater numbers and earlier in their careers than white youth. Some further recommendations consistent with recent recommendations for revisions of DYS funding focus on new community-based alternatives and nonprescriptive disposition guidelines.

Recommendation #5: The range of community-based disposition alternatives should be increased to reduce the number of nonviolent, nonchronic offenders sent to DYS. Relatedly, institutional programs need to be redesigned to take into account shifts in the nature of the delinquent population that will accompany the increased use of community-based programs.

Recommendation #6: Nonprescriptive guidelines concerning the kinds of offenders and stages in their "careers" at which a DYS confinement could be replaced by an alternative disposition should be developed using the data collected in this study and similar data about DYS admissions cohorts.

Issue #5 Dealing with angry youth and unresponsive systems

Findings from this study suggest that minority youth more so than white youth react with anger when confronted by a sanction process that is perceived to be arbitrary, manipulative, and without an evident purpose to help youth. This may be an early expression of the crisis of confidence in our institutions or it may be a temporary teenage posture. Whatever its progression, if anger is inappropriately expressed or allowed to fester, it ultimately proves to be dysfunctional. Juvenile justice agencies have a responsibility not to make matters worse than they are.

Recommendation #7: Juvenile justice agencies should take the lead in developing training programs for staff who work with youth clients to deal with anger effectively and constructively. One prosecutor already communicated with project staff that he thought the decision simulation booklet was a good training exercise for new attorneys on his staff to become familiar with decisions in which demeanor may play a role.

Recommendation #8: Juvenile justice agencies should also take the lead in cooperation with schools to develop effective legal education programs that focus on conflict resolution and dispute resolution, on how the principles of law can operate to everyone's benefit, and on the positive power of legal institutions. In an era of sensitivity to abuses of power and privilege, legal institutions like the juvenile court must assume a positive role in helping to restore even young people's lost confidence in basic principles like equity, justice and the rule of law.

Appendix III

Canons of Ethics and Conduct for Court Interpreters

CANON 1: HIGH STANDARDS OF CONDUCT

Interpreters, transliterators, and translators shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Considerations: Interpreters, transliterators, and translators should maintain high standards of conduct at all times to promote public confidence in the administration of justice.

CANON 2: ACCURACY AND COMPLETENESS

Interpreters, transliterators, and translators shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

Considerations: Interpreters, transliterators, and translators, in order to preserve the court's record and assist in the administration of justice, should faithfully and accurately interpret and repeat faithfully and exactly the meaning of what is said without embellishing, explaining, omitting, adding, altering, or summarizing anything spoken or written. This includes accuracy of style or register of speech, non-distortion of the meaning of the source language even if it appears obscene, incoherent, non-responsive, or a misstatement. When addressing the non-English speaker, they shall not assume or presume the intent behind any question asked and attempt to correct the question in the interpretation.

Interpreters, transliterators, and translators have a duty to correct themselves if they misinterpret, in order to preserve the court record. They have a duty to request repetition if they do not hear the information or the party did not speak in an audible manner.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

Interpreters, transliterators, and translators shall be impartial and unbiased. They shall refrain from conduct that may give the appearance of bias and disclose any real or perceived conflict of interest.

Considerations: Interpreters, transliterators, and translators shall not permit themselves to be used as an investigator in the case or as an investigator for any party to a case. They shall not permit themselves to be used for communicating information to a party, a relative to a party, or witness without the presence of the attorney. They shall not receive gifts or secondary remuneration above and beyond their set fees. If an actual conflict of interest

or an appearance of a conflict of interest arises, the interpreter shall inform the court and the attorneys involved in the case. Such disclosure shall not include privileged or confidential information. Interpreters, transliterators and translators must disclose on the record to the court any prior involvement with the case, parties, or witnesses that could be viewed as a conflict of interest. Following disclosure, the court shall determine whether the interpreter may remain on the case. Interpreters, transliterators, and translators must refrain from conversations with parties, witnesses, jurors, attorneys, law enforcement agents, or with friends or relatives of any party during a trial unless it is to carry out interpreting duties. Should the interpreter become aware that a party in the case views the interpreter as being biased, the interpreter must disclose that information to the court. Counsel for either party may petition the court for appointment of a different interpreter thereby releasing the interpreter from the obligation for the record. However, the court shall determine whether the interpreter may remain on the case. Attorneys, probation supervisors or investigators, police officers, therapists, social workers, family members, friends, volunteers or other professionals should not interpret in any non judicial proceeding or for any court or court support service in which he or she is professionally involved with a party to the matter and/or does not hold a certification on court interpretation or is not qualified to interpret in legal settings. Interpreters, transliterators, and translators shall not offer opinion to any party, counsel or court official concerning the theory of a case, the credibility of a witness, or the demeanor of the finder of fact during the course of any judicial proceeding.

A conflict of interest may exist when:

- 1) Interpreters, transliterators, and translators are related to or have a close social relationship with a party or witness, or are themselves potential witnesses.
- 2) Interpreters, transliterators, and translators have been involved in the choice of counsel.
- 3) Interpreters, transliterators, and translators themselves, their spouse, or their child are party to the proceeding or have a financial interest or any other interest in the outcome of the case.
- 4) Interpreters, transliterators, and translators have served during the investigative phase of the case, which would require them to testify as an expert.

CANON 4: CONFIDENTIALITY

Interpreters, transliterators, and translators shall protect and not disclose a non-English speaker's privileged or confidential information made in or out of court without permission of said non-English speaker; provided, however, that such non-English speaker had a reasonable expectation or intent that such

communication would be protected and not be so disclosed.

Considerations: Interpreters, transliterators and translators shall uphold attorney client privileged information. They shall protect from unauthorized disclosure all privileged or other confidential information that they obtain during the course of their professional duties. This means confidentiality with respect to any communication, documents, police and medical records, or other types of privileged communications. Interpreters, transliterators, and translators shall not derive any profit or advantage from any confidential information acquired while acting in a professional capacity.

CANON 5: REPRESENTATION OF QUALIFICATIONS

Interpreters, transliterators, and translators shall accurately and completely represent their certifications, training, and pertinent experience.

Considerations: Interpreters, transliterators, and translators have a duty to present completely and accurately any applicable testing credentials, certifications, training, references and pertinent experience.

CANON 6: PROFICIENCY

Each court interpreter, translator, or transliterator shall provide professional services only in matters or areas in which said professional can perform proficiently.

Considerations: Upon accepting an assignment, the interpreters, transliterators, and translators imply they have the capacity to perform effectively in the given setting, are fluent in both languages, and have the capacity to interpret accurately and understand the regional differences and dialect spoken. Interpreters, transliterators, and translators have a duty to request from the court and parties all pertinent information and materials necessary to prepare for the case.

Interpreters, transliterators, and translators should strive continually to improve language skills and knowledge of specialized vocabulary and familiarize themselves with the judicial system and any court rules pertaining to interpreters. Interpreters, transliterators, and translators are responsible for having the proper dictionaries and other reference materials available when needed.

CANON 7: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Interpreters, transliterators, and translators shall assess at all times their ability to deliver their services. If the interpreter, transliterator, or translator discovers

anything which impedes full compliance with this code, said individual shall report immediately this information to the appropriate judicial authority.

Considerations: Interpreters, transliterators, and translators shall inform the court if they are having difficulties obtaining any of the pertinent information or materials required to prepare for a trial or court proceeding which may impede their ability to perform adequately. If at the time of a hearing or trial the interpreter has not been provided with the information, the interpreter must on record inform the court and request a recess to review the information. Interpreters, transliterators, and translators should withdraw from an assignment due to lack of preparation, difficulty understanding the client, or lack of proficiency.

CANON 8: DUTY TO REPORT ETHICAL VIOLATIONS

Interpreters, transliterators, and translators shall report to the court any efforts to impede their compliance with any law, provision of this code, or other official policy governing court interpreting or legal translating. Interpreters, transliterators, and translators shall report to the appropriate judicial authority if they observe another interpreter, transliterator, or translator improperly performing an interpreting or translating assignment.

Considerations: Interpreters, transliterators, and translators have the duty to report to the court any ethical violations, actions, or information that suggests imminent harm to someone, relates to a criminal act, or refers to the persistence of a party demanding the interpreter, transliterator, or translator violates the law, subject to applicable privilege. In such a situation, the judge shall determine what action, if any, should be taken.

CANON 9: SCOPE OF PRACTICE

Interpreters, transliterators, and translators shall not give legal advice, conclusions with respect to any answer, express personal opinions to individuals for whom they are interpreting, or engage in any other activity which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Considerations: Interpreters, transliterators, and translators are responsible only for enabling communications and may take a secondary role only as necessary for assuring accurate and faithful interpretation, transliteration, and translation. Interpreters, transliterators, and translators may assume a secondary role when they find it necessary to speak directly to the court to seek assistance in performing their duties, e.g., seeking direction when unable to understand or express a word or thought, requesting that speaker's moderate their rate of communication or repeat or rephrase something,

identifying interpreting errors, requesting a recess, requesting copies of documents or requesting a recess to review the documents to be translated or notifying the court of their reservations about their ability to satisfy an assignment completely. In such instances, they should make clear that they are speaking for themselves.

CANON 10: RESTRICTIONS FROM PUBLIC COMMENT

Interpreters, transliterators, and translators shall not publicly discuss, report, or offer an opinion concerning a matter in which they are or have been engaged, even when that information is not privileged or required by law to be confidential.

Considerations: Interpreters, transliterators and translators shall refrain from making public comments or giving opinions or reports concerning any particulars of a case in which they are or have provided professional services, regardless whether the information is privileged or confidential. This restriction does not apply to public comments or reports concerning the field of interpretation.

Appendix IV

Proposed Rules of Superintendence

Rule - Appointment of Qualified Interpreter in Actions
Initiated by the state of Ohio

I. Applicability.

(A) This rule shall apply in civil and criminal cases which have been initiated by the state of Ohio, and:

- (1) where a party or witness requests an interpreter; or
- (2) if the court concludes that a party or witness cannot speak or understand the English language such that the services of an interpreter would permit effective participation in a court proceeding.

(B) The court should conduct an examination of the party or witness on the record and ask primarily open-ended questions to determine whether the services of an interpreter are required pursuant to Section II of this rule.

(C) The court shall appoint more than one interpreter for:

- (1) proceedings which are expected to last two or more hours if continuous simultaneous or consecutive interpretation will be required;
- (2) in the case of sign language interpreters, two interpreters may be appointed for hearings lasting less than two hours depending on the circumstances and the complexity of the case;
- (3) trials and evidentiary hearings in order to assure that the quality of interpretation does not decrease due to interpreter fatigue; or
- (4) proceedings involving a non-English speaking defendant if there will be any non-English speaking witness(es).

(D) Any individual (other than a witness) who is entitled to an interpreter may waive his/her right to an interpreter. Such waiver shall be accepted only if the court has conducted an appropriate inquiry using an interpreter and only after the individual has an opportunity to confer with counsel. The court should permit the waiver to be retracted at any stage of the case or proceeding.

II. Appointment of Certified Interpreters

(A) Except as provided below, the court shall appoint a certified interpreter. Unless stipulated by all the parties, the interpreter shall be qualified as an expert in accordance with Ohio Evidence Rule 604.

(B) If no certified interpreter exists or is reasonably available, the court shall appoint a qualified interpreter.

- (1) The court shall consider the gravity of the proceedings and whether the matter could be rescheduled to obtain a certified interpreter.
- (2) The court shall summarize on the record its efforts to obtain a certified

interpreter and the reasons for using a non-certified interpreter.

- (3) The interpreter's qualifications should be stated on the record, including the interpreter's experience and training as a court interpreter.
- (4) The court should make inquiry of all parties and give each side an opportunity to object to the interpreter.

(C) If no qualified interpreter is reasonably available, the court may appoint a language skilled interpreter. But the use of such interpreter in both spoken and sign language is strongly disfavored and should only be used when absolutely necessary.

(D) The administrative judge should designate an individual to coordinate the use of interpreters and whose responsibility would include maintaining a current roster of certified and qualified interpreters, and developing an effective method of screening and assessing individuals and their qualification in accordance with the following guidelines.

- (1) "Certified interpreter" means a person who has passed the National Center for State Courts Consortium test, or the Federal Court Certification exam;
- (2) In the case of sign language, certification is recognized for interpreters who hold a Specialist Certificate: Legal from the Registry of Interpreters for the Deaf, Inc.;
- (3) Qualified spoken language interpreters consist of persons who have completed a seminar on the Code of Professional Conduct for Judiciary Interpreters and Translators. Membership in good standing in a professional interpreters association. The sponsorship of two active members in good standing who have been members of the same association for at least two years whose language(s) of expertise is the same as the applicant's and who attest to having witnessed the performance of the applicant, as well as to the accuracy of the statements on the application and have passed the state certification exam. A minimum of three years experience in court interpretation. Reference letters attesting to the interpreter's performance and years of experience from judicial officials and a passing score on the written component of the certification exam;
- (4) In the case of sign language interpreters, qualified interpreters consist of persons holding a Comprehensive Skills Certificate, Certificate of Interpretation (CI), Certificate of Transliteration (CT), must have both CI and CT, or Certificate of Deaf Interpreting, plus three years of experience in court interpreting;
- (5) Skilled language interpreters are persons who lack the training to be considered qualified interpreters, but who have demonstrated to the satisfaction of the court the ability to interpret from English into

a designated language and from that language into English, have attended a seminar on the interpreter's code of ethics and professional responsibilities, and have observed a minimum of 20 hours of in court proceedings.

- (6) In the case of sign language interpreters, sign language skilled interpreters are persons who lack the training to be considered qualified interpreters, but who can demonstrate to the satisfaction of the court the ability to interpret sign language. These individuals hold only a CI or CT, have attended a seminar on interpreters code of ethics and professional responsibilities, and have observed a minimum of 20 hours of incourt proceedings.

(E) If the courts must use an interpreter whose language skills are untested, the court should determine on the record whether the interpreter:

- (1) Communicates effectively with the officers of the court and the person(s) who is receiving the interpreting services.
- (2) Knows the Code of Professional Responsibilities and is able and willing to comply with the code; and
- (3) Is prepared to take the interpreter's oath as in R.C. §2311.14 and as set forth below.

(F) It is the court's duty to inquire regarding the qualifications, training, and pertinent experience of any interpreter even if provided by a language agency as set forth above.

III. Prior Contact with the Case and Interpreter's Oath

(A) Before being sworn to serve on a case, an interpreter shall be required to disclose on the record to the court and to the parties any prior involvement with the case or with any party or witness involved there in.

(B) The presiding judicial officer is responsible for administering the oath in accordance with Ohio Evidence Rule 604.

(C) The name of the interpreter shall be placed on the record and noted on the docket. The record should reflect the interpreter's certification and/or qualifications, pertinent experience, training, and the language of fluency.

(D) The court shall administer an oath that the interpreter will make a true and accurate interpretation of the proceedings to the party or witness, and that he/she will truly repeat the statements made by such party or witness to the court, to the best of his/her knowledge.

IV. Record of Interpreted Testimony and Special Audio Equipment

(A) In criminal trials and evidentiary hearings, the court shall require

the proceedings to be electronically recorded to permit a record of all sworn testimony and its interpretation regardless of the qualifications of the interpreter. In criminal proceedings involving sign language interpreters, the testimony and interpretation shall be video taped.

(B) In non-criminal trials, particularly when an uncertified interpreter renders interpretation, the court shall order the proceedings to be electronically monitored.

(C) For trials and multiple defendant cases, and for hard of hearing persons, the judge shall order the use of special Audio equipment when necessary to aid in interpretation of court proceedings. The parties shall give timely notice to the clerk to facilitate arrangements for locating, borrowing or renting, and installing appropriate equipment.

V. Modes of Interpretation

(A) The modes of interpretation shall be in the simultaneous, consecutive and sight translation modes. Summary interpretation should never be used.

- (1) The simultaneous mode of interpretation is used during all court proceedings where the non-English speaking person is listening or the judge is speaking directly to that person (e.g., trial, jury instructions, the judge is addressing an officer of the court or any other person other than the non-English speaking person, or reading of rights.)
- (2) The consecutive mode is used when the non-English speaking person is giving testimony or the judge or other officer of the court is communicating directly with said individual and is expecting responses.
- (3) Sight translation is the oral translation of a written document into the target language.

(B) All interpretation must be done in the first person in order for the court record to be accurate. The third person is used only when the interpreter is speaking for himself or herself.

VI. Effective Use of an Interpreter

(A) In order to maximize communication during interpreted proceedings, the court should:

- (1) Instruct persons to speak slowly and at an appropriate volume for the interpreter to hear and should permit only one person to speak at a time;
- (2) Seek to avoid interpreter fatigue by providing opportunity for the interpreter to have regular breaks.
- (3) Instruct persons to direct the questions and responses directly to the party, witness, counsel or judge. Questions or responses should not be to

the interpreter.

(B) In proceedings involving an interpreter, the court should provide instructions, including the following information, as applicable:

- (1) When the interpreter is interpreting for a party, the interpreter should be instructed to interpret all statements made in open court including statements made by the judge to the interpreter, objections and statements of counsel.
- (2) Any questions by a party should be directed to counsel. During witness testimony, the witness shall be cautioned that any statement, questions or answers directed to the interpreter will be interpreted in open court. Witnesses should be instructed to direct any questions to the person asking the question, not the interpreter.
- (3) Likewise, counsel should be instructed to direct the questions to the witness and not the interpreter.
- (4) When proceedings involve interpreted witness testimony, the witness should be instructed to direct all questions to the person asking the question, not to the interpreter.
- (5) In open court, the interpreter shall be cautioned that he/she cannot give any advice; personal opinions; carry on conversations with a party, counsel, or judge during trials. An interpreter may communicate with a party, witness, or judge during the proceeding so long as the communication carried out their professional duties and/or dealing with language expertise.
- (6) The interpreter will be instructed that the interpreter is an officer of the court and must remain impartial at all times. If the interpreter cannot meet this duty, the interpreter shall recuse himself/herself. If the judge, the parties, and/or the attorneys become aware of the interpreter giving any advice or opinions, the interpreter shall be removed immediately.
- (7) Any challenges relating to the interpreter or interpretation or any allegation of error should be brought to the attention of the judge and should be handled as a side bar outside the presence of the jury without unnecessary delay. The interpreter has a duty to immediately inform the court of any errors in interpretation.

(C) In any trial in which an interpreter will be used, the court shall inquire whether any jurors understand the language to be interpreted.

(D) Jurors should be instructed that:

- (1) They should treat the interpretation of witness testimony as if the witness had spoken and no interpreter was present.
- (2) They must not give any weight to the fact that the witness, defendant or party cannot speak the English language and requires the services

of an interpreter and jurors may not consider the use of an interpreter when evaluating a witness' credibility.

- (3) Jurors shall be instructed that any juror who understands the witness' language must disregard any interpretation other than the official interpretation rendered in English and must disregard any perceived errors by the interpreter.

(E) In any trial in which an interpreter will be used, the court should voir dire the prospective jurors regarding their ability to comply with the above instructions.

VII. Removal of Interpreter

(A) Any of the following actions shall be good cause for the removal of the interpreter:

- (1) The interpreter is unable to communicate and interpret adequately with the parties, judge, and/or counsel, including self-reported inability.
- (2) The interpreter knowingly and wilfully made false interpretation while serving in an official capacity.
- (3) The interpreter knowingly and willfully disclosed confidential or privileged information while serving in an official capacity.
- (4) The interpreter failed to follow other standards prescribed by law and/or the Code of Ethics and Conduct.

VIII. Compensation and Expense of Interpreter Services

(A) Except as otherwise provided in the Ohio Revised Code, the court is responsible for the payment of court interpreters from within the courts own budget and should not be assessed to the parties as cost.

- (1) The selection of an interpreter does not constitute an appointment of that person as an employee of the state, county or municipality, except in respect to an interpreter who otherwise is an employee of the state, county or municipality by prior appointment.
- (2) Income taxes or social security taxes shall not be deducted from a contract interpreter's compensation. Social security benefits for the contract interpreter shall be based entirely on the interpreter's contribution as a self-employed individual, and the state shall make no contribution as an employee.
- (3) The clerk shall prepare and transmit annually to each contract interpreter the appropriate Internal Revenue Service form(s).

(B) The court shall not select as an interpreter:

- (1) a person who is compensated by a business owned or controlled by the interested party;

the court;

(3) a family member;

(4) a person who has a close relation with any of the parties; or

(5) a person who has an interest monetary or otherwise in the outcome of the case.

(C) The court shall be responsible for payment of interpreters for all court proceedings both criminal and civil.

(1) The fees shall be paid from the appropriations available to the judiciary and determined by courts of common pleas or the municipal court of each jurisdiction.

(2) The court shall pay travel and other per diem cost when necessary to assure that certified interpreters are available.