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March 21, 2007

Dear Alaskan,

The Alaska Supreme Court has long been committed to seeing that race and ethnicity do not disadvantage persons who have contact with the justice system generally, and with the Alaska Court System particularly. In 1997, after an extensive state-wide inquiry, the court's Fairness and Access Advisory Committee made numerous recommendations to this court to address actual or perceived fairness and access issues. The Alaska Supreme Court, in response, created the Fairness and Access Implementation Committee in 1998.

The Implementation Committee has, in the intervening ten years, worked hard to address the recommendations. I am pleased to enclose its 2007 Status Report describing those efforts.

I hope you will review the report and feel free to give your comments about fairness and access issues. We welcome your thoughts. Please send them to Susanne DiPietro, the Judicial Education Coordinator, at the contacts listed below.

Please be assured that the court, its members, and the entire Alaska Court System remain dedicated to making sure that persons are not disadvantaged in the courts by race or ethnicity, whether they are parties, witnesses, jurors, job applicants, or employees.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dana Fabe", is positioned above the printed name.

Dana Fabe
Chief Justice

Please send your comments to:
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**2007 Status Report of the
Alaska Supreme Court Fairness and Access
Implementation Committee**

Implementation Committee Members

Justice Robert L. Eastaugh (Co-Chair)

Retired Judge Mary E. Greene (Co-Chair)

Chief Judge Robert G. Coats

Stephanie J. Cole, Alaska Court System Administrative Director

Judge Patricia A. Collins

Judge Ben Esch

Judge Mark Rindner

Judge Eric Smith

Judge Mark I. Wood

Judge Larry Zervos

Teresa Carns, Alaska Judicial Council

Staff: Susanne DiPietro

March 6, 2007

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PART I: HISTORY OF FAIRNESS AND ACCESS COMMITTEE AND PURPOSE OF THIS REPORT

The Alaska Supreme Court's modern interest in addressing the effect of race and ethnicity in the Alaska state courts began more than ten years ago, after representatives of the Alaska Court System and the Alaska Judicial Council attended a 1995 national conference on eliminating race and ethnic bias in state courts. In 1996 the Alaska Supreme Court appointed the Advisory Committee on Fairness and Access and asked it to identify concerns about racial and ethnic bias and make recommendations. The Advisory Committee formed six subcommittees whose members included prominent community members and leaders, legal professionals, and jurists from all over Alaska. The Advisory Committee's members and subcommittees spent twenty months in 1996 and 1997 investigating racial and ethnic bias issues around the state. The subcommittees then forwarded their written findings and recommendations to the Advisory Committee. The subcommittees' findings and recommendations covered topics bearing on how ethnicity and race affect those dealing with Alaska's state courts. The topics included: court services in rural areas, public education about the justice system, language interpreters, cross-cultural training for the courts, local dispute resolution resources, effective communication, the need to study the effect of race and ethnicity on the criminal justice process, sentencing alternatives, jury service, and diversity in the court system's workforce. The Advisory Committee's Final Report of October 1997 included recommendations about what the supreme court should do to make the court system work better for racial and ethnic minorities. (The Final Report is available on the Alaska Judicial Council's website at www.ajc.state.ak.us.)

In 1998 the supreme court formed the Fairness and Access Implementation Committee and charged it with carrying out the Advisory Committee's recommendations to the extent feasible. Since then the Implementation Committee has worked to carry out the Advisory Committee's recommendations so far as possible and practicable.

This report describes what the Implementation Committee has done for each recommendation. This report also describes what other groups inside and outside the court system have done to advance the recommendations.

The Implementation Committee has not restricted itself to the 1997 recommendations. In 2004 it added a subcommittee to broadly improve access to civil justice; this work will inevitably improve fairness and access for minority civil litigants.

Also, the Implementation Committee's members have recognized that continuing issues regarding the effects of perceived or real ethnic or racial bias on people contacting the courts and the justice system are likely to exist for the foreseeable future. The Implementation Committee was formed with implicit expectations it might take about three years to carry out most or all of the 1997 recommendations before disbanding. Now, going into the tenth year since its formation, the Implementation Committee expects that it must continue its work as a standing committee of the supreme court, just as most similar groups in the other states do. The committee is dedicated

to ensuring that the court system do everything it can to make sure that ethnicity and race do not disadvantage any person dealing with the Alaska Court System or the justice system in any capacity, whether as litigant, advocate, juror, witness, employee, or job applicant.

The committee is publishing this report for two reasons. First, to explain what has been done, partly to reassure Alaskans that efforts are being made to address fairness and access issues. And second, to encourage people to tell the committee and the Alaska Supreme Court whether and what more should be done. The committee will in coming months conduct public meetings and hearings in several Alaska communities to discuss fairness and access issues and to invite public comment on what has been done and what more remains.

The Implementation Committee welcomes all comments. Comments may be sent to any member of the committee or to the committee in care of Dolly Roit, 303 K Street, #500, Anchorage, Alaska 99501, or may be emailed to the committee at droit@appellate.courts.state.ak.us.

PART II: IMPLEMENTATION EFFORTS TO DATE

The Implementation Committee created task forces to implement the recommendations concerning public education, jury service, local dispute resolution, rural services, and interpreters. The Implementation Committee also formed working groups to address recommendations concerning the court as employer, publications and communications, and ethnic disparities in the justice system. Each task force and working group completed several initiatives, explained below.

A. Public Education Task Force

Purpose/Goal

The Public Education Task Force was formed to increase positive contacts among minority populations and judges and magistrates through public education. The task force also investigated the use of technology to improve public education about the justice system.

Members

Retired Judge Mary E. Greene (chair), Justice Robert Eastaugh, Judge Larry Weeks, Stephanie Cole (Administrative Director of the Alaska Court System), Neil Nesheim (Area Court Administrator for the First Judicial District), Brant McGee (then-Public Advocate).

1997 Recommendations Addressed

(B)(1): The Alaska Supreme Court should encourage judges to educate the public about the justice system.

(B)(2): The Alaska Supreme Court should use technology to improve public education about the justice system.

Initiatives and Responsive Actions

In response the court system undertook six initiatives:

Initiative 1: Encourage Judicial Outreach to Minority Groups

Description of Initiative: The task force first focused on encouraging judges to meet with and make presentations to minority groups. Early on, the task force developed a brochure (*Can We Talk*) and twice sent the brochure to several hundred ethnic organizations throughout the state, including village councils, minority organizations, and Native groups. The purpose of the brochure was to encourage groups to invite judges as guest speakers. The task force also enlisted the area court administrators in the four judicial districts to coordinate judicial outreach efforts, and the chief justice personally encouraged judges to make presentations to minority groups.

Assessment of Initiative: Initial evaluation of those efforts suggested mixed results. Some districts showed outstanding outreach efforts and others made less progress. The brochure did not result in many speaking requests by ethnic groups.

Continuing Efforts/Next Steps: Public outreach, particularly into minority communities, will always be an important task. The Implementation Committee should continue to check at regular intervals to see if sufficient outreach with minority groups is being done, and if not, to improve outreach efforts.

Initiative 2: Establish Award for Judicial Outreach

Description of Initiative: The task force, through the Implementation Committee, asked the Alaska Supreme Court to establish an annual award for the judge or magistrate most active and effective in outreach efforts. The First Annual Alaska Supreme Court Community Outreach Award was announced at the statewide joint Bar/Judicial conference in May 2000. Each year since then, the supreme court has given the award to a judge or magistrate who has been particularly active in outreach.

Assessment of Initiative: The award has helped make people understand that outreach is an important part of a judge's work.

Continuing Efforts/Next Steps: Continue outreach award.

Initiative 3: Train Judges about Judicial Outreach

Description of Initiative: The task force sponsored two workshops (one in 2000 and one in 2003) to teach judges how to conduct effective community presentations. The 2003 workshop trained judges how to use a short video in presentations to adult audiences about criminal sentencing law and procedure. (Production of the video was funded by the State Justice Institute.)

Assessment of Initiative: Both workshops were well received by the judges. In addition, the court system still receives requests for copies of the criminal sentencing videotape from teachers and others.

Continuing Efforts/Next Steps: The sentencing video needs to be updated, since there have been important changes in the laws about Driving Under the Influence and felony sentencing.

Initiative 4: Establish Judicial Outreach Advisory Commission

Description of Initiative: In 2001 the chief justice established a community outreach advisory commission consisting of judges, legislators, and members of the public, including community and minority leaders, educators, and journalists. The commission met quarterly and developed recommendations for improving outreach. To effectively implement these and other recommendations, in 2004 the court system administration restructured a staff position in the central administrative office (the court initiatives attorney position) in part to provide ongoing support to judicial outreach and education efforts. This person supports the work of the outreach advisory commission, coordinates Law Day activities statewide, promotes law-related education in the schools, works with the media, and generally spearheads statewide community outreach activities.

Assessment of Initiative: The commission relayed valuable ideas to the staff about outreach and how to do it. The addition of a statewide staff member tasked with outreach has resulted in much more regular outreach to schools and children. The continuing success of the outreach staff member fulfills the public education goals of the Implementation Committee. Its Public Education Task Force is therefore currently inactive.

Continuing Efforts/Next Steps: The commission has not met in about two years. The Implementation Committee should consider recommending that the chief justice reactivate the commission because its work will be helpful to the outreach staff member. The position of the statewide outreach staff member should continue.

Initiative 5: Conduct “Children in Alaska’s Courts” Forums

Description of Initiative: In 2004-05 the community outreach coordinator completed a project funded by the State Justice Institute to conduct five children’s justice roundtables across Alaska

asking professionals and members of the public to identify strengths, weaknesses, and recommendations for how the court system handles cases involving children and families. Each forum started with a series of structured roundtable discussions attended by judges, court administrators, and children's justice professionals. The roundtable participants were divided by subject area (child protection, domestic violence, juvenile delinquency, and divorce/custody). The recommendations and ideas from the roundtable discussions were then written up and distributed to members of the public who attended an open forum in the evening. Members of the public gave their ideas and also responded to ideas from the roundtables. A report, entitled "Children in Alaska's Courts," summarizes the results of the forums. The report is available from the Alaska Court System.

Assessment of Initiative: The project was highly effective in reaching both the general public and people involved with children in the courts (such as government workers and children's advocates). The roundtables and public forums were well attended, and the format helped elicit comments that were focused and pertinent. The report effectively evaluates what has been accomplished and how some areas of unjustified disparity have been reduced. It also identifies areas that need improvement. Recommendations from the report were forwarded to the appropriate court system rules committees, to the presiding judges, and to appropriate court administrators for further action.

Continuing Efforts/Next Steps: None planned.

Initiative 6: Investigate the Use of Technology in Public Education

Description of Initiative: The task force investigated these uses of technology to enhance outreach: Internet question-and-answer sessions for judges, video, and web site information. The task force did not endorse letting the public use an Internet forum to ask questions of judges. The task force endorsed the court system's efforts in preparing the sentencing video and assisted in presenting the video to minority groups. The task force suggested improvements to the court system's "Frequently Asked Questions" (FAQs) on the court's web page. The task force reviewed a number of presentations on public education, but did not find many that were suitable for presentation in Alaska.

Assessment of Initiative: The investigations made were useful in deciding what works and what does not. The sentencing video is an excellent outreach tool and sparks discussion in every group to which it is presented. The additions to the FAQs were useful.

Continuing Efforts/Next Steps: None planned.

B. Rural Services Task Force

Purpose/Goal

The Rural Services Task Force studied ways to increase judges' presence in rural areas. Specific goals included establishing a court system presence in rural areas not now being served, increasing the court system's presence in under-served rural areas, encouraging and funding judicial circuit-riding and travel, and establishing and maintaining a high-quality telephone system.

Members

Judge Patricia Collins (chair), Judge Larry Zervos, Judge Richard Erlich, Judge Fred Torrissi, Retired Judge Donald Hopwood, Teri Carns (Alaska Judicial Council).

1997 Recommendations Addressed

A(1): The Alaska Court System should establish its presence in rural areas not now being served and should increase its presence in underserved areas. It should encourage and fund judicial travel to local hearings, trials, and sentencings, and send "circuit-riding" judges to rural areas.

A(3): The Alaska Court System should establish and maintain a high-quality telephone system.

Initiatives and Responsive Actions

Initiative 1: Institutionalize Rural Travel Policies

Description of Initiative: The task force worked with each of the four judicial districts to adopt policies encouraging judges to travel to rural areas to hold court hearings.

Assessment of Initiative: The First, Second, and Fourth Judicial Districts adopted district-wide written policies encouraging judicial travel to rural areas for court hearings and requiring annual review of travel efforts within each District. The Third Judicial District adopted a written travel plan. The institutionalization of travel policies and annual review is intended to insure regular discussion of rural travel needs and increase rural travel.

The task force also investigated the potential for joint agency travel agreements between the Alaska Court System and the Alaska Department of Public Safety to provide cost-efficient travel for lawyers and judges to hearings and public outreach efforts. The task force concluded that such agreements should be pursued on a case-by-case basis.

Continuing Efforts/Next Steps: Efforts to quantify whether rural travel has increased due to the travel policies have proved unsuccessful. Recommendation will be made to the court system to track the extent and cost of rural travel and related expenditures by judges and magistrates.

Initiative 2: Create Master Reference List of Rural Legal Resources

Description of Initiative: The Alaska Judicial Council created and published a Justice System Resources table listing most of the judicial and public safety resources available in every community in the state.

Assessment of Initiative: The table provides a convenient reference source for information about court services, tribal council or court resources, available police services, available correctional facility services, family reports of harm, local option status, and the numbers of prisoners, probationers, and parolees per community.

Continuing Efforts/Next Steps: The resources table should be updated regularly, but funding to do so has not been available.

Initiative 3: Survey Telephone Complaints and Recommendations

Description of Initiative: The Rural Services Task Force surveyed court locations statewide to identify communities with complaints about telephone systems and provided this information to Court System Administration.

Assessment of Initiative: The court system has upgraded telephone equipment in rural areas as funding permits.

Continuing Efforts/Next Steps: Task force members met with the Departments of Corrections and Public Safety regarding the possibility for shared videoconferencing. This initiative was discontinued due to concerns that videoconferencing might reduce direct services to rural residents. No new tasks are currently being pursued.

Initiative 4: Increase Number of Rural Magistrates

Description of Initiative: The purpose of the initiative was to encourage additional magistrate appointments in rural Alaska, along with additional travel. In response, the court system reopened the Selawik magistrate court, and modified the Craig magistrate position to allow travel to Hydaburg and Thorne Bay on Prince of Wales Island. Court administration secured grant funds for a traveling magistrate/master for delinquency matters to serve villages in the Yukon-Kuskokwim Delta.

Assessment of Initiative: While the court system has been responsive to community-specific requests for services, not all communities have the case load that would support a magistrate

position. The Selawik court closed due to lack of cases, but the magistrate position at Unalakleet has since become full-time, serving Stebbins, St. Michael, Shaktoolik, Koyuk, and Selawik. The effectiveness of the Bethel traveling magistrate/master position was impaired by inclement weather that resulted in cancelled hearings and by the challenge of funding attorney travel for the hearings. After the grant funding expired, the position was converted into a children's master position.

The status of current requests, if any, for increased services in specific communities is not known. There is no question that the number of magistrate posts remains significantly lower than in earlier years. The number of magistrate posts has decreased from 61 in 1978 to 37 in 2004. In addition, the number of Alaska Native magistrates has decreased from 18 in 1978 to 5 in 2004. The reasons for this decrease should be studied further.

Continuing Efforts/Next Steps: The Implementation Committee intends to investigate service requests by rural communities and encourage training and incentives to increase participation by rural communities in court system activities and to increase representation of Alaska Natives in the judiciary.

C. Interpreter Task Force

Purpose/Goal

The Interpreter Task Force was responsible for implementing recommendations regarding use of interpreters in court proceedings. These recommendations fell into four main areas: training judicial officers, training interpreters, establishing qualifications and ethical standards for interpreters, and developing new rules governing appointment and payment of interpreters. The Interpreter Task Force was assisted in some of its work by an interpreter advisory committee. Some of the people who have been critical to this effort include Stephanie Cole (Alaska Court System), Brenda Aiken (Alaska Court System), Robyn Bronen (Alaska Immigration Justice Project), Mara Kimmel (Alaska Immigration Justice Project), Joan Fisher (Anchorage Neighborhood Health Clinic), and Susanne DiPietro (Alaska Court System).

1997 Recommendations Addressed

C(1): The Alaska Court System should train judicial officers in the appointment and supervision of language interpreters in civil and criminal proceedings.

C(2): The Alaska Court System should recruit and train local interpreters of commonly used languages.

C(3): The Alaska Supreme Court should promulgate new court rules establishing qualifications and ethical standards for language interpreters in criminal and civil proceedings. The new rules also should govern appointment and payment of the interpreters.

C(4): The Alaska Court System should work with justice agencies to determine the most efficient way to hire and pay for interpreters in civil and criminal proceedings.

Initiatives and Responsive Actions

Initiative 1: Train Judges About Using Interpreters

Description of Initiative: The court system provided training about how to use interpreters to magistrates in 1998, and to judges in 1999, 2000, and 2004.

Assessment of Initiative: The training was well received, but judicial officers expressed frustration that qualified language interpreters are often not available to them.

Continuing Efforts/Next Steps: It is expected that training will be ongoing.

Initiative 2: Recruit and Train Interpreters

Description of Initiative: In May 2000 the court system sponsored a free mini-workshop in Anchorage on interpreter ethics and basic interpretation techniques. Also in 2000, the court sponsored a free, two-day orientation program for community interpreters. The workshops were open to anyone. The court also provided support to another state agency's interpreter training workshop.

Assessment of Initiative: The workshops were attended by some people who were already providing interpretation services in the legal system and by some people who were interested in doing so. The workshops were well-received, but it seemed that more deliberate attempts were needed to identify those few individuals with adequate bilingual skills and to provide them with more comprehensive and long-term training.

Continuing Efforts/Next Steps: In 2004 the court system joined the National Consortium for Court Interpreters, a project of the National Center for State Courts. The Consortium provides technical assistance on legal interpreting issues to courts, including access to training and certification tests. The court system can use consortium resources to focus training and testing efforts.

Initiative 3: Determine Best Way To Train and Pay Interpreters

Description of Initiative: In 2004 the court system completed a statewide study assessing the need for interpreters in the state, and exploring the financial feasibility of creating a statewide language bank to supply qualified interpreters to all state and local governments and to private businesses. The needs assessment found that language bank interpreters are needed, and draw a preliminary conclusion that such a center could be financially feasible.

Assessment of Initiative: This is an extremely complicated and difficult undertaking that requires the cooperation and active assistance of other branches of government, nonprofit organizations, and the private sector. It is expected to be a multi-year initiative.

Continuing Efforts/Next Steps. The court system continues to partner with other agencies and with the newly founded nonprofit Immigration Law Center to create a financial plan. In addition, the court system hosted its third annual interpreter summit in the fall of 2006.

Initiative 4: Propose Court Rule Regarding Interpreter Ethics

Description of Initiative: In 2004 a subgroup of the original Advisory Committee recommended to the Implementation Committee that it ask the Alaska Supreme Court to adopt the Model Code of Ethics for Court Interpreters for use in Alaska. The proposed code had been circulated to the members of the Alaska Bar Association and to members of the interpreter community for comment, and all comments received were positive.

The Implementation Committee declined to adopt the subgroup's recommendation, however, fearing that an ethical code would intimidate volunteer interpreters and contribute to unnecessary litigation over interpreters' qualifications. The Implementation Committee instead endorsed a strategy of informal education for people serving as court interpreters. The Implementation Committee requested that an information pamphlet of ethical guidelines be created and made available for distribution by judges and court staff.

Assessment of Initiative: A draft of an information pamphlet was created; however, it has not been distributed.

Continuing Efforts/Next Steps: Central court administration staff will continue to work on this issue.

Initiative 5: Propose Court Rules Regarding Appointment and Payment of Interpreters

Description of Initiative: The task force has considered whether court rules for paying and appointing interpreters should be revised, but has not made proposals.

Assessment of Initiative: Changes to court rules regarding appointment and payment of interpreters should wait until there is some way to distinguish between qualifications and skills of interpreters.

Continuing Efforts/Next Steps: No current activity.

D. Court as Employer Working Group

Purpose/Goal

The Court as Employer Working Group addressed cross-cultural training for court system employees and diversifying the court system workforce.

Members

Stephanie Cole (Administrative Director), Justice Eastaugh, Cindy Chase (then-Human Resources Director), Lee Powelson (present Human Resources Director).

1997 Recommendations Addressed

D: The Alaska Court System should ensure that all employees, including judicial officers, receive cross-cultural training upon hiring and at frequent intervals thereafter. The training should include information about the ethnic and cultural groups living and working in the area served by each court location.

J(1): The Alaska Court System should develop a new affirmative action plan and update it annually.

J(2): The Alaska Court System should assess and eliminate practices that adversely affect minority job applicants.

Initiatives and Responsive Actions

Initiative 1: Provide Diversity Training

Description of Initiative: The Administrative Director of the court system amended Administrative Bulletin 64 to require diversity training for all employees. The Human Resources Department developed an eight-hour diversity training curriculum and delivers the training statewide to all non-judicial employees. Diversity issues are incorporated into other court system training programs when possible.

Assessment of Initiative: Court personnel report that the training has been helpful.

Continuing Efforts/Next Steps: Diversity training for non-judicial employees continues on a regular schedule.

Initiative 2: Improve Recruitment Practices

Description of Initiative: The court system's Human Resources Department reviewed the minimum qualifications for various jobs to ensure that each qualification was justified and necessary. It developed initiatives to encourage members of minority groups to apply for jobs with the court system. These initiatives include outreach at job fairs and high schools, and sending recruitment bulletins to minority groups.

Assessment of Initiative: No follow-up study was undertaken to determine whether the number of minority applicants has increased.

Continuing Efforts/Next Steps: The Human Resources Department continues to work in this area.

Initiative 3: Adopt Equal Employment Opportunity Plan

Description of Initiative: Because the court system has no proven history of discrimination, it is not required by law to adopt an affirmative action plan. Instead, the court system adopted an Equal Employment Opportunity (EEO) plan and updates that plan as required by law. The court system's EEO plans have shown only one significant category of under-utilization in non-judicial employment: white males in clerical positions. In 2005 the court system had a slight under-utilization of American Indian/Alaska Native men in clerical positions (2.8% in the general population versus .87% in court system office/clerical positions).

Assessment of Initiative: One difficulty with the EEO data is that some of the court system's job classes are too small for statistical analysis. In other words, there are too few employees in some job classes to enable a valid comparison between those employees' ethnicities and the ethnicities in the Alaska population as a whole.

Continuing Efforts/Next Steps: Continue to send recruitment bulletins to Alaska Native Corporations and organizations. In addition, the Alaska Supreme Court has made efforts to increase diversity when hiring its judicial law clerks.

E. Communications and Publications Working Group

Purpose/Goal

To write court forms and pamphlets and create web sites for the public using clear, simple English.

Members

Justice Eastaugh, Teri Carns (Alaska Judicial Council).

1997 Recommendations Addressed

F(1): The Alaska Court System should use clear, simple language in its forms and other publications.

Initiatives and Responsive Actions

Initiative 1: Simplify Language of Alaska Court System Forms and Publications

Description of Initiative: The working group members looked at the language used in the court system's forms and pamphlets. They considered ways to make the forms more understandable to the people who use them.

The members found other courts' forms and pamphlets to use as models for Alaska. They also contacted people who could advise the Alaska Court System on using simple English.

The members looked at what the Alaska courts do now to make forms more understandable. The Forms Committee and Katherine Alteneider and the Family Law Self-Help Center staff have changed many of the court system's materials to make them easier for the public to use. The Family Law Self Help Center rewrote forms that can be used by people not represented by lawyers. These are on the court system's web site. It also made a web site with answers to common questions that the public asks. The web site includes information that people going to court need to know. Judge Jeffery in Barrow has written new forms for people in the Barrow court. Other courts could use the Barrow forms as models.

The working group looked at guidebooks written by other groups. The Alaska Judicial Council has published guides to the criminal justice system, victims' rights, and children-in-need-of-aid cases. The working group members also looked at the "Women's Legal Resources Handbook" published by the Network on Domestic Violence and Sexual Assault.

Finally, members discussed ways to encourage judges to use simple language in their orders and decisions. They agreed that the court system could offer classes to judges at their conferences about how to speak and write so that the public can understand them. By using simpler language, judges also could help the public understand the legal system better.

Assessment of Initiative: The recommendation and the working group members' actions helped the court system's focus on using simple language. The changes made by the Family Law Self Help Center and Judge Jeffery are examples of changes made within the court system. Some forms and publications that explain legal requirements will always have to use technical terms. Court staff tries to define the technical terms so that the public can understand them.

Continuing Efforts/Next Steps: The Spring 2008 Judicial Conference will probably offer a writing skills program. Training for newer judges in early 2007 included a workshop on

understanding the perspective of self-represented litigants, including how to create oral and written orders that non-lawyers can understand.

F. Ethnic Disparity Working Group

Purpose/Goal

The working group was formed to review the disproportionate numbers of minorities in the criminal justice system, and to determine whether they were the result of legitimate factors or were unjustified disparities. If disparities were unjustified, the working group was to make recommendations to reduce them to the extent possible in the courts.

1997 Recommendations Addressed

The Implementation Committee reviewed the 1997 recommendations and focused on Recommendation G: “The Alaska Supreme Court should coordinate with other agencies to ask the Alaska Legislature to fund a comprehensive study of the effects of defendants’ ethnicity on their treatment by the criminal justice system.” The Implementation Committee deferred to the Alaska Judicial Council’s efforts to fund and conduct a review of Alaska’s criminal justice process.

Initiatives and Responsive Actions

Initiative 1: Understanding the Relationship Between Ethnicity and the Criminal Justice System

In Alaska, as in most other states, racial and ethnic minorities make up a larger percentage of defendants in the criminal justice system than the percentages of the racial or ethnic minorities in the general population. This disproportionality can be seen in the following examples: In 2003 8,378 Black males aged 18 years and older constituted 3.5% of all Alaska males of aged 18 years and older. But in the same year, Blacks constituted 11% of the adult males incarcerated in Alaska. Also, 32,770 Native/American Indian males aged 18 years and older made up 14% of the state’s general population, but made up 36% of the incarcerated adult males. These disproportions do not mean that there were more minority offenders who were incarcerated than Caucasians; in fact, there were fewer. In 2003 the Alaska Department of Corrections had about 388 Black males in its population, 1,256 Native males, and 1,629 Caucasian males out of 3,450 total. Both Blacks and Alaska Natives comprised a larger percentage of the incarcerated population than they did of the total population.

The Alaska Judicial Council, as part of its report on the criminal justice process in Alaska’s courts, looked at disproportionalities and at the statistical evidence for any unjustified disparities.

There may be, and probably are, many reasons for disproportionalities. The courts have control over few of those reasons. For example, judges do not decide who is arrested; police make that decision. Judges do not decide who is charged with a crime and what crimes to charge; prosecutors make those decisions. But it is possible that the decisions judges make may contribute to the disproportionate number of ethnic or racial minorities in jail. Actions taken by courts that result in higher percentages of minorities being incarcerated are justified if the actions are based on legitimate, racially neutral reasons. But if the actions are based on race or ethnicity, the disproportionality is unjustified. For example, the law requires that judges consider a person's prior convictions and the seriousness of the crime committed in deciding what sentence to impose. If those considerations led to a larger percentage of a minority group in jail than in the general population, there would be a disproportionate number of minorities in jail, but it would not be an unjustified disparity. The Alaska Judicial Council, as part of its report on the criminal justice process in Alaska's courts, looked at disproportionalities and at the statistical evidence for any unjustified disparities

Description of Initiative: The Alaska Judicial Council sought and obtained funding for a review of the Alaska criminal justice process. The review compiled and analyzed data about defendants' demographic characteristics, prior criminal history, alcohol and substance abuse, and mental health problems. Data also were collected about the location of the case, the charges filed, what happened with the charges, the outcome of the case, and whether a public or private attorney represented the defendant. The Council selected a random sample of felony cases filed in 1999 from all of the court locations in the state. The 2,331 cases represented about two-thirds of all felony cases filed in 1999 statewide. The court system helped the Council with space and case files for data collection. The Department of Corrections and the Department of Public Safety also provided information.

The Council published its report, "Alaska Felony Process: 1999," in February 2004. The report found substantial disproportions, with minority defendants spending longer times incarcerated, especially pretrial. A few of the disproportions could not be accounted for by legitimate variables, such as prior record, seriousness of offense, and other appropriate factors. The disproportions remaining after all legitimate factors that could be measured had been considered were termed "unwarranted disparities." Among the most important disparities found were increased incarceration times for Alaska Natives and Blacks before disposition of the case, increased total time spent incarcerated throughout the case for a few types of offenses, and longer non-presumptive sentence lengths for drug cases for Alaska Natives and Blacks.

Assessment of Initiative: The Implementation Committee has considered the report's findings, and the court system has taken two follow-up actions. First, the Judicial Education committee, with the support of the chief justice, held a workshop with all judges and key administrators in April 2004 to review the findings and explore whether any court processes were associated with the disparities.

Also as follow up, the chief justice called for a meeting of the Criminal Justice Working Group. This group consisted of high-level representatives of key criminal justice agencies, including the Department of Corrections, Department of Law, the Alaska Court System, the Public Defender Agency, and the Office of Public Advocacy. The group met twice to discuss the felony report, most recently in September 2004. That working group does not currently exist.

Continuing Efforts and Next Steps: The Judicial Council, on its own initiative, continues to research disparity and disproportion issues. It is presently analyzing recidivism data, using new data on arrests and remands to custody in the context of ethnicity, type of attorney, and the other factors considered in its report on 1999 cases.

The court system, through its Judicial Education Committee and other resources, continues to plan and implement training for judges, magistrates and masters, and other court employees on cultural diversity issues.

G. Local Dispute Resolution Task Force

Purpose/Goal

The Local Dispute Resolution Task Force focused on increasing judicial use of alternative dispute resolution and on greater involvement of local community leaders and organizations in the judicial process.

Members

Judge Eric Smith (Chair), Judge Patricia Collins, Teri Carns (Alaska Judicial Council).

1997 Recommendations Addressed

Initiatives and Responsive Actions

(A)(2): Judges should appoint local residents as special masters for appropriate proceedings. Judges also should consider appointing tribal judges and council members as marriage commissioners and guardians ad litem.

E(2): Judicial officers should seek the assistance of local dispute resolution and tribal organizations when the organizations can provide useful information, advice, or services.

H: Judicial officers should make greater use of local sentencing alternatives. It is particularly important to rely on culturally relevant sentencing for ethnic and racial minorities.

Initiative 1: Encourage Judges To Appoint Local Residents as Special Masters

Description of Initiative: In order to encourage judges to appoint local residents as special masters in certain proceedings, the task force concluded that changes in the Alaska Rules of Court were needed to make clear to judges that they had the legal authority to involve local people in these ways. The task force recommended that the supreme court amend Civil Rule 53, Adoption Rule 3(a), and Probate Rule 2(a) to facilitate appointments of tribal courts or qualified tribal members as masters in non-jury civil cases; tribal social workers as GALs and custody investigators in child custody and child protection cases; and village residents as marriage commissioners. The Implementation Committee proposed these changes to the supreme court, which in turn adopted them.

Assessment of Initiative: It is not clear whether any judges have followed up and appointed any of these entities or individuals as masters, GALs, custody investigators, or marriage counselors.

Continuing Efforts/Next Steps: It might well be worthwhile to survey the judges to ask whether anyone has applied under the new rules and whether any judge has appointed anyone to any of these roles.

Initiative 2: Increase Use of Tribal Entities or Local Organizations for Alternative Dispute Resolution

Description of Initiative: The task force recommended that the supreme court amend Civil Rule 100 and Probate Rule 4.5 to allow judges to use tribal entities or local organizations as dispute resolution alternatives.

The supreme court amended Civil Rule 100 to authorize the use of tribal courts, tribal councils, elders' courts, and ethnic organizations in local dispute resolution. It did not amend the probate rule.

Assessment of Initiative: It is not clear whether judges have relied on the amended civil rule to appoint mediators.

Continuing Efforts/Next Steps: It might be worthwhile to survey the judges to see if they have relied on the amended rule to appoint mediators.

Initiative 3: Increase Use of Alternative Dispute Resolution in the Court System

Description of Initiative: The task force asked court system administration to expand its mediation programs. The court system's administrative office subsequently created the position of statewide alternative dispute resolution coordinator, and developed child protection mediation and family group conferencing programs in Anchorage, Kenai, Homer, Bethel, Fairbanks, and Kotzebue. It expanded its child custody mediation programs to include Kenai, Fairbanks, and Juneau. The court system also has begun a guardianship mediation program.

Assessment of Initiative: Formal and informal evaluations of these programs indicate very high levels of user satisfaction and resolution of some or all disputed issues over 80% of the time. These programs are working well.

Continuing Efforts/Next Steps: None is anticipated by the task force or the committee; however, court system administration recently secured funding from the Alaska Legislature for the CINA mediation program (which had been funded by time-limited federal grants).

Initiative 4: Encourage Judicial Officers To Seek Information, Advice, and Services of Local Dispute Resolution and Tribal Organizations

Description of Initiative: The task force asked court system administration to support the use of diversion programs (such as community courts and mediation between victims and offenders) in juvenile cases.

Assessment of Initiative: In 1998 the legislature enacted statutes authorizing the Division of Juvenile Justice to delegate its authority to youth courts or other “entities” such as tribal organizations. Since that time, many youth courts (including some tribal youth courts), victim offender mediation programs, and at least one tribal elders council have come into existence.

Continuing Efforts/Next Steps: The court administration will continue its work in this area.

Initiative 5. Encourage Judicial Officers To Use More Local Sentencing Alternatives, Including Culturally Relevant Sentencing Options, for Ethnic and Racial Minorities

Description of Initiative: The task force recommended amending Delinquency Rules 21 and 23 and Criminal Rule 11 to allow for circle sentencing and similar approaches. The proposal would apply to defendants who have been found guilty and must be sentenced. Often in those circumstances, the prosecutor and the lawyer for the defendant agree on a sentence that they then present to the judge for approval. Under the new proposal, the prosecutor and defense could agree to require the defendant to participate in a circle sentencing process or other alternative sentencing system; the circle sentencing participants would then recommend a sentence for the judge’s approval.

Assessment of Initiative: This was a controversial recommendation when it was considered by the Criminal Rules Committee. It was ultimately approved by that committee, but with substantial dissent. The Alaska Supreme Court decided to defer action on the rule change, but agreed to encourage judges to try these kinds of approaches on an ad hoc basis, to develop information whether they work. No judge has directly used the approach recommended by the task force, but several apparently have pursued different alternative sentencing systems on occasion.

Continuing Efforts/Next Steps: It would be very helpful to find out just what judges have been doing in the past few years and to get their assessment of what has and has not worked.

H. Jury Task Force

Purpose/Goal

The Jury Task Force's goal is to implement the 1997 recommendations to improve jury service. The task force tried to find ways to include as many residents as possible in the jury pool, to increase the likelihood citizens will respond for jury service, to reduce the burden of jury service, and to reduce the number of peremptory challenges.

Members

Judge Larry Zervos (chair), Teri Carns (Alaska Judicial Council), Doug Wooliver (Alaska Court System), Judge Ben Esch, Judge Mark Wood, Ron Woods (Area Court Administrator for the Fourth Judicial District).

1997 Recommendations Addressed

I(1) The Administrative Director of the Alaska Court System and the presiding judge in each judicial district should identify ways to include as many residents as possible in the jury pool.

I(2) The Alaska Court System should work to increase the likelihood that citizens will respond to requests for jury service, and to reduce the burdens of jury service for those who do report.

I(3) To decrease the number of prospective jurors called but not used, the Alaska Court System should ask the Alaska Legislature to decrease the number of peremptory challenges available to the parties in criminal cases.

Initiatives and Responsive Actions

Initiative 1: Expanding the jury pool

Description of Initiative: Many people across the state have not served on a jury because they live in an area that is not listed as a trial site in Criminal Rule 18. To address this problem, the task force formed four working groups, one group for each judicial district.

The working groups first surveyed all the villages and towns in the judicial district and assigned each location to a trial site listed in Criminal Rule 18. Then the groups screened each location under Administrative Rule 15 to determine if it must be excluded from the jury pool because the village is more than fifty miles from the trial site, inclusion of the village would not provide a

jury that is a truly representative cross-section of the trial site, or the cost of transportation is unreasonable.

By March of 2000, the presiding judges in the First, Second, and Fourth Judicial Districts signed orders assigning all the villages in those districts to trial sites. If the location had been considered but excluded as a trial site because of the factors listed in Administrative Rule 15, the reasons for the exclusion were included in the presiding judge's orders in the First and Fourth Judicial Districts. Although the working group for the Third Judicial District prepared proposed orders, the presiding judge did not sign them because of the number of villages involved, the distances involved, and the cost.

Assessment of Initiative: In theory all people in the state should be included in the jury pool. This would insure representative juries and reduce the burden of jury service on individuals as much as possible. The orders signed by the presiding judges in the First, Second, and Fourth Judicial Districts accomplish this goal. But Criminal Rule 18 and Administrative Rule 15 place reasonable limitations on including all people in the jury pool. Distances, costs, and the need to make sure that the make up of the jury mirrors the people in the trial site, mean that many people in outlying villages will not serve. The review conducted by the task force was nonetheless valuable because it revealed that many villages had been excluded by mistake or because they had always been excluded even though there were no longer good grounds for the exclusion. On the other hand the task force also found that many villages that had been excluded were appropriately excluded under Rule 15. Finally, the task force concluded that one of the most valuable aspects of this work was to make the process transparent. The presiding judges' orders in the First and Fourth Judicial Districts describe why a given village was being excluded. Anyone questioning why a village was excluded could understand from the presiding judge's order the reasons for the exclusion. These orders should also provide clear guidance in the future when determining whether a village should be included in a trial site.

Continuing Efforts/Next Steps: The working group for the Third Judicial District presented proposed orders to the presiding judge but the judge raised several concerns. The task force needs to work with the presiding judge and the area court administrator to see if the concerns can be addressed.

Initiative 2: Reducing the Number of Peremptory Challenges

Description of Initiative: The task force sought comment and advice from criminal law practitioners about the effect of reducing the number of peremptory challenges. The task force gathered statistical information about the cost in money and time and the effect on jury selection using the current number of peremptory challenges.

The task force debated the pros and cons of reducing the number of peremptory challenges in numerous meetings. Finally, a majority of the task force voted to recommend that the Alaska Supreme Court request the legislature to reduce the number of peremptory challenges in criminal

cases from ten to eight. The task force believed that this change would significantly reduce the number of persons needed for jury service and thereby reduce the burden of jury service, without undermining the fairness or perception of fairness of the jury selection process.

The task force prepared a report on its findings and conclusions and forwarded the report to the Implementation Committee. The Implementation Committee forwarded the recommendation to the supreme court.

Assessment of Initiative: The criminal defense bar does not want the number of peremptory challenges reduced. Prosecutors are less concerned about how many peremptory challenges there are so long as both sides have the same number. Judges worry about the waste of time and the cost that the large number of challenges causes. And jurors, if they had a voice, would be concerned about the increased burden on them caused by the greater number of peremptory challenges. The Alaska Supreme Court elected not to ask the legislature to change the number of peremptory challenges at this time, but the work done by the task force should help future discussions of this topic.

Continuing Efforts/Next Steps: None at this time.

Initiative 3: Increasing Citizen Response to Jury Service

Description of Initiative: The task force formed working groups to address several specific projects to increase citizen response to jury service. First, the task force sought ways to educate the public about the importance of jury service. The Fairness and Access Public Education Task Force performed most of the work on this project. The work included focusing on jury service during Law Week activities, asking judges to speak to citizen groups about the importance of jury service, and encouraging sessions at judicial conferences about jury selection.

Another task force working group worked closely with court system administration to make the juror summons and juror questionnaires easier to understand and use. The new summons and questionnaires have been in use since the fall of 2002.

The task force spent considerable time debating, designing, and adopting a uniform judicial and administrative response to jurors who fail to return their questionnaire or fail to appear for jury duty. The task force presented the proposed policy to the presiding judges. The presiding judges asked for more information and the task force supplemented the report but the policy has not been adopted.

The task force explored ways to discourage citizens from ignoring jury service. One idea was to find a way to reduce or eliminate a no-show juror's Permanent Fund Dividend. But the task force determined that there was no effective way to accurately track individual juror's service and that the risk of mistakes was too great. The task force opted not to pursue this idea until the court system's computer programs could ensure reasonable accuracy when tracking jurors' service.

Assessment of Initiative: Feedback about the new juror summons and questionnaires suggests that they are easier to use and understand, although no study has been undertaken. The task force continues to believe that there should be a statewide or at least district-wide uniform response to jurors who ignore jury service. The haphazard and indifferent response currently employed in many locations leads to a wide disparity in juror no-show rates. To ensure that the burden of jury service is shared with all eligible citizens and to ensure that juries accurately represent a fair cross section of the community, a fair system to reduce the number of people avoiding jury service is imperative.

Continuing Efforts/Next Steps: The task force needs to work with the presiding judges about the proposal for a uniform response to jurors who ignore jury service.

Initiative 4: Reducing the Burden of Jury Service

Description of Initiative: The task force discussed ways to reduce the burden of jury service and to make jury service more convenient. One idea was to implement a uniform policy to promptly address requests to defer jury service or to be excused from jury service. The task force developed a written policy to establish a uniform approach to these issues of importance to jurors.

The task force relied on a statewide survey of courts about ideas to help address juror comfort and convenience. Ideas included the use of 800 numbers, additional parking, in-house daycare facilities, and improvements in jury waiting and deliberation rooms. Some ideas such as the use of 800 numbers in Craig and Bethel and improvement in juror facilities in Sitka, Bethel, Anchorage, and Fairbanks have been implemented. But many of these issues continue to present problems that require local interest and a local budget priority to change.

The task force decided that one of the best ways to decrease the burden of jury service would be reducing the length and frequency of jury service. The task force proposed that the length of jury service in all locations be reduced to no more than a month and proposed that a juror's service would end after serving in one trial during the period of service. Members of the task force worked with the administration to see if these changes could be implemented. The administration raised concerns about the viability of such a plan in smaller locations. The plan would also require a change to Administrative Rule 15(j). Nonetheless the task force plans to present the uniform proposal to the presiding judges for consideration.

The task force believes that an increase in juror pay is important. The task force has consistently encouraged the court system to increase juror pay. The supreme court and the court administration altered juror pay but the court has been unsuccessful in recent attempts to obtain a legislative appropriation to support an increase of the daily base rate.

Assessment of Initiative: Jurors do not have a voice in how the jury system works. It is important that the task force continue to consider ideas to reduce the burden of jury service and to try to implement those ideas.

Continuing Efforts/Next Steps: The task force should present its uniform policy to defer or excuse jurors to the presiding judges. The task force needs to work with the court system administration to overcome the perceived problems with reducing the length and frequency of jury service and to propose a rule change to accommodate the task force's proposal. The task force will continue to urge increased juror pay.

Initiative 5: The Bethel Project

Description of Initiative: Although not a task force project, court system innovations in Bethel highlighted the value of the recommendations made by the Jury Task Force. Jury service was particularly burdensome in Bethel because there are a large number of jury trials for a town of its size. Bethel is the trial site for a large area that includes many villages, so a substantial number of out-of-town people are called for jury service. When the Fairness and Access Committee held a public hearing in Bethel, the most significant issues raised related to jury service. The presiding judge and the area court administrator set out to decrease the burden on jurors, increase the percentage of jurors called for service who reported, and reduce the expense to the court system.

After intensive community involvement, the presiding judge and the area court administrator made several modifications to the system in Bethel.

To reduce the burden of jury service they reduced the jury duty commitment from 90 days to 30 days and increased the jury pool by adding villages, but they also divided the jury pool for out-of-town cases and Bethel cases. Only Bethel jurors are used for cases that arise in Bethel. Out-of-town jurors are added for cases that arise outside of Bethel.

The presiding judge and area court administrator encouraged trial judges and prosecutors to use jurors' time more efficiently by starting on time, avoiding delays and stopping for the day promptly. They modified the time trials started to better suit the needs of jurors, especially villagers.

To address juror comfort they added seating in the jury waiting area, encouraged the jurors to bring snacks, installed microwaves and refrigerators for jurors' use, and had bottled water delivered to the jury rooms.

They hired a jury clerk to handle jury issues including excusing and deferring jurors. They installed an 800 number so out-of-town jurors could call in without cost.

Assessment of Initiative: It was time consuming to learn about the community's concerns regarding jury service and to implement changes to address those concerns. Jury service in

Bethel is now much more “user friendly,” and the percentage of jurors appearing when called is between 80 to 90 percent, one of the highest in the state.

Continuing Efforts/Next Steps: Administrators are considering expanding the Bethel grand jury room, experimenting with the “one trial and you are done” system, and reducing the number of jurors called through a careful analysis of the actual number of people needed for trial juries and grand juries. They believe it is necessary to continue the public outreach efforts by judicial officers and court staff on a regular basis.

I. Other Initiatives

The court system also undertook other initiatives that responded to or were consistent with the 1997 recommendations.

Recommendation K: Establish Cultural Navigator Pilot Project. The Alaska Court System should seek funding for a pilot program of court facilitators or “cultural navigators” to help guide members of ethnic and cultural minorities through court processes.

Description of Initiative: In 1999 the court system secured grant funds to hire an employee as a “cultural navigator” in Bethel. The Yupik-speaking cultural navigator offered information about the court process and legal language to jurors, third party custodians, parents of juveniles in delinquency cases, and parties in Bethel.

Assessment of Initiative: The position remained filled after grant funding expired, but the decision was made in 2003 to shift that position’s funding to hire a Yupik-speaking magistrate to help handle the extremely heavy caseload in Bethel. When that magistrate left the court system to take another job, the decision was made to convert that position to a district court judge position.

Continuing Efforts/Next Steps: Members of the Implementation Committee recently contacted the University of Alaska Paralegal programs in Anchorage and Fairbanks to explore the possibilities of those programs offering training in Plain English concepts and skills for Cultural Navigators. At this time, the UAA program is particularly interested in offering these programs. In early 2007, the UAA program submitted a proposal for training paralegals in cultural navigator techniques.

Recommendation L(1): Address Disparities in Child Protection Cases. The Alaska Supreme Court should ensure that the procedures used to resolve children’s cases [child in need of aid cases] do not have an unjustifiably disparate impact on children of ethnic minorities.

Description of Initiative. This recommendation arose out of a 1996 Alaska Judicial Council study finding a disparity in the rate at which Alaska Native children were adjudicated as children in need of aid compared to non-Native children. The CINA Court Improvement Committee took

responsibility for this recommendation. Soon after the 1996 finding, the legislature changed the law in child in need of aid cases in response to changes in the federal funding mechanism for foster care. The CINA Court Improvement Committee believed that the law change would have the effect of reducing the disparity in adjudications. To test this idea, the committee performed two follow-up studies — one involving cases from the late 1990s, and one involving cases from 2002-2004. Neither study found disparities in outcomes for Native Alaskan children.

Assessment of Initiative: All available evidence suggests that the disparity found in 1996 no longer exists, and that its disappearance was caused by the law change. However, Alaska Native children continue to be disproportionately represented in child in need of aid cases (in other words, a higher percentage of Native families are involved in child-in-need-of-aid cases than the percentage of Native families in the general population). They also are disproportionately represented in reports of harm to the Alaska Office of Children's Services (OCS).

Continuing Efforts/Next Steps: The CINA Court Improvement Committee is working with OCS to try to understand why it receives reports of harm disproportionately involving Native families, and why Native families disproportionately are involved in child in need of aid court cases.

Recommendation L(2): CINA Training for Judicial Officers. The Alaska Supreme Court should require that all judicial officers receive training in the handling of children's cases and the Indian Child Welfare Act.

Description of Initiative: The CINA Court Improvement Committee took responsibility for this recommendation. The committee has sponsored numerous mandatory workshops for judges on child in need of aid cases and the Indian Child Welfare Act. In addition, for the past six years the court system has been partnering with Alaska Native nonprofit organizations in each of the judicial districts to sponsor regional, interagency Indian Child Welfare Act conferences. Those conferences are attended by judges, social workers, ICWA workers, and others. In addition, the CINA Court Improvement Committee has created and distributed (to judges, social workers, and attorneys) a series of laminated checklists that explain each type of hearing in a child in need of aid case. The checklists explain how each hearing should be conducted and what findings and orders are required, and for each finding they explain the difference between ICWA and non-ICWA cases.

Assessment of Initiative: Training and the checklists are generally credited with raising awareness about the importance of child in need of aid cases and helping judges make the correct findings and orders in ICWA and non-ICWA cases.

Continuing Efforts/Next Steps: The court system has received an additional grant (for the next five years) for more CINA training. The training will be designed by members of the CINA Court Improvement Committee and the Judicial Education Committee.

Recommendation A(4): The Alaska Court System should expand use of technology to improve court access for rural residents.

Description of Initiative: Responsibility for this fell to the court system's central administration and to the Pro Se Law Center Committee. These groups were successful in creating a state-wide Family Law Self-Help Center, which provides legal assistance to urban and rural residents by telephone and computer, and provides user-friendly instructions and forms for multiple family law issues.

Assessment of Initiative: The Center's strategy, which is to help people pursue their own legal cases without an attorney, has turned out to be successful. This conclusion is supported by the high volume of phone calls and requests for assistance received by the Family Law Self Help Center each day. Judges and the Center's staff have found that many people can, if they are provided forms and explanations in clear and simple English, successfully resolve their family law legal matters without attorneys. In particular, the forms and information posted on the Center's web page have been helpful, perhaps in part because Alaskans have the highest rate of internet access of any state in the country. The Center's success also rests on the high degree of training provided to staff.

Continuing Efforts/Next Steps: Continue funding the Center and expand as additional needs or opportunities are identified.

J. Access to Civil Justice Subcommittee

In 1997 the Alaska Supreme Court created a Statewide Access to Civil Justice Task Force. The task force was to figure out how to help people use the courts and available legal services to resolve their legal issues. In May 2000 the task force, chaired by the chief justice, wrote a report with twenty-two specific recommendations to improve access to justice. The supreme court created a committee to put these recommendations into place. However, the committee realized that the Alaska Court System had already implemented most of the recommendations within its control, including:

- creating the Family Law Self-Help Center
- adopting rules allowing lawyers to provide limited-scope representation (also known as unbundled legal services)
- adopting rules to encourage pro bono (free) legal services.

Realizing that the continuing unmet legal needs in Alaska need attention, the supreme court decided to turn the committee into a subcommittee of the Fairness and Access Implementation Committee. The subcommittee will make findings about the unmet legal needs and recommend how these needs can be addressed. The subcommittee's work will inevitably benefit many potential civil litigants who happen to be members of ethnic or racial minorities.

Members

Judge Mark Rindner (Chair), Mara Kimmell (Alaska Immigration Justice Project), Jim Parker (Office of Public Advocacy), Phil Pallenberg (Alaska Bar Association Board of Governors), Stacey Marz (Alaska Court System Family Law Self-Help Center), Katherine Altener (Alaska Court System Family Law Self-Help Center), Barbara Hood (Alaska Court System), Erick Cordero (Alaska Legal Services/Alaska Pro Bono Program), Andy Harrington (Alaska Legal Services), Krista Scully (Alaska Bar Association).

Work In Progress

The subcommittee is developing for consideration by the Implementation Committee recommendations on the topics described in Appendix C.

Anticipated Deadlines for Civil Justice Subcommittee Recommendations

The subcommittee hopes to submit draft recommendations to the Implementation Committee in 2007. Recommendations approved by the Implementation Committee will be submitted to the Alaska Supreme Court for consideration.

PART III. CONCLUSION

The Implementation Committee has addressed most of the 1997 recommendations. It has successfully implemented some and partially implemented others. While most recommendations appropriately addressed particular problems, some were difficult to implement or did not seem to affect the targeted problem. The experience of trying different solutions and approaches has been useful and will help us refine our ideas and implementation plans in the future. The committee remains dedicated to the ultimate goal of making sure that ethnicity and race do not disadvantage any person dealing with the Alaska Court System or the justice system. The public responses from this report will help guide the Implementation Committee and the Alaska Supreme Court in achieving that goal. The committee urges all interested persons to send their comments to any member of the committee or to the committee in care of Dolly Roit, 303 K Street, #500, Anchorage, Alaska 99501, or by email to the committee at droit@appellate.courts.state.ak.us.

Appendix A

Selected Reports and Articles Related to Fairness and Access Issues

1997 - 2007

1. **Alaska Judicial Council, *Alaska Felony Process: 1999*** (February 2004). The Alaska Supreme Court Advisory Committee on Fairness and Access recommended that the Judicial Council compile data on Alaska felony cases. The Council reviewed predisposition incarceration, charge reductions, case dismissals, sentencing, post-disposition incarceration and total time incarcerated. It found evidence that the system was generally even-handed, but found some disparities by ethnicity, type of attorney, gender, and rural location. The report includes descriptive data about the court process for cases filed as felonies in 1999, and a detailed description of the multivariate analysis, findings and recommendations.
[Fairness and Access Recommendation G.1, Effects of ethnicity on criminal justice processes.]
2. ***Recommendations of the Alaska Criminal Justice Council*** (Alaska Judicial Council) (January 2003). Successor organization to the Criminal Justice Assessment Commission (CJAC), created to carry out the CJAC recommendations. Final report summarizes work accomplished and recommendations for future work. Table appended showing the distribution of justice system resources throughout the state.
[Fairness and Access Recommendations A. Increased service to rural areas; E. Local dispute resolution and cooperation with local organizations; G. Study effects of ethnicity on criminal justice processes; H. Expand sentencing alternatives]
3. ***Interim Status Report of the Alaska Criminal Justice Council*** (Alaska Judicial Council) (January 2002). This report describes the progress made in carrying out the May 2000 Criminal Justice Assessment Commission recommendations. The report organizes the CJAC recommendations by the degree of progress made, from completed recommendations to those on which no action has been taken.
[Fairness and Access Recommendations A. Increased service to rural areas; E. Local dispute resolution and cooperation with local organizations; G. Study effects of ethnicity on criminal justice processes; H. Expand sentencing alternatives]
4. ***Final Report of the Alaska Criminal Justice Assessment Commission*** (Alaska Judicial Council) (May 2000). Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips established the Criminal Justice Assessment Commission to review, develop, and implement strategies within the criminal justice system so that all offenders are

- held appropriately accountable for their conduct. The Judicial Council provided staff support for the Commission. Recommendations for the state on dealing with alcohol abuse and mental health issues in the criminal justice system.
[Fairness and Access Recommendations A. Increased service to rural areas; E. Local dispute resolution and cooperation with local organizations; G. Study effects of ethnicity on criminal justice processes; H. Expand sentencing alternatives]
5. ***Evaluation of Bethel Video Link*** (Alaska Judicial Council) (July 1999). Evaluation of the video link between the courthouse and the Yukon Kuskokwim Correctional Center.
[Fairness and Access Recommendation A. Increased service to rural areas]
 6. ***Fairbanks Video Arraignment Assessment*** (Alaska Judicial Council) (May 1999). Alaska Judicial Council's assessment of the Fairbanks video arraignment system.
[Fairness and Access Recommendation A. Increased service to rural areas]
 7. ***Escoger Un Mediador Una Guía para la Clientela*** (Alaska Judicial Council) (May 1999). Spanish version of A Consumer Guide to Selecting a Mediator. Describes how to find and select a mediator to help resolve a dispute. The guide incorporates current research and policy information on mediator qualifications into a five-step process for lawyers, judges, litigants, and other consumers of mediation services.
[Fairness and Access Recommendation F.2., Translate publications into other languages]
 8. ***A Directory of Dispute Resolution in Alaska Outside Federal and State Courts*** (Alaska Judicial Council) (March 1999). An overview of Alaska dispute resolution entities other than state and federal courts, including tribal courts, other tribal entities, and mediation and alternative dispute resolution organizations.
[Fairness and Access Recommendation E., Local dispute resolution and cooperation with local organizations; H. Expanding sentencing alternatives]
 9. ***Un Manual para las Víctimas de Delitos en Alaska*** (Alaska Judicial Council) (May de 1998, revised September 2001). Spanish version of A Handbook for Victims of Crime in Alaska.
[Fairness and Access Recommendation F.2., Translate publications into other languages]

10. ***A Handbook for Victims of Crime in Alaska*** (Alaska Judicial Council) (April 1998, revised September 2001). Brief manual about the criminal justice process and the victim's role, rights, and resources.
[Fairness and Access Recommendation B., Public education about justice system]
11. ***Guía del Sistema Jurídico de Alaska*** (Alaska Judicial Council) (Mayo de 1998). Spanish version of A Guide to Alaska's Criminal Justice System.
[Fairness and Access Recommendation F.2, Translate publications into other languages]
12. **Alaska Judicial Council, *A Guide to Alaska's Criminal Justice System*** (May 1998). A comprehensive overview of Alaska's adult and juvenile criminal justice system, including statutory provisions, flow charts, glossaries, sentencing information and a list of resources.
[Fairness and Access Recommendation B., Public education about justice system]
13. **Alaska Judicial Council, *A Guide to Alaska's Child in Need of Aid Cases*** (November 1999). Guide describing how abused, neglected, and runaway children are protected by the State of Alaska. It also offers resources to contact for more information.
[Fairness and Access Recommendation B., Public education about justice system; Recommendation L., Child in Need of Aid proceedings]
14. ***Mediation, Alternative Dispute Resolution (ADR) and the Alaska Court System*** (Alaska Judicial Council) (December 1999). A Guide for attorneys, judges, and persons who are considering using alternative dispute resolution (ADR) to help them resolve a dispute. This Guide explains the benefits and differences among mediation, arbitration, and other ADR processes. It offers resources to contact for [Teri ?]
[Fairness and Access Recommendation B., Public education about justice system; Recommendation E., Local dispute resolution]
15. ***Rural Justice Issues: A Selected Bibliography***, University of Alaska Anchorage Justice Center (2006).
16. Moras, Antonia, ***Native Employment in the Alaska Justice System***, Alaska Justice Forum (No. 2, Summer 1998).
17. Moras, Antonia, ***Alaska Supreme Court Report: Fairness and Access Problems and Recommendations***, Alaska Justice Forum (No. 3, Fall 1997).
18. Moras, Antonia, ***Language Interpretation and the Justice System***, Alaska Justice Forum (No. 4, Winter 2006).

19. Riley, John, ***Obstacles to Minority Employment in Criminal Justice: Recruiting Alaska Natives***, Alaska Justice Forum (No. 4, Winter 2000).
20. Morrow, Phyllis, ***Interpreting and Translating in Alaska's Legal System: Further Discussion***, Alaska Justice Forum (No. 3, Fall 2000).
21. ***Access to Legal Services for Alaskans with Low Incomes***, Alaska Justice Forum (No. 3, Fall 2002).
22. Moras, Antonia, ***Felony Case Process in Alaska: The Judicial Council Analysis***, Alaska Justice Forum (No. 4, Winter 2004).

Appendix B

Disparity Background

In 1997 the Alaska Supreme Court Advisory Committee on Fairness and Access recommended new research on the relationship between defendants' ethnicities and their treatment in the criminal justice system. The disproportionate numbers of minorities at all points in the criminal justice system were well known. The purpose of the Judicial Council's report, *Alaska Criminal Process: 1999* was to update knowledge about the disproportions. The Council also wanted to find whether the disproportions stemmed from legitimate differences among defendants or from unwarranted disparities. A legitimate disproportion arose from legal distinctions among defendants. For example, different prior criminal histories are the statutory basis for sanctioning defendants differently. Unwarranted disparities were those left after the relevant legal factors such as prior criminal history and seriousness of offense had been accounted for. The primary disparities found by the Council included ethnicity, gender, and type of attorney.

In its review of 2,331 defendants with felony charges in 1999, the Judicial Council found several disparities, as distinct from disproportions. One of the most notable disparities that persisted after many legitimate factors were accounted for was Black and Native ethnicity. In some instances, but not systemically, these ethnic groups spent increased time in predisposition incarceration, post-disposition incarceration, and total time incarcerated. The Council did not find disparities in presumptive sentences for any group of defendants. Other unwarranted disparities in incarceration time at different points in the process were associated with type of attorney, gender, and location of the case in the state.

The report showed that by many measures that justice for felony defendants in Alaska was evenhanded. The disparities were scattered among groups of defendants and types of offenses. The lack of uniformity suggests that the disparities were not the result of systematic distinctions among defendants based on ethnicity or other unwarranted factors.¹

Few unwarranted disparities appeared at sentencing. However, disparities early in the system carried over into outcomes later on, even if there were no disparities at the later stage. For example, disparities for some groups of defendants in pretrial incarceration time showed up as longer total time spent incarcerated.

¹ See ALASKA FELONY PROCESS: 1999, published February 2004 by the Alaska Judicial Council. Available at the Council's web site, www.ajc.state.ak.us.

The percentages of increased times incarcerated for defendants with specific ethnicity or type of attorney are the effects of the single factor discussed, independent of the possible effects of other factors.

Disparities tied to ethnicity

- Black or Native defendants could expect to spend 14% more time in predisposition incarceration than did a comparable Caucasian defendant.² The finding was important for Natives in Violent, Property, and Driving offenses. It was also true for Blacks in Drug and Driving offenses, all other things being held equal.³
- Statewide, Native and Black defendants spent longer times in post-disposition incarceration for Drug offenses with non-presumptive sentences than did Caucasian defendants. Black defendants spent 37% more time, and Native defendants spent 39% more time, incarcerated for these offenses than comparable Caucasian defendants, all other things being equal.⁴
- Native defendants spent 26% more time incarcerated during the total span of their cases than did comparable Caucasian defendants. For Violent offenses, they spent 58% more total time incarcerated, and for Drug cases, they spent 139% more time, all other things being held equal.⁵
- The unexplained ethnic disparities described above did not suggest conscious or systemic discrimination. They did suggest the need for conscious and thoughtful responses from those in the criminal justice system.

Other disparities, especially those associated with type of attorney

- The Council found other unwarranted disparities for defendants. These included gender-based disparities, and widespread disparities associated with type of

² *Id.* at note d to Table 35a, page 181. The finding in this instance was for all offenses, statewide. The multivariate analysis held other important factors such as type of attorney, defendant's offense, defendant's prior criminal history, substance abuse and mental health problems, age, and gender equal, so that defendants could be compared only on the basis of ethnicity.

³ The finding was for all offenses, statewide.

⁴ *Id.*, page 231, note d to Table 37a.

⁵ *Id.*, page 257, note c to Table 38a. Black defendants did not spend significantly longer total times incarcerated.

attorney. Defendants with private attorneys spent 55% less time in predisposition incarceration.⁶ They spent 56% less time incarcerated post-disposition,⁷ and 93% less total time incarcerated during their case, all other things being held equal.⁸

- Further analysis and interviews suggested that type of attorney may have served in part as a “proxy” for socioeconomic status.⁹ Earlier findings by the Judicial Council when both socioeconomic and type of attorney data were available showed that both factors were independently important.¹⁰
- The Council did not have enough data to measure the quality of representation provided by different groups of attorneys.¹¹ “Until the[] factors [the influence of socioeconomic factors,¹² the effect of fewer resources available to public attorneys,¹³ and the amount of time defendants spent in residential substance abuse treatment¹⁴] can be assessed, the quality of representation is another potential factor that cannot be excluded.”¹⁵ The report noted that “if quality of representation were the deciding factor, the analyses would have been more likely to show consistent differences by type of attorney for all offenses rather than just for [some] types of offenses.”¹⁶

⁶ *Id.*, page note d to Table 35a, page 181.

⁷ *Id.*, page 231, note d to Table 37a.

⁸ *Id.*, page 257, note c to Table 38a.

⁹ *Id.*, page 166, part b., “Socioeconomic factors.”

¹⁰ *Id.*, pp. 51-52.

¹¹ *Id.*, page 168, part 3., “Other factors associated with attorney type differences.” This section discusses the greater resources available to prosecutors when compared to public defenders, and other possible reasons for the differences in outcomes for defendants with private attorneys rather than public attorneys.

¹² *Id.*, pp. 47-52.

¹³ *Id.*, pp. 168-69.

¹⁴ *Id.*, page 167.

¹⁵ *Id.*, page 169.

¹⁶ *Id.*, page 249.

Combined effects of independent factors

“All other things being equal, the equations showed that a defendant with several of the characteristics present would be likely to spend substantially more time incarcerated than a defendant without those characteristics.”¹⁷ In other words, the independent effects of each variable were somewhat additive. A male Native defendant might spend more time incarcerated predisposition than a female Native defendant. Both would spend noticeably more time incarcerated than a female Caucasian defendant. However, “because of the design of the equations, the estimated [increases] could not be simply added to each other. . . . The best that could be said was that defendants with more of these variables would be associated with more . . . time incarcerated than defendants with fewer of these variables.”¹⁸

Judicial Council recommendations

The Judicial Council recommended that:

- “The court system should take affirmative steps to encourage criminal justice agencies to collaborate to eliminate unwarranted disparities through the criminal justice process.”¹⁹ The recommendation suggested that agencies should look at earlier events in the justice system such as arrest and charging. Some of the largest disproportions already existed at the time that cases were filed in the courts.
- The Judicial Council suggested that the court system take the lead in a coordinated effort by state policymakers to understand the perspectives of people outside state agencies. The state agencies should consider ethnic minorities, local law enforcement officials, and the private defense bar. The Council recommended that the state working group meet with others to find and carry out workable programs to reduce disparities and disproportions.²⁰
- The Council recommended special attention to predisposition incarceration practices.²¹ It suggested more resources for public attorneys and other criminal

¹⁷ *Id.*, page 181, note c to Table 35a.

¹⁸ *Id.*, page 245.

¹⁹ *Id.*, page 283.

²⁰ *Id.*, page 284.

²¹ *Id.*, page 284, Recommendation 4.

justice agencies.²² Finally, it recommended improved, routine data collection and analysis.²³

²² *Id.*, page 285, Recommendations 6 and 7.

²³ *Id.*, page 286, Recommendation 8.

Appendix C

Topics Being Addressed by the Access to Civil Justice Subcommittee

Different sections of the subcommittee are addressing these topics:

Rural access issues: Recognizing that people living in rural communities often do not have a court or lawyers in their community, the recommendations discuss how to connect rural residents with legal and court services. This section is considering providing cultural navigators in the courts and other non-traditional methods to deliver legal services.

Low bono legal services: Low bono means reduced fee legal services to low-income clients. This section is considering how to increase low bono legal services; the issues of practicing law without a license (known as unauthorized practice of law); paralegal training and supervision; and community partnerships.

Pro Bono: This section is considering how to increase the number of lawyers who provide free legal services. It also is considering pro bono reporting; providing CLE credit to lawyers for pro bono work; and allowing judicial law clerks to do pro bono work.

Right to lawyers in civil cases (civil Gideon): This section is considering the right for litigants in civil cases to be appointed free lawyers, similar to the right that has been recognized for defendants in criminal cases by the U.S. Supreme Court in the *Gideon* case.

Unbundled legal services: This section is considering lawyers providing litigants with discrete task representation, known as unbundled legal services. It also is considering ways to increase the number of unbundled service lawyers and the need to promote this type of legal services to the bar and bench.

Barriers to Access to the Justice System: This section is considering the different areas that are known barriers to litigants getting their cases to court. The barriers include different cultures, low literacy levels, disabilities, mental illness, not speaking or reading English, and difficulty in understanding court processes.

Pro Se: This section is considering how to improve services to people representing themselves in civil cases. It also is considering volunteer attorney programs; improving customer service; training and education needs; understandable court forms; instructions and orders; domestic violence; expanding self-help services; limited English proficiency.

Free legal services: This section is considering the need of low income Alaskans for free legal services, primarily provided by Alaska Legal Services Corporation. It also is considering the need to increase the number of ALSC offices around the state, to increase funding for ALSC, to build legislative relationships to support increased funding, to partner with community organizations to support ALSC offices, and to educate the public about the importance of ALSC.

Outreach/Partnerships: This section is considering the ideas for different entities to work together to make happen the recommendations in the report.