

**Report of the Oregon Supreme
Court Task Force on Racial/Ethnic
Issues in the Judicial System**

MAY 1994

**OFFICE OF THE STATE COURT ADMINISTRATOR
OREGON JUDICIAL DEPARTMENT**

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

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ABBREVIATIONS USED IN THIS REPORT:

ABA	American Bar Association
ABE	Adult Basic Education
CSD	Children's Services Division
DRI	Disproportionate Representation Index
F2d	Federal Reporter Second Edition
FED	Forcible Entry and Detainer
L J	Law Journal
L Rev	Law Review
MHRC	Multnomah Human Relations Commission
Or	Oregon Reports—Supreme Court
Or App	Oregon Reports—Court of Appeals
ORCP	Oregon Rules of Civil Procedure
ORS	Oregon Revised Statutes
OSCI	Oregon State Correctional Institution
OSP	Oregon State Penitentiary
P2d	Pacific Reporter Second Edition
S Ct	Supreme Court Reporter
US	United States Supreme Court Reports
UTCR	Uniform Trial Court Rules

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INTRODUCTION

Forenote to Nonminority Readers

One conclusion permeates this report, but it is expressly stated only on this page. The conclusion should be evident to even a casual reader of the report. Lest any reader fail to perceive the message, however, we state it here explicitly:

Nonminorities have brought about many of the problems that minorities encounter and are discussed in this report. Addressing these problems, and ultimately solving them, is the joint responsibility of nonminorities and minorities.

When a person or an institution has a problem, a common and reliable approach to solving the problem runs along these lines:

1. Define the problem and its cause.
2. Consult with the person or persons causing the problem and with the persons affected by the problem, and try to get them to agree upon a solution.
3. Implement the solution.

Often the greatest challenge is getting those who cause a problem to recognize any responsibility for the problem and to agree on the solution. Our society is filled with persons who nod in agreement that a problem exists and say, "It's them; not *me*."

Law schools, bar associations and other entities have periodic conferences and seminars about racial discrimination. Readers who have attended such conferences know that those in attendance are, for the most part, minorities. Not nonminorities, but minorities. The persons *affected* by the problem attend. Those contributing to the problem do not.

This report repeatedly urges members of the majority to learn about the problems discussed herein so that, ultimately, the majority *agrees* that racial discrimination in our society is "our problem" too and that nonminorities *must* be involved in the solution. Nonminorities have contributed to the problems that minorities experience, and if the problems ever are to be solved, then nonminorities must work with minorities to rectify the situation.

If a poll were taken of all the lawyers, court staff and judges in Oregon, it is doubtful that even one person would admit that he or she discriminates against minorities in any way. "Sure," they might say, "there's a problem. But someone else is causing it. Not me." That attitude makes the education process even more difficult.

The truth is that many nonminorities were raised in a culture

in which discrimination was common, even accepted. Not surprisingly, the habits and attitudes learned as children carry over into adult life.

This report, therefore, begins with a plea to nonminority judges, court staff, lawyers, law school faculty and students, juvenile staff, corrections personnel, law enforcement officers and others in government: recognize that our minority population has serious problems in our society. Nonminorities, who have contributed to the problems that minorities encounter, must work with minorities to solve these problems. This report contains a number of suggestions to address the issues of racial discrimination or ethnic bias at all levels in the Oregon judicial system. Our hope is that the reader agrees with our recommendations and is impelled to act.

CHAPTER 1 OVERVIEW OF TASK FORCE REPORT

The Oregon Supreme Court, on February 21, 1992, established the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System. This is the report of that task force. Instead of opening with our findings and recommendations, we begin with an incident from an Oregon courtroom. A Mexican-American defendant appeared on December 28, 1993, before an Oregon judge. The defendant had been arrested for driving under the influence (DUI) and had begun a diversion program, but he had not paid the diversion fees that had been assessed. The December 28 hearing was one of several at which the question was whether the defendant's diversion should be revoked because of nonpayment of diversion fees. At an earlier hearing, the defendant had told the judge he could pay \$100 each week. The December 28 record shows that the defendant had been working for a "tree farm operation." The judge said:

"I'm not going to let him just hold out money. And I know just darn good and well where that money from the tree harvest went. *I'll bet a good part of it went down South*, and that's his business, except he's got this obligation here." (Emphasis added.)

By invoking this stereotype, the judge mocked the idea of equal justice under the law and the notion that an individual has the right to be treated as a unique human being in our judicial

system. That is one reason for some of our recommendations that follow.

We offer no pie-in-the-sky recommendations. *Every recommendation in this report is attainable within a reasonable time.* Many recommendations are attainable at little or no cost. But attainment will best be achieved if the goal of equal justice for all ever is in the minds of the members of the Oregon Supreme Court and others responsible for implementation of the recommendations.

This report is a small but important step. If the efforts of this task force are to bear fruit, the Supreme Court, other judges and court staff must be convinced that its recommendations are valid and that the problems are readily addressable. This report aims to accomplish that.

Unlike most chapters in this report, which end with recommendations, this chapter begins with a recommendation, the task force's strongest. Other recommendations are set forth in each chapter.

Recommendation Number 1-1

The task force recommends that the Oregon Supreme Court:

- a. Publish its response to the recommendations contained in this report**
- b. Appoint a committee to assist in the implementation of the recommendations in this report**
- c. Require the committee to report annually on the progress made during the previous year**
- d. Publish the progress reports of the committee.**

The legacy of centuries of discrimination in the United States is a society in which racial discrimination continues to exist. The Oregon court system is no more immune from its effects than are other segments of society. While overt, intended discrimination against minorities¹ by nonminority judges, prosecutors, lawyers and court staff is not common, strong evidence demonstrates that

¹ In the task force surveys, the term "minorities" was defined as racial minorities including African Americans, Native Americans, Asian Americans, East Indians, Hispanics, Latinos, Mexican Americans and persons of Middle Eastern ancestry. Unless the text indicates otherwise, that is the meaning that applies in this report.

In a more general sense, "minority groups" are people who are singled out for unequal treatment, and who regard themselves as objects of unequal discrimination. Discrimination excludes minority groups from full participation in the life of their society.

racial minorities are at a disadvantage in virtually all aspects of the Oregon court system.

Many of the problems recounted in this report stem from cultural differences between minorities and nonminorities. The dominant culture of this state and nation is reflected in its courts. Largely nonminority judges and court staff do not understand the cultures of minorities who appear in the courts.

Conversely, minorities—many of whom come from countries with different justice systems—do not understand the Oregon courts in which they appear. This lack of understanding is not limited to minorities who speak little or no English. It is just as pervasive in Native-American and African-American cultures, in which English is the dominant language.

Conclusions of the Task Force Report

This report contains conclusions that should dismay all persons dedicated to the concept of equal justice for all. Among the conclusions:

1. Many non-English-speaking minorities appearing in court do not comprehend what is going on because they do not understand the justice system, because interpreters are not present, or because interpreters are not qualified.
2. Too few lawyers speak and understand the languages of non-English-speaking minority Oregon residents.
3. Too few minority lawyers practice in Oregon. An example: Only one African American is a partner in any large Portland law firm.
4. Efforts to recruit minority lawyers are inadequate.
5. Too few minorities are called for jury duty, and even fewer minorities actually serve on Oregon juries.
6. Peremptory challenges, eliminating individuals from serving on juries, are used solely because of the race or ethnic background of prospective jurors.
7. Judges handling family law cases involving minorities often lack an understanding of the traditions and cultural practices of minority families.
8. Too few minorities are employed in Oregon courts. Of the 49 management positions in the Oregon Judicial Department, none is filled by a minority.
9. In the criminal justice area, the evidence suggests that, as compared to similarly situated nonminorities:

- minorities are more likely to be arrested,
 - minorities are more likely to be charged,
 - minorities are less likely to be released on bail,
 - minorities are more likely to be convicted,
 - minorities are less likely to be put on probation,
 - minorities are more likely to be incarcerated.
10. In the juvenile justice system:
- minorities are more likely to be arrested,
 - minorities are more likely to be charged with delinquent acts,
 - minorities are more likely to be removed from their family's care and custody,
 - minorities are more likely to be remanded for trial as adults,
 - minorities are more likely to be found guilty of delinquent acts,
 - minorities are more likely to be incarcerated,
 - minorities lack experts sensitive to the cultural differences of minorities.
11. All nonminorities involved in the justice system—judges, court staff, lawyers, law school professors and law students—need ongoing, cross-cultural training. Nonminorities have contributed to most of the problems facing minorities today. Nonminorities must recognize that problems exist; nonminorities must address them with resolve and sensitivity.

Overview of the Task Force

On the recommendation of the Oregon Judicial Conference, the Supreme Court of Oregon ordered, on February 21, 1992, the creation of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System. The order is set forth, in part, in Appendix 8. The members of the task force were appointed in May 1992.

Why was the task force created? The Supreme Court created the task force to identify problems faced by racial and ethnic minorities in the judicial system; to examine the concerns of racial and ethnic minorities in their treatment in and by the courts; and to propose a course of action to address the problems and concerns.

Who is on the task force? Eighteen persons were appointed to

the task force. The task force included four African Americans, one Native American, one Asian American, three Mexican Americans, two persons of Middle Eastern extraction and seven Caucasians. The membership also could be described by vocation: two trial judges, two appellate judges, a prosecutor, criminal defense attorneys, civil attorneys and public members. Twelve members were male; seven female.

The chair of the task force was former **Associate Justice Edwin J. Peterson**.² **Professor M. Khalil Zonoozy**, Director of International Student and Faculty Services at Portland State University, was vice chair. Other task force members were:

Kathleen Bogan, a lawyer and former Executive Director of the Oregon Criminal Justice Council, Portland.

Honorable Nancy W. Campbell, District Court Judge, Hillsboro.

Kathryn H. Clarke, a lawyer in private practice, Portland.

Honorable Mercedes F. Deiz, Senior Circuit Court Judge, Portland.

Marco A. Hernandez, Deputy District Attorney, Hillsboro.

Douglas Hutchinson, a lawyer and Executive Officer, Oregon Commission on Indian Services, Salem.

Corinne J. Lai, a lawyer in private practice, Portland.

Honorable Jack L. Landau, Judge, Oregon Court of Appeals, Salem. (When appointed, Judge Landau was Deputy Attorney General.)

Angel Lopez, a criminal defense lawyer, Portland.

Yvonne Martinez, public member, Oregon Department of Corrections, Salem.

Jeffrey B. Millner, a lawyer in private practice, Portland.

Jack L. Morris, a criminal defense lawyer, Hood River.

Liliana E. Olberding, public member, Spanish interpreter, Hillsboro.

William A. Olsen, a public member and President, Center for Organizational Research and Development, Portland.

Nargess Shadbeh, a Legal Aid lawyer, Woodburn.

H. Adunni Warren, a lawyer in private practice, Portland.

How the Task Force Gathered Information: The conclusions in this report were drawn from four sources: testimony at public

² Justice Peterson served as Chief Justice for eight years (1983-91) and retired from the Oregon Supreme Court on December 31, 1993.

hearings, extensive survey research, prior research and written comments submitted to the task force.

Public Hearings: In the summer and fall of 1992, the task force held nine public hearings throughout the state to encourage Oregonians to tell the task force of their experiences in the courts and observations regarding the treatment of minorities in the Oregon court system. The hearings were held in Woodburn, Pendleton, Ontario, Klamath Falls, Portland, Warm Springs, Salem, the Oregon State Penitentiary and the Oregon Women's Correctional Center.

The public hearings were well publicized in advance, and most were well attended. Witnesses were invited to give oral or written testimony regarding issues of race/ethnicity in the Oregon court system. Interpreters were provided for non-English-speaking persons who wished to testify. Each hearing was recorded and minutes of the hearings kept. The largest number of minority witnesses were Hispanics. Significant numbers of Native-American, African-American, Asian-American and Pacific Islander witnesses testified. Other ethnic groups also testified.

Survey of Oregon Legal Community: Also, 7,525 persons who use the court system were surveyed by the task force regarding issues of race/ethnicity in the Oregon court system. The task force prepared three surveys. The "main survey" was for lawyers, judges, court staff and corrections personnel. The second survey was for persons in the juvenile justice system. The third survey was exclusively for language interpreters/translators in the Oregon court system. Copies of the surveys are contained in Appendices 3, 4 and 5. Professor Robert Shotola, chair of the Department of Sociology at Portland State University and an expert in survey research, assisted in preparing the surveys, and he statistically analyzed the survey responses. Dr. Shotola's analysis is set forth in Appendix 1.

The main survey was distributed to 5,438 persons, including the following:

- All judges and court personnel statewide (1,562)
- Corrections personnel likely to appear in court (415)
- Municipal Court judges (182)
- Private and public attorneys in the following organizations:
 - Oregon District Attorneys Association (400)
 - Oregon Criminal Defense Lawyers Association (741)
 - Oregon Women Lawyers (630)

Oregon Trial Lawyers Association (700)
Oregon Association of Defense Counsel (475)
Oregon Minority Lawyers Association (258)
Legal Aid lawyers (75)

The juvenile justice survey was sent to 1,778 juvenile law practitioners and court personnel. The interpreters survey was distributed to 309 persons who serve as interpreters in the Oregon court system.

A postage-paid return envelope, addressed to the Center for Sociological Research at Portland State University, was sent with each survey. Respondents were instructed not to write their names on their surveys; responses were anonymous. Returned surveys were scanned and tabulated at the Portland State Computer Center.

Of 5,438 main surveys distributed, 2,198 were returned, a response rate of 40 percent. Of the 1,778 juvenile surveys distributed, 667 were returned, a response rate of 37.5 percent. Of the 309 interpreter surveys distributed, 96 were returned, a response rate of 31 percent.

One goal of the survey was to obtain information based on *actual* experience in the courts. The survey asked questions in several different formats. For example, the survey included several "forced choice" questions, where the respondent was required to agree or disagree. Other questions gave the respondent an opportunity to agree, disagree or answer "no opinion." A third type of question asked respondents to rank their response on a scale that included the frequency with which they had observed certain behavior: NEVER (0% of the time), RARELY (1-5% of the time), SOMETIMES (6-25% of the time), OFTEN (26-50% of the time), and USUALLY (51-100% of the time).

For questions that asked respondents to agree or disagree, the tables used in this report are relatively easy to understand. For example, Question 3(a) asked, "Do you more agree or disagree that MINORITY LAWYERS need better grades in law school to be hired." The responses were:

Respondents who agree “that minority lawyers need better grades in law school to be hired.”

Respondents	Percentage Who Agree
All respondents	22%
Minority respondents	39
Prosecutors	8
Criminal defense lawyers	32

There are nine chapters in this report. Each chapter discusses one subject area and contains findings and recommendations, as follows:

Chapter Number	Subject
1	Overview of Task Force Report
2	Interpreters
3	Minorities Working in Oregon Courts
4	Criminal Justice System
5	Juvenile Justice System
6	Civil Justice System
7	Juries
8	Oregon Law Schools
9	Minorities in the Legal Profession

Editor's Note: This excerpt of the original article ends with Chapter 1. Those interested in reading the full report should turn to the original publication: 73 Or. L. Rev. 823 (1994).