

Chapter 3

Minorities Working in Oregon Courts

The Supreme Court charged the task force to “collect demographic information on lawyers, judges, court officials, [and] other court personnel.” The task force undertook the task of ascertaining the racial and ethnic makeup of the judiciary and Judicial Department staff and analyzing job classifications in each Judicial District and the state Judicial Department. If the task force found the racial and ethnic makeup of the judiciary and court staff not representative of the communities they serve, it was asked to determine: (a) what effect this may have on employees working within the Judicial Department and (b) whether this affects how minorities are treated by Judicial Department employees.

Importance of Having a Diverse Work Force

Minorities who appear in Oregon courts often feel like foreigners in their own court system. This perception was stated again and again at task force hearings across the state. Even if it could be assumed that most nonminority judges, lawyers, and court staff make every effort to see that justice is administered fairly, rulings will not be accepted as fair if minorities believe the system is skewed against them.

In most courthouses in this state, almost all, if not all, of the personnel are monolingual, monocultural, and nonminority. (See Appendix 3, Oregon Judicial Department Affirmative Action Plan, Utilization Analysis, Summary of Findings, EEO Category: all positions.) This is true even in courthouses in communities that have significant minority populations. It is difficult for minorities as well as other citizens to perceive the system as fair and not racially biased when its work force is not representative of the community. The “us versus them” mind-set is reinforced.

A judiciary and court staff that is racially and culturally diverse and whose members have a knowledge of non-English languages common in the community would increase the likelihood of effective access to the courts for all members of society. A diverse courthouse would be less intimidating to a minority litigant than one that is monoracial, monocultural and monolingual. This is especially true for someone who is both a racial minority and non-English-speaking person.

Consider the barriers a monoracial and monolingual courthouse presents to a non-English-speaking minority who, for example, seeks a restraining order. He or she may have been advised by the police after a domestic dispute to obtain the restraining order. The abuse victim goes to the courthouse where all employees he or she sees are

nonminority, no one speaks his or her language, all of the forms are in English, no interpreters are available to help, and the judge asked to sign the order speaks only English. This problem was emphasized at a task force hearing by the police chief of a city with a large minority and non-English-speaking population. It was also confirmed in interviews with employees of cultural centers and domestic violence shelters. The barriers are so extreme that non-English-speaking minority abuse victims rarely seek restraining orders.

A racially diverse courthouse work force would increase the likelihood that people will be treated fairly and without bias. Having daily contact with people of diverse cultural backgrounds increases the understanding of these cultures by all of the work force. Increased understanding fosters fairness.

Lack of diversity among Oregon's judges and court administrators may have a negative "trickle-down" effect that discourages a diverse and bias-free judicial system. Judges and administrators exercise authority and determine or recommend policy. Changes in workplace attitude are more likely to occur when people experience diversity on a day-to-day basis. The absence of diversity "at the top" suggests that the judicial system will continue to be nondiverse and racially biased unless steps are taken to change the judiciary and judicial administration. The task force believes that many persons in the judicial system lack an understanding of the benefits of a diverse work force.

The Judicial Department Affirmative Action Plan

We are respectfully, but strongly, critical of the Judicial Department's Affirmative Action Plan. The plan states:

"The goal of the Judicial Department is to have an employee work force which is at least equal to the Oregon Labor Force in terms of the representation of women and minorities."

The task force applauds this goal. But that goal is only the first of many steps necessary to achieve a work force that truly is culturally diverse and serves a culturally diverse population. Granted, numerical parity seems to be the goal of federal affirmative action laws. But merely achieving numerical parity does little to address biases that already exist among nonminorities in a work force.

For example, changing a work force that is 100 percent nonminority to a work force that is 90 percent nonminority and 10 percent minority would still leave 90 percent of the work force with the biases and prejudices that pre-existed numerical parity. One writer succinctly put it, "Affirmative action gets the new fuel into the tank, the new people through the front door. Something else will have to get them into the driver's seat."³

By itself, racial parity achieves only arithmetic racial parity. The true and ultimate goal of an affirmative action program must be to increase the understanding of all races and ethnic groups in the workplace, to increase the appreciation of one for the other, to

achieve a society in which no race, no culture, is dominant other than in a numerical sense. The goal is to achieve a heterogeneous culture, one in which racial prejudice and bias, overt or covert, intended or unintended, no longer exists.

How can this be achieved? By *education, education and more education*. By education of judges and staff to make them aware of, and sensitive to, the manifold ways in which bias or lack of cross-cultural understanding creeps into conduct. This is the direction that the Judicial Department should be taking. (*And by education, education and more education of others—juvenile counselors, corrections personnel, indeed, all persons whose work brings them in contact with the justice system.*)

This problem is not unique. The private sector of American society recognizes and is addressing this very problem. The cover article of the January 31, 1994, issue of *Business Week*, pages 50–55, discusses what companies should do and what companies should avoid in “taking adversity out of the workplace.” These quotations are alike relevant to the Judicial Department, indeed, to all government.

“For some companies, diversity simply means affirmative action. But at others such as IBM, Coming, and Honeywell, it’s part of a broader effort to change the corporate culture...[C]ompanies are linking diversity more closely to business objectives—and holding managers accountable for meeting them. The goal: to create a culture that enables all employees to contribute their full potential to the company’s success.”

The article also contains a list of “what companies should avoid,” including this one:

“[Avoid] **agitating** employees with one-shot sensitivity workshops and seminars that stir up emotions by pitting different groups against each other. Favor ongoing training programs that seek not only to educate workers about ethnic, racial, and cultural differences but also seek to change the company’s culture.”

Employment of Minorities in the Courts

Findings

1. The racial/ethnic composition of the judiciary is not representative of the populations served by the courts.

Of 172 judges in the judicial system, only four are minorities, none of whom are minority women. Members of the bar should encourage minority lawyers to become judges.

2. The proportion of racial/ethnic minorities serving as nonjudicial court employees is not representative of the populations served.⁴
3. Racial/ethnic minorities are under-represented in all nonjudicial court positions.
4. To the extent that minorities are represented in nonjudicial court positions, they are concentrated in office/clerical positions.
5. Few minorities are on judges' staffs.
6. No minority court administrators are employed in the state.
7. No comprehensive programs implemented by the Judicial Department or by individual judicial districts specifically aim to increase minority representation in nonjudicial court positions through *specific* policies and procedures.
8. Of the 49 statewide positions in the executive, administrative and managerial court staff categories, *none* is filled by a minority. Moreover, several large Oregon counties have either no minorities or a limited minority representation in court administrative support categories.

Number of Minorities Available and On-Staff in Oregon Courts by County

County	Number of Positions	Percentage Minority Labor Force Availability	Number of Minority Hires
Benton	18	7.2%	0
Clackamas	62	3.9	1
Coos	31	5.4	0
Douglas	36	4.2	0
Jackson	56	4.6	0
Jefferson	7	23.7	0
Lane	91	4.8	1
Linn	33	2.9	0
Yamhill	22	4.5	0

9. Findings regarding the lack of minority representation of nonjudicial employees are even more disturbing when one considers that the Judicial Department goal apparently intends to comply with federal Equal Employment Opportunity (EEO) Guidelines based on 1990 census figures. These figures are outdated, and do not accurately reflect the population makeup of most counties. Comparing 1990 census figures with current school enrollment figures shows a significant increase in the minority population of the state since 1990. For example, the 1990 Census reported Oregon's Hispanic population to be four percent of the population. The

Oregon Department of Education reported that 4.37 percent of children attending school are Hispanic. In only two years the school enrollment figure rose to 5.32 percent for the percentage of Hispanic children in school in October 1992, an increase of more than 20 percent. (The number of Hispanic children attending school went from 21,200 in October 1990 to 27,115 in October 1992.) This increase is even more dramatic in some counties. In Marion County, the number of Hispanic children enrolled in school jumped from 3,859 in 1990 to 4,918 in 1992, a 27 percent increase; in Washington County, the Hispanic school enrollment figure jumped from 2,849 in 1990 to 3,912 in 1992, a 37 percent increase.

10. Substantial problems exist in communication between minorities and nonminorities in the court system, irrespective of the language spoken.

A large percentage (64.1 percent) of all respondents to the main survey concluded that court personnel have some difficulty communicating with minority witnesses or litigants because of cultural differences that are *not language-related*. A slightly lower percentage (53.6 percent) of the same respondents believe that court personnel sometimes stereotype minority witnesses or litigants because of their race or ethnicity. (See Appendix 1.)

The response of minority respondents is even more dramatic. For example, 73.6 percent of minority respondents to the main survey believe that court personnel have some difficulty communicating with minority witnesses or litigants because of cultural differences not language-related. Over 67.6 percent of minority respondents also believe that court personnel sometimes stereotype minority witnesses or litigants due to their race or ethnicity.

Such problems exist within most work forces that include minorities and nonminorities. *Education* of staff is the best way to address this problem.

11. Minority employees believe they are discriminated against in terms of advancement opportunities and their treatment by judges, staff, attorneys and the public.

This finding is based on personal interviews with a sampling of minority staff members, survey results returned by Judicial Department employees, and statements made by minority court employees at public hearings.

12. Support exists for cross-cultural diversity training in minority issues for all legal personnel.

In response to the statement, “[S]ensitivity training in minority issues for all legal personnel would help attain fair treatment for all within the court system,” 50 percent of all respondents to the survey agreed. A recurring theme among those testifying at task force hearings was the belief that cross-cultural diversity training for judges and court employees would help to increase understanding and achieve

fair treatment for those who work in the court system, and for those who come in contact with the court system. *Ongoing* cross-cultural training is the key.

Recommendations

Recommendation Number 3-1

Judicial selection committees should include the goal of achieving racial/ethnic diversity in the judiciary as one of the factors considered in making judicial appointment recommendations to the Governor, and the Governor should be encouraged to consider this factor in making judicial appointments. Members of the bar should develop a pool of qualified minority judicial candidates.

Estimated date for implementation to be completed: January 1, 1995.

Estimated cost: None.

Recommendation Number 3-2

Presiding judges and administrators responsible for hiring and promoting should give high priority to the goal of achieving racial/ethnic diversity at all levels of Judicial Department employment when making hiring and promotion decisions.

Administrators and judges must be held accountable for failing to recruit, hire or promote minorities.

The Judicial Department personnel office should have, as a performance goal, a marketing plan to reach minority applicants. All job openings should be advertised in ways to reach minority applicants.

Estimated date for implementation to be completed: January 1, 1995.

Estimated cost: None.

Recommendation Number 3-3

Judges and administrators responsible for filling vacancies should be trained in methods of attracting qualified minority employees, including

methods of identifying a wider, more ethnically diverse applicant pool to increase the number of minority applicants. They should be more aggressive in advertising and recruiting for qualified minority applicants for managerial and supervisory positions. Notice of job opportunities should be made known as early as practicable. The task force has been given numerous suggestions: advertising in minority publications, posting job announcements with various minority organizations (many have “job banks”), and emphasizing a preference for otherwise qualified job applicants who are bilingual.

Estimated date for implementation to be completed: January 1, 1995.

Estimated cost: Modest (training could be conducted at meetings regularly scheduled for judges and administrators).

Recommendation Number 3-4

Judges, administrators and all court personnel must be convinced, through education, of the need for and value of increasing the diversity of the work force at *all* levels. Diversity includes a message of inclusion rather than exclusion and, once achieved, will bring a variety of perspectives of human experiences, greater awareness and a more productive work force.

Estimated date for implementation to be completed: Ongoing; commencing no later than January 1, 1995.

Cost of implementation: Modest, but ongoing (should be included in ongoing training of judges and court personnel).

Recommendation Number 3-5

Ongoing cross-cultural awareness training should be established for judges and court staff, with the objectives of (1) creating an environment where individual differences are valued, not merely tolerated, and (2) creating a heterogeneous environment, rather than simply assimilating minorities into a dominant majority work environment.

Estimated date for implementation to be completed: Ongoing; commencing no later than January 1, 1995.

Cost of implementation: Unknown.

Recommendation Number 3-6

The Judicial Department should increase its efforts to train and attract bilingual employees. Suggestions include:

- 1. See Recommendation 3-2.**
- 2. Hiring preference should be given to otherwise qualified bilingual employees and applicants fluent in a language common to the environs of the courthouse.**
- 3. The Judicial Department should reimburse the cost of judges and court personnel learning a second language that could be used at work.**

Estimated date for implementation to be completed: July 1, 1995.

Cost of implementation: Unknown.

Recommendation Number 3-7

Each court should appoint an ombudsperson who would investigate complaints against staff relative to allegations of racial bias. The State Court Administrator should appoint a person to act as a liaison between management and staff concerning staff racial issues or problems. Periodic reports should be made to the State Court Administrator and Chief Justice.

Estimated date for implementation to be completed: January 1, 1995.

Cost of implementation: Minimal.

Note: The task force does *not* recommend creating a new position. After receiving training in cross-cultural diversity, one or more staff members—preferably bilingual—could be appointed to hear and investigate complaints against court staff. By merely providing such access to dissatisfied persons, most complaints could be resolved expeditiously, with a corresponding increase in confidence in the courts, both by those using the courts and by those working *in* the courts. Each courthouse should post, in appropriate languages, notices advising persons of the availability of this service.

Recommendation Number 3-8

The Chief Justice should appoint an ombudsperson to investigate complaints against judges and administrators relative to allegations of racial bias.

Estimated date for implementation to be completed: January 1, 1995.

Cost of implementation: Minimal.

Recommendation Number 3-9

The success, or lack of success, of improving diversity in court staffing must be monitored. Specific goals and standards (in addition to numerical goals) should be developed to measure whether diversity is being achieved. The Chief Justice and State Court Administrator should monitor this improvement (or lack thereof) at least annually to ensure that needed diversity is achieved. The monitoring should focus on equal opportunity plans, recruiting minorities for the more responsible and more visible positions, cross-cultural diversity training, and the development of standards to assess progress other than on a purely numerical basis.

We recognize that development of non-numerical standards to evaluate success is a difficult challenge. But Oregon can be a leader in developing standards to evaluate the success of what we might call “Phase 2” of the affirmative action program—developing a *unitary* work force that is culturally diverse in thought and action as well as diverse in race and ethnicity.

Estimated date for implementation to be completed: January 1, 1996.

Cost of implementation: Unknown.

Recommendation Number 3-10

The Supreme Court, Chief Justice and State Court Administrators should adopt a canon for judges and administrative rules for staff that would prohibit discriminatory conduct. The judicial canon could be patterned after the ABA Code of Judicial Conduct 3B(6) (which has not been adopted in Oregon). It provides:

“Judges, in proceedings before the court, shall refrain from manifesting, by words or conduct, bias or prejudice based upon race or ethnic origin, against parties, witnesses, counsel or others.”

Estimated date for implementation to be completed: July 1, 1995.

Cost of implementation: Minimal.

Recommendation Number 3-11

Canon 2 of the Code of Judicial Conduct should be amended to provide:

“A judge should not engage in conduct, on or off the bench, that reflects or implements bias on the basis of race, sex, religion, ethnic or national origin, or sexual orientation (including sexual harassment).”

See the Draft Report of the National Commission on Judicial Discipline and Removal, 102–03 (June 19, 1993).

Estimated date for implementation to be completed: July 1, 1995.

Estimated cost of implementation: Minimal.