

Chapter 4

Minorities in Criminal Courts

The task force heard wide-ranging reports of racial and ethnic bias within the Oregon criminal justice system. Oral and written testimony identified instances of racism at practically every stage in the process: from arrest and detention to charging decisions, bail and pretrial release hearings, jury selection, plea negotiations, trial, judge and jury deliberations, sentencing, imprisonment, and parole and probation decisions. The extent to which these reports reflect aberrant individual biases or deep-seated structural or organizational prejudices is difficult to establish. Statistical evidence suggests the existence of “niches” within the system where bias exists. Task force survey results are not conclusive. Still, the evidence that the task force received is too strong to ignore. There is, at the least, a significant perception, by both minorities and nonminorities, of racism *within* the criminal justice system and that perception is, in many ways, every bit as disturbing as statistical reality.⁵

Arrest and Detention

Findings

Strictly speaking, arrest and detention are matters that lie beyond the charge of the task force. Nevertheless, the sheer volume of comments to the task force regarding this pre-judicial stage of the criminal justice process warrants recognition. At virtually every public hearing a substantial portion of the testimony—in some cases a majority of the testimony—concerned racially discriminatory treatment by law enforcement officers. The complaints tended to fall into several categories.

First, a large number of witnesses complained of police stops, citations or arrests based solely on the color of a person’s skin. Hispanic witnesses, in particular, complained of police action taken for the unwritten crime of “driving while Hispanic.” One middle-aged woman, for example, reported being stopped while driving her 1980 Cadillac through a city. When she asked why she had been stopped, she said the officer replied, “We don’t see very many Hispanics driving Cadillacs.”

Second, witnesses complained of a lack of civility, or outright hostility, from law enforcement officers for no apparent reason other than their color. One witness complained that his arresting officer refused to provide an interpreter to assist him in responding to questioning. According to that witness, the officer explained: “You’re in America, not in Mexico.”

Third, witnesses complained of the extent to which law enforcement officers appear more inclined to use unreasonable force or deadly force against minorities than against white suspects.

Arrest data compiled by the State of Oregon Law Enforcement Data System reveals a disproportionately large number of minority arrests. In 1992, for example, 9,739 African Americans were arrested, representing 6.4 percent of all arrests. Yet African Americans account for only 1.6 percent of the state's 1990 population. Similarly, in 1992, 12,599 Hispanics were arrested, representing 8.3 percent of all arrests. Hispanics represented only 4 percent of the state's 1990 population. This disproportionality in arrests is especially evident in particular counties. In Multnomah County, 1992 arrests of African Americans accounted for nearly 23 percent of the total, while African Americans constitute only 5.9 percent of the county's total population. See Tables 4-7 and 4-8 at the end of this chapter.

This data, however, does not necessarily demonstrate the existence of racial bias at the arrest and detention phase. It is possible that the figures merely reflect the fact that a disproportionate number of persons of color are engaging in criminal activity, or that more arrests are of persons from lower socio-economic classes, which are comprised of a disproportionate number of persons of color, or that more police officers are being deployed in areas with larger minority populations. See *generally* A. Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* 179-98 (1992). Those possibilities still may reflect racial bias, but of an entirely different sort.⁶

Insufficient data is available from which to draw hard conclusions concerning the extent to which racial and ethnic bias affect arrest and detention decisions in Oregon. Nevertheless, the combination of the available data and hearing testimony concerning instances of actual discriminatory treatment cannot be ignored. Certainly, minorities strongly perceive bias, and that perception undercuts the credibility and effectiveness of law enforcement throughout the state.

Law enforcement agencies appear to be aware of the potential for racial and ethnic bias in arrest and detention decisions. The Oregon State Police has distributed information to all officers concerning the need to be aware of cultural differences in law enforcement work. However, the task force knows of no consistent, mandatory, formalized law enforcement officer training programs concerning cross-cultural awareness.

Recommendations

Recommendation Number 4-1

The Chief Justice should recommend to the Governor:

1. That all Oregon State Police officers be required to receive cross-cultural awareness training, including training on the extent to which cultural differences may be relevant in investigations and other law enforcement activities;
2. That the Board on Public Safety Standards and Training be required to offer similar training as a prerequisite to certification.

Estimated date for implementation to be completed: July 1, 1994.

Estimated cost of implementation: Minimal.

Recommendation Number 4-2

All law enforcement agencies—state, county and city—should implement a hiring program designed to attract minority and bilingual police officers.

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

Estimated cost of implementation: Minimal.

Charging Decisions

Findings

In Oregon, the county prosecutor has the authority to determine whether to file charges against an arrested person, what charges to file and what penalties to seek. In exercising that authority, the prosecutor is constrained by no statutes, rules or regulations. The prosecutor is constrained by the constitution and case law to make those decisions in a nondiscriminatory manner. However, the judiciary traditionally is deferential to the discretion of the prosecutor in reviewing charging decisions for possible unconstitutional bias. *See, e.g., U.S. v. Redondo Lemos*, 955 F2d 1296, 1299 (9th Cir 1992). This leaves the prosecutor in a singularly powerful position in the criminal justice system. His or her discretion is nearly total, leaving significant room for potential abuse.

Research in other jurisdictions suggests that, in fact, racial and ethnic minorities—particularly African Americans and Hispanics—are much more likely than whites to be charged with felonies, especially if the victim is white. See generally Comment, *Why Have You Singled Me Out? The Use of Prosecutorial Discretion for Selective Prosecution*, 67 Tulane L Rev 2293 (1993); Developments, *Race and the Criminal Process*, 101 Harv L Rev 1472, 1525–32 (1988). Decisions to seek the death penalty have been shown to be especially suspect. See *McClesky v. Kemp*, 481 US 279 (1987).

The task force knows of no such research concerning prosecutorial decision-making in Oregon. Many, if not most, counties do not maintain data on the variable of race in the filing and disposition of cases. Charging practices no doubt vary considerably from county to county; no uniform charging guidelines exist at this time. The Oregon District Attorneys Association has been studying the possibility of producing uniform charging guidelines, but none has been proposed or adopted to date. Other jurisdictions have operated under some form of uniform charging guidelines for as long as two decades. The California District Attorneys Association, for example, published the “Uniform Crime Charging Standards” in 1974. The most recent edition, published in 1989, lists as “improper bases for charging” the race, religion, nationality, occupation, economic class or political association of the charged person or position of the victim.

The task force heard testimony from a number of witnesses who believed that race was a factor in prosecutorial charging decisions. Witnesses testified that persons of color are more likely to be charged with crimes than whites engaged in the same activities and that persons of color are more likely to be charged with more serious crimes than whites engaged in the same activities. Witnesses also testified that the color of the victim appears to be a factor taken into account by prosecutors: if the victim is white, the prosecutor is more likely to charge than if the victim is not. One prosecutor acknowledged that she charged a disproportionately high number of Hispanics, although she suggested that—as in the case of arrest data—that may be explained by the fact that criminal behavior in her county is largely a function of low income, unemployment and similar factors. The task force is well aware of the limitations of anecdotal testimony. It is also aware of the importance of the prosecutor’s discretion in making charging decisions. Only the prosecutor is in a position to weigh the complex set of variables—such as the severity of the crime, the strength of the evidence, the likelihood of conviction—that go into determining the extent to which it is appropriate to devote the state’s limited resources to enforcement of the law in a given case. Nevertheless, the task force considers unacceptable the nearly complete absence of any limitations on the prosecutor’s charging authority. The need for discretion, while compelling, must be balanced against the potential for abuse. The need to ensure that the charging decision is free from racial and ethnic bias must be taken into account.

Recommendations

Recommendation Number 4-3

District attorneys should be required to collect and report to the Criminal Justice Council data on the variable of race in all charging decisions.

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

Estimated cost of implementation: Unknown.

Recommendation Number 4-4

The legislature should direct the Criminal Justice Council to develop uniform charging standards to be used by all prosecutors in Oregon. The uniform standards should be sufficiently detailed to provide meaningful limits on prosecutorial discretion and to enable judicial review. At a bare minimum, they should specify that race, religion, nationality, gender, occupation or economic class are improper bases for charging. The Criminal Justice Council should be directed to report biannually to the legislature on the implementation of the standards.

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

Estimated cost of implementation: Unknown.

Pretrial Release

Findings

Several witnesses testified that pretrial release decisions appear to be based on the race of the defendant. These witnesses complained that white defendants are more likely to be released without bail, while minority defendants are more likely to be held in custody or subjected to bail requirements that are impossible for them to meet. Others complained that minority defendants are subjected to more careful scrutiny by the courts than are nonminorities. One lawyer, for example, mentioned a judge who often requires Hispanic defendants' employers to be notified of the defendants' legal problems while imposing no such requirement on white defendants. Others complained of implicitly discriminatory pretrial release criteria that unfairly discriminate against migrant workers in particular.

Task force survey results based on the actual experience of the respondents are consistent with those perceptions. About half of the respondents (47.8 percent) said that minority defendants are less likely than nonminority defendants to be released without bail pending trial. Similarly, a third of survey respondents felt that minority defendants are more likely to have higher bail set for them. Among minority respondents to the survey, the percentage of those who believe that minorities are less

likely to be released on their own recognizance is substantially higher (65.2 percent). Similarly, more minority survey respondents (55.5 percent) said that minority defendants are likely to have higher bail set for them than nonminority defendants.

Little empirical data exists on the extent to which the race of a defendant influences pretrial release decisions. Oregon law prescribes a uniform procedure for making pretrial release decisions. The law directs that persons in custody who have a right to be released⁷ are to be released on their own recognizance, subject to the “least onerous” conditions likely to ensure later appearance, unless the application of enumerated release criteria shows that release is unwarranted. ORS 135.245(3). Those criteria include the defendant’s employment status and history, the defendant’s financial condition, the nature and extent of family relationships with defendant, the past and present residences of the defendant and any facts tending to indicate that the defendant has “strong ties to the community.” ORS 135.230(6).

The release criteria are, at least facially, race-neutral. Some of the criteria, particularly those relating to employment and income, have the potential for unfair application to minority defendants, who tend to make up a disproportionately large percentage of the unemployed or lower economic classes. For example, even when bail for a Hispanic migrant farm worker is set at the same level as bail for a nonminority defendant, the migrant worker may rarely be able to post that amount. However, nothing in the release law gives these factors any particular prominence, and they are subject to the general statutory commission to impose the “least onerous” conditions that are likely to ensure appearance.

Recommendations

Recommendation Number 4-5

The Chief Justice should require trial judges, in rendering pretrial release decisions, to use uniform forms that include the race of defendants.

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

Estimated cost of implementation: Minimal.

Recommendation Number 4-6

The legislature should direct the Criminal Justice Council to study and report the extent to which the race of a defendant affects the outcome of a pretrial release decision, either in the decision whether to release on personal recognizance or in the conditions of release.

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

Estimated cost of implementation: Unknown.

Recommendation Number 4-7

The Chief Justice should propose that ORS 135.230(6) be amended to include the following as a “release criterion”: “the defendant’s ability to provide cash, stocks, bonds or real property to secure a promise to appear in court.”

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

Estimated cost of implementation: Minimal.

Plea Negotiations

Findings

The task force heard frequently from minority witnesses that they had been “pushed” into accepting plea negotiations rather than exercising their right to trials. A number of witnesses suggested that it is more common for minority defendants than nonminority defendants to be encouraged to take a plea. The suggested reasons for this practice include defense counsel’s assessment that minority defendants are more likely to be convicted and that minorities are more difficult than nonminorities to defend, particularly when language barriers exist.

Slightly more than a third of all respondents to the task force survey concurred in the perception that minority defendants are more frequently advised to plead guilty. Of the minority respondents, however, 57.4 percent believed that minority defendants are more often advised to take a plea bargain, and 61.8 percent believed that minority defendants are given less than adequate explanations of court proceedings than similarly situated nonminority defendants. To the contrary, felony plea rates data do not appear to substantiate the reported perception. The Criminal Justice Council reports a breakdown of 1991 felony plea rates by race as follows (from 9,602 cases statewide):

Table 4-1

Felony guilty plea rates by race/ethnic group

Race/ethnic group	Percentage of guilty pleas
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White	90%
African American	87
Native American	83
Hispanic	88
Asian	82

This data suggests that minorities do not enter felony guilty pleas more often than do nonminorities. The data does not, however, address the question whether minority defendants are less likely than nonminority defendants to be given adequate explanations of the consequences of the negotiated plea arrangement. Post-hearing complaints that a minority did not understand the consequences of his or her guilty plea are, in fact, not uncommon. See, e.g., *Keeney v. Tamayo-Reyes*, 118 L Ed 2d 318 (1992) (Hispanic *habeas* petitioner complained that he did not understand that by pleading guilty he would lose his right to jury trial).

Conduct of Trial

Findings

The behavior of judges, juries and lawyers in the courtroom also was the subject of testimony before the task force. Witnesses complained that judges and juries begin the trial process with built-in biases against the credibility of minority witnesses and parties. Others expressed concern that judges and juries simply do not understand differences in demeanor that may be attributable to cultural differences and not to truthfulness. A number of witnesses, for example, asserted that judges and juries are likely to draw adverse inferences from an Asian or Hispanic witness who fails to make eye contact with anyone in the courtroom, when that behavior may more accurately be seen as a cultural sign of respect.⁸ The task force heard testimony about judges who refused to let witnesses speak in court because of the witnesses' inability to speak English. The task force also heard numerous anecdotes concerning comments of both court and counsel that reflect, at best, insensitivity and, at worst, outright hostility to minorities in the courtroom.

Even seemingly inoffensive references to race are problematic. For example, the Oregon Court of Appeals recently, in reciting the facts of a case, stated that “[o]ne witness testified that Osiris and a taller, younger, *black* man had approached Gonzales and demanded drugs, then money.” *State v. Taylor*, 125 Or App 636, 638, 866 P2d 504 (1994) (emphasis added). This reference was not necessary to the decision in the case. The court simply could have described the defendant as “a taller, younger man” without affecting the analysis and resolution of the case. References to race, when not directly relevant to the resolution of a case, are dangerous because they perpetuate, and can exploit, the stereotype that minorities are likely to commit crimes.

Task force survey results indicate that a vast majority of respondents have either “never” or “rarely” observed any disrespect or discourtesy toward minority witnesses or litigants. Nevertheless, a significant number of respondents said they have observed such behavior. Of the minority survey respondents, for example, 10.1 percent said that court personnel “usually” stereotyped minority witnesses or litigants. More than a third (37.7 percent) of the minority respondents also complained of having seen racial or ethnic “stereotyping” in the courtroom “sometimes” or “often.” Of related concern is a perception that court personnel do not communicate well with minorities. Approximately a third of all survey respondents indicated that they had “sometimes” or “often” observed court personnel, judges or lawyers having difficulty communicating with minority witnesses or litigants due to cultural differences. The figure is substantially higher (52.8 percent) among minority respondents.

Hard data on the extent to which racial or ethnic bias invades the courtroom is difficult to come by. Many instances of appeals to racial or ethnic prejudices in courts around the nation have been catalogued in Johnson, *Racial Imagery in Criminal Cases*, 67 *Tulane L Rev* 1739 (1993). Empirical studies suggest that white jurors have more trouble distinguishing African-American faces than white faces and that white jurors tend to assume less favorable characteristics of African-American witnesses and defendants. *Id.* at 1639–40 (citing studies). The task force knows of no such studies of Oregon juries or Oregon courtroom conduct.

The task force recommends amendments in the canons of judicial conduct and ongoing cross-cultural training to address these problems. See recommendations in Chapter 3.

Recommendation Number 4-8

Judges should be aware of racial stereotypes lurking beneath references to race. Accordingly, judges should refer to race only when necessary to the disposition of the case.

Sentencing

Findings

The task force heard testimony that minorities are likely to receive greater sentences than nonminorities upon conviction of the same offenses. One lawyer complained that Hispanics may be denied optional probation because they fail to satisfy regulations that require that “a treatment program is available” when no such treatment programs for non-English speakers exists, particularly in sexual abuse cases. Another submitted the transcript of a case in which a judge meted out a tough sentence to provide a Hispanic defendant “enough incentive to stay where he belongs and, in essence, stay out of this country.” The perception appears to be particularly widespread among minorities. As one minority witness stated: “If you’re a black man, you’re going to prison.”

A substantial number of task force survey respondents reported the same perception. A third of all respondents answered that minorities are more likely than similarly situated nonminorities to receive a sentence of prison than probation. Among minority respondents that figure nearly doubled, with 60.1 percent believing that minority defendants are more likely than nonminority defendants to receive prison sentences. Nearly half of the minority respondents (49.6 percent) felt that minority defendants are more likely to receive a longer prison sentence.

Oregon is one of more than a dozen states that have adopted uniform sentencing guidelines for all felony crimes. Developed by the Oregon Criminal Justice Council, the sentencing guidelines were approved by the 1989 Legislative Assembly and apply to all crimes committed on or after November 1, 1989. One of the purposes of the guidelines is to achieve sentence uniformity and promote sentencing decisions that are racially neutral.

The sentencing guidelines set presumptive sentences for convicted felons based on the seriousness of the crime and the offender’s criminal history. The presumptive sentences are stated graphically in a two-dimensional grid, with one axis ranking crime seriousness and the other ranking criminal history. Judges are permitted to depart from the presumptive sentence and impose a sentence more (an “upward departure”) or less (a “downward departure”) severe than the presumptive sentence upon a finding that there are substantial and compelling reasons for the departure.

The extent to which the administration of the sentencing guidelines has resulted in more uniform sentencing practices has been monitored by the Sentencing Guidelines Board. The most recent report of the board, *Third Year Report on Implementation of Sentencing Guidelines 1992*, analyzes the sentencing of 12,354 felons during calendar year 1992. It reveals that, after three years of guidelines implementation, racial disparity, although considerably reduced, continues to exist in sentencing decisions, particularly where judges retain discretion to depart from presumptive sentences set by the guidelines.

The Third Year Report finds that the 1992 imprisonment rate varied significantly by race:

Table 4-2

Offenders sentenced to prison by race/ethnic group

Race/ethnic group	Percentage sentenced to prison
White	16.7%
Hispanic	22.1
African American	27.2
Native American	20.1
Asian	25.0

The Third Year Report notes that the disparity in imprisonment rate is most likely a result of higher presumptive imprisonment sentences required by the guidelines, which are occasioned by minority convictions of more serious crimes and more serious criminal history records. The Third Year Report adds that some of the disparity is a function of judges' decisions to depart from the guidelines. Those departure decisions fall into two general categories: "dispositional" departures and "durational" departures.

Dispositional departures occur when the presumptive sentence is prison and the offender is sentenced to probation (a "downward" dispositional departure) or vice-versa (an "upward" dispositional departure). The Third Year Report shows that, statewide, minorities had an *upward* dispositional departure rate almost double that of whites. According to the Third Year Report, minority offenders tend to have more serious criminal histories than white offenders and those with more serious criminal histories tend to have higher upward dispositional departure rates. Controlling for criminal history, the Sentencing Guidelines Board found no racial disparity in 1992 upward dispositional departure rates, with the exception of drug offenders with no or one prior adult felony drug conviction. Within that group, the board found Hispanic offenders had an upward dispositional departure rate of 4.6 percent, while the rate for African-American offenders was 1.9 percent, and the rate for white offenders was 0.4 percent.

The Third Year Report also reveals some disparities in downward dispositional departures. In Multnomah County, where 58 percent of the state's minority felons are sentenced, racial disparity in downward dispositional departure rates was deemed statistically significant. The rate for white offenders totaled 22 percent, while the rates for Hispanic and African-American offenders were only 10.3 percent and 15.8 percent respectively.⁹

Departures may also be "durational." Such departures occur when the judge imposes a prison sentence that is longer (an upward durational departure) or shorter (a downward

durational departure) than the range that is specified by the guidelines grid as the presumptive sentence. The Sentencing Guidelines Board found that, with the exception of one category of offenders, there is no statistically significant racial disparity in the imposition of durational departures. The single exception is the category of drug offenders sentenced in counties other than Multnomah, where Hispanics were found to be more likely to be sentenced to an upward durational departure. In that category of offenders, 11 percent of Hispanics received upward durational departure sentences, while none of the whites received such sentences.

A final category of sentences analyzed for possible racial disparities involves sentences of imprisonment where optional probation is included in the presumptive sentence. The bulk of offenders eligible for optional probation are classified in a single grid block (8-1). The Third Year Report indicates that in these cases, whites received probation 77 percent of the time, Hispanics 41 percent of the time, and African Americans 54 percent of the time. Particularly in the category of drug offenders, Hispanics appear to be offered probation significantly less than any other racial group. According to the Third Year Report, in such cases, white offenders were sentenced to probation 77 percent of the time, African Americans 71 percent of the time, and Hispanics only 29 percent of the time.

In sum, the Sentencing Guidelines Board's annual report establishes that, although racial disparity has been reduced significantly, it still exists under the state's sentencing guidelines. That disparity appears to be more pronounced when judges retain discretion to depart from the presumptive sentences contained in the grid. In such cases, Hispanic offenders appear to be treated more severely than African-American offenders, and African-American offenders more severely than white offenders.

Although, as the Sentencing Guidelines Board points out, a substantial amount of the racial disparity may be explained by the fact that minority offenders tend to have more serious criminal histories than white offenders, that explanation fails to take into account the possibility that racism may, in some measure, account for those more serious criminal histories. To the extent that is so, implementation of the guidelines simply has perpetuated the effects of that racism in subsequent cases. A number of witnesses recommended limiting the use of criminal histories that pre-date the implementation of the sentencing guidelines to ameliorate the possibility that racism affected prior convictions and sentences.

The task force also notes that obtaining explanations for departures is complicated by the unavailability of the judges' stated reasons. Although judges are required to state their reasons on the record, that information is not readily available without ordering a transcript in each case. The guidelines reporting form submitted by the court in each case records only a few categories of bases for departure decisions, and those categories are too broad to provide any meaningful explanations. For example, the explanation of "persistent involvement" and "other" account for most departures. It is not possible, after the fact, to determine what either of these means.

The task force also heard complaints that not all counties are reporting sentencing decisions as required while others are reporting only partially. This, too, hampers the ability of the Sentencing Guidelines Board and others to evaluate the effectiveness of implementation of the guidelines, and possibly unfairly skews the results that are reported.

A recent audit of Multnomah County sentencing shows significant differences in decisions to impose jail sentences in drug cases involving Hispanic and white offenders with little or no criminal record. Of the Hispanics in that category, 74 percent were sentenced to jail; of the whites, only 35 percent.

The disparity in the use of jail sentences decreases as criminal history increases. In the case of Hispanics and whites with prior nonperson felony records, 73 percent of the Hispanics were sentenced to jail, while 53 percent of the whites were sent to jail. In the case of Hispanics and whites with prior person felonies, 75 percent of the Hispanic offenders were sentenced to jail, compared to 68 percent of white offenders with similar histories.

Interpretation of the data is complicated somewhat by the fact that Hispanic offenders who are illegal immigrants are generally sentenced to jail because probation is considered an illegal sentence for such persons.

Recommendations

Recommendation Number 4-9

The Chief Justice should require trial judges to use a uniform judgment form, or other uniform form, that includes the defendant's race and that states specifically the reasons for a departure (in those instances in which a departure sentence is imposed) from a presumptive sentence applicable under the guidelines.

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

Estimated cost of implementation: Minimal.

Recommendation Number 4-10

Because some counties have not been reporting as required, all counties should be required to submit sentencing guidelines reports timely and in a complete manner.

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

Estimated cost of implementation: Minimal.

Recommendation Number 4-11

The Sentencing Guidelines Board should again consider amendments to the sentencing guidelines that establish a five-year sunset period for consideration of prior criminal history.

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

Estimated cost of implementation: Minimal.

Recommendation Number 4-12

Because of the immense help that its statistics have been to this task force, and because it is imperative that such statistics be available in the future, the Criminal Justice Council should continue to study and report on racial disparities in sentencing.

Estimated date for implementation to be completed: Not applicable.

Estimated cost of implementation: Unknown.

Imprisonment, Parole and Probation

Findings

Although imprisonment, parole and probation are beyond the charge of the task force, sufficient testimony was received to warrant comment. The task force heard testimony from a number of witnesses, including inmates at the Oregon State Penitentiary (OSP) and the Oregon Women's Correctional Center, that "racism is alive and well" within Oregon's corrections system. Some witnesses stated that the existence of a disproportionately large number of minority inmates in corrections institutions evidences racism in the criminal justice system. Others complained that "your skin color, your

accent, and the money in your pocket will determine how you are treated.” African-American inmates complained that they are unfairly assumed to be members of gangs solely because of their color, which adversely affects their chances for early release. A number of inmates objected to discrimination against minorities in the availability of vocational training. Others complained about the small number of minorities on staff. Still others complained that persons who perform psychological evaluations are nonminorities, and lack sensitivity to the minority defendant’s cultural background.

Offender population statistics reveal a disproportionately high percentage of minorities subject to Department of Corrections supervision in one form or another. For example, although African Americans make up only 1.6 percent of the state’s total population, they make up 7.6 percent of those persons in custody or supervised by the Department of Corrections. The breakdown of the population of offenders in the 12 correctional institutions located around the state is as follows:

Table 4-3

**Population of offenders in correctional institutions
by race/ethnic group**

Race/ethnic group	Institution population percentage	Statewide population percentage (1990 census)
White	72.8%	92.8%
African American	13.5	1.61
Hispanic	10.5	4.0
Native American	1.9	1.33
Asian	1.2	2.42

The breakdown of the population of those offenders in community services is similar:

Table 4-4

**Population of offenders in community services
by race/ethnic group**

Race/ethnic group	Community services population percentage	Statewide population percentage (1990 census)
White	81.1%	92.8%
African American	9.4	1.61
Hispanic	6.5	4.0
Native American	1.5	1.33
Asian	0.7	2.42

In both cases, all minorities except Asians are over-represented, and nonminorities are underrepresented.

Overrepresentation of minorities in the state's corrections programs is to be expected, given the disproportionately higher numbers of minorities who are arrested, charged, prosecuted, convicted and sentenced to prison. The number of minority offenders subject to Department of Corrections supervision does not, in and of itself, demonstrate racism in the corrections system. However, some upward "creeping" appears in the proportion of minorities within the criminal justice system. Thus, while African Americans represent 6.4 percent of all arrests, they make up 7.8 percent of the criminal convictions and 13.2 percent of the prison population. It is difficult to avoid the conclusion that racial bias accounts for at least some of the cumulative increase in the proportion of minorities.

Statistics concerning the availability of vocational training appear to bear out some of the concerns expressed by inmates. The breakdown of participants in vocational training programs at OSP and Oregon State Correctional Institution (OSCI) is as follows:

Table 4-5

Population of offenders in vocational training programs at correctional institutions by race/ethnic group

Race/ethnic group	<u>OSP</u>		<u>OSCI</u>	
	Percentage in vocational training	Total institutional population percentage	Percentage in vocational training	Total institutional population percentage
White	87.67%	75.15%	75.0%	68.4%
African American	8.22	11.85	15.0	17.91
Hispanic	4.11	9.51	8.33	9.77
Native American	0.0	2.69	1.67	1.4
Asian	0.0	0.8	0.0	2.33

Thus, in both institutions, a disproportionately large percentage of participants in vocational assistance are nonminorities, while the percentage of minority participants is generally lower than the minority share of the prison population for all groups except Asians.

Data on participation in educational programs reveals a very different distribution. Participation in Adult Basic Education (ABE) at OSP and OSCI, for example show the following:

Table 4-6

Population of offenders in adult basic education (ABE) at correctional institutions by race/ethnic group

Race/ethnic group	<u>OSP</u>		<u>OSCI</u>	
	Percentage in ABE	Total institutional population percentage	Percentage in ABE	Total institutional population percentage
White	59.09%	75.15%	44.64%	68.4%
African American	9.09	11.85	23.21	17.91
Hispanic	27.27	9.51	27.68	9.77
Native American	2.27	2.69	0.89	1.4
Asian	2.27	0.80	3.57	2.33

There, African-American and Hispanic inmates participate in adult basic education at a rate that exceeds the percentage of their prison population. This is most likely a

product of the educational background of offenders, *i.e.*, the fact that white offenders tend to come to prison with more education on the average than do minority offenders.

Inmate complaints that the Department of Corrections employs few minorities do not appear to be borne out by the department's own work force statistics. According to its work force analysis of August 11, 1993, the percentage of minorities working for the department is slightly more than 11 percent. However, the number of minorities at management levels in the Department is quite low, particularly at institutions that house large percentages of minority offenders. That fact no doubt contributes to the impression that the department employs too few minorities.

One final observation deserves mention. At least since 1989, sentencing decisions have been subject to uniform guidelines, but the same has never been true of parole revocation decisions, or decisions to grant or deny institutional "earned time credits" (which can reduce an offender's prison term), and other prison and post-prison supervision decisions. These decisions should be monitored for consistency and possible racial or ethnic bias.

Recommendations

Recommendation Number 4-13

The Department of Corrections and the Criminal Justice Council should be required to monitor and report whether race, ethnicity or cultural differences of inmates play a role in revocations of parole or post-prison supervision or probation status or in administrative processes, such as granting or denying earned time credits.

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

Estimated cost of implementation: Unknown.

Recommendation Number 4-14

The Department of Corrections should examine the requirements of inmate participation in educational, vocational and treatment programs to determine whether the entry requirements operate in a manner that systematically disfavors any racial or ethnic group.

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

Estimated cost of implementation: Unknown.

Recommendation Number 4-15

The Department of Corrections should develop a program designed for employees to enhance retention and promotional opportunities of minorities.

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

Estimated cost of implementation: Unknown.

Table 4-8

State of Oregon 1990 census figures by race and county

Total Population	County	Population composition by race/ethnicity					Other Race
		White	Black	Indian	Hispanic	Asian	
15,317	Baker	14,829	29	137	276	45	1
70,811	Benton	64,103	580	501	1,735	3,845	47
278,850	Clackamas	263,965	1,107	1,824	7,129	4,723	102
33,301	Clatsop	31,756	99	361	648	419	18
37,557	Columbia	36,067	37	485	684	273	11
60,273	Coos	56,879	133	1,338	1,353	556	14
14,111	Crook	13,455	11	207	388	47	3
19,327	Curry	18,367	31	444	354	121	10
74,958	Deschutes	72,303	78	609	1,526	426	16
94,649	Douglas	90,196	140	1,428	2,225	629	31
1,717	Gilliam	1,668	-	10	30	9	-
7,853	Grant	7,595	6	86	152	14	-
7,060	Harney	6,544	2	252	221	39	2
16,903	Hood River	13,628	36	186	2,752	284	17
146,389	Jackson	136,957	319	1,722	5,949	1,386	56
13,676	Jefferson	9,590	20	2,551	1,448	62	5
62,649	Josephine	59,521	123	802	1,749	434	20
57,702	Klamath	51,704	352	2,202	2,984	442	18
7,186	Lake	6,689	5	178	270	41	3
282,912	Lane	265,391	2,040	3,017	6,852	5,419	193
38,889	Lincoln	36,962	63	926	598	329	11
91,227	Linn	87,081	171	1,001	2,177	765	32

26,038	Malheur	19,839	63	177	5,155	783	21
228,483	Marion	201,218	2,039	2,970	18,225	3,874	157
7,625	Morrow	6,688	8	65	825	30	9
583,887	Multnomah	497,700	34,415	6,122	18,390	26,626	634
49,541	Polk	45,145	192	704	2,802	653	45
1,918	Sherman	1,853	-	24	28	13	-
21,570	Tillamook	20,765	38	231	374	154	8
59,249	Umatilla	51,303	350	1,746	5,307	503	40
23,598	Union	22,612	99	226	381	268	12
6,911	Wallowa	6,738	6	31	113	23	-
21,683	Wasco	19,474	59	844	1,065	235	6
311,554	Washington	280,239	1,986	1,575	14,401	13,190	163
1,396	Wheeler	1,370	1	11	12	2	-
65,551	Yamhill	59,538	344	756	4,129	760	24
2,842,321	State Total	2,579,732	44,982	35,749	112,707	67,422	1,729

Table 4-8

State of Oregon 1990 census percentages by race and county

Total Population	County	Population composition by race/ethnicity				
		White	Black	Indian	Hispanic	Asian
15,317	Baker	96.8	0.2	0.9	1.8	0.3
70,811	Benton	91.0	0.8	0.7	2.4	5.4
278,850	Clackamas	94.7	0.4	0.7	2.6	1.7
33,301	Clatsop	95.3	0.3	1.1	2.0	1.3
37,557	Columbia	96.0	0.1	1.3	1.8	0.7
60,273	Coos	94.4	0.2	2.2	2.2	0.9
14,111	Crook	95.4	0.08	1.5	2.7	0.3
19,327	Curry	95.0	0.2	2.3	1.8	0.6
74,958	Deschutes	96.5	0.1	0.8	2.0	0.6
94,649	Douglas	95.3	0.2	1.5	2.4	0.7
1,717	Gilliam	97.2	-	0.6	1.6	0.5
7,853	Grant	96.7	0.08	1.1	1.9	0.2
7,060	Harney	92.7	0.03	3.6	3.1	0.6

16,903	Hood River	80.6	0.2	1.1	16.2	1.7
146,389	Jackson	93.6	0.2	1.2	4.1	0.9
13,676	Jefferson	70.1	0.2	18.7	10.6	0.5
62,649	Josephine	95.0	0.2	1.3	2.8	0.7
57,702	Klamath	89.6	0.6	3.8	5.2	0.8
7,186	Lake	93.0	0.07	2.5	3.8	0.6
282,912	Lane	93.8	0.7	1.1	2.4	1.9
38,889	Lincoln	95.0	0.2	2.4	1.5	0.9
91,227	Linn	95.5	0.2	1.1	2.4	0.8
26,038	Malheur	76.2	0.2	0.7	19.8	3.0
228,483	Marion	88.0	0.9	1.3	8.0	1.7
7,625	Morrow	87.7	0.1	0.9	10.8	0.4
583,887	Multnomah	85.2	5.9	1.1	3.2	4.6
49,541	Polk	91.1	0.4	1.4	5.7	1.3
1,918	Sherman	96.6	-	1.3	1.5	0.7
21,570	Tillamook	96.3	0.2	1.1	1.7	0.7
59,249	Umatilla	86.6	0.6	3.0	9.0	0.9
23,598	Union	95.8	0.4	1.0	1.6	1.1
6,911	Wallowa	97.5	0.09	0.5	1.6	0.3
21,683	Wasco	89.8	0.3	3.9	4.9	1.1
311,554	Washington	90.0	0.6	0.5	4.6	4.2
1,396	Wheeler	98.1	0.07	0.8	0.9	0.1
65,551	Yamhill	90.8	0.5	1.2	6.3	1.2
2,842,321	State Total	90.8	1.6	1.3	4.0	2.4

Table 4-9

State of Oregon arrest percentages by race and county 1992

Arrest Total	County	Population composition by race/ethnicity				
		White	Black	Indian	Hispanic	Asian
943	Baker	97.4	0.2	0.9	1.6	-
2,851	Benton	90.2	4.2	0.2	3.2	2.3
8,511	Clackamas	90.0	2.3	0.8	6.1	1.1
2,761	Clatsop	94.7	1.2	0.3	3.5	0.4

2,177	Columbia	98.3	0.5	0.3	0.5	0.4
4,337	Coos	97.0	0.4	0.3	2.1	0.2
877	Crook	100.0	-	-	-	-
1,006	Curry	99.1	0.2	0.3	0.2	0.2
4,704	Deschutes	98.0	0.3	0.7	0.8	-
6,200	Douglas	97.5	0.4	0.3	1.7	0.2
32	Gilliam	96.7	3.1	-	-	-
249	Grant	98.8	0.8	0.4	-	-
178	Harney	92.1	-	7.3	0.6	-
1,149	Hood River	73.5	0.7	1.0	24.5	0.4
10,651	Jackson	90.2	1.5	0.8	7.1	0.5
1,219	Jefferson	58.4	0.3	24.5	16.8	0.08
2,873	Josephine	95.4	0.8	0.4	3.2	0.2
2,016	Klamath	80.1	1.7	8.6	8.6	0.4
316	Lake	91.8	1.3	1.6	4.8	0.6
16,776	Lane	95.2	3.0	0.9	0.06	0.8
2,896	Lincoln	96.8	0.5	1.7	0.4	0.7
6,354	Linn	96.0	1.1	0.4	2.3	0.3
1,731	Malheur	56.2	0.7	0.5	42.2	0.4
12,121	Marion	73.7	3.2	1.9	20.1	1.1
285	Morrow	92.0	-	0.7	7.4	-
33,354	Multnomah	61.6	22.8	2.3	11.2	2.1
2,494	Polk	78.9	1.4	1.8	17.4	0.6
66	Sherman	87.9	-	-	12.1	-
1,279	Tillamook	99.1	-	0.08	0.8	0.08
3,127	Umatilla	76.4	0.4	3.1	19.9	0.2
1,399	Union	94.3	1.4	0.9	2.6	0.8
313	Wallowa	98.7	-	0.6	0.6	-
1,372	Wasco	78.6	0.7	4.5	14.6	1.5
11,220	Washington	82.3	3.6	0.3	11.4	2.4
29	Wheeler	100.0	-	-	-	-
3,371	Yamhill	86.4	0.4	0.4	12.6	0.3
2,842,321	State Total	82.7	6.4	1.5	8.3	1.1

Bibliography

Chapter 4: Minorities In Criminal Courts

American Bar Association Task Force on Minorities in the Justice System, *Achieving Justice in a Diverse America* (1992)

California District Attorneys Association, *Uniform Crime Charging Standards* (1989)

Comment, *Why Have You Singled Me Out? The Use of Prosecutorial Discretion for Selective Prosecution*, 67 *Tulane L Rev* 2293 (1993)

Developments, *Race and the Criminal Process*, 101 *Harv L Rev* 1472 (1988)

Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (1992)

Johnson, *Racial Imagery in Criminal Cases*, 67 *Tulane L Rev* 1739 (1993)

Johnson, *Unconscious Racism and Criminal Law*, 73 *Cornell L Rev* 1016 (1988)

Langan, *Racism on Trial: New Evidence to Explain the Racial Composition of Prisons in the United States*, 76 *J Crim L & Criminology* 666 (1985)

Minnesota Supreme Court Task Force on Racial Bias in the Judicial System, *Final Report* (1993)

Morris, *Race and Crimes: What Evidence Is There That Race Influences Results in the Criminal Justice System?*, 72 *Judicature* 111 (1988)

Multnomah County Auditor, *Management of Felons: Improve Sentencing Practices* (1992)

Murphy, *Racial Discrimination in the Criminal Justice System*, 17 *NC Cent L J* 171 (1988)

Oregon Criminal Justice Council, *Third Year Report on Implementation of Sentencing Guidelines—1992* (1993)

Oregon Law Enforcement Data System, *Report of Criminal Offenses and Arrests* (1992)

Shelley, *Structural Influences on the Problem of Race, Crime, and Criminal Justice Discrimination*, 67 *Tulane L Rev* 2273 (1993)

Strasser, *One Nation Under Siege*, *Nat'l L J* § 2 at 1 (August 7, 1989)

U.S. Department of Justice, Office of Policy and Communications, *The Case for More Incarceration* (1992)