

# A Call for Action



*Firms and individual lawyers have a duty to make the system work — for everyone*

By Edwin J. Peterson

This May the Oregon Supreme Court released its task force report on racial issues in the courts. After participating in the task force and reading its report again, I am convinced that our profession should do something. Before getting to that, however, let me mention some of the findings that struck me as being particularly important.

- Many non-English-speaking minorities appearing in court do not understand what is going on because interpreters are not present, because interpreters are not qualified or because they do not understand the justice system.

- Too few lawyers speak and understand the language of non-English-speaking minority Oregon residents.

- Too few minority lawyers practice in Oregon. Only one African-American is a partner in any large Portland law firm.

- Efforts to recruit minority lawyers are inadequate.

- Too few minorities are called for jury duty, and even fewer minorities actually serve on Oregon juries.

- Peremptory challenges are improperly used to eliminate jurors solely because of the race or ethnic background of the juror.

- Judges handling family law cases involving minorities often lack an under-

standing of the traditions and cultural practices of minority families.

- Too few minorities are employed in Oregon courts. Of the 49 management positions in the Oregon Judicial Department, none is filled by a minority.

- A goal of numerical parity in employment of minorities does not go far enough, because numerical parity alone does not eliminate discrimination. In addition to numerical goals, specific goals and standards should be developed to measure whether a unitary, culturally diverse work force is being achieved. Ongoing cross-cultural training of judges and court staff should be conducted.

In the criminal justice area, minorities are more likely to be arrested than non-minorities, and minorities are more likely to be incarcerated. In addition, a number of witnesses testified that, as compared to similarly situated non-minorities:

- minorities are more likely to be charged,

- minorities are likely to be charged with more serious offenses,

- minorities are less likely to be released on bail,

- minorities are more likely to be convicted,

- minorities are more likely to receive a stronger sentence, and

- minorities are less likely to be put on probation.

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, and

- minorities lack experts sensitive to cultural difference of minorities.

(The task force cites a number of statistics to support these findings. This is intolerable!)

All non-minorities involved in the justice system — judges, court staffs, lawyers, law school professors and law students — need ongoing cross-cultural training. Non-minorities are the cause of many of the problems facing minorities today. Non-minorities must recognize that problems exist; non-minorities must address them with resolve and sensitivity.

The task force did point out that few of the findings suggested overt, inten-



tional discrimination by judges, court staff, lawyers or legal staff. But isn't that beside the point? The significant thing is that the task force found many instances of racial and ethnic bias, which the task force described as "subtle but unmistakable discrimination that appears to be institutionalized throughout society and reflected in Oregon's courts and legal profession."

It seems to me that the problems discussed in the report stem, in part, from erroneous stereotypical attitudes that the dominant culture has of non-minority cultures. This becomes manifest in a host of ways. I'll mention a few.

- A feeling by non-minorities that successful minorities are successful because of preferential hiring policies stemming from affirmative action programs.

- A feeling that all young African-American men are gang members.

- A feeling that all Native-Americans are lazy, living off the government.

- A feeling that African-American students are slow learners and that they will need special assistance in order to keep up.

- A feeling that if you are a Hispanic driver, you have neither an operator's license nor insurance.

- A feeling that if you don't look me in the eye, you're being evasive.

Is it fair to say that the biggest problems that minorities face today are misconceptions, conscious and unconscious, that non-minorities have about minorities? Would you find anyone in your firm, indeed, any partner in any Oregon law firm, who would admit to discriminating against

minorities? Yet, minorities have found it difficult to get jobs in some law firms. It is pointless to preach to minorities about these problems. The problem is people like me, non-minorities who were raised in a non-minority culture and almost from birth consciously or unconsciously invested with prejudices against minorities. Consider your firm or work place: Is it common or not for your firm's partners to live in the same part of town, in the same non-minority culture?

Those of us in the majority, particularly persons in positions of responsibility, *must* address this problem. The task force repeatedly recommends that lawyers, judges and others working in the courts and in the legal profession receive ongoing cross-cultural awareness training to create an environment in which individual differences are valued, not merely tolerated, and to create a heterogeneous environment, rather than an environment that assimilates minorities into a dominant majority work environment. The task force report states on page 21:

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.* (Emphasis in original.)

That makes sense to me.

Let me make one more point. I'm sure that you agree that a law firm of men *and* women is preferable to one with only men or only women. Similarly, a work force of men and women of different races and cultures is a stronger work force than a work force of only Caucasians. That, too, is easy to say, but many non-minorities, in their heart, do not believe that. In a 100 percent non-minority work force, there is

## THE FIRST PRINCETON CORPORATION

is pleased to announce that

**D. Alan Hungate, C.F.A.**

has been elected a

**Managing Director of the firm.**

### The First Princeton Corporation

Acquisitions and Divestures • Business Valuations • Portfolio Management

William E. Holmer, ASA, President  
Five Centerpointe Drive, Suite 100  
Lake Oswego, Oregon 97035  
(503) 598-9399

**Experienced,  
Dependable, Thorough.  
A name you can trust.**



An Accredited Senior Appraiser of The American Society of Appraisers



a strong likelihood that bias — perhaps unintended, but nonetheless bias — exists against some minorities. If minorities are hired totaling 10 percent of the work force (approximately 10 percent of Oregon's population is minority) you still have a work force of 90 percent non-minorities, non-minorities who have the same biases that they had before the minorities came aboard. Addressing this invisible bias, this subconscious bias, is the aim of cultural diversity training. Yet, some firms have yet to hire their first minority. They don't intentionally exclude minorities, but "just haven't found any worthy candidates." Can we honestly rest on that response?

I suggest that Oregon's law firms do what the task force recommends — undergo cross-cultural training. Not just for the partners and associates, but for entire law firms. Not a one-shot session, but ongoing training programs that will not only educate about ethnic, racial and cultural differences, but also change firms' attitudes and cultures.

The task force heard many poignant stories of the efforts of minorities to address the problems of racial discrimination that still exist in our society. We heard the story of minority law students conducting a seminar to assist them in overcoming discrimination in their job search. *Why should this be necessary?* The reason that the minority law students are having these problems is because of us, the dominant majority. Minorities didn't create the bias and discrimination that continues to permeate our society, yet they expend immense amounts of energy to overcome it. The Salem *Statesman Journal* (May 21, 1994) put it well:

Racism is a waste of economic and intellectual resources. This nation cannot afford to lose the full productive power of every citizen — yet it happens right before our eyes.

We also cannot afford the cost of crime that rises out of the poverty, indifference and hopelessness that racism spawns.

The task force also recommends that we "adopt" a minority grammar school student through the "I Have a Dream" program that now exists in Portland. Contact Len Girard, Pam Jacklin or Ken Lewis to see how you can get involved. We have nothing to lose, yet everything to gain. The cost will be modest (and tax deductible).

The task force also recommends we evaluate our hiring practices and that we "focus on the need for immediate measurable gains in minority participation in private practice." Is there any reason why we should not do that, as well?

Government programs haven't been successful in addressing many of the problems mentioned above. Is it possible that the task force is correct in saying, on the very first page of its report:

Non-minorities have brought about many of the problems that minorities encounter. ... Addressing these problems, and ultimately solving them, is the joint responsibility of non-minorities and minorities.

We lawyers often lead societal change. Can't we do more? Shouldn't we? ■

#### ABOUT THE AUTHOR

*Retired Chief Justice Edwin J. Peterson is the chair of the Oregon Supreme Court Task Force on Racial/Ethnic Issues in the Judicial System. The task force released its report on May 20, 1994.*

### What sellers say about MacNaughton

“When you list your home with Kathleen, you might as well call the moving van at the same time.”



Kathleen MacNaughton  
Sales Associate • 15 Years

CAPE COD  
Sold for \$209,000  
in 1 day.

*Cronin & Caplan*  
**Realty Group**  
Inc.

733 Northwest 20th Avenue • Portland • 220-1144