



Online CLE

Access to Justice: History of Exclusionary Laws, Social Equity Programs, and How Business Lawyers Can Help

1 Access to Justice credit

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Chapter 3

Presentation Slides: Oregon's Legally Constructed Barriers: Understanding and Addressing Economic Barriers for Marginalized Groups

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Oregon's Legally Constructed Barriers: Understanding and Addressing Economic Barriers for Marginalized Groups



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Land Acknowledgement

Kalapuya Treaty/ Treaty of Dayton, 1855



CLE Goals and Outline

Goal: Understand how the legal system exacerbates economic inequalities and examine our responsibility to improve accessibility to the legal system.

Historical Legal Timeline –the impact that the law has in creating and enforcing power differences.

Update of economic impacts of marginalized groups

Roadmap for personal involvement to dismantle economic impacts

The “isms”

Racism

Sexism

Ableism

Heterosexism

Classism

Ageism

“Isms” + Institution

The use of institutions and systems to support and resource the group in power at the expense of the group or groups with less power. These barriers may be created with ill intent or based on ignorance. Once these barriers are set into an institution or a system, they perpetuate themselves without the help of individuals. Often societal bias allow these institutional barriers to go unnoticed.

Oregon’s History of Constructing Legal Barriers

1850 – Oregon Donation Land Act



Lower Table Rock was the site of negotiations for the 1853 treaty with the Takelma.

Congress passed the Oregon Donation Land Act providing 320 acres to all white or “half-breed” men. Although some tribes had been decimated by disease, the Rogue Valley tribes were still strong. “Indian title” was extinguished and white settlers claimed thousands of acres. The organized resistance by Rogue Valley tribes began a race war in 1852 & 1853. Eventually the US military removed the remaining tribal members to coastal reservations

1862 - Oregon’s Race Tax

The Oregon legislature passes a law that requires all Black, Hawaiian, Chinese and mixed race individuals to pay an annual tax of \$5 or work for the state building roads at 50 cents a day to pay off the tax. The high unemployment for people of color and relatively expensive tax made it difficult to pay.



1882-Chinese Exclusion Act



The act provided an absolute 10-year moratorium on immigration of Chinese laborers. The term laborers applied to both skilled and unskilled laborers, making it difficult for any Chinese immigrant to legally immigrate. For the first time, Federal law proscribed entry of an ethnic working group on the premise that it endangered the good order of certain localities. It was extended for ten years and then made permanent in 1902.

1884 – Women’s Suffrage in Oregon



After failed attempts to pass both the House and Senate in Oregon in 1880 and 1882 respectively, the Oregon Equal Suffrage Association first placed the voting amendment on the ballot in 1884. It failed five times before finally passing in 1929.

1907 – Federal Expatriation Act

Women assumed the citizenship of their husbands, regardless of their place of residence. As a result, any U.S. women marrying men who were not US citizens would lose citizenship. Although overturned in part in 1922, any women marrying a person who could not become a citizen continued to lose their U.S. citizenship until 1931.



1919 – In Re Estate of Fred Paquet

Ophelia Paquet from the Tillamook tribe was married to Fred Paquet for over 30 years. Upon his death, their marriage was considered invalid. Marriage between white people and any person who was 1/4th or more Black, Chinese or Hawaiian was illegal according to an 1866 Oregon law. The Oregon Supreme Court gave John Paquet, Fred's brother, possession of the land.

AN ACT to prohibit amalgamation and the intermarriage of races.
Enacted by the Legislative Assembly of the State of Oregon:
Section 1. That hereafter it shall not be lawful within this State for any white person, male or female, to intermarry with any negro, Chinese, or any person having one-fourth or more negro, Chinese or Kanaka blood, or any person having more than one-half Indian blood; and all such marriages or attempted marriages, shall be absolutely null and void.
Sec. 2. If any white person, negro, Chinese, Kanaka, or Indian, within the above forbidden degrees, shall knowingly intermarry or attempt the same by procuring a solemnization of marriage, under any of the forms or ceremonies legalized in this State, each person or persons upon conviction thereof, shall be punished by imprisonment in the penitentiary or county jail, not less than three months nor more than one year.
Sec. 3. If any person authorized to license marriages, or to solemnize marriages within this State, shall willingly or knowingly license, marry or attempt to marry, any of the persons above forbidden to marry, such person or persons upon conviction thereof, shall be imprisoned in the penitentiary or county jail, not less than three months nor more than one year, and he shall not less than one hundred dollars, nor more than one thousand dollars.
Sec. 4. It shall be the duty of the clerks of the several counties in this State, when applied to for a "license" to marry, to inquire into the facts as to whether either of the parties to such proposed marriage comes within the above forbidden degrees, and for this purpose he may put such questions on oath, and demand further proof in his discretion; provided, such clerk shall not require more than the affidavits of and other disinterested persons.
Approved October 24, 1866.

1922- Takao Ozawa v. United States

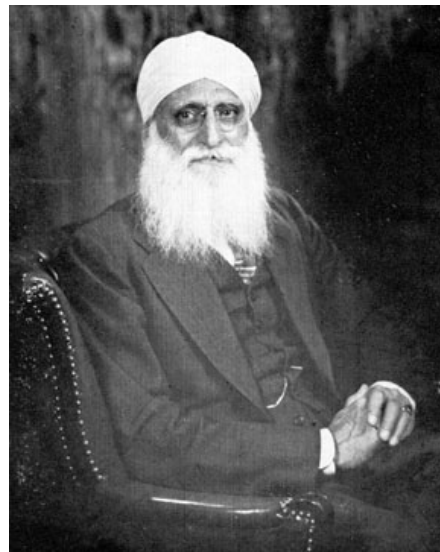


The court determined that membership as part of the Caucasian race was more important than the color of one's skin in determining whiteness and the ability to be an American citizen. Takao Ozawa was determined to be ineligible to be an American citizen and the court denied his naturalization.

Anti-Japanese sentiment was rampant at the time and just two years later, in the Immigration Act of 1924, immigration from Japan was barred.

1923 United States v. Bhagat Singh Thind

A mere 3 months later, the Supreme Court took up a second case in which they held that the definition was no longer those who were members of the Caucasian race. The court held that Bhagat Singh Thind, a US. Army veteran and Sikh man originally from India who was living in Oregon, was ineligible to naturalize as a citizen. Although he was classified as Caucasian, the court now looked to the common or popular meaning of the word white, which they decided excluded Singh Thind.



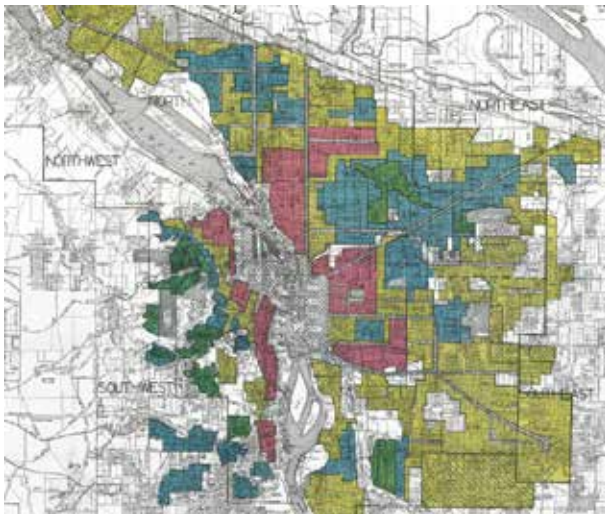
1923 - Oregon Land Act

Oregon passed the Oregon Land Act in 1923 which prohibited aliens from owning land, both individually and as majority shareholders of a business. A similar law had already been passed in California and Washington. The law specifically targeted the large Asian communities who were ineligible to naturalize.



Oregon Historic Society Research Library, 50082

1933 – New Deal's Home Owners' Loan Corporation



Portland, Oregon

The New Deal saw the creation of many federal entities working to support individuals in the depression. The Home Owners' Loan Corporation (HOLC) was created to help homeowners. Certain neighborhoods were rated as credit risks. One of the main factors considered was race and ethnicity.

These ratings have had long term impacts. Sixty-five percent of people of color still live in neighborhoods that were graded hazardous in the HOLC maps in the 1930s. In "hazardous" neighborhoods the credit necessary to economic mobility was either unavailable or very expensive. Neighborhoods labeled "best" in the 1930s, are 91% upper income, and almost entirely white.

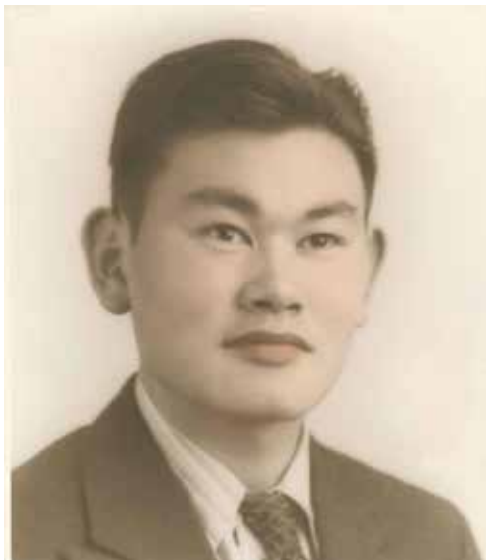
1942 – Executive Order 9066

Following the Executive Order given by President Roosevelt, more than 110,000 U.S. citizens of Japanese descent and Japanese residents were placed in internment camps. Given very little time to prepare, they were sent to temporary holding places, such as the Expo Center in Portland Oregon.

These camps were in operation until 1945. The individuals sent to the camps lost not only personal freedoms for many years, but also had significant economic losses.

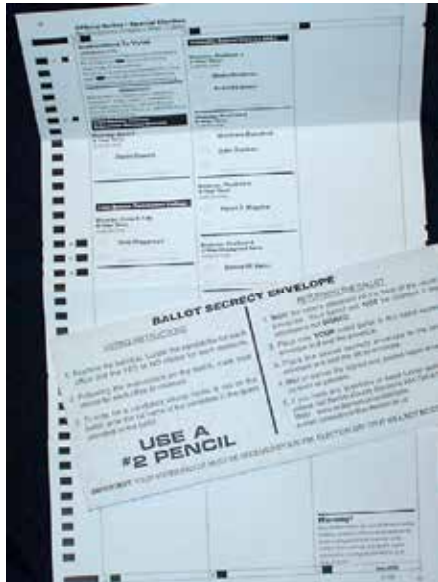


1944 – Korematsu v. United States



The Supreme Court in a 6-3 decision held that pressing public necessity allowed for the internment of an entire group. National security was deemed more important than equal rights. The court accepted the government’s argument that it was impossible to determine the disloyal from the loyal. This problem did not extend to the German and Italian immigrants residing in the United States who were interned in significantly smaller numbers despite having much larger populations.

1988 – Measure 8

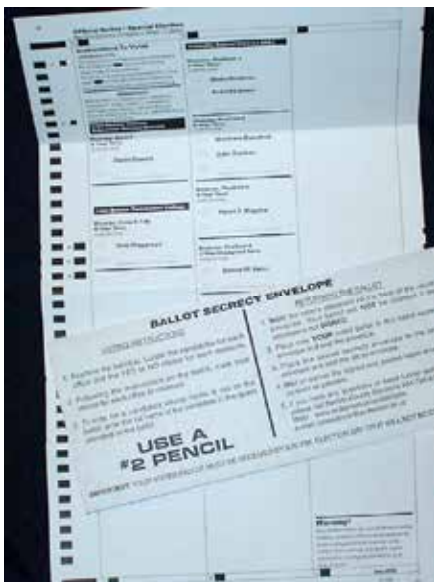


In response to Governor Neil Goldschmidt's Executive Order which banned discrimination in state agencies based on sexual orientation, Measure 8 was placed on the ballot.

Phrased as "Shall voters revoke Governor's authority to ban discrimination, based on sexual orientation, in state executive department employment and services?"

The measure passed by a margin of 52.75 to 47.25%.

2004 – Ballot Measure 36



Measure 36 was placed on the ballot for the May 2004 elections. The ballot title was:

Amends Constitution: Only Marriage Between One Man and One Woman Is Valid or Legally Recognized as Marriage.

The measure passed 56.63% (Yes) to 43.37% (No).

Benefits only given to married couples, such as medical insurance, tax breaks and inheritance were denied to those who were unable to marry. It was overturned in 2014 in federal district court.

2008 – Oregon Passes Stricter DMV Requirements

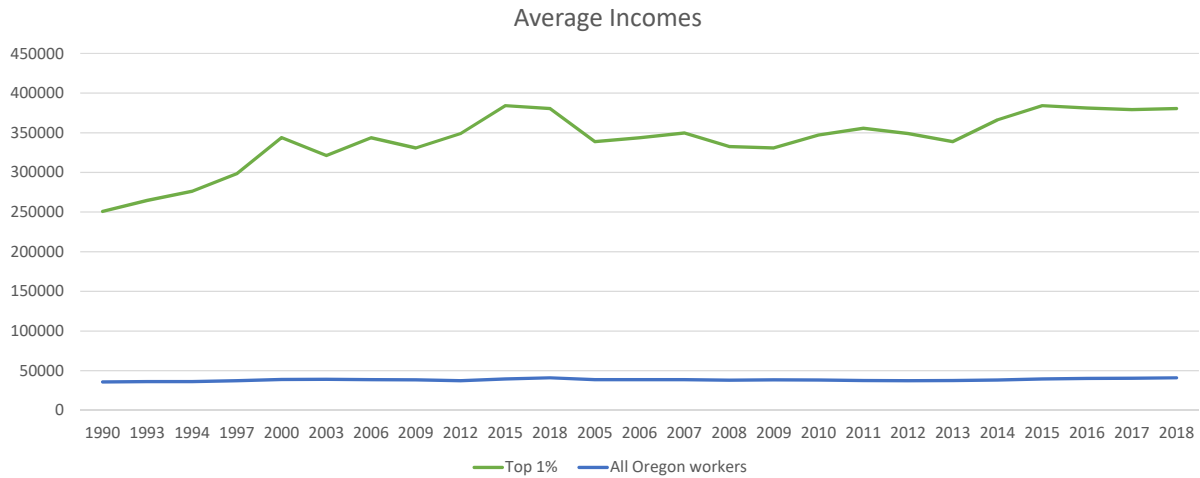
In July 2008, as a result of a referendum, Oregonians requesting a driver's license or identification card were required to present proof of citizenship or lawful presence, a social security number and proof of their full legal name. These requirements made it difficult for many, especially those whose names had changed since birth.



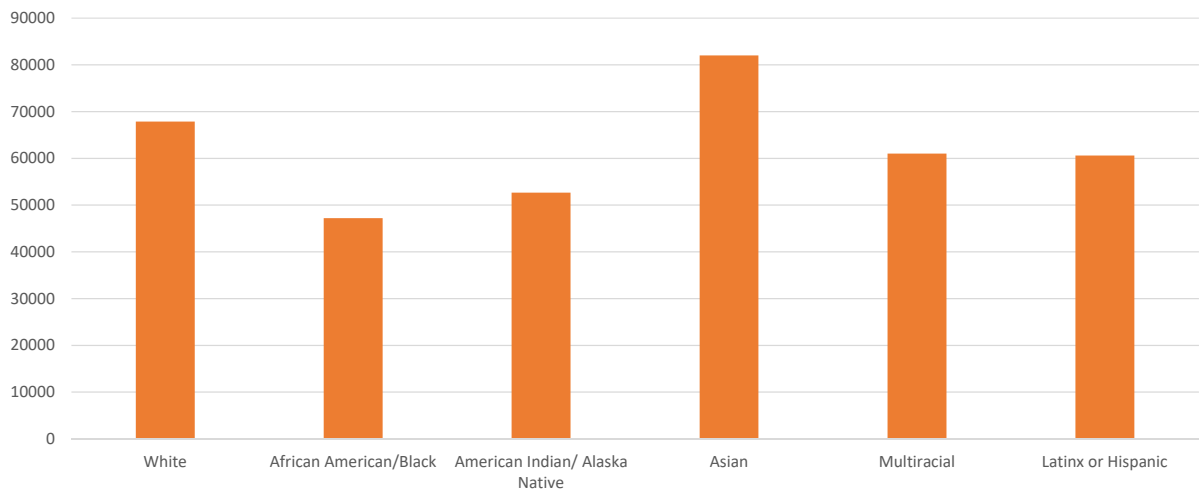
Current Disparities

The long legacy of unequal legal treatment and active discrimination against marginalized groups has led to significant economic disparities.

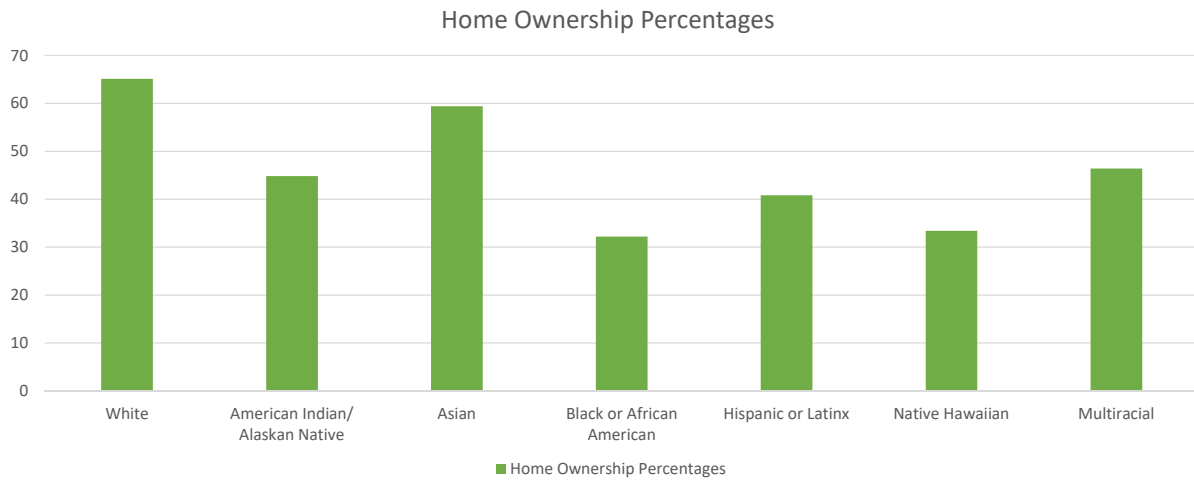
Top 1% of Oregonians compared to all Oregonians



Average Income per Household in Oregon



Tracking Wealth through Home Ownership



Economic Disparities by Gender

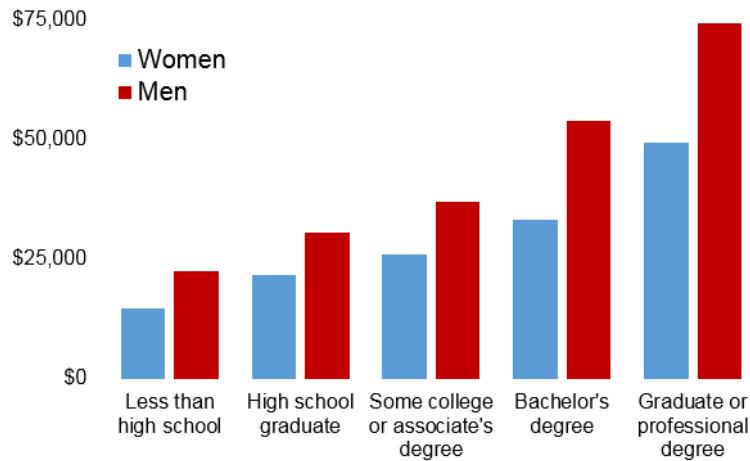


Equal Pay Day 2020

- February 11th – Asian women
- March 31st – All women
- April 10th – White women
- August 13th – Black women
- October 1 – Native women
- October 29th – Latinx women

Gender pay gap exists regardless of education

(2014 Oregon median earnings for population age 25+ by educational attainment)



Women attorneys in Oregon make \$.63 for every \$1 made by male attorneys (2014).

With the exception of comparing men with less than high school to women with high school experience, all differences shown are statistically significant
Source: OCPP analysis of American Community Survey data.

Oregon Center for Public Policy | www.ocpp.org

Economic disparities in the trans community

- According to the Institute for Women's Policy Research, unemployment is 3 times higher for transgendered people and 4 times higher for transgendered people of color than it is for all Americans.
- Transgendered women earn 32% less after they transition.
- Transgendered people are almost 3 times more likely to live in poverty

What can you do?

How as lawyers can we make a difference in the system and within ourselves?

Examining and modifying institutions

- Identify institutions (OSB, courts, Legislature, law schools, law firms, your institution)
- Identify pressures points (statutes, impact litigation, modifying ethics rules, internal policies, informal/unspoken rules)
- Identifying barriers (language, cost)
- Invite those for whom the policies have not been favorable to instruct the effort to make those changes

Guiding clients through institutions

- Donate to organizations doing the work
- Pro bono work through non-profit organizations, <https://www.osbar.org/probono/index.html#place>
 - Business focused work
 - The Small Business Legal Clinic at Lewis and Clark Law School
 - The Commons Law Center
 - Mercy Corps NW
 - Oregon Farmer’s Market Association
 - Other transactional work
 - Disability Center – Immigrant and Refugee Community Organization
 - Willamette University – Clinical Law Program
 - Economic equity work
 - Personal Bankruptcy – Legal Aid
 - Low Income Taxpayers (Lewis and Clark and Legal Aid)
 - Senior Law Project – Legal Aid, Oregon Law Center
 - Foreclosure support - Legal Aid, Oregon Law Center

The “isms” and ourselves

- Focusing on our own “isms” and biases is necessary when doing the pro bono work.
- Attorneys who want the pro bono work to be less challenging than their other work (it will and it won’t).
- Reframing expectations. Gratitude may or may not be part of the process. Attorneys are part of the legal system.
- Intentionally bringing respect into the relationship. Recognizing our clients’ expertise.