

Re: HB 2479

SENATE BILL NO. 3342

State of Washington
47th Legislature
1981 Regular Session

By Senators Fleming, Talmadge,
Ridder, McDermott, Bottiger,
Scott, Bluechel, Jones and
Charnley

Read first time January 30, 1981, and referred to JUDICIARY
COMMITTEE.

1 AN ACT Relating to malicious harassment; adding a new section to
2 chapter 9A.36 RCW; defining crimes; and providing
3 penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Section 1. There is added to chapter 9A.36
6 RCW a new section to read as follows:

7 (1) Every person who intimidates or harasses any other
8 person in a malicious manner, through violence or threat of
9 violence to that person or that person's property, by reason of
10 that person's race, color, religion, ancestry, or national
11 origin, is guilty of malicious harassment.

12 (2) Malicious harassment is a class C felony.

13 (3) In addition to the criminal penalty provided in
14 subsection (2) of this section, any person convicted of
15 malicious harassment or any other person who aids, incites, or
16 conspires in such an act, is liable to the victim in a civil
17 action for actual damages and punitive damages of ten thousand
18 dollars. In the case of multiple offenders, the actual damages
19 and the punitive damages shall be apportioned among them.

20 (4) The penalties provided in this section for malicious
21 harassment do not preclude the victims from seeking any other
22 remedies otherwise available under law.

CRIMES AGAINST THE PERSON

265 § 37

beach, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one month.

Amended by St.1975, c. 322.

1975 Amendment. St.1975, c. 322, approved June 12, 1975, increased the fine from \$50 to \$100.

§ 35. Throwing or dropping objects onto public way; punishment

Whoever willfully or negligently drops, throws or otherwise releases any object, missile or other article onto any way as defined in section one of chapter ninety, the turnpike as defined in clause (b) of section four of chapter three hundred and fifty-four of the acts of nineteen hundred and fifty-two or the tunnels as defined in clause (d) of section one of chapter five hundred and ninety-eight of the acts of nineteen hundred and fifty-eight so that the lives or safety of the public might be endangered shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than one year, or both.

Amended by St.1973, c. 432.

1973 Amendment. St.1973, c. 432, approved June 20, 1973, deleted "from any bridge or overpass" following the word "article".

§ 36. Throwing or dropping objects at sporting events; punishment

Any person who willfully drops, throws or otherwise releases any object, missile or other article at any sporting event with the intent to injure any person at such event shall be punished by a fine of not more than five hundred dollars or by imprisonment in the house of correction for not more than one year, or both.

Added by St.1975, c. 435.

1975 Enactment. St.1975, c. 435, was approved July 9, 1975.

Library References

Theaters and Shows ↪5.
C.J.S. Theaters and Shows § 38.

§ 37. Violations of constitutional rights; punishment

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both.

Added by St.1979, c. 801, § 2.

1979 Enactment. St.1979, c. 801, § 2, was approved Nov. 16, 1979.

Library References

Assault and Battery ↪48, 100.
Extortion and Threats ↪25, 33.
C.J.S. Assault and Battery §§ 2, 3, 62, 64 to 66, 81, 130.

TORILAND, OREGON

re: 2479

Dear Fellow Oregon Hunter:

The 1980-81 big game season in the State of Oregon will be cancelled due to the shortage of big game animals. The following will not be hunted within this state's boundaries this season: Bear, Deer, Elk, and Big Horn Sheep.

However, in the place of the game animals, there will be an open season on the South-Western Wet Back, (known locally as Mexican, Greaser, Greaseball, Spic, Mex; or Low Rider.) The season will open October 1st, 1980 and close on April 1, 1981. These Wet Backs must be thinned out every two or three years.

It will be unlawful to:

1. Hunt in a party of over 150 persons.
2. Use more than 35 blood-thirsty bloodhounds.
3. Shoot in public taverns. (the bullet may ricochet off the grease and injure a civilized white person)
4. Shoot any Wet Back while in a Mexican Restaurant.

Trapping Regulations:

1. Traps may not be set within 15 feet of taco stands.
2. Traps may not be baited with tacos, burittos, chili peppers, or food stamps. (Refried beans may be used for this season only)

Note: A special permit may be issued for the use of flashy cars.

3. Traps may not be set in a welfare office.
4. All traps must have a 120 lb. spring and have a jaw spread of at least 5 feet 3 inches.

Other Rules and Regulations:

1. It is unlawful to possess a road-killed Wet Back. If is seen on the highway, you may hit it, just don't pick the greasy bastard up.
2. It is unlawful to use any recorded or electronically amplified device to trap a Wet Back, with the exception of the following: (A) A recording of Crystal Gayle's "Don't Make My Brown Eyes Blue."

Note: A special permit may be purchased to use "Mexically Baby."

How To Know A Wet Back Is In Your Area:

1. Disposable diapers thrown on the street.
2. Large lines outside the welfare office.
3. Trail of grease leading from shallow water to the bushes.
4. Empty books of food stamps thrown on the ground.
5. A 1957 "Cheevy", a "Cheevy peecup", or a Ford Torino with Starsky & Hutch strips. (All with red dingle balls in the windows)

Limit: Three (3) per Day Forty (40) per Season

MARY ALICE FORD
WASHINGTON COUNTY
DISTRICT 6



House Committee on Aging
and Minority Affairs
March 5, 1981 **HB 2479**
EXHIBIT D (3 pages)

REPLY TO ADDRESS INDICATED:
HOUSE OF REPRESENTATIVES
SALEM OREGON 97310
6620 S.W. HICKMAN LANE
PORTLAND, OREGON 97223

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

February 19, 1981

Rep. Mary Alice Ford

FOR IMMEDIATE RELEASE

Contact: Dave Myers ext. 88858

LEGISLATIVE REPORT

SALEM - HB 2479 Racial Harassment - A little over a month ago; as the 61st. Legislative session opened, Governor Atiyeh delivered his "state of the State" address to a joint session of the legislature. What concerns me now is a part of that speech; the part in which the Governor called on every member of our state "to speak out strongly in condemnation of any kind of racial discrimination." There is an immediate need for all of us to voice our concern and disgust of those actions which disgrace our state. No longer can we as Oregonians sit back and gloat - saying that we live in "God's Country". For unless we stand up and speak out, everyone of us, to abolish these heinous acts, we have no right to refer to our state as part of "God's Country".

What appalls one is not the lack of response from the people of Oregon, but the quick response made by those who carry out these acts of religious and racial bigotry. During the period since the Governor's address we have witnessed several incidents of racism and anti-semitism in our state capital. Salem's only synagogue, Temple Beth Shalom, was defaced when neo-nazi leaflets and swastika decals were plastered on its doors. The mailing & leafletting of neo-nazi and white power pamphlets in East Salem and sent to the Governor has also occurred in the last few weeks. During this period a death threat was phoned to a member of the Temple Beth Shalom.

Finally, over the weekend of our state's birthday and Valentine's Day a mailing, having anti-semitic and racial overtones, was apparently sent to all of the state's legislators. The letter sent to Senator Day used his business address as a return address. Those letters mailed to other legislators, including myself, contained no return address, nor did they have any kind of signature or acknowledgement of who the sender may have been. A brave act?

To continue - the sender, showing disrespect for flag and country, placed the stamp of the American flag and motto "The Land of the Free - The Home of the Brave", upside down on each envelope. The two page letter was a series of articles blaming desecration of synagogues on an "ultra-orthodox Jewish sect". The articles were mostly from the nineteen sixties and dealing with incidents in New York and Los Angeles. The implication of the letter was to blame ultra-orthodox Jewish radicals for the recent actions in Salem.

Oregon's history and people are blemished because of these actions. It is not something that has sprouted in this last year; it is something that has permeated our history. In the 1920's one could witness Klu Klux Klan rallies in Southern Oregon. One can still find numerous reports throughout our history of bigotry and anti-semiticism. What we must realize is that these actions are not just those of kooks and weirdos who are passed off as part of the "lunatic fringe", but are part of an unconsciousness in some segments of our society.

As Oregonians and as residents of Washington County we must awaken from our sleep and discard this unconsciousness. The Governor has introduced a bill, HB 2479, which would make racial harassment a felony. Racial harassment as defined in the bill is

an act of intimidation because of a person's race, color, religion, ancestry or national origin - where physical harm is caused, or a person is placed in fear of imminent physical harm, or a person's property is damaged. I see this bill as one step toward the awareness and abolishment of a problem that "defiles humanity" and our state.

HB 2479 has drawn some criticism from those who question its legality, but the Governor, in response, has asked the Attorney General to help iron out any legal problems contained within the bill. I support this legislation strongly, and I join the Governor in calling on every citizen of our state to help speak out against "any kind of racial discrimination".

Oregonians cannot ignore the happenings in Miami, Florida, and Greensboro, North Carolina, or in our own state within this last year. Let us once again set an example for the rest of the nation.

STATEMENT OF KATHY GREENE, COMMISSION ASSISTANT, IN BEHALF OF THE
OREGON STATE LEGISLATIVE COMMISSION ON INDIAN SERVICES, 454, STATE CAPITOL,
HERSELF, BEFORE THE HOUSE COMMITTEE ON AGING AND MINORITY AFFAIRS,
TUESDAY, MARCH 10, 1981, IN REGARD TO HOUSE BILL 2479.

My name is Kathy Greene, I am the Commission Assistant for the Oregon State Legislative Commission on Indian Services, and I am here tonight to represent the views of the Commission in regard to House Bill 2479 which prohibits certain kinds of harassment against a person on account of the person's race, color, religion, ancestry, or national origin.

At their January 16th meeting, the Commission members voted unanimously to pledge support for the passage of a racial intimidation bill introduced by Governor Atiyeh. (HB 2479). The Commission chairman, Mr. Jim St. Martin, the representative from the Burns Paiute Tribe made a statement which reflects the feelings of the Commission members on the Governor's proposal. He stated:

"This bill is only one example among many of the Governor's sincere concern for the welfare of minority people in this state. As a need is realized, he has sought solutions that would effect the necessary changes. His co-sponsoring of a bill creating the Commission on Indian Services and the recent introduction of bills to create Black and Hispanic Commissions, are prime examples. The Commission on Indian Services would prefer that racial intimidation laws not have to be strengthened. But, until respect for the equality of all people is consistently demonstrated, there will be a need for a law such as the one the Governor proposes."

As an Indian person, I would like to state that most Indian people have had to contend with racial intimidation at some time in their lives and in one form or another. We have had to deal with violence brought on because of racial slurs and ^{have had to deal} with being isolated because we are Indian. It occurs anywhere, in restaurants, at any public gathering place, or just walking down the street.

However, Indian people have had to deal mostly with a kind of racial harassment which is based on the ignorance of non-Indian people of American Indian culture and history.

For example, many non-Indians believe that all Indians receive hand-outs from the U.S. Government. Because of ignorance, many people do not understand that the so-called "hand-outs" are payments owed to certain tribal members to compensate for lands taken away, or that they might be payments from tribal earnings through various tribal enterprises. Such payments are received by very few Indians. If an Indian person lives off the reservation which the majority of them do in this state, that person does not receive tribal services.

This notion of Indians receiving hand-outs from the government causes resentment among non-Indians and causes them to feel they are being cheated in some way. They then view an Indian person as someone who should not be so privileged. They do not understand that they are mis-interpreting the meaning of being Indian nor do they understand the history of tribal sovereignty which entitles American Indians to the special trust relationship that they have with the U.S. Government ^{AND} which is legally sanctioned through various treaties and documents. Such a mistaken notion causes ill feelings towards Indian people and often leads to racial harrassment.

There are also non-Indian persons who believe that all Indians are drunks and that they are genetically defective and pre-disposed to the condition of alcoholism. Of course there are Indian alcoholics just as there are alcoholics in any other culture. Perhaps when you see an Indian who is drunk, you are only noticing him or her because that person is culturally different from you. I think that if you looked around a little bit more closely, you will notice that all cultures ~~are~~ have the same problem and that they are all people who cannot recover from a ~~decimating~~ ^{terrible} disease.

Hollywood and the non-Indian people who run the motion picture industry have done their share in perpetuating cultural ignorance. Indians are portrayed as feathered, wild, blood-thirsty savages who are out to get the women, the guns, and the whisky.

Our people have been referred to as squaws, papooses, and bucks as if we were a class of animal not equal to a human being. Such references are comparable to calling a female pig a sow, or a young horse a foal or a male cow a bull.

When any of these ignorant notions are verbalized, which they are and usually in jest, they can be insulting. Such insults can lead to instances of racial harrassment and intimidation.

Therefore, I suggest to all of you, that you seriously consider following the Governor's lead by supporting his proposal both personally and legislatively. You all know that the problem of racial intimidation exists in this state. You are aware of cross-burnings and swastika-paintings. If you do not condone such blatant racism then you should have no problem in taking a position against such activity nor should you have a problem in proposing that the people of this state take a position against such activity. You should be confident that the people of Oregon do not accept that kind of behavior and you should be willing to institute heavy penalties for those who insist on disrespecting the rights of others to let them know *that* such behavior will not be tolerated.

A REPORT ON PROPOSALS FOR
A RACIAL INTIMIDATION OR HARRASSMENT STATUTE

Prepared By: Martin Feinrider,
Visiting Assistant Professor of Law
Willamette University
College of Law

Date: March 4, 1981

Governor Atiyeh's Racial Intimidation Bill, House Bill 2479, (See Appendix A) should not be passed in its present form. First, it would not pass constitutional muster. The inclusion, in section 2(c), of "by word...places, or attempts to place, the other person in fear of imminent physical harm" is violative of the First Amendment. Additionally, the words "intent to intimidate," in section 2, may well be void for vagueness. Second, while the bill may be an effective symbolic statement condemning racism, it is not well designed for practical application. That is, there are reasons that racial harrassment is not now prosecuted aside from the lack of adequate felony statutes. Attention needs to be given to the resource needs of investigative and prosecutory agencies. Third, in attempting to be racially neutral, the bill is left open to the possibility of selective enforcement and prosecutorial discretion. Similar types of legislation have been used in the U.S. to harrass and prosecute civil rights workers and blacks demanding their civil rights--the people originally seen as protected by the legislation. If the Governor is attempting to respond to the harrassment and intimidation of racial minorities, then the bill should be designed to afford just that protection.

Racism, a long-standing problem in the United States and Oregon, consists of attitudes and actions aimed at racial and ethnic minority groups by members of the white majority. Among the groups that are currently targeted for racist attacks are Blacks, Native Americans, Hispanic-Americans, Asian Americans, Arabs, and Jews. Among the more recent examples of racist attacks on members of these groups are cross-burnings, swastika-daubings,

and cemetery desecrations. Any attempt at drafting a Racial Intimidation statute must be undertaken in light of both historical and contemporary realities. As such, a bill should be designed to symbolically condemn racism and to provide practical protection and redress for the violation of individual, group, and societal interests injured by racism.

Racist attacks on minority group members not only injure members of the minority, but also injure larger societal interests as well. Racism is a cancer on the American body politic, and every racist act serves to poison the peacefulness of our entire community. The very future of our society is threatened by our continuing inability to eradicate racism. The severe sanctions of the criminal law are reserved, in general, for those acts which are most repugnant to our society. Racist acts should be added to that list.

Any attempt to draft a Racial Intimidation statute raises several issues:

What behavior is to be criminalized?

How is free speech to be protected?

How will enforcement be encouraged?

The first two issues should be joined. Both the U.S. Constitution and policy considerations mandate that "words alone" should not be subject to the criminal sanction. If consideration is restricted

to racist acts, it must be recognized that much of such behavior is already illegal. Cross-burnings and swastika daubings usually involve the violation of some misdemeanor set out in the Oregon Penal Code. The fact that these violations of the law are not

now prosecuted raises the question of why they are not prosecuted. At a time of severe budget restrictions and limited law enforcement manpower, misdemeanors of all varieties are simply not given a high priority by law enforcement agencies. This problem can be easily redressed by making misdemeanors accompanied by some sort of "racist" mental element into felonies. Unfortunately, this alone will not solve the problem of non-prosecution. In a society which has not yet rooted out racism, it is common for police, prosecutors, judges, and juries to simply not view racism as a crime of the same significance as murder, rape, and bank robbery.

Responsibility for investigation should lie with the State Police and Justice Department, agencies which can be held responsible by the combined efforts of all minority group members in the state.

Additionally, the legislature must be made to realize that the fight against racism cannot be waged for free. It will be easier for the costs to be underwritten when they are borne by a central state agency. Thus, overworked and underfinanced local agencies will not suffer from additional financial drain, and evenhanded statewide enforcement is assured.

Even with the best drafted criminal statute it is likely that a racist society cannot be counted on to ensure that state instrumentalities will put full force into combating racism. Yet, this is a society filled with contradictions, and so some people will use what tools are available for the fight against racism. This increased possibility for the prosecution of racist acts is, alone, sufficient justification for enactment of a criminal statute. When combined with the symbolic value of such an enactment, the case

becomes overwhelming.

Another potential problem with a criminal statute is the possibility of misuse of such a statute against members of minority groups. The problem is one of drafting the statute narrowly enough so that it can only be used against those engaged in traditional forms of racist attack against minority group members, and cannot be used against minorities themselves. (There is no history, in this country, of a threat to the larger society emanating from racist attacks by minority group members against whites as a group.) There are two possible approaches: first, the statute could limit itself to criminalizing specified acts that have traditionally been aimed at minorities (e.g., cross-burnings; swastika-daubings). Unfortunately, this approach would be limited to symbolic value. On the practical level it can be expected that racists are not entirely incapable of being creative. If cross-burnings are criminalized, the KKK could simply electrify crosses or paint them with day glow paint. If that is then criminalized, they could start burning circles or squares. More importantly such a statute has grave First Amendment implications, and therefore, should be opposed if proposed to the legislature.

A second approach is to limit the statute to racist acts aimed at specified racial and ethnic minorities. (See Appendix B) This also raises several problems, the first of which, it is often suggested, is possible violation of the Equal Protection Clause of the U.S. Constitution. In the opinion of the authors of this report, this is not a problem. The statute is not designed to protect individuals against racist attacks. This is

already done (sic) by the misdemeanor statutes of the state. The statute is designed to protect the over-all community against divisiveness and disturbance of the general peace caused by racism. These problems have historically come from racist acts by whites against racial and ethnic minorities. Therefore, the state has a clear compelling interest in criminalizing those actions against specified minorities which threaten the peace of the larger community. The statute proposed in Appendix B would likely survive strict judicial scrutiny.

Another potential problem here is the possibility that certain groups which suffer racist attacks might be omitted accidentally from the enumeration. While this is a possibility, the fact is that groups most usually targeted for racist attack are well known, and any group that needs to be added to the list can always be added by way of future amendment.

CIVIL REMEDIES

While a criminal statute is of great symbolic importance, it is probably unreasonable to expect that it will see much use. The "beyond a reasonable doubt" standard of proof, and the procedural rights given to a criminal defendant, make prosecution and conviction difficult. Additionally, members of minority communities often doubt that the criminal justice system will be used for their protection. Therefore, in addition to the criminal statute, some sort of civil remedy is needed. This can either be a cause of action in a civil court (see Appendix C for one suggestion), or an administrative procedure.

Because the cost of investigation is likely to be high, I suggest that, whether a judicial or administrative procedure is chosen, one of two approaches be taken. The Attorney General can be authorized to commence the action on behalf of the victim(s) after investigation by the State Police. In order to allay minority distrust of state agencies, the victim should be allowed to displace the Attorney General in the action at any time. An alternative would be to authorize generous attorneys fees and investigatory expenses to be paid by the defendant after a finding in favor of the plaintiff. Unfortunately this would still leave the victim with the responsibility of laying out a great deal of money up front. If the Attorney General-initiated action is chosen, there is no reason that the defendant cannot be required to reimburse the state for the expense of the prosecution. With either model, minimum punitive damages (e.g., \$3,000) should be established by statute. Additionally, compensatory damages and costs would be paid by the losing defendant. Another available remedy in civil court would be injunctive relief under threat of contempt proceedings.

The advantage of a civil action in court over an administrative proceeding is the public nature of the trial and the opportunity for twelve jurors to confront racism. The disadvantage is that twelve (usually) white jurors may not be sympathetic with the victim of racial harrassment.

The simplicity of administrative proceedings is an advantage. But, there is little reason to expect that an administrative hearing officer would necessarily be more sympathetic to victims than

jurors. Furthermore, there is great antipathy today to establishing additional levels of state bureaucracy. For these reasons we support the establishment on a civil cause of action, to be initiated by the Attorney General of the state.

(Appendix A)

OREGON LEGISLATIVE ASSEMBLY—1981 Regular Session

House Bill 2479

Sponsored by COMMITTEE ON JUDICIARY (at the request of Governor Atiyeh)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prohibits certain kinds of harassment against a person on account of the person's race, color, religion, ancestry or national origin.
Punishes violation as Class C felony with fine up to \$2,500, up to five years imprisonment, or both.

A BILL FOR AN ACT

1
2 Relating to crime.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** Section 2 of this Act is added to and made a part of ORS 163.165 to 163.205.

5 **SECTION 2.** (1) A person commits the crime of intimidation if, intentionally and with intent to intimidate
6 another person because of such other person's race, color, religion, ancestry or national origin, the person:

7 (a) Causes physical harm to the other person;

8 (b) By word or conduct places, or attempts to place, the other person in fear of imminent physical harm; or

9 (c) Tampered with, interferes with, damages or destroys the property of the other person.

10 (2) Intimidation is a Class C felony.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

(Appendix B) Proposal Bill
Racial Harrassment

Criminal Statute

Any person who intentionally or knowingly engages in conduct proscribed by chapters 163 and 164 of Oregon Revised Statute, and who chooses as the victim or target of such conduct a member of a racial or ethnic minority group because of their racial or ethnic identity, shall be guilty of Racial Harrassment.

Any person who engages in conduct proscribed by Chapters 163 and 164 of the Oregon Revision Statutes for the purpose of interfering with the free exercise or enjoyment, by a member of a minority group, of any right or privilege secured by the Constitution and laws of the State of Oregon or the U.S., shall be guilty of Racial Intimidation.

For the purpose of this section, racial or ethnic minority group means Blacks, Hispanics, Asian-Americans, Native Americans, Arabs, and Jews.

Racial Discrimination is a Class C Felony.

District Attorneys and local police shall immediately inform the State Attorney General of all complaints relating to conduct that is, or may be, covered by this statute. The State Attorney General

(Appendix B), con'd.

shall take charge of the investigation and prosecution of any complaint of Racial Harrassment. He shall have the authority to order the State Police to conduct an investigation under his command.

(Appendix C)

Proposed Civil Cause of Action*

Any person who intentionally or knowingly engages in conduct proscribed by Chapters 163 and 164 of Oregon Revised Statutes, and who chooses the victim or target of such conduct because of their racial or ethnic identity, or who engages in conduct proscribed by Chapters 163 and 164 of Oregon Revised Statutes for the purpose of interfering with the free exercise or enjoyment of any right or privilege secured by the Constitution and laws of the State of Oregon or the United States shall be liable for damages. Damages shall include compensation for the expense of investigation and prosecution, compensation for loss to the victim, and minimum punitive damages of three thousand dollars to be paid to the victim.

The cause of action shall be initiated and pursued by the Attorney General on behalf of the victim. The Attorney General may use the State Police to investigate. At any time during the proceeding, the victim may relieve the Attorney General of responsibility for the prosecution and control of the case.

If an action has not been initiated by the Attorney General, anyone claiming to be a victim under this statute may initiate and pursue the cause of action.

*Note: The availability of the Civil Cause of Action is not limited to members of racial or ethnic minorities because a civil action is not subject to the same possibility of misuse as is a criminal action.

Testimony of Dean Derrick Bell on House Bill
March 10, 1981

Based on almost 25 years of professional experience in every aspect of civil rights practice, I am happy to recommend House Bill 2479. In my view, this legislation is well-designed to discourage harassment of persons in this state based on their race, color, religion, ancestry or national origin.

House Bill 2479 represents good legislation because:

1. It will provide prosecutors in this state with a specific legal tool with which to combat the alarming increase in instances of racial harassment and intimidation. Regrettably, physical attacks on racial and other minority groups have been a historic problem in our nation. With predictable regularity, such attacks increase during periods when there is serious economic distress at home, and disturbing set-backs abroad. Certainly, this is such a time.
2. The introduction of this legislation by Governor Atiyeh served as official notice to those tempted to vent their social frustrations on relatively powerless minorities. The enactment will provide proof that Oregon's people, as well as its Governor, intend to protect all those within its borders against attack and intimidation because of their race, color, religion, ancestry or national origin.

House Bill 2479 will be an even better measure if amended to include a civil remedy such as the following:

Section 1. All persons within the jurisdiction of this State shall have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry or national origin.

Section 2. Whoever denies a right provided by Section 1, or whoever aids, incites, or conspires in such denial, is liable for each and every offense for the actual damages, reasonable attorney fees and civil statutory damages in the amount of \$1,000 to \$5,000.

Provision for a civil remedy such as that set forth above would add enormously to the value of House Bill 2479:

1. History indicates that the effort to secure the protection of minority rights solely through criminal penalties is difficult. The standards of proof in criminal cases are, and should be, quite severe. The interpretation of words such as "intimidation," "intentionally," and "intent" will be subject to the tightest scrutiny by defense counsel and courts. As a result, local prosecutors are likely to invoke criminal provisions in racial harassment cases only when the nature of the acts charged is so serious that convictions appear certain. Thus, incidents of serious moment to the victim may not result in prosecution. Or, if prosecutions are initiated, may not bring about convictions.
2. The effort by the federal government to protect the civil rights of black in the Post-Reconstruction period illustrates the difficulty of reliance on criminal provisions. During that time, literally thousands of blacks were victimized by organized terror groups, Ku Klux Klan, the White Camellias, and the White League, engaged in lynchings and whippings, arson and random shootings, all designed to deprive the former slaves of their newly-gained liberty. In the absence of effective state protection, the federal government enacted a series of laws, most of which relied on criminal penalties. Convictions were difficult to obtain in areas where the perpetrators were deemed heroes. Even when convictions were returned,

appellate courts construed the provision so narrowly as to require reversals in many instances.¹⁾ Even in more recent times, federal prosecutors have been able to obtain convictions only when the nature of the defendant's deeds shocked the national conscious. The murder of three civil rights workers in Philadelphia, Mississippi, was such an instance.²⁾

State prosecutions for civil rights violations have not encountered the barriers of "state action" and "comity" which so frustrated federal efforts in this field. Even so, the record has not been encouraging. Several northern states in the 1930's and 1940's attempted to protect through criminal provisions the right of blacks to use public accommodations on a non-discriminatory basis. The measures were generally abandoned because they were little used. Eventually, most states moved to civil remedies and, eventually, the federal government followed the same route with the enactment of the Civil Rights Act of 1964. The effectiveness of Title II (the public accommodations provision), and Title VII (the equal employment provision), is generally attributed to the self-effectuating aspect of these laws. Victims

1) See United States v. Harris, 106 U.S. 629 (1883); Baldwin v. Franks 120 U.S. 678 (1887); United States v. Cruikshank, 92 U.S. 542 (1875); and, Screws v. United States, 325 U.S. 91 (1945).

2) United States v. Price, 383 U.S. 787 (1966).

can initiate civil suits to gain relief for themselves and, by virtue of that relief, provide notice to other prospective perpetrators that the law will not tolerate discrimination. The provision of attorneys fees is a major aid in insuring that victims will be adequately represented in court. The Supreme Court, in approving the "reasonable attorney's fee" provision in Title II, made the point that the relief obtained by the plaintiff has a broad impact, and that the plaintiff serves as a "private attorney general" vindicating a policy that Congress considered of the highest priority.³⁾

In summary, House Bill 2479 will provide much-needed protection to minorities in Oregon if enacted in its present form. That protection will be greatly enhanced if the measure is amended to include an effective civil remedy for the racial harassment that should be, but is still not, an unhappy aspect of history.

3) Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400 (1968).

HB 2479

MARCH 10, 1981

MR. CHAIRMAN, COMMITTEE MEMBERS:

MY NAME IS JOSE VASQUEZ, A MEMBER OF THE GOVERNOR'S HISPANIC COMMISSION. I WISH TO THANK YOU AND THE COMMITTEE FOR GRANTING ME THIS OPPORTUNITY TO TESTIFY ON BEHALF OF HOUSE BILL 2479.

ALL AMERICANS ARE RESPONSIBLE FOR THE PRESERVATION OF FREEDOM AND RACIAL EQUALITY AND SHOULD BE CONCERNED WITH THE UPSWING OF RACIST ACTIVITIES ^{IN} THIS COUNTRY AND ESPECIALLY IN OUR HOME STATE OF OREGON.

MOST RECENTLY, THE CITY OF PORTLAND'S BLACK AND JEWISH COMMUNITIES WERE TARGETS OF RACIAL HARASSMENT, RACIST COMMENTS AND SIGNS WERE POSTED THROUGHOUT THE CITY. IN ADDITION, THE CITY OF WOODBURN'S CHICANO COMMUNITY WAS THE VICTIM OF RACIAL INTIMIDATION, RACIST FLIERS AND LITERATURE WERE DISTRIBUTED. THESE FLIERS INSTRUCTED OREGON HUNTERS THAT THE STATE OF OREGON WOULD CANCEL ITS HUNTING SEASON DUE TO THE SHORTAGE OF BIG GAME ANIMALS, (AND I QUOTE) "HOWEVER, IN THE PLACE OF THE GAME ANIMALS, THERE WILL BE AN OPEN SEASON ON THE SOUTH-WESTERN WET-BACK, (KNOWN LOCALLY AS MEXICAN, GREASER, GREASBALL, SPIC, MEX, OR LOW RIDER). THESE WET-BACKS MUST BE THINNED OUT EVERY TWO OR THREE YEARS". I ^{have} ~~can~~ PROVIDED EACH OF YOU WITH A COPY OF THIS DISGUSTING MATERIAL, SO THAT YOU CAN WITNESS AND JUDGE FOR YOURSELF THE SCOPE AND SERIOUSNESS OF THE RACIAL CLIMATE THAT EXIST IN THIS STATE. RACISM, HARASSMENT, AND INTIMIDATION OF RACIAL MINORITIES HAVE EXISTED IN THIS COUNTRY FOR MANY YEARS. I BELIEVE ITS TIME TO SAY NO-MAS, NO MORE.

FURTHERMORE, DURING MY FOURTEEN YEARS AS AN OREGON RESIDENT, I HAVE BEEN THE VICTIM OF HARASSMENT AND RACIAL INTIMIDATION. FOR EXAMPLE MY BROTHERS AND I VISITED A BEAVERTON CAR DEALER WITH THE INTENT OF PURCHASING A NEW AUTOMOBILE, AS WE ENTERED THE CAR DEALER'S SHOWROOM WE OVER HEARD ONE

OF THE SALESMEN COMMENT, REFERRING TO US AS "A BUNCH OF ANIMALS". MY BROTHER CONFRONTED THE GENTLEMAN AND HE CONTINUED TO VERBALIZE RACIAL REMARKS. WE DECIDED TO LEAVE, WHAT COULD HAVE LED TO AN EXPLOSIVE SITUATION, AND EVEN VIOLENCE. TWO DAYS LATER, I RETURNED TO THE CAR DEALER TO DISCUSS THE INCIDENT WITH THE DEALER'S MANAGER. I ASKED FOR A LETTER OF APOLOGY FROM THE COMPANY, AS TO THIS DATE, NO REPLY.

IN THIS INCIDENT PHYSICAL HARM WAS AVOIDED, BECAUSE OF OUR COOL RESTRAINT. THE NEXT TIME IN AN ENTIRELY DIFFERENT SETTING THE RESULTS MIGHT BE DIFFERENT. IN ANOTHER INCIDENT, WHERE MY TWO FRIENDS AND I WERE ORDERED TO LEAVE A BAR IN WASHINGTON COUNTY FOR SPEAKING SPANISH, AND TO INSURE THAT WE LEFT SEVERAL OF THE BAR'S WHITE PATRONS FOLLOWED US TO THE DOOR, INTIMIDATING, AND HARASSING US WITH RACIAL SLURS. SUBSEQUENTLY, WE WERE VIOLENTLY ATTACKED AND ONE OF MY FRIENDS WAS BADLY BEATEN. HE SUFFERED FACIAL LACERATIONS. I COULD GO ON DESCRIBING INCIDENTS OF THIS BEHAVIOR BECAUSE I HAVE BEEN A VICTIM AND A WITNESS.

IT WOULD TAKE ME THE BALANCE OF THE EVENING TO RELATE ALL MY EXPERENCES, SO I LEAVE YOU WITH THESE FEW INCIDENTS IN HOPES THAT YOU WILL UNDERSTAND THE NEED FOR THE PROTECTION THAT WE AS MINORITY PEOPLE ARE REQUESTING.

I AM NOT ALONE, EITHER AS A WITNESS TO RACIAL HARASSMENT, NOR A VICTIM TO RACIAL HARASSMENT, NOR IN MY PLEA TO YOU, TO PROVIDE SOME DEGREE OF PROTECTION BY JOINING WITH US: RALLYING YOUR COLEAGUES, THEN CASTING YOUR WEIGHT IN FAVOR OF HOUSE BILL 2479.

THANK YOU

Hello, my name is Faith Alberta Lopez. I speak to you this evening as an educator, a concerned citizen, and as a Chicana. For those of you who don't know Chicanos or Hispanics are one group who along with blacks, native Americans, Asians and other racial and religious minorities have historically been subjected to racial and religious oppression. Nearly all of us who are racial or ethnic minorities have suffered some form of racial abuse or harassment or know someone who has. Like many Oregonians I am concerned about the increase in racial violence and harassment. The existing laws have been ineffective. Civil Rights laws are poorly enforced and have resulted in very few remedies for minorities. A thread of civil sanctions is not sufficient to prevent racist hate mongers to harass and threaten, and beat blacks and other minorities. Racism is a hateful venom that is continuing to poison the fabric of our society. We are seen in upsurge in racist motivated activity in our state and in the nation as a whole. Not since the cold war have prospects for racial repression been so great. The State of Oregon must provide an example of resistance to the ideological swing which is encouraging racists to overt activity. By turning our heads to passively ignore this activity we are in effect condoning the resurgence of racism. Governor Atyeh is to be commended on his stands against racist and religious harassment. The effects of racism are insidious and devastating. Children are either accepting their attributed inferior status or learning anger and hate. Anglo children since they are very young are inculcated with racist stereotypes. Changes must occur in our educational and economic systems. But most importantly in the legal system that allows these abuses to occur. Racial harassment is a crime. It is a crime to the humanity and dignity of all American citizens. I urge your support of HB-2479 or a bill similar in concept taking into consideration the points made by Mr. Martin Feinrider.

1. One way statute--to protect those that it is supposed to protect.
2. Mandatory enforcement with sufficient funding.
3. Civil remedies.

A bill such as this would provide criminal and civil sanctions to those who would violate the human dignity of others through criminal acts of violence and intimidation.

Faith Lopez

HB 2479
INTIMIDATION BY HARASSMENT

Section 1. The following Sections of this Act are added to and made a part of ORS 163.165 to 163.205.

Section 2. A person commits the crime of intimidation by harassment if, intentionally, knowingly, or recklessly, and because of another person's race, color, religion, ancestry or national origin, the person:

- (a) causes physical harm to the other person;
- (b) by words or conduct places, or attempts to place the other person in fear of imminent physical harm;
- (c) engages in a course of conduct or repeatedly commits acts which serves no legitimate purpose and which seriously alarms or annoys the other person, or results in emotional distress or mental anguish;
- (d) publicly insults another person by the continuing use of abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or
- (e) damages or destroys the property of the other person.

Section 3. The District Attorney in the appropriate jurisdiction shall present complaints under this Act to a Grand Jury and shall give the victim or victims a reasonable opportunity to make a statement before such Grand Jury.

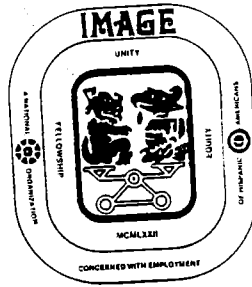
Section 4. Irrespective of any criminal prosecution brought under this Act, or the outcome of such prosecution, any person or persons, or any other person who aids, abets, incites, or conspires with any person, who commits any act in Section 2 is liable to the victim or victims in a civil action for each and every such offense for the actual damages, punitive damages of ten thousand dollars (\$10,000), and if bodily injury results treble actual and punitive damages, and the costs of suit and reasonable attorney fees. One-half (1/2) of any punitive damages to support the

Oregon victims compensation fund. In the case of multiple offenders, actual damages and punitive damages may be apportioned among them.

Section 5. Remedies under this Act shall be independent and in addition to any other remedies or procedures that may be available to the aggrieved person or persons.

Section 6. Intimidation by harassment is a Class C felony.

IMAGE



DE

OREGON

CHAPTER No. 10

P.O. Box 40061 Portland, Oregon 97240

March 9, 1981

Honorable Victor Atiyeh
Governor of Oregon
Salem, Oregon 97310

Dear Governor Atiyeh:

HB 2479
I am writing to you as President of Image de Oregon. Image is a national organization that addresses the employment and social concerns of Hispanics. Image has a membership of 100,000 and covers 42 states of our great Nation.

As President of Image de Oregon I am indeed distressed at the information I am receiving from my fellow Image members and the Hispanic community. This information gives credence to the assertion that racism is exploding here in Oregon against Hispanics, as well as other ethnic minorities. I am enclosing a copy of the most recent racist literature that is being circulated in our State. This "flyer" has turned up in such places as The Dalles, Portland, Woodburn, Hood River, and Salem.

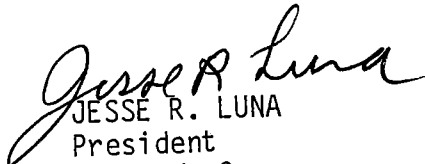
Since Hispanics are the largest minority group in Oregon, it is logical to assume more racial harassment is directed toward Hispanics.

The latest incident of a Hispanic being killed due to racial harassment occurred in John Day in 1980. Let us not forget other racial incidents that have occurred in Oregon. In Hood River, Oregon, in February, 1979 five White males attacked one Hispanic male and one White female. The incident left one White male dead of stab wounds. The ruling on the case was voluntary manslaughter. Another incident occurred in Bly, Oregon where Hispanics and White residents met on city streets armed to combat, with rifles and clubs.

While I acknowledge that extreme racist sentiments are reflected by only a small segment of our society, I nevertheless, believe that it is vital to have appropriate legal systems for redress in place. I am, therefore, proud to support your efforts on House Bill 2479, and I believe that this Bill constitutes a quantum leap forward towards the realization of human rights here in Oregon. With the rise of racial tensions in Oregon and throughout the United States it is imperative for this legislation to be enacted now. I believe that criminal penalties for the dissemination of racist materials and for the overt intimidation of our citizens based upon their ethnic origin can and should be invoked under Title VII of the Civil Rights Act of 1964. It is only with such legislation on the books that we can hope to stem this tide of prejudice.

I would like to take this time to commend you for your efforts to enact legislation that would suppress racist acts. We fully endorse and support House Bill 2479.

Sincerely,


JESSE R. LUNA
President
Image de Oregon

Enclosure

March 12, 1981

EXHIBIT L (1 page)

HB 2479 THE TRAP

At the Marion County Republican Central Committee meeting I became aware of the intent to create a State Law that would make "racial harrassment" a Class C Felony punishable by a \$2,500.00 fine or five year imprisonment, or both.

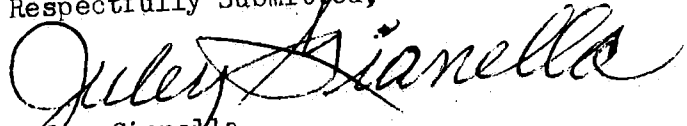
I applaud your outrage against this or any other form of injustice; however, I would encourage you to reconsider the effects that ANOTHER LAW would have on the rights of the people that were so painstakingly guarded by our forefathers.

I don't think there is a situation, whether it is cross burning, or other abusive acts, that could not have been handled with justice if those who were abused would be willing to take the necessary steps, such as a restraining order, or simply follow through with any true assaults on their being or property.

This well-intended law can be used to distort its purpose. It could become another loophole that can be used against the average citizen who needs to be able to bring issues before the public in open debate. EXAMPLE: A person could be FALSLY accused of attempting to place the person in fear of physical harm. Without witnesses you would be TRAPPED.

The Reagan Administration was brought into power largely by honest citizens who are tired of well-meaning individuals intent on giving governments more power over the individual.

Respectfully Submitted,


Juley Gianella

★
Gianella

20342 Olmstead Rd..
Aurora, Oregon
97002

678 5845



The American Jewish Committee

PORTLAND CHAPTER • Ste. 930, 1220 S.W. Morrison St. • Portland, Oregon 97205 • (503) 295-6761

THE AMERICAN JEWISH COMMITTEE

HB 2479
STATEMENT ON

House Committee on Aging
 and Minority Affairs
 March 12, 1981 HB 2479
 EXHIBIT M (2 pages)

RACIAL HARASSMENT LEGISLATION

The Portland Chapter of the American Jewish Committee is firmly convinced that the State of Oregon must speedily adopt racial harassment legislation.

As this nation's pioneer human relations agency, the American Jewish Committee has for 75 years monitored racial activities in this country. We have noted with alarm both the recent increase in such activities and the permissive attitude which has often made offenders believe such behavior is acceptable.

Governor Atiyeh's courageous stand in presenting racial harassment legislation to the people of Oregon must not be accorded anything less than full acceptance by this body. To do so would make a mockery of those concerns he expressed on behalf of all caring and concerned citizens.

On behalf of the American Jewish Committee, let me make our position clear: We are not talking about prank calls and irritating name calling. We are talking about those events which put innocent citizens in fear for their safety, which cause actual bodily harm, and which deface and destroy the property of minority groups. We are talking about those events which too often, because the appropriate statutes are not on the books of the

State of Oregon, are treated as "malicious mischief" or other misdemeanors, even though they have harmed and terrified innocent men and women. We are talking about those events which made individuals fear to leave their homes because of threats received, afraid to go to church or synagogue or school because of harassment which has taken place.

Such events have taken place in our state, and this body must adopt those laws which will give law enforcement officials the backing they need to actively pursue and penalize offenders. We understand many of the concerns which have been expressed regarding this legislation, particularly those relating to freedom of speech. It is not our intent to put before you a list of suggested amendments. Rather, we would like to reinforce the message already given to you by Governor Atiyeh, who has said to Oregon legislators, through Attorney General Dave Frohnmeyer: "Tell me how we can do it, not how we can't."

It is our belief that the combined talents of Oregon legislators are more than capable of amending the proposed legislation to insure that First Amendment rights are protected, even while offenders are properly prosecuted. The Portland Chapter of the American Jewish Committee urges that the Oregon legislature act with all due haste to adopt effective racial harassment legislation.

LR:mlb
3111

Laurie Rogaway
Ste. 930, 1220 S.W. Morrison
Portland 97205

House Committee on Aging
and Minority Affairs
March 12, 1981 HB 2479
EXHIBIT N (2 pages)



NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

PORTLAND BRANCH / 2752 N. WILLIAMS / PORTLAND, OREGON 97227 / 284-7722

President:

March 3, 1981

Rep. Wally Priestley, Chairperson
House Committee on Aging and Minority Affairs
Room 453A, State Capitol
Salem, Oregon 97310

Dear Mr. Priestley:

HB 2479

The Portland Branch N.A.A.C.P.'s Legal Redress Committee has reviewed the Racial Harassment Bill proposed by Governor Atiyeh. It is our opinion that this bill in its present state is unacceptable because of vagueness, specifically, with reference to the term "intimidation" as used in the proposed bill.

The phrase "shall intimidation" provides no basis for distinguishing between criminal and non-criminal conduct and therefore could very well be declared unconstitutional by being overly vague.

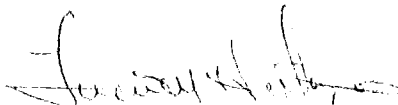
Perhaps you recall State vs. Sanderson, 33 OR.APP. 173 (1978). In Sanderson, it was found that the phrase "alarms or seriously annoys" was so general and subjective that it provided no basis for distinguishing criminal for non-criminal conduct and that the subsection was not susceptible to a limiting construction because the legislative history indicated an intention to create a "dragnet" or catchall offense.

We are presently drafting a friendly amendment designed to avoid this potential set-back. We will be prepared to introduce this amendment on March 12, 1981 during the 1:30 Public Hearing. We will also be prepared to introduce a complete bill relating to racial harassment if need be.

Page 2
March 3, 1981

Please do not pass HB2479 out of committee until we have had an opportunity to present our concerns.

Sincerely,



Lucious Hicks, IV
President

LH/tw

cc: F. Petett, Urban League
S. Remington, ACLU
L. Roberts, MHRC (Metro Human Relations Commission)
L. Rogoway, A.J.C. (American Jewish Comm.)
P. Friedman, Nat'l Conf. of Chris. & Jews
S. Dozono, Japanese American Citizens League
City Commissioners
County Commissioners

745 S. Baker #5
McMinnville, OR 97128
March 13, 1981

House Committee on
Aging & Minority Affairs
Room 453A, State Capitol
Salem, OR 97310

Re: HB 2479 and HB 2703

Dear Committee members:

You probably are aware of the recent increase in the harassment and intimidation of racial minorities by the general public. Therefore I fully support the intent of HB 2479. However, the bill as it is now written does not give full protection, as intended, to the racial minorities of the state.

Therefore I respectfully propose the following amendments to the bill:

1. Not only should the bill include criminal sanctions but it should also include civil liabilities as well. Provisions similar to those found for shoplifting cases should be included. For example, ORS 164.015 provides criminal sanctions against shoplifters while ORS 30.875 provides for civil liability.

2. If the bill is intended to protect racial minorities, then the word "intent" should be omitted from the bill. The "intent" element would dilute the bill so that in reality it would only address the most grievous offenses. I do not think this is or should be the "measuring stick" used to determine whether or not a person has been offended.

3. Funds for enforcement should be included in the bill. Otherwise law enforcement officials will be hard pressed to bring criminal sanctions against an offender. This is especially true in the less than grievous cases of racial harassment or intimidation.

As far as HB 2703 is concerned, the same amendments suggested above would apply. However, one additional change should be considered. To try to include sexual as well as age discrimination would totally dilute the intent of the bill; that is, to protect an insular segment of society -- the racial minorities. The bill

as it is now written could be used against a member of a racial minority -- a segment of society which the bill supposedly is trying to protect. This is not to say that sexual as well as age harassment and intimidation should be omitted altogether. However, to be most effective a separate bill addressing these segments of society should be drafted but not included in the same provisions as that for racial harassment as HB 2703 does.

In light of the recent and increased overt harassment of racial minorities in Oregon, I think the concept of these bills is commendable. However, the bills should be drafted in such a way that they are effective against what they are intended to protect. Neither bill in its present form does that. A strong bill should be drafted so that the people will know that the state means business and will not tolerate such behavior.

Thank you for allowing me this opportunity to comment on these bills.

Respectfully,



Arturo Torres

cc: Gretchen Kafoury

WORK SESSION

HB 2479 - Relating to crime.

Prohibits certain kinds of harassment due to a person's race, color, religion, ancestry or national origin.

Sponsored by Committee on Judiciary at the request of Governor Atiyeh.

The Bill has been referred to Judiciary Committee by the Speaker. We have borrowed it for 10 days. The 10 days expired on March 13th.

Testimony taken at previous Hearings gives overwhelming support to a statute that addresses harassment. Opinion leans to "racial and religious", leaving sex or sexual orientation out of this bill.

While this Bill is brief and to the point, general opinion leads to the belief it needs to be strengthened by the addition of Civil Redress.

In your folder are two sets of suggested amendments for your consideration. One set proposed by Frank Wilson and one set proposed by Martin Feinrider. Both sets essentially rewrite the Bill.

Also in your folder is a document from Frank Gruber of Legislative Counsel which is in response to questions posed.

The following questions should be addressed for recommendation to the Judiciary Committee:

1. Do we want to expand the Bill to include "sex and sexual preference" in definition? Or Should it remain only religious and racial discrimination?
2. Do we want to include "harassment" as well as intimidation?
 - A. Intimidate - To make timid; frighten. To discourage or inhibit by or as if by threats.
 - B. Harass - To disturb or irritate persistently, to wear out; exhaust. Harass implies systematic persecution by besetting with annoyances, threats or demands.
3. Do we want to include "Mental Anguish and Psychological damage" as reasons of intimidation?
4. Do we want to add "Minimum sentence of 1 year in jail and \$1,000 Fine" to Class C Felony?

WORK SESSION
HB 2479
Page 2 of 2

5. Do we want to mandate Grand Jury involvement in complaints?
6. Do we want to add civil redress and attorney fees above and beyond criminal prosecution?

Relating to Frank Wilson's proposal to divert punitive damages funds to the Oregon Victim's Compensation Fund, that Fund is defined in ORS 147.005 through 147.165.

Fiscal Impact Statement Attached.

MARTIN FEINRIDER

House Committee on Aging
and Minority Affairs
March 17, 1981 HB 2479
EXHIBIT H (3 pages)

(Appendix B) Proposal Bill
Racial Harrassment

HB 2479

Criminal Statute

Any person who intentionally or knowingly engages in conduct proscribed by chapters 163 and 164 of Oregon Revised Statute, and who chooses as the victim or target of such conduct a member of a racial or ethnic minority group because of their racial or ethnic identity, shall be guilty of Racial Harrassment.

Any person who engages in conduct proscribed by Chapters 163 and 164 of the Oregon Revision Statutes for the purpose of interfering with the free exercise or enjoyment, by a member of a minority group, of any right or privilege secured by the Constitution and laws of the State of Oregon or the U.S., shall be guilty of Racial Intimidation.

For the purpose of this section, racial or ethnic minority group means Blacks, Hispanics, Asian-Americans, Native Americans, Arabs, and Jews.

Racial Discrimination is a Class C Felony.

District Attorneys and local police shall immediately inform the State Attorney General of all complaints relating to conduct that is, or may be, covered by this statute. The State Attorney General

(Appendix B), con'd.

shall take charge of the investigation and prosecution of any complaint of Racial Harrassment. He shall have the authority to order the State Police to conduct an investigation under his command.

(Appendix C)

Proposed Civil Cause of Action*

Any person who intentionally or knowingly engages in conduct proscribed by Chapters 163 and 164 of Oregon Revised Statutes, and who chooses the victim or target of such conduct because of their racial or ethnic identity, or who engages in conduct proscribed by Chapters 163 and 164 of Oregon Revised Statutes for the purpose of interfering with the free exercise or enjoyment of any right or privilege secured by the Constitution and laws of the State of Oregon or the United States shall be liable for damages. Damages shall include compensation for the expense of investigation and prosecution, compensation for loss to the victim, and ^{MAXIMUM \$10,000} minimum punitive damages of three thousand dollars to be paid to the victim.

The cause of action shall be initiated and pursued by the Attorney General on behalf of the victim. The Attorney General may use the State Police to investigate. At any time during the proceeding, the victim may relieve the Attorney General of responsibility for the prosecution and control of the case.

If an action has not been initiated by the Attorney General, anyone claiming to be a victim under this statute may initiate and pursue the cause of action.

*Note: The availability of the Civil Cause of Action is not limited to members of racial or ethnic minorities because a civil action is not subject to the same possibility of misuse as is a criminal action.

FRANK WILSON

HB 2479
INTIMIDATION BY HARASSMENT

Section 1. The following Sections of this Act are added to and made a part of ORS 163.165 to 163.205.

Section 2. A person commits the crime of intimidation by harassment as defined in ORS 161.085, intentionally, knowingly, or recklessly, and because of another person's race, color, religion, ancestry, sex, or national origin, the person:

- (a) causes physical harm to the other person;
- (b) places or attempts to place, the other person in fear of imminent physical harm by continuing use of words or conduct;
- (c) engages in a course of conduct or repeatedly commits acts which serves no legitimate purpose and which seriously alarms or annoys the other person, or results in emotional distress or mental anguish;
- (d) publicly insults another person by the continuing use of abusive or obscene words or gestures in a manner likely to provoke a violent or disorderly response; or by the use of an inflammatory symbolic gesture; or
- (e) damages or destroys the property of the other person.

Section 3. The district Attorney in the appropriate jurisdiction shall present all complaints under this Act to a Grand Jury and shall give the victim or victims a reasonable opportunity to make a statement before such Grand Jury.

Section 4. Irrespective of any criminal prosecution brought under this Act, or the outcome of such prosecution, any person or persons, or any other person who aids, abets, incites, or conspires with any person, who commits any act in Section 2 is liable to the victim or victims in a civil action for each and every such offense for the actual damages, punitive damages up to

INTIMIDATION BY HARASSMENT

Page 2 of 2

ten thousand dollars (\$10,000), and if bodily injury results treble actual and punitive damages, and the costs of suit and reasonable attorney fees. One-half (1/2) of any punitive damages go to support the Oregon victims compensation fund. In the case of multiple offenders, actual damages and punitive damages may be apportioned among them.

Section 5. Remedies under this Act shall be independent and in addition to any other remedies of procedures that may be available to the aggrieved person or persons.

Section 6. Intimidation by harassment is a Class C. felony.

Phone: 378-8148

OFFICE OF THE LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

House Committee on Aging
and Minority Affairs
March 17, 1981 HB 2479
EXHIBIT J (2 pages)

To: HOUSE COMMITTEE ON AGING AND MINORITY AFFAIRS

From: FRANK R. GRUBER, DEPUTY LEGISLATIVE COUNSEL

Re: HB 2479 and your request for commentary on proposed amendments to the bill.

1. You propose to amend the title of the crime (line 5) to read: "intimidation or harassment", and to make a corresponding adjustment in the penalty provision at line 10.

The title of a crime is not a part of the operative language establishing the elements of the crime. It is a label by which to refer to the crime. The title is a convenient reference for those occasions when a crime is best referred to by designation other than an ORS section number, and the title may or may not indicate clearly the nature of the crime involved. From a legal standpoint, this is not of great concern, since it is other language in the statute that establishes what constitutes the crime.

However, the proposed change would create ambiguity and uncertainty within the Oregon Criminal Code, because there is already a crime entitled "harassment" embraced by ORS 166.065. Therefore, the change would also cause confusion and ambiguity among judges, prosecutors, defense attorneys and persons charged with record-keeping in regard to these two crimes.

2. In line 5, following "intimidate", you propose to insert "or harass" as an alternative specific intent for the crime. (Such a change has nothing to do with the title, and this change can be made without changing the title.) The specific intent of a crime is an element; therefore this change will have an effect on the nature of the crime defined by the bill. According to Webster's Seventh New Collegiate Dictionary, an intent to "intimidate" is an intent to make timid or fearful, or to compel or deter as by threats; an intent to "harass" means an intent to annoy continually. The addition of the proposed language would allow a prosecution in a case where there was no intent to make the victim fearful, but where there was an intent to annoy. I would note that of the two words, "intimidate" seems the more clearly defined and perhaps less vulnerable to attack on grounds of vagueness.

3. You propose to insert after line 7: "(b) Causes mental anguish or psychological damage;". The proposed language may be an acceptable standard for ascertaining injury in a civil case, if a civil remedy is established, but it is subject to attack on grounds of vagueness as the basis for a criminal case. This is so because of the subjectivity involved in determining what is "mental anguish" and, perhaps to a lesser extent, "psychological damage."

4. You propose to add in line 10 a minimum sentence of one year's imprisonment and a \$1,000 fine. I see no legal reason why this cannot be done.

5. You propose to add a section requiring the district attorney to present complaints and cases before the grand jury when they arise under the provisions of the bill. I see no legal reason why this cannot be done.

6. You propose to add a civil remedy in addition to the criminal penalty already contained in the bill. I see no legal reason why this cannot be done. (However, it may be advisable to put such a civil remedy provision in a separate section, as you indicate, to avoid confusion between the two remedies.)

Chairperson:
REP. WALLY PRIESTLEY
Vice-Chairperson:
REP. JOHN SCHOON

Staff:
DICK WILSON
Committee Administrator
CONNIE FRITZ
Committee Assistant



House Committee on Aging
and Minority Affairs
March 31, 1981 **HB 2479**
EXHIBIT A (6 pages)

HOUSE COMMITTEE ON
AGING AND MINORITY AFFAIRS

Room 453A, State Capitol
SALEM, OREGON 97310

373-8816
Toll Free 1-800-452-7313

March 25, 1981

TO: Committee Members
House Committee on Aging and Minority Affairs

FROM: Dick Wilson
Administrator *Dick*

RE: HB 2479 - Recommendations to House Judiciary Committee

Since we could not get to a Work Session on HB 2479 on March 24th, I am enclosing a draft of a letter to the Judiciary Committee. Also attached are the Amendments you asked for from Legislative Counsel.

I would appreciate your comments and/or approval so we can send the recommendations on to Judiciary as soon as possible.

DW:cf
Attachments

Chairperson:
REP. WALLY PRIESTLEY
Vice-Chairperson:
REP. JOHN SCHOON

Staff
DICK WILSON
Committee Administrator
CONNIE FRITZ
Committee Assistant



Members:
REP. SHIRLEY GOLD
REP. JEANNETTE HAMBY
REP. PEG JOLIN
REP. MAX RIJKEN
REP. GEORGE TRAHERN

HOUSE COMMITTEE ON
AGING AND MINORITY AFFAIRS

Room 453A, State Capitol
SALEM, OREGON 97310

378-8818

Toll Free 1-800-452-7813

March 25, 1981

DRAFT

TO: Representative Tom Mason, Chairperson
House Judiciary Committee

FROM: Representative Wally Priestley, Chairperson
House Committee on Aging and Minority Affairs

RE: HB 2479 - Governor Atiyeh's Harassment Measure

Thank you and your Committee Members for affording our Committee an opportunity to review the subject bill. We did receive much good testimony and the attached Amendments reflect the thinking of the people who spoke to us.

In summary, the following observations are for your information:

1. Recent events in Oregon justify statutory attention of some sort.
2. HB 2479 needs strengthening to accomplish the objectives.
 - A. Inclusion of "sexual class" received a mixed review. Some felt it would not help the bill.
 - B. Inclusion of a Section that adds Civil Penalty and Attorney Fees is required.
 - C. Investigation by the State Attorney General and State Police would insure action on complaints.
 - D. A clearer definition of Acts of Harassment or Intimidation is needed.
 - E. Add a firm definition of racial and ethnic minorities, but leave the definition open-ended.

Again, thank you for lending the measure to our Committee.

Attachments: Copy of Bill
Copy of Amendments
(What else?)

OFFICE OF THE LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

March 24, 1981

To: House Committee on Aging and Minority Affairs

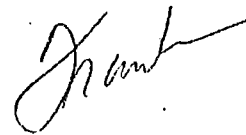
From: Frank R. Gruber, deputy Legislative Counsel

I have been asked to prepare, and have prepared, amendments to HB 2479. These were requested by your committee, and I have delivered them to Mr. Dick Wilson, committee administrator.

I was not requested to make a legal assessment of the amendments requested. However, I believe I would be remiss if I did not point out that the proposed amendments raise serious constitutional questions. These questions arise particularly in regard to constitutional "equal protection" provisions, "free speech" and related provisions, and "due process" provisions relating to the issue of vagueness in criminal statutes.

Since receiving the amendment request, I have spent available time putting the amendment material into what I believe is a workable form and have not had time to address the constitutional issues in detail. If I can be of further assistance in this regard, please let me know.

Respectfully submitted,



PROPOSED AMENDMENTS TO HOUSE BILL 2479

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In line 5 of the printed bill, after "if" delete the comma and insert "the person" and after "Intentionally" delete the rest of the line and lines 6 through 9 and insert a colon and begin a new paragraph and insert:

"(a) Violates the provisions of any section of ORS chapter 163 or 164 if the victim of the conduct is a member of a racial or ethnic minority or sexual class and was selected as the victim of such conduct because of being a member of the racial or ethnic minority or sexual class;

"(b) Violates the provisions of any section of ORS chapter 163 or 164 for the purpose of preventing another person who is a member of a racial or ethnic minority from the free exercise or enjoyment of a right or privilege secured by the Constitution and laws of the State of Oregon, or of the United States, when the victim of the conduct is a member of a racial or ethnic minority or sexual class; or

"(c) Because of the race, color, religion, ancestry, sex or national origin of the victim:

"(A) Causes physical harm to the victim;

"(B) By word or conduct places or attempts to place the victim in fear of imminent physical harm;

"(C) Engages in a course of conduct which serves no legitimate purpose and which is intended to and does seriously alarm or annoy the victim or cause the victim emotional distress or mental anguish;

"(D) Publicly insults the victim by a course of abusive or obscene words or gestures likely to provoke a violent or disorderly response; or

1 "(E) Damages or destroys the property of the victim.

2 "(2) As used in this section, 'racial or ethnic minority' means
3 persons of Negro or Oriental race, persons whose ancestry and
4 heritage is Arabic, Hispanic, Native American, Russian or belonging
5 to any other identifiable cultural heritage that is a minority
6 within the population of this state, or persons whose religion is
7 Jewish, Roman Catholic, Buddhist or otherwise is a minority among
8 religions of this state."

9 In line 10, delete "(2)" and insert "(3)".

10 After line 10, insert:

11 "SECTION 3. (1) District attorneys and police agencies within
12 this state shall immediately advise the Attorney General upon
13 receipt of complaints of intimidation coming under, or potentially
14 coming under, section 2 of this Act.

15 (2) The Attorney General shall take charge of the investigation
16 and prosecution of any complaint of intimidation of which the
17 Attorney General is advised under subsection (1) of this section.

18 "(3) In order to carry out the responsibilities imposed under
19 this section, the Attorney General shall have authority to order
20 that the Oregon State Police conduct an investigation of any alleged
21 violation of section 2 of this Act. The investigation shall be
22 conducted under the Attorney General's direct control.

23 "SECTION 4. (1) Regardless of whether a criminal prosecution is
24 commenced under section 2 of this Act or the outcome of such a case,
25 any person who violates, or who aids, abets, incites or conspires
26 with any person to violate section 2 of this Act is liable in a
27 civil action to the victim of the violation. For each such
28 violation, recovery may be made as follows:

1 "(a) The victim may recover actual damages, both general and
2 special, punitive damages of not more than \$10,000, costs and
3 attorney fees; or

4 "(b) If the victim suffered physical injury as a result of the
5 violation, the victim may recover actual and punitive
6 punitive

7 "(2) In its judgment:

8 "(a) The court shall award one-half of the punitive damages
9 assessed against a defendant pursuant to this section to the
10 plaintiff.

11 "(b) The court shall award the remaining one-half of the
12 punitive damages assessed against the defendant to the State of
13 Oregon. The moneys so awarded shall be paid to the clerk of the
14 court, who shall forward the moneys to the Department of Justice for
15 deposit in the Criminal Injuries Compensation Account established
16 under ORS 147.225.

17 "(3) When more than one defendant acting in concert are liable
18 to the plaintiff under this section for damages, the actual and
19 punitive damages assessed in the case shall be apportioned among
20 them."

GEORGE E. TRAHERN

REPLY TO ADDRESS INDICATED:

- House of Representatives
Salem, Oregon 97310
- 4011 Williams Highway
Grants Pass, Oregon 97526



House Committee on Aging
and Minority Affairs
March 31, 1981 **HB 2479**
EXHIBIT B (1 page)

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

March 31, 1981

Minority Report

Measure: HB 2479

Recommendations to House Judiciary Committee
From: Representative George E. Trahern

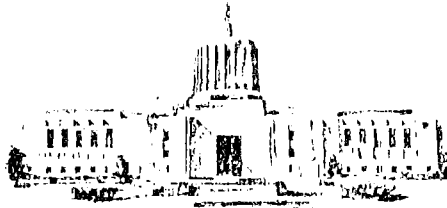
Explanation:

I can find no reason for HB2479. The bill is intended to prohibit racial/religious harassment, which is on the rise in Oregon. The items addressed are already a crime in Oregon. A legislative resolution abhorring harassment in Oregon would be a better solution. The alternative solutions/amendments proposed would, in my opinion seriously restrict a citizen's rights of freedom of speech and due process, and are restrictive of our civil liberties.

We cannot legislate morality. The acceptance of people different than ourselves into society must be because we want to accept them, not because we are forced to. This can only be accomplished through our education process.

Chairperson:
REP. WALLY PRIESTLEY
Vice-Chairperson:
REP. JOHN SCHOON

Staff:
DICK WILSON
Committee Administrator
CONNIE FRITZ
Committee Assistant



House Committee on Aging
and Minority Affairs
April 7, 1981 HB 2479
EXHIBIT C (6 pages)

HOUSE COMMITTEE ON
AGING AND MINORITY AFFAIRS

Room 453A, State Capitol
SALEM, OREGON 97310
378-8816
Toll Free 1-800-452-7813

DRAFT

TO: Representative Tom Mason, Chairperson
House Judiciary Committee

FROM: Representative Wally Priestley, Chairperson
House Committee on Aging and Minority Affairs

RE: HB 2479 - Governor Atiyeh's Harassment Measure

Thank you and your Committee Members for affording our Committee an opportunity to review the subject bill. We did receive much good testimony and the attached Amendments contain the recommendations of the majority of our Committee.

In summary, the following observations are for your information:

1. Recent occurrences of harassment and/or intimidation justify Statutory attention.
2. HB 2479 needs strengthening to accomplish the objectives.
 - A. The measure should remain confined to racial and religious harassment. Inclusion of "sex", "sexual orientation" or "sexual class" would weaken the bill further.
 - B. A section adding civil penalties and attorney fees needs to be included.
 - C. Investigation by the State Attorney General and State Police would insure action on complaints.
 - D. A clearer definition of Acts of Harassment or Intimidation is needed.
 - E. Add a firm definition of racial and ethnic minorities, but leave the definition open-ended.
 - E. There are concerns about the constitutional problems in the original bill and the proposed amendments that need to be addressed.

Again, thank you for allowing us to review this measure.

OFFICE OF THE LEGISLATIVE COUNSEL
S101 State Capitol
Salem, Oregon 97310

March 24, 1981

To: House Committee on Aging and Minority Affairs

From: Frank R. Gruber, deputy Legislative Counsel

I have been asked to prepare, and have prepared, amendments to HB 2479. These were requested by your committee, and I have delivered them to Mr. Dick Wilson, committee administrator.

I was not requested to make a legal assessment of the amendments requested. However, I believe I would be remiss if I did not point out that the proposed amendments raise serious constitutional questions. These questions arise particularly in regard to constitutional "equal protection" provisions, "free speech" and related provisions, and "due process" provisions relating to the issue of vagueness in criminal statutes.

Since receiving the amendment request, I have spent available time putting the amendment material into what I believe is a workable form and have not had time to address the constitutional issues in detail. If I can be of further assistance in this regard, please let me know.

Respectfully submitted,



GEORGE E. TRAHERN

REPLY TO ADDRESS INDICATED:

- House of Representatives
Salem, Oregon 97310
- 4011 Williams Highway
Grants Pass, Oregon 97526



COMMITTEES
Minority
Revenue
Aging and Minority Affairs

HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

April 2, 1981

Report on HB 2479

Recommendations to House Judiciary Committee

Explanation:

The bill is intended to prohibit racial/religious harassment, which on the rise in Oregon, however, the items addressed are already a crime in Oregon. A legislative resolution abhorring harassment in Oregon would be a better solution. The alternative solutions/ amendments proposed would, in our opinion seriously restrict a citizen's rights of freedom of speech and due process, and are restrictive of civil liberties.

We recommend that HB 2479, relating to racial harassment, not be passed as written.

1 PROPOSED AMENDMENTS TO HOUSE BILL 2479

2 In line 5 of the printed bill, after "if" delete the comma and
3 insert "the person" and after "intentionally" delete the rest of the
4 line and lines 6 through 9 and insert a colon and begin a new
5 paragraph and insert:

6 "(a) Violates the provisions of any section of ORS chapter 163
7 or 164 if the victim of the conduct is a member of a racial or
8 ethnic minority or sexual class and was selected as the victim of
9 such conduct because of being a member of the racial or ethnic
10 minority or sexual class;

11 "(b) Violates the provisions of any section of ORS chapter 163
12 or 164 for the purpose of preventing another person who is a member
13 of a racial or ethnic minority from the free exercise or enjoyment
14 of a right or privilege secured by the Constitution and laws of the
15 State of Oregon, or of the United States, when the victim of the
16 conduct is a member of a racial or ethnic minority or sexual class;
17 or

18 "(c) Because of the race, color, religion, ancestry, sex or
19 national origin of the victim:

20 "(A) Causes physical harm to the victim;

21 "(B) By word or conduct places or attempts to place the victim
22 in fear of imminent physical harm;

23 "(C) Engages in a course of conduct which serves no legitimate
24 purpose and which is intended to and does seriously alarm or annoy
25 the victim or cause the victim emotional distress or mental anguish;

26 "(D) Publicly insults the victim by a course of abusive or
27 obscene words or gestures likely to provoke a violent or disorderly
28 response; or

1 "(a) The victim may recover actual damages, both general and
2 special, punitive damages of not more than \$10,000, costs and
3 attorney fees; or

4 "(b) If the victim suffered physical injury as a result of the
5 violation, the victim may recover treble damages, both actual and
6 punitive.

7 "(2) In its judgment:

8 "(a) The court shall award one-half of the punitive damages
9 assessed against a defendant pursuant to this section to the
10 plaintiff.

11 "(b) The court shall award the remaining one-half of the
12 punitive damages assessed against the defendant to the State of
13 Oregon. The moneys so awarded shall be paid to the clerk of the
14 court, who shall forward the moneys to the Department of Justice for
15 deposit in the Criminal Injuries Compensation Account established
16 under ORS 147.225.

17 "(3) When more than one defendant acting in concert are liable
18 to the plaintiff under this section for damages, the actual and
19 punitive damages assessed in the case shall be apportioned among
20 them."