

Kate Brown
Governor



Oregon Commission on Black Affairs
"Advocating Equality and Diversity"
1819 SW 5th Ave., Portland, OR 97201
O 503.302.9725/F 503.473.8519
Email: oaco.mail@oregon.gov
Website: www.oregon.gov/OCBA

Board of Governors, Oregon State Bar
PO Box 231935
Tigard, OR 97281

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To the Oregon State Bar Board of Governors:

Prosecutors enjoy tremendous discretionary power over individuals within our criminal justice system. They have the power to choose whom to charge, what crimes to identify, what penalties to seek, what bail to urge, what witnesses to call, what evidence to present, what persons to give immunity from prosecution, what plea bargains to make, and what sentences to negotiate. They also exercise tremendous influence over the broad discretionary powers of the police whom they advise, and in terms of the decisions to charge crimes. Prosecutors are public lawyers who hold their power and exercise their power on behalf of the client – the people of Oregon. It is not about their personal prerogatives. Their use of the public power demands the utmost professionalism and accountability.

The way in which prejudice affects discretionary decisions is well understood by society in general, and by the bar association of this state. When race and religion consistently inform discretionary choices against people subject to the power of our criminal justice system, the system deprives those people of the most fundamental assurances of American justice: the presumption of innocence, and the promise of fair and unprejudiced treatment before the law. The integrity of our criminal justice system depends, in large part, upon the professionalism of the lawyers who prosecute criminal matters on behalf of the state.

Ethical self-restraint is the first and best protection of the principles of justice and professionalism in this powerful system. Absent meaningful principles of self-restraint, including self-reflection and public accountability, justice itself is damaged by the perception of racism, impunity, and corruption. Without trust in justice, our communities fall prey to the double bind of criminality on one side and injustice with violence on the other. We believe that both the Oregon Rules of Professional Conduct and the American Bar Association recognize and demand professional accountability when official acts of power are motivated by racial and religious prejudice.^{i, ii}

The following statements recently issued by Washington County Deputy District Attorney Zoe Smith have been widely broadcast. While made in a social media context, they reflect directly upon the conduct of the lawyer as a deputy district attorney, and are thus subject to the regulation of our bar association. They are dangerous and unethical.

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Deputy District Attorney Zoe Smith is “on board” with “the anti-politically correct movement to support Trump,” Smith wrote recently on her Facebook page. She added, “If you’re looking for a terrorist, look at a young Muslim male. If you’re looking for a gang shooter, look for a young black guy. If you’re looking for a child molester or a mass shooter, look for a white guy. That’s just common sense.”ⁱⁱⁱ

We urge you to investigate these statements and any other acts of unprofessional conduct. We request that you reprimand this attorney, publicly, and require her to complete adequate training and reflection to satisfy the requirements of professional and ethical conduct. We further request that you investigate other complaints regarding improper conduct of the office of this prosecutor reflecting prejudice and bias in the discharge of public powers and duties.

Signed,



Robin Morris Collin, OSB number 990187
Oregon Commission on Black Affairs



James I. Manning, Chair
Oregon Commission on Black Affairs

In support:



Chanpone Sinlapasai-Okamura,
OSB number 071740
Oregon Commission on Asian and
Pacific Islander Affairs



Mari Watanabe, Chair
Oregon Commission on Asian and
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Oregon Commission for Women



Dr. Barbara Spencer, Chair
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cc: Michael Levelle, Oregon State Bar President-Elect
Paulette Brown, American Bar Association President

ⁱ Oregon Rules of Professional Conduct RULE 8.4 MISCONDUCT

(a) It is professional misconduct for a lawyer to:

(4) engage in conduct that is prejudicial to the administration of justice; or

(7) in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

ⁱⁱ American Bar Association Criminal Justice Standards, Criminal Justice Standards for the Prosecution Function

Standard 3-1.6 Improper Bias Prohibited

(a) The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority.

(b) A prosecutor's office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. A prosecutor's office should regularly assess the potential for biased or unfairly disparate impacts of its policies on communities within the prosecutor's jurisdiction, and eliminate those impacts that cannot be properly justified.

ⁱⁱⁱ Budnick, N (2016, March 7). *Washington County Deputy DA accused of racial profiling*. KOIN6. Retrieved from <http://koin.com> on March 21, 2016.