

“Where the Injured Fly for Justice”
A Ten-Year Retrospect on the Report and Recommendations
of the Florida Supreme Court Racial and Ethnic Bias Study Commission

A swallow had built her nest under the eaves of a Court of Justice.
Before her young ones could fly, a serpent gliding out of his hole ate them all up.

When the poor bird returned to her nest and found it empty,
she began a pitiable wailing. A neighbor suggested, by way of comfort,
that she was not the first bird who had lost her young. “True,” she replied,
“but it is not only my little ones that I mourn but that I should have been
wronged in that very place **where the injured fly for justice.**”

Aesop, Fables.

**Preliminary Assessment:
A first look at reporting on implementation progress
and identifying issues that require additional action**

December 2000

Color Key:

Policies and programs over which the ***Florida State Courts System has authority.***

Policies and programs over which the ***Florida State Courts System has some influence.***

Policies and programs that are ***outside the Florida State Courts System's scope of authority and influence.***

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Introduction

In the 1970s and 1980s, women and minorities began entering the legal profession in increasing numbers. Although still scarce, African American, Hispanic, and female lawyers were no longer novelties in Florida. These pioneers were a catalyst in compelling the legal profession – indeed, the entire justice system – to reflect on fairness within the legal profession and the justice system those professionals serve. At the same time, claims of racial and ethnic bias in the justice system were increasing, even after decades of laws and affirmative action designed to end discrimination. In late 1989, the Florida Supreme Court began an unprecedented examination of racial and ethnic bias in the justice system. That study culminated with the issuance of final reports and recommendations in 1990 and 1991.

Following the study, leaders in all three branches of government came together to work on eradicating racial and ethnic bias from our courts and legal system. The Florida Legislature responded with a major bill in the spring of 1991, one described at the time by then-Governor Lawton Chiles as “packed with revisions that make a difference.” Those legislative revisions and other changes in all three branches of government over the past ten years have resulted in:

- Appointment of unprecedented numbers of minorities to Florida’s bench by both Governor Jeb Bush and former Governor Lawton Chiles.
- Increases in the diversity of court staff.
- Creation of a Civil Rights Division within the Attorney General’s Office.
- Cultural-awareness training for all of Florida’s law enforcement officers.
- Provisions to ensure that the composition of juries reflects the diversity of the population.
- Creation and funding of a minority law student scholarship program and the recent approval of the establishment of two new law schools for the purpose of recruiting more minorities into the legal profession.
- Implementation of drug courts, stopping the revolving door of the criminal justice system and holding offenders accountable.
- Requirements to include minorities on the Judicial Nominating Commissions, Commission on Juvenile Justice, and the Juvenile Justice Standards and Training Council.
- Creation and funding of a project to compare pre-trial release practices.
- Expansion of the use of community-based programs for pre-trial intervention and probation.

- Review of the racial implications of “mandatory minimum” and “habitual offender” statutes.

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Floridians are proud of their state’s cultural diversity. According to recent population estimates, approximately 16% of Floridians are African-American and another 16% are Hispanic. Other minority cultures are also represented among our citizens, including Native Americans, Asians, and others. This diversity adds a richness and texture to the fabric of our society. Florida was among the first states to empanel a commission to investigate racial and ethnic bias, and to identify specific recommendations to rid its court system of all vestiges of race and ethnic discrimination and bias. As of today, 29 states and the District of Columbia have followed suit and examined racial equity, which is absolutely critical to an American justice system that is founded upon the fundamental principle of the fair and equal application of the rule of law for all.

While much progress has been made in the last ten years, much remains to be done. State and national research, as well as daily news reports, indicate that racial and ethnic bias in the justice system continues at an unacceptable rate. It is time to reflect on these issues, take stock of Florida’s successes, and renew the judicial branch’s efforts to ensure the fair and equal treatment of all our citizens, regardless of their race, color, ethnicity, or national origin. It is time for the Florida justice system to return to the forefront on these issues and make every effort to move our justice system forward in ensuring full racial and ethnic equity.

Chief Justice Charles Wells commenced this Ten-Year Retrospect for the purpose of ensuring continuing progress in the equitable treatment of and full participation by racial and ethnic minorities in the Florida State Courts System. This preliminary assessment is a first look at reporting on the progress made in implementing recommendations by the Racial and Ethnic Bias Study Commission, and identifying those recommendations that have not yet been appropriately addressed. To fully assess the implementation status and develop a comprehensive action plan for moving forward, the Florida Supreme Court must secure adequate resources – including both staff and expense monies.

Based on this preliminary assessment, an Advisory Committee recommended further documentation of activities in Florida over the past decade; development of up-to-date strategies to improve the equitable treatment of racial and ethnic minorities in the Florida justice system; and renewed attention to implementation of recommendations, with particular emphasis on the following issues:

- *Advancing the Diversity of Court Staff, Particularly in Leadership Positions and Higher Level Job Classifications*
- *Increasing the Number of Minority Lawyers and Fostering Their Professional Development*
- *Improving the Judicial Nominating/Appointment Process as it Impacts on the Diversity of the Bench*
- *Preventing Minority Youths from Becoming Involved in the Delinquency System*

- *Reducing the Disparate Impact of Sentencing Policies and Practices on Racial and Ethnic Minorities*

Preliminary Assessment

I. THE JUDICIAL SYSTEM WORK FORCE

A. Racial and Ethnic Diversity of Florida's Judges

1. The Judicial Nominating/Appointment Process

Original Recommendations and Implementation Status

- The Florida Legislature should mandate representative minority attorney and citizen membership on each judicial nominating commission.

implemented

Implemented, but overturned.

The legislature enacted this recommendation in the spring of 1991. Though ruled unconstitutional in the mid-1990's, the law had time in the intervening years to bring about change and improvement. In the first round of judicial nominating commission (JNC) appointments made by Governor Chiles following release of the report, 23 out of 26 individuals appointed were racial or ethnic minorities. In the following year, Chiles appointed 19 minorities out of 26 seats, to the JNCs. The diversification achieved was unprecedented and widely hailed as historic. Legislation was considered in the spring of 2000 that would have encouraged (rather than mandated) minority representation on the JNCs, but for unrelated reasons the bill did not pass.

- The Florida Supreme Court should instruct each judicial nominating commission to provide explicitly, by rule, that racial and ethnic diversity of Florida's bench is a desirable objective and, as such, an element which shall be considered by all judicial nominating commissions when making recommendations on appointments to the bench.

status unknown

Unknown, pending further study.

Please note that the Florida Supreme Court has no authority over the actions of the judicial nominating commissions.

- Each judicial nominating commission should, by rule, establish a model plan for recruiting qualified minority candidates for judicial appointment, updating the plan as appropriate to account for experience gained in the recruitment process. Particular attention should be paid to the recruitment of minority females for judicial appointment. Judicial

nominating commissions should be required to provide to the Governor a statement certifying compliance with the commission's minority recruitment plan when submitting recommendations for judicial appointments. In addition, the Florida Supreme Court should require the Judicial Nominating Procedures Committee of The Florida Bar and each judicial nominating commission to submit an annual report detailing each commission's record of increasing the number of minorities recommended for appointment to Florida's bench.

implemented

Implemented in part.

In late 1999, Governor Bush chastised the JNCs for sending him 65 names, of which only 10 were women and 5 were African American. Bush urged the JNCs to "eliminate any informal barriers that may affect the diversity of the lists I receive." On March 30, 2000, the JNCs amended their rules to require that new members receive diversity training, racial information be collected from applicants on a voluntary basis, and all judicial openings be advertised with minority bar associations.

Please note that the Florida Supreme Court has no authority over the actions of the judicial nominating commissions.

- The Governor should establish, as a top priority, the increase of minorities among his appointments to Florida's bench.

implemented

Implemented, with progress continuing.

Minority judicial appointments increased significantly under the gubernatorial terms of former Governor Chiles. Likewise, Governor Bush has made several minority appointments and continues to call for a more diverse judiciary. In March of 2000, Bush told Bar members that his efforts to appoint minority judges have been hindered by the lack of diversity in the pools of applicants and in the recommendation lists he has received from the JNCs. Bush said minority applicants "have not received a fair shot in the past and I do not think they will receive one now."

implemented

- The Florida Bar, through the decisions of its Board of Governors and the efforts of its Judicial Nominating Procedures Committee, should expressly establish, as a top priority, the increase of minority representation among the Bar's appointees to the judicial nominating commissions.

Implemented, with continuing progress unknown.

In 1991, Florida Bar President Benjamin Hill vigorously encouraged Bar members to nominate minorities and placed ads in legal publications encouraging minorities to apply for JNC seats. In its first round of appointments after the Commission's report, the Bar appointed five minorities, out of 26 seats, in what Hill described then as a "dramatic" improvement in the Bar's record. The number of subsequent minority Bar appointees is unknown.

Discussion

There has been a significant improvement in the diversity of Florida's judges. Both Governor Jeb Bush and former Governor Lawton Chiles are to be commended for appointing unprecedented numbers of minorities to Florida's bench. Minority judges at the trial court level have increased from 5.8% in 1990 to 11.4% in 2000, minority judges at the district court of appeal level have increased from only 3.5% in 1990 to 14.7% in 2000, and minority judges at the supreme court level have increased from 14.2% in 1990 to 28.5% in 2000.

Despite these advances, the judiciary as a whole still does not accurately reflect the rich cultural diversity of our state. Additionally, racial disparities are more pronounced in various geographical areas. Until the Florida courts fully reflect the diversity of our citizens, leaders in all three branches of government should reiterate their aspirations for diversity among both judicial nominating commission membership and judicial appointees.

The ability of the judicial nominating commissions to influence who is appointed to the bench cannot be overstated. The public needs assurances that JNC actions are explainable and accountable. Furthermore, The Florida Bar should account for the diversity of their JNC appointments, especially if they are advocating the adoption of a merit selection and retention process for trial judges. The Florida Bar should develop a mechanism to report on the diversity and composition of the judicial nominating commissions, on an annual basis.

2. Judicial Elections

Original Recommendations and Implementation Status

- The Florida Legislature should, in connection with its preparation for the upcoming session on reapportionment, fund and conduct computer-assisted analyses of the feasibility of devising judicial election subdistricts which would tend to increase minority representation while avoiding fragmentation and parochialism. Once concrete examples of the configuration of subdistricts are devised, the State will be in a better position to determine whether a change to single-member districts or subdistricts should be implemented through an amendment to the State Constitution.

Moot

Since rendered moot.

This recommendation appears to have been rendered moot by intervening events of the past decade, including the adoption in 1998 by Florida voters of a constitutional amendment allowing counties to opt into a system of merit selection and retention for trial court judges.

Discussion

Over the past decade, there has been considerable discussion and debate over the method by which more racial and ethnic minorities reach the Florida bench: election or appointment. The election of judges and the resulting impact on the diversity of Florida's bench should be monitored.

B. Justice System Staff

1. Court Staff

Original Recommendations and Implementation Status

- The Florida Supreme Court should adopt, by rule, an affirmative action plan for the Florida State Courts System, to be binding upon and administered by all components of the State Courts System. Under the authority provided by section 25.382, Florida Statutes, the Chief Justice of the Florida Supreme Court should ensure system-wide compliance with the affirmative action plan.

In Progress

Alternate action.

A statewide affirmative action plan for the State Courts System was never adopted. The 6th and 13th circuits have established affirmative action plans.

In 2000, the State Courts System Equal Employment Opportunities Committee proposed, and the Supreme Court adopted, new personnel rules designed to increase the diversity of court staff. Additionally, trial and appellate courts will be required to report demographics of court staff on a regular basis.

The Committee on Employment Fairness issued a statistical report on this issue.

- The Florida Supreme Court should establish an Office of Equal Employment Opportunity and appoint a director experienced in personnel matters and in implementing affirmative actions programs. The Director should be responsible for monitoring the implementation of an Affirmative Action plan that includes the recruitment of all court personnel, including judicial law clerks. The Office should be provided with sufficient funding and support staff to carry out its assigned duties.

In Progress

Attempted but failed; Ongoing efforts under way.

The State Courts System repeatedly requested legislative authorization and funding to establish an Equal Employment Opportunities office following the release of the report, but was unsuccessful due to state budgetary constraints.

The recruitment regulations developed in 2000 by the Equal Employment Opportunities Committee provide for equity in the selection and hiring of court employees. Further, each court will be required to annually report their recruitment efforts to the Chief Justice.

In the summer of 2000, the Employment Fairness Committee adopted a Resolution endorsing this recommendation and renewing the call for establishment of a statewide Equal Employment Opportunities office within the State Courts System.

In the State Courts System's Legislative Budget Request for FY 2001-02, Chief Justice Wells requested a full-time Equity Coordinator position as a high priority within the Supreme Court's budget.

Please note that since judicial assistants and appellate judicial law clerks are personal staff, the State Courts System may not have the legal authority to subject those positions to an affirmative action plan.

- All chief judges, managers, and personnel officers within the State Courts System should receive training regarding the Court's affirmative action plan. In addition, the Florida Supreme Court and each court and office within the State Courts System should develop specialized programs for managers, to include incentive and awards programs for those who develop and implement successful, creative, and innovative minority hiring, promotion, and training programs pursuant to the Affirmative Action Plan.

Alternative action.

Since there is no statewide affirmative action plan, the recommendation as written could not be implemented. However, training programs are provided for chief judges, court managers, and court personnel officers on civil rights laws and other applicable employment laws. Also, the Equal Employment Opportunities Committee's recommendations, which were adopted by the Supreme Court in the summer of 2000, include a provision that all State Courts System managers be trained on the new recruitment regulations.

In Progress

- The Chief Justice of the Florida Supreme Court should promulgate, by order, a grievance procedure for the State Courts System, to be utilized by any employee of the State Court System who believes he or she has been the subject of an employment decision improperly influenced by race or ethnicity.

implemented

Implemented.

A statewide policy statement was adopted by the Chief Justice in 1993. Grievance procedures have been established within each trial and appellate court, and filed with the Office of the State Courts Administrator. The grievance procedures are being actively utilized by court staff around the state.

Discussion

There has been improvement in each category of court staff, and the courts appear to be moving in the right direction. In 1990, 4.6% of state-funded court staff positions were held by African Americans, and 4% were held by Hispanics. By 2000, those numbers had grown to 8.1% African American and 8.4% Hispanic. For a more complete picture of the trial court staffing complement, however, one must look at both state and county-funded positions. According to a 1998 survey, 11% of the non-judicial trial court positions were held by African Americans and 13.9% were held by Hispanics.

There is less significant improvement, however, in the leadership positions and higher level job classifications. In 1990, no African Americans or Hispanics held positions within the court system at the administrator level. There has been slight improvement, but today only 3.5% of state-funded administrators are African American, only 1.7% are other racial/ethnic minorities, and there are no Hispanics. There has been some progress, as well, among professional positions. In 1990, 3% were filled by African Americans, 4.7% Hispanic, and only 0.2% other. Today, 8.2% of the state-funded professional positions are filled by African Americans, 7.4% by Hispanics, and 1.7% by other racial and ethnic minorities.

It should be noted that these statistics are a snapshot in time and may fluctuate from day-to-day; nevertheless, they reflect a positive trend of increasing diversity among court staff. As with diversity among judges, the level of diversity of court staff also varies among the geographical areas.

The Florida State Courts System, in its legislative budget request for fiscal year 2001-2002, requested funding for an equity coordinator. This position would assist in developing and implementing policies and procedures that ensure equal employment opportunities; formulate and conduct training programs to ensure that court managers comply with State

Courts System Equal Employment Opportunities policy, as well as state and federal civil rights laws; assist in investigating and resolving employees' complaints of discrimination; prepare and submit statistical and narrative reports to the Chief Justice, including work force profiles and annual reports of trial and appellate court recruitment and selection activities; advise the trial and appellate court chief judges of noncompliance and violations of civil rights policies, and recommend corrective action; and assist in providing staff support to court committees established to address equity issues. Funding of this position is critical to the State Courts System's success in ensuring that court staff fully reflects the rich cultural diversity of the people the system serves.

The Advisory Committee noted that if continuing progress is to be made, the trial and appellate courts must embrace and fully comply with both the spirit and the letter of the revised personnel rules that were developed by the State Courts System Equal Employment Opportunity Committee. Additionally, demographic projections for the state should be analyzed by the Office of the State Courts Administrator, to prepare the courts for the ever-changing workforce of the future. The Florida Supreme Court must also be ever-vigilant and proactive in its leadership to improve the diversity of court staff, and should continue to establish and support committees such as the Equal Employment Opportunity Committee and the Committee on Employment Fairness.

2. Staff of Other Justice System Partners

Original Recommendations and Implementation Status

- The Legislature should mandate that each Clerk of the Court develop and implement an affirmative action plan, which shall establish annual goals for ensuring full utilization of minorities in the work force of county-level court-related employees. These plans should be submitted to and approved by the Director of the Office of Equal Employment Opportunity of the State Court System. The approval should be certified to the appropriations committees of both houses of the Legislature and to the executive branch officials who can ensure that state revenues normally transferred to counties may be withheld for non-approval of or non-compliance with the locally adopted affirmative action plans.

Implemented in part.

This recommendation was partially implemented by legislation, approved by Florida lawmakers in 1991, that requires each clerk of court to conduct an annual review of race and gender employment policies, including compensation, for all persons employed or appointed by the clerk of court and to eliminate any inequities uncovered by the review.

Please note that the State Courts System's Equal Employment Opportunities Office may not have authority to approve clerks' affirmative action plans, since the clerks of court are constitutional officers and not part of the State Courts System proper.

implemented

- The Governor, as well as the Governor and Cabinet, should, by executive order or resolution, immediately require the executive agencies under their direction and having responsibilities relating to the judicial system to report on compliance with the provisions of the agency's affirmative action plan developed pursuant to section 110.112, Florida Statutes. Furthermore, the Governor should request from the Judicial Administration Commission a report on the compliance by state attorneys and public defenders with their affirmative action plans developed pursuant to section 110.112, Florida Statutes.

Implemented in part.

This recommendation was partially implemented by legislation approved in 1991, that requires state attorneys and public defenders to review and eliminate staff salary discrimination based on gender or racial considerations. In addition, the 1991 Legislature strengthened provisions regarding the affirmative action plans required of executive agencies, including state

implemented

attorneys and public defenders, and accelerated the date of the plans' annual review by the Governor and Cabinet.

Discussion

Due to limited time and resources, this preliminary assessment was unable to ascertain what improvements, if any, have been made in diversifying the staff of other justice system partners.

II. LAW ENFORCEMENT INTERACTION WITH MINORITIES

Original Recommendations and Implementation Status

- Law enforcement organizations should adopt plans to recruit, hire, retain, and promote minorities.

status
unknown

Unknown, pending further study.

- The Florida Department of Law Enforcement and local law enforcement organizations should develop a minority career development program.

status
unknown

Unknown, pending further study.

- The Legislature should create and fund a new division within the Attorney General's Office to be called the "Civil Rights Division." This division would be charged with the authority and responsibility to bring injunctive and compensatory suits against individuals and agencies, including law enforcement agencies, which engage in harassment or other inappropriate conduct on the basis of race or ethnicity.

implemented

Implemented.

See also implementation activities for the following recommendation.

- The Legislature should mandate that each law enforcement agency adopt a policy which regulates the use of force and domination on stops, recognizes that excessive force is an impediment to stable and effective law enforcement, and provides disciplinary action for violations of the policy.

implemented

Alternative action taken.

In 1991, the Florida Legislature agreed to vest, in the newly-created Civil Rights Division, the power to investigate alleged racial harassment by law enforcement officers.

Over the past decade, as the issue of racial profiling has achieved prominence, a number of law enforcement agencies in Florida have begun to collect race and ethnicity data on the individuals stopped and detained by their officers. In 1997, an analysis by the Orlando Sentinel found that the Orange County drug squad that patrols the Florida Turnpike carries out six times as many searches on black motorists as on whites. Since January 2000, the Florida Highway Patrol has collected race data on all motorists it stops. Congress is currently

considering a bill (the “Traffic Stops Statistics Study”) that would mandate such data collection.

*status
unknown*

- The Legislature should review the present structure of managing and funding the 40 centers which presently provide training to law enforcement officers throughout the state and determine whether program offerings can be improved through closer collaboration among the centers.

Unknown, pending further study.

implemented

- The Legislature should, by statute, expand the responsibilities of the recently created “Criminal Justice Executive Institute” to include the design and implementation of research projects which will combine the talents of community colleges and universities toward the end of improving law enforcement efforts with regard to the minority community.

Implemented.

This recommendation was implemented by legislation approved in 1991, that provided for research and training projects aimed at improving law enforcement efforts with regard to minorities.

- The Legislature should amend Chapter 943, Florida Statutes, to mandate the following improvements to law enforcement training in Florida:
 - a. cultural representation among police instructors;
 - b. development of a “train the trainer” curriculum for Florida’s law enforcement instructors and certification of all instructors by attending “train the trainer” classes, especially on racial and ethnic bias-related topics;
 - c. specialized training for internal affairs officers in the area of ensuring equality and fairness in the investigation of internal affairs complaints;
 - d. an increase in the number of hours designated for training on ethnic and cultural groups;
 - e. integration of concepts relating to racial and ethnic bias into other courses in the Criminal Justice Standards and Training curriculum;
 - f. reclassification of racial and ethnic relations topics as “proficiency” areas, subject to serious standardized testing;
 - g. instruction in cross-cultural awareness and communications for Field Training Officers;
 - h. the development of standardized, uniform, specific, and culturally sensitive lesson plans and instructors’ guides in high risk/critical task areas identified as important

because of their effect upon the minority community, as well as the monitoring and inspection of the classes covering these areas;

- i. the updating of videotapes and other materials used in race and ethnicity-related training;
- j. the initiation of community interaction sessions at each training center through interaction components in the training classes; and
- k. for chief executives, including sheriffs and police chiefs, training in areas relating to racial, ethnic and cultural awareness.

implemented

Implemented.

This recommendation was implemented by legislation approved in 1991, which significantly strengthened the training all law enforcement officers must receive, including in the area of cultural awareness.

Discussion

Law enforcement recognized that the quality of policing is enhanced when their officers are well-prepared to meet the challenges they face every day. Therefore, law enforcement embraced and implemented the training recommendations. Cultural awareness was integrated into every aspect of law enforcement educational curricula. Florida's law enforcement establishment is to be commended for its extraordinary efforts and commitment in this regard.

However, there appears to have been less progress on other law enforcement issues, such as racial profiling. Also, due to limited resources, this preliminary assessment was unable to ascertain the current status of law enforcement employment practices as they relate to racial and ethnic minorities.

Equitable treatment by the legal system should be afforded to all persons in all situations, but fairness is even more critical in the criminal justice system because an individual's liberty interests are at stake. An individual's interaction with the criminal justice system begins with law enforcement. Any bias that attaches during that initial stage is likely to accompany an individual through the entire criminal process. Eradicating any vestiges of racial or ethnic bias in interactions with law enforcement can have a tremendous positive impact on the justice system; therefore, substantial effort should be made to prevent inappropriate bias from entering the criminal justice at this crucial first stage of the process.

The Advisory Committee believes it would be beneficial for the State of Florida to evaluate the effectiveness of diversity training for law enforcement officers and study its impact on racial and ethnic minorities in Florida; evaluate and document the effect of community policing, including its impact on the crime level; and document the efforts of the Civil Rights Division within the Attorney

General's Office, as it relates to law enforcement interaction with racial and ethnic minorities.

III. JUVENILE JUSTICE

Original Recommendations and Implementation Status

- The Legislature should amend Chapter 39.023, Florida Statutes, to mandate minority representation among the membership of the seven-member Commission on Juvenile Justice.

implemented

Implemented.

The entire juvenile justice system has been restructured since the issuance of this report. The Commission was replaced by the Juvenile Justice Accountability Board (section 985.401(b), Florida Statutes). The composition of the board must be broadly reflective of the public and must include minorities and women.

- Police practices, including field adjustments, relating to law enforcement interaction with juveniles should be recorded for supervisory review and monitoring to determine whether and how race or ethnicity has entered into arrest and disposition decisions by Florida's law enforcement personnel.

status unknown

Unknown, pending further study.

The Department of Juvenile Justice is acutely aware of racial and ethnic issues and is working to address them. Furthermore, the Committee on Juvenile Fairness Issues of the Supreme Court Commission on Fairness, is addressing race, ethnicity, gender, and disability issues in the juvenile delinquency and juvenile dependency systems.

- The State should mandate the establishment of procedures, in each of the agencies comprising the juvenile justice system, to encourage and provide means for reporting, investigating, and responding to professionals whose decisions appear to have been influenced by racial or ethnic bias.

status unknown

Unknown, pending further study.

The entire juvenile justice system has been restructured since the issuance of this report. The Department of Juvenile Justice is acutely aware of racial and ethnic issues and is working to address them. Furthermore, the Committee on Juvenile Fairness Issues of the Supreme Court Commission on Fairness, is addressing race, ethnicity, gender, and disability issues in the juvenile delinquency and juvenile dependency systems.

- Policies and practices of the Department of Health and Rehabilitative Services should be altered so that youths referred to intake are not rendered ineligible for diversion programs because their parents or guardians (a) cannot be contacted, (b)

are contacted but are unable to be present for an intake interview, or (c) exhibit attitudes and styles of behavior that are perceived as uncooperative or unfamiliar to intake staff.

*status
unknown*

Unknown, pending further study.

The entire juvenile justice system has been restructured since the issuance of this report. These responsibilities have been shifted to the Department of Juvenile Justice, which is acutely aware of racial and ethnic issues and is working to address them. Furthermore, the Committee on Juvenile Fairness Issues of the Supreme Court Commission on Fairness is addressing race, ethnicity, gender, and disability issues in the juvenile delinquency and juvenile dependency systems.

- To determine the necessity of 1) detention versus prehearing release, and 2) secure detention versus home detention, DHRS should promulgate criteria which are sensitive to racial, cultural, and ethnic differences in family structure and styles of childrearing and supervision.

*status
unknown*

Unknown, pending further study.

The entire juvenile justice system has been restructured since the issuance of this report. These responsibilities have been shifted to the Department of Juvenile Justice, which is acutely aware of racial and ethnic issues and is working to address them. Furthermore, the Committee on Juvenile Fairness Issues of the Supreme Court Commission on Fairness, is addressing race, ethnicity, gender, and disability issues in the juvenile delinquency and juvenile dependency systems.

- In situations where persons with economic resources (e.g., income or insurance benefits) commonly arrange for private care outside of the juvenile justice system—i.e., for first offenders, and for those who engage in minor forms of misbehavior—treatment services of equal quality should be made available outside of the juvenile justice system to serve the poor, especially poor minority youths.

*status
unknown*

Unknown, pending further study.

The entire juvenile justice system has been restructured since the issuance of this report. The Department of Juvenile Justice is acutely aware of racial and ethnic issues and is working to address them. Some emphasis and resources are directed to prevention; however it is difficult to determine “equal quality.” The Committee on Juvenile Fairness Issues is addressing race, ethnicity, gender, and disability issues in the juvenile delinquency and juvenile dependency systems.

- The Legislature should amend Chapter 39.024(2), Florida Statutes, to mandate minority representation among the membership of the 17-member Juvenile Justice Standards and Training Council.

implemented

Implemented.

According to section 985.406(2)(b), Florida Statutes, the composition of the Council must be broadly reflective of the public and must include minorities and women.

- The Florida Legislature should mandate the development of a thorough race, ethnic, and cultural diversity curriculum which personnel at every level of Florida’s juvenile justice system should be required to complete through continuing education credits. The curriculum should emphasize facts and myths about racial and ethnic minorities and the effect of bias in justice processing.

*status
unknown*

Unknown as to action among affected executive branch agencies, pending further study.

Diversity training is made available to all Florida judges, including those presiding over juvenile court.

- The State, through all appropriate agencies including, but not limited to, the Department of Health and Rehabilitative Services, Department of Education, State Courts System, State Attorneys, and Public Defenders, should actively support, through financial and other means, the establishment and extension of local community programs and efforts aimed specifically at addressing the needs of Florida’s minority juveniles.

in Progress

In progress, but extent and success is unknown, pending further study.

Discussion

Improving the processing of cases involving juveniles is a priority for Chief Justice Wells' administration. More and more of Florida's children and families are becoming involved in the juvenile delinquency and dependency systems. In 1999, there were more than 81,000 new criminal delinquency cases filed for children in Florida courts. As Chief Justice Wells recently stated, "It is our obligation to ensure that these cases are given adequate and appropriate attention by Florida courts; thereby protecting our most valuable resource – our children."

Several initiatives are currently underway in the court system, to improve the juvenile dependency and delinquency systems. Additionally, state and national research abounds on minority youths involved in the delinquency system. The Florida State Courts System should continue its efforts to improve the processing of cases involving children, with a particular emphasis on delinquency and other areas where there is a disproportionate impact on racial and ethnic minority youths.

IV. THE ADULT CRIMINAL JUSTICE SYSTEM

A. Non-English Speaking Defendants

Original Recommendations and Implementation Status

- The Florida Legislature should amend section 90.606, Florida Statutes, to make clear that all non-English speaking criminal defendants have a right to a certified interpreter at all critical stages of the criminal prosecution. This would make such right co-extensive with the Sixth Amendment right to counsel in criminal cases.

Attempted but failed.

Attempted

In the 1992 session, Representative Logan introduced a bill to implement this recommendation. HB 2151 died in the Judiciary Committee. The legislative citations from the 1993-97 legislative sessions indicate no further action on this issue.

- The courts, through promulgation of a rule of practice and procedure, should be required affirmatively to inquire, during first appearance as to a criminal defendant's need for the services of an interpreter.

Not Addressed

Not implemented.

No rule has been adopted in response to this recommendation. The quadrennial changes to the Florida Rules of Criminal Procedure in 1992 (case #79,615) and 1996 (cases #87,679 and #88,807) did not contain any mention of such a change. However, the provisions of rule 3.130(c)(3), Florida Rules of Criminal Procedure, would seem to require an interpreter in appropriate circumstances. That subsection provides that "no further steps in the proceedings should be taken until the defendant and counsel have had an adequate opportunity to confer" A non-English speaking defendant would not be able to confer without the services of an interpreter.

- The Florida Legislature should mandate and fund the development of a statewide training and certification program, to be administered through the Office of the State Courts Administrator. Once funded, OSCA should be encouraged to collaborate with the state university and community college systems to design a curriculum appropriate for pre- and post-certification education.

Alternate action taken.

In Progress

This recommendation came before the Legislature on several occasions, but no action was taken. Nevertheless, during the late 1990s the Office of the State Courts Administrator was successful in obtaining a full-time position to address interpreting issues. The Florida courts currently offers a two-day orientation/ training programs for interpreters of all languages and administers a qualifications examination to Spanish and Haitian Creole interpreters. After November 2000, qualifications examinations will be offered to Russian, Vietnamese, Korean, and Cantonese interpreters.

Additionally, Rules of Judicial Administration have been proposed which, if adopted, will provide for a certification board, set forth the requirements for certification of interpreters, provide for discipline and regulation of court interpreters, establish a code of professional responsibility, provide for continuing education requirements, and provide direction to the courts on the appropriate use of interpreters.

Technological advances over the past decade—such as teleconferencing and videoconferencing with interpreters in remote locations—is also increasing the accessibility and quality of court interpreters in less-common languages.

- The Office of the State Courts Administrator should, through appropriate means, ensure the effective dissemination of information to all judges and court administrators regarding the availability and appropriate use of court interpretive, training, and certification services.

Implemented

Implemented.

Training is available to judges and court administrators about the appropriate use of interpreters in the courtroom.

Discussion

Substantial progress has been made in increasing the availability of qualified court interpreters. However, there are potentially some areas, such as rural courts and civil cases, where this may still be problematic. Efforts should continue until all language barriers are eliminated from the justice system. The Florida State Courts System should continue its efforts to improve the availability, quality, and appropriate use of court interpreters.

B. Bail and Pre-Trial Release

Original Recommendations and Implementation Status

- The Florida Legislature should authorize and fund a project to compare the pre-trial release practices of several jurisdictions. The goals of the project should be to determine which types of pre-trial services programs best 1) enhance the judge's ability to make more equitable decisions as to pre-trial release; and 2) reduce the extent to which pre-trial detention is a function of income.

Implemented.

implemented

Several studies have been undertaken with regard to pretrial release, including (1) The Florida Advisory Council on Intergovernmental Relations (ACIR) Interim Report: Current Need for and Status of Pretrial Intervention Procedures in Florida's Criminal Courts (April 1991); (2) Intergovernmental Relations in Local Jail Finance and Management in Florida: A Comprehensive Report (ACIR, August 1993); (3) An Evaluation of Florida's Local Pretrial Detention Population (The Leroy Collins Center for Public Policy, August 1994); and (4) The Final Report of the Task Force for the Review of the Criminal Justice and Corrections Systems (January 1995). In addition, ACIR undertook a study of county jail expenditures resulting in a final report in September 1990. The studies recommended increased expenditures, but funding has been insufficient.

- The Education Conferences for Circuit and County Judges should offer continuing instruction as to the propriety and implications of judicial decisions concerning pretrial release and bail. That instruction should emphasize the need to overcome cultural differences and stereotypes as to minority lifestyles when making bail decisions.

implemented

Implemented.

- The Chief Judge in each judicial circuit should ensure the effective dissemination of complete information regarding the pre-trial programs within that circuit.

status unknown

Unknown, pending further study.

Discussion

There has been extraordinary improvement in judicial education on diversity issues, including the availability of training programs on bail and pre-trial release. The courts should continue their efforts to present programs on fairness education topics for all judges and court staff. The Florida State Courts System should continue its efforts to provide education programs on fairness topics for all judges and court staff. Cultural differences and behaviors in the courtroom should be considered as an education topic for judges.

It is not apparent that there has been a substantial change in regard to bail and pre-trial release practices and policies. Florida's Constitution sets forth the presumption that all defendants, except for those charged with a capital offense or one punishable by life imprisonment, are entitled to pre-trial release on reasonable conditions. The original report documented that Florida's bail and pre-trial release systems operate against lower-income individuals and racial and ethnic minorities. Numerous studies document the critical link between pre-trial detention and case outcome. Because liberty interests are at stake, it is incumbent upon the justice system to ensure a level playing field.

C. Juries

Original Recommendations and Implementation Status

- The Florida Legislature should further its resolve to ensure that jury composition accurately reflects the diversity of the population, allowing the community conscience to be voiced through the judicial process. At the earliest possible opportunity, the Legislature should take action to clarify the appropriate timetable necessary to implement the change in the jury source list, as provided in Senate Bill 678, or adopt other responsible measures to increase the diversity of juries in Florida.

implemented

Implemented.

See section 40.011, Florida Statutes, approved in the 1991 legislative session. Florida now relies primarily on the registry of persons with drivers' licenses and state-issued identification cards as the principal jury wheel. However, section 40.011, Florida Statutes, also authorizes the clerk of court to "add to the list the name of any person who is 18 years of age or older and who is a citizen of the United States and a legal resident of Florida and who indicates a desire to serve as a juror . . . by requiring such person to execute an affidavit at the office of the clerk."

Discussion

The right to trial by a jury of one's peers is a primary and unique characteristic of the American judicial system. Jury service is a privilege and responsibility of citizenship. Racial and ethnic minority citizens should be able, along with other citizens, to exercise this fundamental right and responsibility. The Florida State Courts System should evaluate the racial and ethnic composition of Florida jury pools, to determine whether the revised jury source list is, indeed, resulting in juries that reflect the rich diversity of our state.

D. Drug Courts and Other Models of Therapeutic Justice

Original Recommendations and Implementation Status

- The Legislature should, through both statutory amendments and funding priorities, expand and strengthen the use of community-based programs, pre-trial intervention programs, and probation. All offenders in need of education, training, or drug treatment should be provided the same.

In Progress

Partially implemented.

Treatment-based drug courts have been substantially expanded over the past 10 years. There are also substance abuse treatment programs within the Department of Corrections. Currently, judges can order substance abuse treatment for offenders sentenced to state prison.

Pre-trial programs were discussed on the previous page.

Community-based programs have been created, but with limited financial assistance. In line with recommendations by the Task Force for the Review of Criminal Justice and Corrections System and Local Government and the State - Local Partnership in Community Based Criminal Sanctions and Programs (ACIR February 1995), the Legislature passed substantial changes in Chapter 95-283, Laws of Florida. This legislation expanded the concept of community corrections embodied in section 948.51, Florida Statutes, by allowing two or more counties to establish a consortium and pool their resources. Thus, the mechanism is in place for diverting nonviolent offenders from the state prison system by punishing such offenders with community-based sanctions, and thereby reserving the state prison system for those offenders who are deemed to be most dangerous to the community. However, it has not received sufficient funding.

- The Legislature should adequately fund the literacy, educational, and vocational programs under the purview of the Correctional Education School Authority and PRIDE, as well as the incarcerative drug-treatment programs provided by the Dept. of Corrections.

Status Unknown

Unknown, pending further study.

The Correctional Education School Authority was subsequently eliminated; however, PRIDE now provides some educational opportunities to Florida inmates. Unknown as to the level of funding and other issues.

- The Legislature should, through adequate funding of the Drug Punishment Act of 1990 and other appropriate methods, provide sufficient community-based

In Progress

sanctions for technical probation violations, with a strong educational, vocational, and treatment component.

At least partially implemented; remainder unknown, pending further study.

As discussed elsewhere in this report, there has been a tremendous increase and success of treatment-based drug courts.

In Progress

- The chief judge in each circuit, as well as individual judges, should seek the implementation of alternative sentencing models, such as the “drug court” model in Dade County.

In progress.

There has been a tremendous increase in the number of treatment-based drug courts over the past 10 years. Each circuit court now has an operational or planned drug court. Trial courts are also experimenting with other alternative sentencing models. Such programs should be independently evaluated, and information about them should be made available to other circuits. Funding and flexibility should be provided so as to encourage pilot projects.

In Progress

- The Departments of Corrections and Health and Rehabilitative Services should actively and concurrently monitor minority access to and success in offender educational, vocational, and drug-treatment programs. Insofar as the programs are for training, those departments should collaborate with the Dept. of Labor & Employment Security. As part of that collaborative effort, each department should, through rule promulgation or other appropriate methods, ensure that educational, vocational, and drug program administrators apply fair and culturally sensitive screening and selection criteria for participation in their programs and exhibit cultural awareness in the administration of their programs.

At least partially implemented; remainder unknown, pending further study.

The Treatment-Based Drug Court Steering Committee is addressing the need for developing and implementing a statewide management information system that will provide statistics on participants and outcomes for evaluation. Grant funding has been awarded by the Drug Court Programs Office to support this initiative.

Discussion

The drug court concept originated in Miami in June 1989. Since that time, the State Courts System, in an effort to deal with an increasing substance abuse-related court docket, has continued to develop the innovative treatment-based drug court concept. Florida currently has 42 operational drug courts in not only the adult criminal arena, but also the juvenile and dependency areas. The interdisciplinary approach utilized in drug courts has resulted in numerous benefits for Florida, including:

- < An alternative process that diverts offenders to a more appropriate judicial sanction and helps them address their problems of addiction;
- < Cost savings for the criminal justice system, since the estimated cost of treatment for a drug court defendant averages \$1,200-\$3,000 per year, as compared to one year of incarceration at \$19,000-\$26,000 per year; and
- < A reduction in recidivism and time between future arrests, as indicated by preliminary evaluations.

The Florida State Courts System should evaluate the effectiveness of treatment-based drug courts and their impact on racial and ethnic minorities.

It is not apparent that there have been substantial improvements regarding the availability of other community-based or incarcerative programs. Addressing the educational, vocational, and treatment needs of racial and ethnic minority offenders facilitates these individuals' re-integration into the community, thereby reducing the rate of recidivism and benefitting society.

E. Sentencing Policies and Practices

Original Recommendations and Implementation Status

- < The Legislature, through the joint efforts of the criminal justice and corrections committees of the House and Senate, as well as the Joint Task Force on Sentencing Practices and Prison Resources, should immediately undertake a review of those cases prosecuted under both mandatory minimum statutes and the “habitual offender” statute to determine the effect of race or ethnicity in their selection, processing, or ultimate disposition. To the extent that improper considerations are playing a role, the Legislature should repeal these statutes altogether.

In Progress

In progress.

A study done by the Economic and Demographic Research Division (EDR) of the Joint Legislative Management Committee in August of 1992 concluded that blacks and males were much more likely to be habitualized even after adjustments for prior record, current offense, and other factors. Changes effected by Chapter 93-406, Laws of Florida, and Chapter 95-182, Laws of Florida, led to the requirement of uniform criteria for habitualization. Each state attorney must adopt criteria and place them on file with the Florida Prosecuting Attorneys Association. Any deviation must be explained in writing.

No similar study was done with minimum/mandatory sentences, but their use as a method to undermine sentencing guidelines was noted in an EDR study in November 1991 entitled An Alternative to Florida’s Current Sentencing Guidelines - A Report to the Legislature and the Sentencing Guidelines Commission. As a result, Chapter 93-406, Laws of Florida, abolished several minimum/mandatory provisions including those dealing with violent offenses against law enforcement and certain weapons and drug offenses.

- < All criminal justice agencies should implement data-gathering methods with regard to Hispanics so that a more accurate and continuing assessment of the impact of criminal policies on Hispanics may be measured and monitored.

Status Unknown

At least partially implemented; remainder unknown, pending further study.

The Department of Juvenile Justice has recently begun to gather data on Hispanics. Unknown as to the other criminal justice agencies.

- < The Legislature should re-examine its 1988 amendments to the Sentencing Guidelines, embodied in section 921.001(5), Florida Statutes, and ensure, through the promulgation of criteria or otherwise, that a sentence of incarceration is not being imposed upon drug, non-violent property, or other offenders who are more appropriate candidates for non-incarcerative sanctions.

Achieved, then re-instituted.

Attempted

Chapter 93-406, Laws of Florida, eliminated the 22-months provision found in Chapter 88-131, Laws of Florida. The 1997 Legislature brought the provision back in Chapter 97-194, Laws of Florida.

- < The Florida Legislature should require, as a condition of funding, that each state attorney: a) promulgate effective criteria which ensure the fair and equal exposure of the individuals to processing under mandatory minimum statutes; and b) annually submit a report to the legislative appropriations committees detailing the racial/ethnic composition of all individuals prosecuted under these statutes. To the extent that such reports reveal racial/ethnic disparities in the population of individuals who are prosecuted under these statutes, the Legislature should require a detailed justification for the impact of prosecutorial decision-making in this area.

Implemented in part.

Implemented

This recommendation was implemented, in part, by legislation approved in 1993 that required state attorneys to adopt, file, and explain any deviations from criteria used in the decision to "habitualize" offenders. In addition, chapter 93-406, Laws of Florida, eliminated many mandatory-minimum sentences. The number of inmates admitted under mandatory sentences declined from 2,842 in 1992-93 to 1,585 in 1995-96.

- < The Florida Legislature should amend section 921.141(3), Florida Statutes, to prohibit judges from imposing the death penalty in cases where the jury has recommended a sentence of life imprisonment.

Attempted

Attempted, but failed.

In 1992, the Orlando Sentinel studied Florida's death penalty and found that in the six counties analyzed, prosecutors were twice as likely to seek the death penalty when the victim was white. In those same counties, only three percent of the prosecutors were black. During the 1992 Legislative Session, there were two measures introduced on this topic. SB 1150 by Senator Carrie Meek died in the Senate Judiciary Committee, and HB 911 by Representative James Burke died in the House Criminal Justice Committee.

Racial disparity in capital cases continues to be a controversial topic. During the 2000 special legislative session, this issue was hotly debated in the Florida Legislature. The governor subsequently appointed a special committee to study the issue. While Governor Bush's death-penalty task force concluded that the evidence was insufficient to confirm racial bias, the commission urged that the following steps be taken to end the perception of racism: 1) increased anti-bias training to judges, lawyers, and police; 2) recruitment of minority lawyers and judicial nominees; and 3) adoption of rules for questioning jurors about potential bias and for appropriate jury instructions proscribing the consideration of race.

Discussion

Over the past ten years, there have been numerous changes to Florida's adult criminal punishment code. On its web site, the Florida Department of Corrections has published a Historical Summary of Sentencing and Punishment in Florida. There has been a decade of new developments since the original reports by the Racial and Ethnic Bias Study Commission were released. The impact of these developments on the crime rate as well as Florida's racial and ethnic minority population should be evaluated.

It appears that statutory guidelines in regard to charging criteria used by prosecutors are becoming more permissive. Implementation of the guidelines should be reviewed to ensure they are not disproportionately impacting on racial and ethnic minorities. The state attorneys are required to report on who is being charged under the habitual offender statutes, but it is unclear what use is made of this information. It is also unclear what criteria are used and their impact on racial and ethnic minorities, in cases involving mandatory minimum sentences for drug and gun crimes where defendants can receive waivers for providing assistance to law enforcement and prosecution.

Florida has a high population on death row. Racial disparities related to the death penalty continue to be a controversial and hotly-debated topic across the nation. The public expects swift, yet fair, punishment for violent crime. There have been numerous state and national studies on race and the death penalty, with conflicting results. The Attorney General of the United States, the American Bar Association, and others are reviewing the application of the death penalty in America. It appears this issue is being adequately addressed by credible entities.

V. THE EXPERIENCES OF MINORITY WOMEN IN THE JUDICIAL SYSTEM

Original Recommendations and Implementation Status

- < The Commission continues to encourage the Supreme Court to develop, and the Florida Legislature to fund, an Office of Equal Employment Opportunity. Once developed, this office should ensure that clearly written policies, procedures, and goals for the recruitment, selection, promotion, and retention of minorities, including minority women, are established throughout all levels of the judicial system. An annual report should be submitted to the Chief Justice outlining progress, problems, and corrective actions relating to the implementation of this plan.

Attempted but failed; Ongoing efforts under way.

In Progress

The State Courts System repeatedly requested legislative authorization and funding to establish an Equal Employment Opportunities office following the release of the report, but was unsuccessful due to state budgetary constraints.

The recruitment regulations developed in 2000 by the State Courts System's Equal Employment Opportunities Committee provide for equity in the selection and hiring of court employees. Further, each court will be required to annually report their recruitment efforts to the Chief Justice.

In the summer of 2000, the Employment Fairness Committee adopted a Resolution endorsing this recommendation and renewing the call for establishment of a statewide Equal Employment Opportunities office within the State Courts System.

In the State Courts System's Legislative Budget Request for FY 2001-02, Chief Justice Wells requested a full-time Equity Coordinator position as a high priority within the Supreme Court budget.

- < All court administrators and personnel managers within the judicial system should develop and implement an advertisement policy so that all vacancies and promotions are widely and systematically publicized. Extensive use should be made of minority-oriented media to ensure an adequate supply of minority women applicants.

In Progress

In progress.

The recruitment regulations developed by the State Courts System's Equal Employment Opportunities Committee and approved by the Supreme Court provide for equity in the selection and hiring of court employees, excluding personal staff. The new rules also require all trial and appellate courts to annually report their recruitment efforts to the Chief Justice.

In Progress

- < Judges should be encouraged to extend their selection of judicial assistants and law clerks so as to include a wider pool of applicants in order to ensure equal access for minority women. Local court administrator offices should assist judges in identifying a wider, more ethnically diverse applicant pool, by among other things, contacting placement offices at law schools.

In progress.

Education courses are provided for judges, court managers, and personnel officers on civil rights laws and other applicable employment laws.

Diversity of court staff was addressed by the State Courts System's Equal Employment Opportunities Committee and is also being addressed by the Employment Fairness Committee. The Committee on Employment Fairness will issue a comprehensive statistical report and propose strategies to continue efforts to increase diversity of court staff.

Implemented

- < Court administrators, personnel directors, and supervisors should provide opportunities to minority women to participate in educational and training programs through the state waiver system or other agency-funded mechanisms to acquire the skills necessary to increase their chances for success and future promotion.

In progress.

All court staff, including minority women, are provided with opportunities to participate in educational and training programs through the state-waiver system and other agency-funded mechanisms.

Discussion

Bias is compounded for women of color, based on both their race/ethnicity and gender. The original commission limited its scope of inquiry to minority women in the judicial workforce. However, there are additional concerns, including minority women in the corrections/prison system and other issues, that have not yet been considered.

VI. MINORITY LAWYERS IN FLORIDA

A. Governmental Contracts for Legal Services

Original Recommendations and Implementation Status

- < The Legislature should statutorily (1) ensure that minority lawyers and law firms are extended equal opportunities to perform legal services for the State; (2) require state agencies to make aggressive efforts to target and cultivate relationships with minority lawyers and law firms; (3) limit state contracts with majority-owned law firms only to those firms which themselves recruit, hire, promote, and retain minority attorneys; and (4) endorse “joint venturing” between majority and minority firms where necessary to achieve the goal of full utilization of minority lawyers and firms.

status
unknown

Unknown, pending further study.

The Minority Business Advocacy and Assistance Office (MBAAO), created as a result of the Small and Minority Business Act of 1985, has historically provided the most comprehensive statewide effort in redressing present effects of past discriminatory practices in the State of Florida. Their efforts include, but are not limited to, continuous recruiting, registering and certifying minority owned businesses and firms to participate in the state’s minority business program. The MBAAO had conducted outreach and educational efforts directed at matching minority attorneys doing business in the State of Florida with the governmental entities seeking private attorney services. Recent developments in regard to state contracts with minority business may affect how such matters are handled in the future.

In 1998, Florida’s Attorney General faced federal accusations of racial discrimination when the Miami office of the Equal Employment Opportunity Commission alleged that the office hired too few black lawyers and paid them less than their white counterparts. The Attorney General vehemently denied the pay inequity charge, but acknowledged that the office had difficulty recruiting minority lawyers because of the low salaries offered by the state in comparison with the private sector.

- < The chief judge in each circuit should initiate a review of the court appointments made by all judges within the circuit and, if necessary, adopt criteria designed to ensure the fair award of fee-generating court appointments.

In progress, with various responses in the trial courts.

In Progress

The Commission on Fairness conducted a survey on this issue. As of January 1998, the 4th, 6th, 7th, 9th, 10th, 11th, 13th, 15th, 16th, 18th, and 20th circuits report that they have criteria in place to ensure the fair award of fee-generating court appointments. In addition, the 2d circuit reports that all appointments are made through program-specific committees. The 1st, 3rd, 8th, 12th, and 19th report no action. The 5th, 14th, and 17th circuits did not respond to this question.

Discussion

Government should take a leadership role in ensuring that minority lawyers and law firms are extended equal opportunities to perform legal services.

B. The Florida Bar and Other Bar Associations

Original Recommendations and Implementation Status

- < The Florida Bar should immediately adopt and implement an affirmative action plan which sets forth goals and timetables for the full utilization of minorities on its staff, especially in staff supervisory and leadership positions. The Board of Governors should actively monitor the plan's implementation and publish, on an annual basis, the results of the plan's implementation to the Florida Supreme Court and all members of the Bar.

In Progress

Alternate action taken in part; unknown as to Bar staff, pending further study.

In response to the Commission's report as well as that of its own Equal Opportunities Commission, The Florida Bar Board of Governors adopted an aspirational policy calling for the fair representation of women and minorities in Bar groups: "It is the policy of The Florida Bar to ensure that all members, including women and minorities, have equal opportunities to be appointed to committee membership, committee leadership, and other positions." Following rancorous debate, The Florida Bar in 1995 rejected a plan to set aside three of its 50 Board of Governors' seats for minority members. Nevertheless, in 2000, four members of the Board of Governors are African American, at least two are Hispanic, and five are women.

- < All voluntary bar associations should review their membership records and develop specific strategies, where necessary, aimed at increasing the collaboration among minority and non-minority attorneys in their affected localities.

Status Unknown

Unknown, pending further study.

It should be noted that according to The Florida Bar Journal, there are nearly 170 voluntary bar associations in Florida, of which more than 40 are minority associations. However, there appears to be no concerted effort to unite bar associations and organizations on equity issues.

Discussion

The Advisory Committee believes that the Florida Supreme Court should review and evaluate, on an on-going basis:

- the racial and ethnic composition of staff at The Florida Bar;
- The Florida Bar's affirmative action plan; and
- minority representation on The Florida Bar Board of Governors.

C. Code of Conduct for Judges and Attorneys

Original Recommendations and Implementation Status

- < The Florida Supreme Court should set in motion the amendment of both the Code of Judicial Conduct and the Rules of Professional Conduct to proscribe and discipline conduct reflective of racial animus and to establish a professional and ethical obligation on the part of lawyers and law firms to actively recruit, hire, promote, and retain minorities.

implemented

Implemented in part, with progress continuing.

This recommendation was implemented in part when Florida became one of a handful of states in the country to amend its Code of Judicial Conduct and the Rules of Professional Conduct to proscribe and discipline conduct reflective of racial animus.

Further, the Supreme Court Commission on Professionalism has established a Diversity Committee to address these issues. Also, The Florida Bar recently established an Equal Opportunity Law Section.

D. Private Practice of Law

Original Recommendations and Implementation Status

- < The Florida Chamber of Commerce, the Council of 100, and other business leaders should adopt, as the policy of businesses in Florida, the requirement that all law firms with which these businesses contract must demonstrate, as a prerequisite to being retained, the firm's commitment to recruit, hire, promote, and retain minority attorneys.

Status
Unknown

Unknown, pending further study.

- < Law firms should actively recruit from, and establish relationships with, law schools with high enrollment of minority law students.

Status
Unknown

Unknown, pending further study.

- < Law firms should increase cultural awareness and sensitivity at the interview stage by educating interviewers as to questions and behavior that might be discriminatory or otherwise offensive to minority candidates and by including minority attorneys on interview, selection, and hiring teams.

Status
Unknown

Unknown, pending further study.

- < Law firms should review those factors which may be inhibiting minority participation in, and the utilization of minorities from, summer associate programs and adopt specific strategies designed to increase the participation and full-time utilization of minority summer associates.

Status
Unknown

Unknown, pending further study.

- < Law firms should broaden their recruiting and hiring criteria to weight measures of a candidate's ability in addition to GPA and class rank.

Status
Unknown

Unknown, pending further study.

status
unknown

- < Law firms should give serious consideration to participating in the Texas/Tulane Minority Clerkship Program, or any comparable program, which seeks to place first-year minority law students as summer associates, with the goal of expanding the range of criteria upon which the law firm may judge the likelihood of the student's ultimate success with the firm.

Unknown, pending further study.

implemented

- < The Florida Bar, through the active and ongoing assistance of its Committee on Equal Opportunities in the Profession, should develop, maintain, and disseminate a directory of practicing minority lawyers, noting the attorney's location, area of practice, and career goals, to facilitate the lateral hiring of minority attorneys for Florida's major law firms.

Implemented.

In September 1994, The Florida Bar Board of Governors adopted a "Minority Participation Resolution" encouraging law firms to hire more minorities and promising a concerted effort to produce a measurable increase in the number of minority attorneys participating in Bar activities.

For the past two years, the Equal Opportunity Law Section has published a directory of minority lawyers.

Discussion

According to a survey by The Florida Bar, currently 2% of Florida's lawyers are African American, 7% are Hispanic, less than 1% are Asian American, and less 1% are other racial and ethnic minorities. While that represents a slight improvement over the last decade, Florida still trails the national average. Presently, The Florida Bar collects racial information on a voluntary basis. Not all attorneys complete this information. There appears to be a concern among some attorneys that the information would be misused. However, The Florida Bar Equal Opportunity Law Section is considering whether to recommend that such demographic information be collected on a mandatory basis.

While the pool of minority lawyers is too limited, entities that are committed to fairness have made the extra effort and had some success in achieving true diversity in their workforce. More effort should be made to foster the professional development of minority lawyers in Florida. Experienced lawyers should serve as mentors; law firms should ensure equal employment opportunities; businesses should contract with law firms that demonstrate a commitment to diversity; and The Florida Bar should provide leadership in fostering the professional growth of minority lawyers.

Due to limited time and resources, this preliminary assessment was unable to ascertain what improvements, if any, have been made by to improve the circumstances of racial and ethnic minority lawyers involved in the private practice of law in this state.

E. Law School

Original Recommendations and Implementation Status

- < Law schools should develop and implement a five-year plan containing specific goals for attaining minority representation within the student body which reflects the level of minority representation among undergraduates.

status
unknown

Unknown, pending further study.

Minority admissions to Florida law schools have increased over the past decade by six percent, according to Bar figures. However, Florida's college admissions policies are currently being revised and the impact of those changes on minority law school admissions is unknown at this time.

- < Law schools and their respective undergraduate institutions should develop cooperative minority recruitment programs. Recruitment programs should focus specifically on high schools with high minority enrollment, as well as community colleges and universities. All law schools should appoint a minority recruiter to assist in these efforts.

in Progress

In progress.

During the 2000 session, the Florida Legislature approved the establishment of two additional public law schools, within universities that have a record of successfully recruiting and graduating minority students.

- < The Florida Legislature should immediately and substantially increase funding for financial assistance to needy minorities applying to law school. In addition, law schools should continue diligently to seek further funding for such scholarships from the private sector. Research and teaching assistantships should also be made available.

implemented

Implemented, with progress continuing.

In 1991, The Florida Bar Foundation established a minority scholarship program, under which a total of \$3 million was subsequently awarded to 174 minority law students. The Bar dropped its race-based eligibility requirement in 1997 because of concerns over the effect of the 1996 Hopwood decision, and ended the program altogether in 1999 because of a lack of funds.

In 1994, the Florida Legislature approved the Minority Participation in Legal Education scholarship program, with the goal of increasing by 200 the number of minority students enrolled in law schools in this state. By April of 1999, 126 recipients had graduated. The program also awards undergraduate scholarships. Funding appropriations

have varied over the years. The program averages approximately 370 applications annually and awards about 70 scholarships.

It should also be noted that the American Bar Association has recently established a scholarship fund for minority students. Nova Southeastern University in Ft. Lauderdale has agreed to match the ABA's \$5,000 diversity scholarships for recipients who enroll in their law school.

The availability of these scholarships has been credited over the past decade with a six percent increase in minority law student enrollment, according to Bar figures.

status
unknown

- < Law schools should, through the promulgation of an affirmative action plan, formally adopt and implement policies which reflect specific goals and strategies for recruiting, retaining, and advancing African-American, Hispanic, Native American, and Asian faculty.

Unknown, pending further study.

status
unknown

- < All law schools should develop a summer preparatory program for admitted first-year students with demonstrated academic need, building upon the excellent efforts of those Florida law schools which currently offer such a program.

Unknown, pending further study.

status
unknown

- < All law schools should continue to collaborate with the voluntary bar associations in each locality to duplicate the "Professional Opportunities for Black Law Students Program," instituted in Dade County through the efforts of the University of Miami Law School and the Dade County Bar Association, with the goal of expanding the employment potential of minority law students upon graduation.

Unknown, pending further study.

- < Law schools should increase efforts to provide students with appropriate mentors and should, through direct and indirect means, encourage and assist in the formation of peer support groups.

Unknown, pending further study.

*status
unknown*

- < All placement offices should seek to identify and develop relationships with law firms which have proven records of minority hiring, as well as those willing to give serious consideration to factors in addition to GPA and class rank.

Unknown, pending further study.

status
unknown

- < Placement offices should increase their efforts to reach minority students and graduates as early as possible in their placement efforts and should counsel students early as to the specialty areas of visiting firms.

Unknown, pending further study.

status
unknown

- < Law schools should aggressively seek the support and assistance of minority alumni as potential faculty candidate referrals, and should seek to increase the involvement of minority and non-minority practitioners and alumni in summer institutes, workshops, and internships, and as guest lecturers, mentors, and advisors. The active use of an intermediate or part-time status, with a commensurate level of compensation, is encouraged.

Unknown, pending further study.

status
unknown

The dearth of minority faculty in Florida's law schools continues to be a major problem. In May of 1999, five female professors at Florida State University's law school resigned en masse, alleging "pervasive distrust, sex harassment and racial harassment and retaliation." In September of 2000, Ken Nunn, the University of Florida's only remaining tenured African-American law professor, resigned, saying "I have been providing this university with cover, and I'm not going to do it any more."

- < The Florida Legislature should establish a fellowship fund to support an academic scholars program for minorities interested in law teaching and research, to be developed at one or more of Florida's law schools. A major goal of the program would be to assist minority attorneys currently practicing law in Florida to become faculty members at one of Florida's law schools. The endeavor should be a cooperative effort among the Board of Regents, The Florida Bar, the Florida Chapter of the National Bar Association, the Cuban American Bar Association, other voluntary bar associations, and law schools.

Unknown, pending further study.

status
unknown

- < Law schools should undertake a periodic review of their curricula to include course materials that will engender sensitivity to and understanding of different cultures. The schools should also give instruction on the lingering existence and effects of racial and ethnic bias in the courts, the judicial system, and the legal system.

status
unknown

Unknown, pending further study.

- < The Board of Regents, the State Board of Community Colleges, and the Department of Education should continue aggressively to support the provision of responsible multi-cultural instruction to elementary, high school, community college, and undergraduate students.

status
unknown

Unknown, pending further study.

Discussion

To achieve true diversity in the legal profession, Florida must encourage an increase in the number of racial and ethnic minority lawyers and foster their professional development. During the 2000 session, the Florida Legislature approved the establishment of two new public law schools, with the goal of increasing diversity among Florida's legal profession. The Florida Bar Foundation had to discontinue its minority scholarship program, due to funding problems; however, legislatively-funded and ABA-funded minority scholarships are available and must continue. Also, undergraduate preparation for law school should continue to be an important area of focus.

Due to limited time and resources, this preliminary assessment was unable to ascertain what improvements, if any, have been made by the law schools to increase diversity among their students and to provide racial and ethnic minority students with the support they need to successfully complete law school.

F. The Bar Admission Process

Original Recommendations and Implementation Status

- < The Florida Board of Bar Examiners should immediately review those questions identified in this report as performing differentially between White and Black candidates and revise or eliminate the questions for which the language, situations, or inherent structural components of the questions are most likely accounting for the disparate performance.

implemented

Implemented.

In December of 1991, at the formal ceremony in which the Commission on Racial and Ethnic Bias presented its second report to the Supreme Court, the Chair of the Florida Board of Bar Examiners indicated that the Board had agreed to permanently discontinue using the two dozen exam questions the Commission's experts found most objectionable. The Board also retained its own consultant in response to this recommendation.

The latest race/ethnic-related bar exam issue involves a proposal to increase the pass/fail standard. Law professors and others have expressed concern about this proposal's impact on minority bar applicants.

- < The Florida Board of Bar Examiners should obtain racial/ethnic information on candidates for the Bar exam so that performance levels of majority and minority candidates can be monitored on a continuing basis.

in Progress

In progress.

By letter dated March 28, 2000, then-Chief Justice Major Harding approved The Florida Board of Bar Examiners' request to collect demographic data pertaining to bar applicants, with certain restrictions as to the scope of the inquiry and the purposes for which this data may be utilized.

- < The Florida Board of Bar Examiners should provide for the systematic review of all items, prior to their use, by experts who are familiar with the language issues and problems faced by minority candidates and non-native English speakers in order to detect potential cultural biases in the items themselves.

implemented

Implemented.

The Florida Board of Bar Examiners has indicated to the Court that the Board "has and continues to revise questions which contains [sic] language found offensive by Dr. Swaminathan's panel of experts." See July 1993 Board Minutes.

- < The Florida Board of Bar Examiners should make the data described above available to Florida's law schools so that the schools may 1) assist the Bar Examiners in discerning what analytical skills the Bar exam should seek to assess and in crafting items which most appropriately measure those skills; and 2) adapt their teaching practices so as to produce lawyers who are capable of passing a Bar exam which fairly tests those analytical abilities.

In Progress

In progress.

The Board of Bar Examiners meets regularly with the deans of Florida's law schools to exchange information and discuss areas of mutual interest. In previous years, the relationship between the two groups was strained, but the situation has improved dramatically in recent years.

- < The Florida Board of Bar Examiners should also share the by-product of its analyses above with the licensing authorities for other professions so that those authorities may assess the presence of potential biases in all professional licensing exams presently being utilized in Florida.

Status Unknown

Unknown, pending further study.

- < All Florida law schools, once provided with this report and further information from the Board of Bar Examiners as described above, should review their teaching practices and curricula to ensure that both are geared, as much as possible and consistent with the academic goals of both the school and legal education, to prepare students for the rigors of the Bar examination process.

Status
Unknown

Unknown, pending further study.

The Board of Bar Examiners meets regularly with the deans of Florida's law schools to exchange information and discuss areas of mutual interest. In previous years, the relationship between the two groups was strained, but has improved dramatically in recent years.

- < The Florida Board of Bar Examiners should ensure the inclusion of minorities among those individuals who develop both multiple-choice and essay questions for use in the Florida Bar exam.

Implemented

Implemented.

The Florida Board of Bar Examiners has adopted an affirmative action plan to ensure, as much as practicable, that minorities are included among those who draft Bar exam questions.

- < All Florida law schools should immediately consider and develop appropriate mechanisms designed to assist their students in passing the Bar exam. Possible mechanisms include: a) requiring that commercial Bar review courses, as a prerequisite to access to on-campus sales, provide scholarships to needy students to cover the cost of the review course; b) with assistance from public or private donors, providing direct funding to needy students for the purpose of taking a commercial Bar review course; and c) developing a supplemental Bar review program for needy students, which would focus on improving essay-writing and test-taking skills, with a heavy emphasis on individual performance.

Attempted

Implemented, but since discontinued.

In 1993, The Florida Bar Board of Governors approved the Law Education Assistance Program that provided stipends to African American law graduates to enroll in a Bar review course. Several private review course providers agreed to match the stipend. Over 100 scholarships were awarded, but the program was discontinued in 1995 due to a lack of funds.

Discussion

Proposals to raise the passing grade on the bar examination and other issues affecting admission should be evaluated to determine their impact on racial and ethnic minority bar applicants.

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