

**EXECUTIVE SUMMARY:  
REPORTS & RECOMMENDATIONS OF  
THE FLORIDA SUPREME COURT  
RACIAL & ETHNIC BIAS COMMISSION**

**"Where the Injured Fly for Justice"**

**Reforming Practices Which Impede  
The Dispensation of Justice  
To Minorities in Florida**

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**Deborah Hardin Wagner, Editor**

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's Fables

# **First Report**

**December 11, 1990**

## Executive Summary

The Courts: "Where the injured fly for justice."  
—Aesop

One year ago today, then Chief Justice Raymond Ehrlich issued an administrative order creating the Racial and Ethnic Bias Study Commission. The 27 members of the Commission have spent the last year listening to the people of Florida and conducting empirical studies in an effort to address the question of whether racial or ethnic considerations adversely affect the dispensation of justice to minority Floridians.

The initial report of the Commission addresses these aspects of the justice system which, if operated unfairly, could adversely impair the basic liberties of disadvantaged minorities: the dearth of minorities who serve as judges, bailiffs, managers in police organizations, and administrators in Florida's courthouses; the treatment accorded minorities by law enforcement organizations; and the processing of delinquency cases of minority juvenile offenders.

### I. The Judicial System Work Force: Its Complexion, Demeanor And Dialect

#### A. Findings

**M** Minorities are significantly underrepresented as judges in Florida in proportion to their numbers in the general population, comprising only 5.5% of the 723 judges in the state.

**M** Minority females, at 1% of all judges, are particularly scarce on Florida's bench.

**M** Minorities are virtually absent from the higher courts, serving primarily (92.5%) on the trial and limited jurisdiction courts. Four of the five district courts have no minority judges at all.

**M** The judicial appointive system, as currently structured and implemented, has failed to achieve racial and ethnic diversity, in large measure because minorities are not included in the selection process and are underrepresented in the pool from which judges are drawn. Only 5.6% and 3.6% of the membership of the judicial nominating commissions are, respectively, African-American and Hispanic. Almost half of the commissions have no minority members at all.

**M** While over 63% of the membership of the judicial nominating commissions are attorneys, not a single African-American attorney serves as a member of any of the 22 judicial nominating commissions responding to the Commission's survey. African-Americans hold only lay appointments.

**M** Judicial nominating commissions with no minority members are less successful in obtaining minority applicants for judicial vacancies than commissions which include minority members.

**M** The election process (for trial court judges) has not yielded significant representation of minorities in the judiciary in Florida.

**M** As is the case with judges, minorities are underrepresented in the work force of Florida's State Court System, constituting only 9% of all state court employees. This is particularly true as it

relates to positions of greater responsibility and authority.

**M** No African-American attorneys are employed in attorney positions by the Supreme Court.

**M** No African-American attorneys or nonattorney professionals are employed by any district court of appeal.

**M** African-Americans, Hispanics, and Native Americans continue to be poorly represented generally in the work force of the circuit and county courts, as officials and administrators in the Clerk of the Circuit Courts' offices, some state attorneys' offices, and certain court-related executive agencies.

## **B. Recommendations**

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

**M** 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.

**M** 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.

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

**M** 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.

**M** 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.

**M** The Florida Supreme Court should adopt, by rule, an affirmative action plan for the Florida State Court System, to be binding upon and administered by all components of the State

Court 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.

**M** 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.

**M** All chief judges, managers, and personnel officers within the State Court 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 Court 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.

**M** The Chief Justice of the Florida Supreme Court should promulgate, by order, a grievance procedure for the Florida State Court 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.

**M** 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.

**M** 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 Justice Administrative 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.

## **II. Law Enforcement Interaction With Minorities**

### **A. Findings**

**M** Extensive evidence suggests that minorities are too often subjected to the threat of abuse and brutality by law enforcement organizations. Survey responses suggest that African-Americans and Hispanic individuals are stopped and detained more frequently than a nonminority would be under similar circumstances and are treated with less respect and more unnecessary force than are their white counterparts.

**M** Relationships between police officers and minorities are adversely affected by cultural differences and misunderstandings.

**M** African-Americans and Hispanics are underrepresented in Florida's police agencies, representing, respectively, only 8.7% and 5.6% of all law enforcement officers. Minorities appear to be losing ground in their representation in police agencies.

**M** Minority police officers tend to receive fewer promotions than similarly situated whites and are disproportionately underrepresented in the management and supervisory ranks of police organizations in Florida. Current training is not sufficient to demonstrate the state's commitment to ensuring appropriate and culturally sensitive law enforcement action toward racial and ethnic minorities.

## **B. Recommendations**

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

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

**M** 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.

**M** 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.

**M** The Legislature should review the present structure of managing and funding the forty 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.

**M** 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.

**M** 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.

### **III. Juvenile Justice: The Need for Further Reform**

#### **A. Findings**

**M** Minority juveniles are being treated more harshly than non-minority juveniles at almost all stages of the juvenile justice system, including: arrest; referral for formal processing; transfer to the adult criminal justice system; secure detention prior to adjudication; and adjudication and commitment to traditional state-run facilities.

**M** Opportunities for informal processing and diversion are not equally accessible to minority juveniles. The deeper the penetration of the juvenile justice system towards "deep-end" commitment, the greater the overrepresentation of minority juveniles.

**M** The differential treatment of minority juveniles results, at least in part, from racial and ethnic bias on the part of enough individual police officers, intake workers, prosecutors, and judges, to make the system operate as if it intended to discriminate against minorities. It results as well from bias in institutional policies, structures, and practices.

**M** Initiatives to eliminate disparities based on race and ethnicity must extend beyond the immediate crisis of harsh treatment of people who are in trouble today, to emphasize those more recently born who will be in even greater trouble tomorrow. Long-term strategies should involve improvements in education, income levels, employment training, economic development, health care, and the host of related considerations needed to elevate the status of minorities to true equality in society.

#### **B. Recommendations**

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

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** The Florida Legislature should mandate the development of a thorough race, ethnic, and cultural diversity curriculum which personnel at every level in 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.

**M** The State, through all appropriate agencies including, but not limited to, the Department of Health and Rehabilitative Services, the Department of Education, the State Court 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.

# Second Report

December 11, 1991

## Executive Summary

On December 11, 1989, the Florida Supreme Court Racial and Ethnic Bias Study Commission was created to determine whether "race or ethnicity affects the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate." The 27 members of the Commission have, through listening to extensive public testimony and conducting numerous empirical studies, attempted to meet the Court's challenge to develop "long term strategies" for eradicating any bias uncovered by their study.

One year ago today, Chief Justice Leander J. Shaw, Jr., a prime motivating force behind the Commission's original creation, convened the Supreme Court in ceremonial session to receive the first part of the Commission's final report. Addressing concerns in the three areas of law enforcement, juvenile justice, and judicial system work force, the Commission's first report prompted the passage of legislation and the implementation of other key efforts throughout the State designed to effect meaningful, necessary change.

This second and final report of the Commission addresses the disproportionate number of minorities in the criminal justice system and the lack of minority presence within the legal profession. As distinct as these two issues may appear, they are inexorably linked, with several consequences.

First, the underrepresentation of minorities as attorneys and judges serves to perpetuate a system which is, through institutional policies or individual practices, unfair and insensitive to individuals of color in the ways described in the Commission's first report. Second, the underrepresentation of minorities as attorneys deprives the public debate of voices which speak with conviction about the social consequences of losing so many minorities to imprisonment.

Third, the dearth of minority attorneys deepens despair among young minorities who have no personal association with anyone who has become an attorney. Fourth, by threatening the withdrawal of the tacit "consent of the governed," the underrepresentation of minorities in positions of responsibility in the judicial system weakens the very system of ordered liberty upon which our democracy is based.

The current system—characterized by an abundance of minorities in positions of vulnerability and a dearth of minorities in positions of responsibility—disadvantages the individual and society as a whole. Both fairness to the individual and economic self-interest of the State mandate the need for fundamental reforms to eradicate the stain of racism from the garments of justice in Florida.

### **I. The Adult Criminal Justice System: Reclaiming Discarded Human Resources**

#### **A. The Impact of Language Barriers**

##### **1. Findings**

**M** Fundamentally, the courts should be equally accessible to, and protective of, all persons, regardless of their ability to communicate in English. Interpreters should be made available to an individual for whom English is not the primary language at the first stage of the criminal process at which his or her liberty is at risk.

**M** Evidence in Florida suggests that the rights of non-English speaking defendants are systematically being compromised due to the lack of trained, qualified court interpreters.

**M** Many of Florida's judicial circuits do not have formal standards or criteria governing the training, certification, and use of court interpreters. The special needs of linguistic minorities have not been adequately met by the present approach of leaving to individual judges or administrators the responsibility of eliminating the language barrier.

## **2. Recommendations**

**M** The Florida Legislature should amend s. 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.

**M** 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.

**M** 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.

**M** OSCA 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.

## **B. The Importance of Effective Pre-Trial Release Policies**

### **1. Findings**

**M** Testimonial evidence suggests that the constitutional presumption of non-financial pre-trial release for criminal defendants is not being effectuated in practice in Florida, and the presumption operates least of all in favor of lower income individuals, a disproportionate number of whom are minorities.

**M** Survey responses suggest that bail and pre-trial release decisions are being made on the basis of limited information and without full appreciation for the impact a defendant's financial condition has on his or her ability to be released pre-trial. The practical effect of the release decision-making process in Florida is that, all too often, it is the bailbondsmen, not the presiding judge, who determines whether the defendant will be released pre-trial.

**M** Numerous studies and pervasive testimony document the critical link between pre-trial detention and case outcome. Defendants who are not released pre-trial are more likely to plead guilty and accept a plea bargain for the sole reason to get out of jail. Moreover, a defendant who is

detained pre-trial is less able to aid in his or her own defense, adversely affecting the outcome of any criminal trial.

**M** Pre-trial services programs are in operation in only approximately half of Florida's counties, and those which do exist vary widely from site to site. Until recently, there have been few attempts at information-sharing or collaboration among the various programs as to successful models or components. Even within individual jurisdictions, judges and administrators are often unfamiliar with their own program's practices and policies.

## **2. Recommendations**

**M** 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.

**M** 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.

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

## **C. Jury Selection**

### **1. Finding**

**M** The present system of selecting jurors through the list of registered voters does not result in juries which are racial and ethnic composites of the community.

### **2. Recommendation**

**M** 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 designed to increase the diversity of juries in Florida.

## **D. Sentencing: A Call for a Change in Direction**

### **1. The Need for Educational, Vocational, and Drug-Treatment Programs**

#### **a Findings**

**M** By 1994, 30% of all Black males between the ages of 18 and 34 will be incarcerated or under some form of state control.

**M** While African-American offenders account for 57.9% of all admissions for other offenses,

they currently comprise over 71.2% of all drug offenders.

**M** The educational, vocational, and drug-treatment needs of Florida's offenders, particularly drug offenders, are not being met by the current correctional approach which places its funding priorities on merely warehousing these offenders in the ever-expanding slew of prisons.

**M** Specific sentencing policies appear more to accentuate the disproportionate impact of current policies on the minority offender population than they do to effectively reduce crime.

**M** The racial composition of those individuals sentenced as habitual offenders reveals a wide disparity between Black and White offenders. In 1990-91, 73.6% of all habitual offenders admitted to prison were Black, even though Blacks represented approximately 60% of admissions for all crimes.

**M** As it moves in the direction of adapting its correctional philosophy to emphasize the provision of educational and vocational training and drug treatment, Florida must ensure that these programs are accessible and culturally sensitive to minority offenders.

#### **b. Recommendations**

**M** 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.

**M** 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 Department of Corrections.

**M** 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.

**M** 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.

**M** The Legislature should re-examine its 1988 amendment to the Sentencing Guidelines, embodied in s. 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, nonviolent property, or other offenders who are more appropriate candidates for non-incarcerative sanctions.

**M** 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 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.

**M** The Legislature should, through adequate funding of the Drug Punishment Act of 1990 and other appropriate methods, provide sufficient community-based sanctions for technical probation violators, with a strong educational, vocational, and treatment component.

**M** 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.

**M** 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 Department of Labor and 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.

## **2. Capital Sentencing**

### **a. Findings**

**M** The application of the death penalty in Florida is not colorblind, inasmuch as a criminal defendant in a capital case is, other things being equal, 3.4 times more likely to receive the death penalty if the victim is White than if the victim is an African-American.

**M** Since 1972, 18% of all capital cases have involved a judicial override of a jury recommendation of life imprisonment. The discretionary authority of the judge to override a jury's recommendation of life opens up an additional window of opportunity for bias to enter into the capital sentencing decision. This discretion is too often influenced by public pressure for punishment and retribution.

**M** Society must intensify its efforts to address the underlying economic and social issues and conditions which contribute to the tragically high rate of incarceration of minorities on death row.

### **b. Recommendation**

**M** The Florida Legislature should amend s. 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.

## **II. Special Concern: The Experiences of Minority Women in the Judicial System**

### **1. Findings**

**M** Minority women comprise only 1% of Florida's judges and represent 6% of all judicial employees who work as part of the state court system. Significantly, within the nonjudicial work force of the state court system, there are virtually no minority females in the upper level job classifications who are in positions of authority responsible for development of general administrative policy.

**M** No clear directives exist regarding the active recruitment, hiring, and promotion of

minority women to address their underrepresentation in the judicial system.

**M** The overreliance on word-of-mouth advertisement of vacancies within the judicial system reduces the probability of a wide selection of minority women applicants, further contributing to the underrepresentation of minority women. Specifically, the practice of selecting judges' own staff through personal referrals adversely affects minority women.

**M** Professional minority women, both as employees and attorneys within the judicial system, report that they are disproportionately assigned trivial or the least desirable work, while men are assigned the more important work.

**M** Minority women attorneys in both the public and private sectors are often on the receiving end of inappropriate and unprofessional comments, on the dual basis of their gender and race, from both judges and court personnel.

**M** Training opportunities for minority women in the judicial system, designed to improve their skills or enhance their opportunity for promotion, are limited.

**M** Minority women supervisors consistently report adverse practices which undermine their authority, including being given less responsibility and discretion in the supervision of their subordinates.

## **2. Recommendations**

**M** 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.

**M** 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.

**M** 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.

**M** 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.

## **III. Minority Lawyers in Florida: A Precious Resource Excluded and Untapped**

### **A. Government's Use of Minority Lawyers: The Need for Leadership**

## 1. Findings

**M** Minority lawyers and law firms do not receive equal opportunities to perform legal services for the State as its outside counsel.

**M** While state agencies spend significant sums of money every year to retain and utilize the services of private lawyers, they have not developed effective criteria by which to determine the selection of appropriate lawyers and firms to perform the State's work.

**M** As a large consumer of legal services, the State has the power to exercise its spending decisions in ways which would both help empower minority lawyers and law firms and promote diversity within majority-owned law firms.

**M** A widespread perception exists that minority lawyers do not receive an equitable share of fee-generating appointments by the courts.

**M** Minorities are underrepresented on the staff of The Florida Bar, especially in positions which influence policy.

## 2. Recommendations

**M** 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.

**M** 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.

**M** 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.

**M** 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.

## B. Law Firm Hiring Practices: The Time for Real Commitment

### 1. Findings

**M** Minorities are significantly underrepresented in Florida's large law firms, particularly those not located in the Miami area. African-American attorneys represent less than 1.6% of attorneys in large firms both inside and outside the Miami area, a proportion even lower than the already depressed national average. Hispanics account for only 1.7% of attorneys employed by large firms outside Miami.

**M** The underrepresentation of minority attorneys in Florida's major law firms carries

significant consequences for the development of public policy in the state, inasmuch as public leadership has traditionally been tapped from among attorneys in Florida's larger law firms.

**M** Very few Florida law firms recruit from law schools where the enrollment of minority students is traditionally high, thus bypassing one of the most logical and fertile sources of minority candidates.

**M** When making interviewing and hiring decisions, Florida law firms continue to weight most heavily the traditional factors of class rank and law school GPA. The exceptions made to these requirements are most frequently made in the cases of White males.

**M** Florida law firms consistently consider their summer associate programs as one of the primary sources of new associate hires. Yet, the increased number of minority summer associates in some parts of the state has not yet resulted in a commensurate increase of minorities entering as associates after graduation.

**M** Interactions between minority and non-minority lawyers continue to be characterized by tension, rancor, and humiliation indicative of racial conflict.

## **2. Recommendations**

**M** 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 actively to recruit, hire, promote, and retain minorities.

**M** 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.

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

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

**M** 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.

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

**M** 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.

**M** 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 attorneys' location, area of practice, and career goals, to facilitate the

lateral hiring of minority attorneys by Florida's major law firms.

## **C. Minorities in Law School: The Danger of Losing Ground**

### **1. Findings**

**M** Minority student enrollment in Florida's law schools has remained static over the past several years and does not appear to be increasing. African-American students are particularly underrepresented at 4.7% of the 1990-91 enrolled class.

**M** Because low enrollment of minority students is at least partially a consequence of the limited number of minority students applying to law school, increased attention must be directed at the high school, community college, and undergraduate levels to expand the pool from which law school candidates may be drawn.

**M** Although all Florida law schools provide some form of financial assistance, these funds tend to be extremely limited and do not sufficiently address the needs of minority students.

**M** While minority students appear to graduate as often as do their White peers, they tend not to rank in the upper quartile as often due to, among other factors, lack of available mentors and financial strains.

**M** Minority students generally do not perceive law school placement offices as having the inclination or ability to help them obtain employment.

**M** Minorities are severely underrepresented on the faculties of Florida's law schools, comprising only seven percent of the full-time faculty. Hispanic and Asian individuals hold none of the tenured positions, even though 63% of all law degrees awarded to minorities in Florida are awarded to Hispanics.

**M** Although most law schools report dissatisfaction with the number of tenure-track minority faculty, none have defined specific goals for addressing this concern.

### **2. Recommendations**

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** All law schools should continue to collaborate with the voluntary bar association 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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 profession.

**M** 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.

## **D. Minority Performance on Florida's Bar Exam: Ensuring a Level Playing Field**

### **1. Findings**

**M** A stark disparity exists in the passage rates of White and Black candidates on Florida's Bar exam. Specifically, for the February 1991 administration, 74% of the White candidates passed

the Florida and multistate portions of the exam, while only 39% of the Black candidates passed the exam. For the July administration, 76% of Whites passed, while only 46% of Blacks passed.

**M** Generally, the difference in performance between White and Black candidates is larger on the essay questions than on the multiple-choice questions.

**M** As between White and Black candidates with similar overall proficiency levels, over 10% of the Florida multiple-choice items showed a significant level of differential functioning against Black candidates. While this differential functioning does not necessarily indicate the presence of bias, it does raise serious concerns as to the possibility that cultural factors inherent in the exam are accounting for the disparity.

**M** A review of these items by a panel of linguistic and test-measurement specialists reflects that most items contained culturally stereotypic language or situations, or structural components, which may have disadvantaged minority candidates. The Bar exam is no place for the portrayal of minorities in stereotypes or cultural situations which needlessly burden the examination process.

**M** Moreover, a review of the entire exam showed that some questions have technical, language, and/or structural problems which, while possibly affecting the performance of all candidates, may carry a greater impact for minority candidates. Adjustment of the items to eliminate these flaws would be consistent with the Board's item-writing guidelines and could be done without sacrificing the overall integrity of the exam.

**M** More than two-thirds of the surveyed Black candidates felt that their law school coursework did not prepare them for the Bar exam generally, and 91% indicated that the tests they took in law school did not prepare them for the multiple-choice items on the Bar exam.

## **2. Recommendations**

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.

**M** 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.