

**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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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.