Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Commission

Florida Supreme Court Racial and Ethnic Bias Study Commission

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REPORT AND RECOMMENDATIONS OF THE FLORIDA SUPREME COURT RACIAL AND ETHNIC BIAS STUDY COMMISSION*

"WHERE THE INJURED FLY FOR JUSTICE"
Reforming Practices Which Impede the Dispensation of Justice to Minorities in Florida

December 11, 1990

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 piteous 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."

* The Florida State University Law Review is grateful for the opportunity to publish the Commission's Report and Recommendations. First published by the Commission in December of 1990, the Report and Recommendations are reprinted here verbatim. The only changes made by the Law Review editors involved correcting a few typographical errors, revising the form of some citations, and changing the placement of a special inset for the convenience of the reader. Graphics published in the original Report and Recommendations are not included here. Because the editors sought to publish the Report and Recommendations verbatim, some citation forms may not conform to The Bluebook: A Uniform System of Citation (15th edition), which is adhered to elsewhere in the Law Review. Additionally, there are a number of stylistic differences between the Report and Recommendations and other material in the Law Review. The Addendum following the Report and Recommendations was prepared by Law Review editors in an effort to show the impact of the Commission's work. The Commission in December 1991 published Part II of its Report and Recommendations, a copy of which may be obtained from the Florida Supreme Court.
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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.

The Judicial System Work Force: Its Complexion, Demeanor and Dialect

Findings

* 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.
* Minority females, at 1% of all judges, are particularly scarce on the Florida bench.
* 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.
* 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.
* 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.
Judicial nominating commissions with no minority members are less successful in obtaining minority applicants for judicial vacancies than commissions which include minority members.

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

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.

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

No African-American attorneys or non-attorney professionals are employed by any district court of appeal.

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.

**Recommendations**

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

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.

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.

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

* 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.

* 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.

* The Florida Supreme Court should establish an Office of Equal Employment Opportunity and appoint a director experienced in personnel matters and in implementing affirmative action 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.

* 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.

* 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.

* 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.

* 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.

_Law Enforcement Interaction With Minorities_

* 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 non-minority would be under similar circumstances and are treated with less respect and more unnecessary force than are their white counterparts.
* Relationships between police officers and minorities are adversely affected by cultural differences and misunderstandings.
* 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.
* 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.
Recommendations

* Law enforcement organizations should adopt plans to recruit, hire, retain, and promote minorities.
* The Florida Department of Law Enforcement and local law enforcement organizations should develop a minority career development program.
* 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.
* 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.
* 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.
* 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.
* 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.

Juvenile Justice: The Need for Further Reform

Findings

* 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.
* 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.
* 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.
* 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.
Recommendations

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

* 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.

* 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.

* 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.

* 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.

* 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.

* 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.

* 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.

* 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.
INTRODUCTION

The Commission’s Charge and Its Process of Inquiry

On December 11, 1989, then Chief Justice Raymond Ehrlich issued an order which created the Racial and Ethnic Bias Study Commission. His order recognized that Florida’s judicial system is “founded upon the fundamental principle of the fair and equal application of the rule of law for all,” and charged the Commission to assess these fundamental issues:

(1) Does race or ethnicity affect the dispensation of justice, either through explicit bias or unfairness implicit in the way the civil and criminal justice systems operate?

(2) What are the elements of a coherent, long-term strategy to eradicate the vestiges of any legally prescribed discrimination?

(3) Are there practical measures which can be taken to alleviate any underrepresentation of disadvantaged minorities from positions of responsibility in the justice system, including as judges and court employees?

(4) What, if any, measures should be taken by the Supreme Court, law schools, the Board of Bar Examiners, the profession, and the Legislature to accelerate the rate at which disadvantaged minorities enter the legal profession and ascend through its ranks in the public and private sectors?

(5) What, if any, changes should be made in the manner of selecting judges to increase the racial and ethnic diversity of the bench?

The Commission Listened to Floridians

The Commission developed the findings and recommendations contained in this report after analyzing information from several different sources. First, the Commission sought to receive testimony about the experiences, perceptions, and opinions of Floridians, including citizens and officials who in some way participate in the dispensation of justice in this state. During its first ten months of deliberations, the Commission held public hearings in every region of the state, including the following cities: Ft. Lauderdale, Miami, Tampa, Pensacola, Tallahassee, Jacksonville, and Orlando. Most hearings were held during the early evening hours to facilitate attendance by interested members of the working public. Hundreds of individuals testified before the Commission or attended the hearings. Thousands viewed the Commission’s public hearings on live television. An inestimable number became aware of the Commission’s work through extensive news coverage in mass media.
Presentations made by citizens included heart-rending expressions of anguish, poignant appeals for reform, praise for progressive but underfunded programs, and imaginative outlines for bold policy initiatives. The Commission heard the justice system described in the words of those who are directly involved—civil rights advocates, judges, police officers, prosecutors, defense attorneys, law school deans, law students, the accused and their relatives, and victims of violent crime. The views of all these Floridians immeasurably enhanced the Commission’s deliberations.

The Commission Retained Professors to Conduct Original Research

The Commission retained leading researchers from Florida’s universities and nationally recognized experts from elsewhere to assist it in formulating the findings and recommendations contained in this Report. Some of the studies are thought to represent the most thorough assessments of phases of justice dispensation ever undertaken in the country. A full list of these researchers and the subjects of their reports may be found in the Appendix at the end of this Report.

The Commission Used Its Collective Expertise to Assess The Question of “Bias”

In his remarks to the Commission at its initial meeting, the Chief Justice made clear his expectation that members would consider their individual expertise and perspectives to search for a collective answer to determine “whether race or ethnicity affect the dispensation of justice in Florida.”

The Central Inquiry of the Commission

The presence of the term “Bias” in the Commission’s name notwithstanding, the central inquiry of the Commission was not to reach a simple “yes or no” response to the hopelessly overbroad question, “Is the judicial system biased against minorities?” A question more calculated to lead to an incisive analysis and a useful result is “whether racial or ethnic considerations adversely affect the dispensation of justice to minority Floridians.”

Resort to the shorthand, ill-defined term “bias” often does little to clarify and much to confound the answer to the question which is of central importance to the Commission. Hence, combined with the public testimony and scholarly studies, the collective judgments made by the Commission in fact-finding activities have provided a legitimate basis for the ultimate conclusions respecting its central inquiry.
Detecting Bias Involves a Search for “Evidence of Things Not Seen”

The term “Bias” in the Commission’s name could have impeded, not aided, its effort to collect information responsive to its central inquiry. One can too often limit the term “bias” to its narrowest, most detectible form, i.e., prejudice evidenced by the repulsive comments or disrespectful displays of individuals who seek to harm a person because of his or her race or ethnicity. An inquiry about “bias” conducted sensibly must identify the policies and practices which treat minorities unjustly, irrespective of whether the basis for mistreatment is malevolence, undue benevolence, or indifference. As one criminologist, testifying at a public hearing of the Commission, said:

If you define racism as the Ku Klux Klan attitude . . . you are not going to find that kind of explicit [bias] within the criminal justice system.

[Dr. William Jones, Tallahassee, 11-12].

A former president of the Florida Bar, testifying before the Commission in Miami, expressed the challenge this way:

You all have a much more difficult job now than you would have had thirty years ago, because bias and racial prejudice was much more open then.

[Steven Zack, Miami, 41].

Bias may take the form of actions, structures, or policies which, while not explicitly using or referring to race or ethnicity, create inequalities through the use of other mechanisms indirectly related to color or culture. For instance, as is noted in further detail in the following chapters, the Commission has found that the structure, policies and practices of Florida’s juvenile justice system often systematically place minority juveniles at a disadvantage. This type of “institutional bias” is potentially more insidious than overt displays of prejudice, because it may not be as readily recognizable or remediable.

Responding To Those Who Doubt “Bias” Exists

Lawyers and judges are members of a “show me” profession who instinctively demand strict proof of allegations or hypotheses. Like the presence of poison in food or certain pollutants in the air, how-

1. References are to the relevant page numbers from each public hearing transcript (available at the Florida Supreme Court Archives, Tallahassee, Fla.).
ever, bias in decision-making may not always be readily detectible by the unwary. Indeed, because of inherent limitations of some databases, purely quantitative approaches to proving bias can be inadequate or misleading. Similarly, efforts neatly to separate the effects of discrimination and poverty will often fail because the two factors frequently operate in tandem and reinforce each other. The Commission's efforts focused not on the formulation of theories to analyze either factor in air-tight isolation but on the formulation of policies to address the effects of both as they impact the lives of Floridians.

As directed by the Supreme Court, the Commission set out to determine and document whether race or ethnicity adversely impacts the administration of justice in Florida. An effort to detect a sentiment as intricate as personal prejudice can be made as complex, and as futile, as an effort to detect a sentiment as basic as faith. In this regard, the search for bias, like the search for faith, involves a search for "evidence of things not seen." In a multi-cultural, secular society, neither prejudice nor faith ever will be proved to the satisfaction of those who doubt.

As a recent national poll reflects, a majority of Americans believe that racial discrimination still exists in many of the country's institutions.² The vestiges of prejudice and segregation have not escaped the attention of the Florida Legislature. In establishing a minority business enterprise program, the Legislature made these findings about the prejudicial treatment meted out to black Floridians:

WHEREAS, the time has come to eliminate the economically crippling and demeaning disparities between blacks and other Floridians, and

WHEREAS, there is a great disparity in the economic and social well-being of black Floridians as compared to both the general population and other minority groups, and

WHEREAS, because of past discrimination and persistent unwritten social prejudices, blacks face substantial barriers in obtaining the major elements necessary for business ownership such as availability of capital, technical assistance, and market opportunities, and

WHEREAS, blacks are represented in the professional, executive, and managerial work force in substantially smaller percentages than

² See Louis Harris & Associates, The Unfinished Agenda on Race in America (Jan. 1989) (a national poll prepared for the NAACP Legal Defense and Educational Fund, Inc.) (available at the Florida Supreme Court Archives, Tallahassee, Fla.).
nonminorities and other minorities . . . . [Chapter 85-104, Laws of Florida.]

The Florida Legislature could be so forthright, because the people of this state are willing to recognize and deal with the serious problem of prejudice.

*The Special Role of the Courts*

The judicial system is, by its very nature, simply unlike other governmental institutions. The fundamental goal of our state judicial system is to uncover truth and dispense justice, to act as the ultimate arbiter of what is right and wrong. There is no place here for unequal or unfair treatment stemming from bias—individual, institutional, or otherwise. Aesop, who by all accounts was born a slave and whose fables have become part of American folklore, uses this simple image to make the point:

> 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."

This report presents findings and recommendations to help assure that Florida's courts remain the place where the injured can seek refuge without fear of being devoured by the serpent of hatred. In America, the eaves of the courthouse are designed to be places of refuge because, to quote George Washington, "The due administration of Justice is the firmest pillar of good government." The importance of providing justice is commensurate with the importance of preserving democracy itself in a state and nation undergoing profound demographic changes. By the year 2000, more than 30% of the new entrants to the work force will be a minority group member or female.

*The Need to Acknowledge and Count Hispanics, Native Americans, and "Others"*

Pursuant to its charge from the Supreme Court, the Commission has studied the issues in this report as they relate to historically disad-

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vantaged racial and ethnic minorities. According to the 1980 U.S. Census, African-Americans constitute 13.8% of the state's total population; Hispanics make up 8.8%; and Native Americans make up 0.2% of that population. Results of the 1990 Census were unavailable as of the publication of this report. The Commission is vitally concerned about each of these groups of individuals. It has found, however, that obtaining employment and regulatory information regarding Hispanics and Native Americans in Florida is not always possible. Some judicial and executive agencies do not maintain data in a way which identifies the ethnic attributes of the individual. An agency's failure to maintain racial identifiers may stem from the well-intended desire to appear "color-blind" in its actions. This failure, however, impedes, in practice, the monitoring of whether the agency's practices are "color-blind" in fact. All state agencies with responsibilities related to law and law enforcement should record employment, regulatory, and enforcement information in a manner which permits the public to determine how they treat African-Americans, Hispanics, Native Americans, and "other" minorities.

Future Reports Will Be Issued

This initial report addresses those aspects of the justice system which, if operated unfairly, could most adversely impair the basic liberties of disadvantaged minorities: the dearth of minorities who serve as judges, bailiffs, managers in police organizations, and behind-the-scenes administrators in Florida's courthouses; the treatment accorded minorities by law enforcement organizations; and the processing of delinquency cases of minority juvenile offenders. Questions of education and training are addressed in the context of each of these subjects. Because of the ongoing work of another Commission appointed by the Florida Supreme Court, this report does not address the measures needed to prevent sexism and chauvinism from impairing the dispensation of justice to women. It does, however, note that there are some areas in which African-American and Hispanic women fare more poorly than their minority and non-minority male counterparts.

Other important issues will be addressed in future reports. Prominent among these will be the question of increasing the number of minorities who enter the legal profession and ascend through its ranks. Some of the problems of underrepresentation noted in this report can be traced to the shortage of minority lawyers. Accordingly, the Commission's study will focus attention upon the experience of minorities in law school, on the Bar exam, and once admitted to the profession. Similarly, many of the grievances expressed by minorities can be traced, in substantial part, to the lawyerless-ness of those poor
minorities who are at odds with the power of the state. In addition to the issue of minority attorney hiring and advancement, future reports will address important aspects of the adult criminal justice system, including the effect of current bail, pre-trial release, sentencing, and post-sentencing practices (including correctional education programs) upon minorities in Florida, as well as the impact of language considerations on the dispensation of justice to minorities. In addition, the Commission will conduct a study on the unique problems facing minority women in the judicial system and legal profession. Finally, the access of minorities to the civil courts—where important personal and property interests may be protected—will also be addressed.

Patently, the practices that adversely affect the liberty interests of minorities affect all Floridians. So it is everyone's concern to assure that the rights of minorities are protected. Nothing is more central to the existence and vitality of a democratic society than justice—meted out fairly and equally. When justice is provided to some groups and not others, the quality of democracy itself is diminished:

The loss of liberty injures all. And when liberty finally has fallen, there will be nothing to protect us from a threat of a different kind—people who, as history teaches, sometimes abuse positions of authority in government and its agencies. Cresswell v. State, 15 F.L.W. 287, 288-89 (Fla. May 10, 1990) (Kogan, J., dissenting).

The Commission hopes the recommendations in this report will be reviewed and implemented by those who are empowered to do so: the judicial, legislative, and executive branches of Florida's government and, ultimately, by the people of Florida.

THE JUDICIAL SYSTEM WORK FORCE: ITS COMPLEXION, DEMEANOR, AND DIALECT

No institution in this state stands in as lofty a position as the judicial system.

Under our constitutional system, Courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement.

Chambers v. Florida, 309 U.S. 227, 241 (1940) (Black, J., for the Court).

By virtue of its mission to dispense justice, the Court must reflect fairness and sensitivity in all respects, including the complexion, demeanor, and dialect of its work force.
The Court's Complexion: Ensuring Diversity

Delano Stewart, a former president of the Florida Chapter of the National Bar Association and an outstanding Florida lawyer, told this story during his public hearing testimony in Tampa regarding a speech he once gave to an all-white audience, in which he described a criminal trial:

For people to acquiesce to justice, they must perceive that they are going to receive justice. . . . In my speech, I made the judge black, the six members of the jury black. Before I finished the speech, all the white members of the audience were perspiring because they did not perceive that they could receive justice. But ninety-five percent of the time, the only black thing a black defendant sees in the courtroom is the judge's robe.

[Delano Stewart, Tampa, 18].

The Importance of Diversity

Perhaps more than any other element relating to the judicial system, the complexion of the judicial system workforce—from judges to court bailiffs, from attorneys to court reporters— influences how Florida's citizens will view and respond to justice administered through the state courts. A professor testifying before the Commission described the fundamental importance of a racially and ethnically diverse judicial workforce:

I keep thinking that there is a phrase by a writer named Richard Wright, who's talking about invisibility. And he said there was a black man accused of being irresponsible. And the [system] was saying, "Well, how can you be so irresponsible?" And the guy says, "You're damn right I'm irresponsible, I'm invisible." I think that invisibility, the lack of being visible in the system, having proper positions, has a lot to do with why a lot of people feel that they have nothing to be responsible for.

[Dr. Donald Jones, Miami, 69-70].

In sum, diversity speaks to the very essence of justice and democracy. The tapestry of Florida's population is a colorful blend of many different cultures and racial groups, held intact by a code of both written and unwritten laws and legal principles. Inclusion of minorities in the workforce of Florida's judicial system is vital to the goal of keeping the fabric of our society together. The State simply cannot expect continued acceptance of a judicial system in which minorities
are virtually invisible in positions of decision-making and responsibility.

The Commission's Study in this Area

Earlier this year, the Commission applied for and received a special grant through the "Service Through Applied Research" ("STAR") program, funded by the Legislature and administered by the Florida Institute for Government, to conduct a study into the diversity of the judicial system work force. After formal proposals were received, the Center for Governmental Responsibility at the University of Florida Law School, which is headed by former House Speaker Jon Mills, was selected to perform the Commission's work force analysis. The Center studied the composition of the entire judicial system work force, including judges, employees within the Florida State Court System, court-related employees hired by counties, staffs of public defenders and state attorneys' offices, and certain executive branch agencies which perform quasi-judicial functions. The Center conducted a formal "minority utilization" analysis for most of these agencies, comparing the number of minorities within each employment classification to the number of minorities in the state who are available and eligible for employment in that position. The figures in this final report are derived from the Center's study. It should be noted at the outset that the Center's figures are as of June 1990 and, thus, do not include any changes stemming from the November 1990 elections.

At its hearing in Miami, a citizen challenged Florida's court system "to make sure that, from the top down, it establishes a clear moral standard and behavioral standard which will indicate that there is a commitment to employ on a nondiscriminatory basis." (Arthur Teitelbaum, Miami, 29). An examination of the current complexion of the judicial system work force shows that in all areas of the work force, Florida's judicial system must make a serious commitment to recruit and hire minorities.

Increasing Ethnic Diversity Among Florida's Judges

The issue of racial and ethnic diversity among Florida's judges raises two fundamental public policy considerations: equal opportunity for minorities to serve as members of the judiciary and the need for a judiciary which excellently reflects and is sensitive to Florida's racially and ethnically diverse population.

Judicial authority in Florida is vested in a Supreme Court, five appellate courts, 20 circuit courts, and 67 county courts of limited jurisdiction. Judges on the Supreme Court and the appellate courts are
currently appointed by the Governor from a list of three nominees recommended by the appropriate judicial nominating commission. Circuit and county court judges are currently elected in a non-partisan election by voters who reside in the territorial jurisdiction of the court to which the election pertains. The Governor fills unexpired terms on the circuit and county courts from among three nominees forwarded by the appropriate judicial nominating commission; an appointed judge must thereafter stand for election at the expiration of the appointed term. In addition to trial and appellate court judges, there are currently 30 workers compensation judges within the Department of Labor and Employment Security, selected by the Governor from a list of three nominees provided by the appropriate judicial nominating commission.

Distribution by Court

In proportion to their numbers in the general population, minorities are significantly underrepresented as judges in Florida. Of the 723 judges in the state, including justices of the Florida Supreme Court and compensation claims judges, only 5.5% (n=40) are minorities. Of all judges, 4% (n=29) are African-American and 1.5% are Hispanic.

Most minority judges in Florida serve on the trial and limited jurisdiction courts; African-American and Hispanic judges are largely invisible on the higher courts. Of all minority judges, 92.5% (37 of 40) serve on the lower courts, with almost half serving on the circuit court. Minorities make up 6.7% (n=2) of the thirty judges now sitting as compensation claims judges. Only two minority judges, one African-American and one Hispanic, currently sit on the district courts of appeal, with four of the five appellate courts having no minority judges at all. The seven-member Supreme Court has one African-American and no Hispanic justice. Minority females, at 1% of all judges, are particularly underrepresented on Florida’s bench. No African-American, Hispanic, or other minority females currently sit on any of Florida’s appellate courts. Four of the seven minority females who serve on the judiciary are county or compensation court judges; the remaining three serve on the circuit court.

It appears that the small cohort of minority judges obtained more experience on the bench than their typical non-minority colleagues before ascending through the ranks of the judiciary. Each of the minority judges on the appellate court (n=2) had prior judicial experience, compared to 55% (n=30) of the white appellate judges. Similarly, of the 18 minority circuit court judges, 67% (n=12) reached the circuit
court via prior judicial service, while 35.6% (n = 135) of the white circuit judges appear to have had prior judicial experience.

**Distribution by Region**

A greater proportion of minority trial and appellate judges serve in the central and southern portions of the state than in the northern region. Fifty percent (n = 19 of 38) serve in the state’s southern region, including 40.7% (n = 11) of the African-American judges and 72.7% (n = 8) of the Hispanic judges. Just over 36% (n = 14) of minority judges serve in the central region, including 40.7% (n = 11) of all African-American judges and the remaining 27.3% (n = 3) of Hispanic judges. Only 13.2% (n = 5) of minority judges serve in the northern region, all of whom are African-American.

In connection with the paucity of minority judges in the northern region, several attorneys said to the Commission: "When the Second Judicial Circuit, where the state capital sits amidst a large black population, has yet to see its first black judge as the 20th Century draws to a close, the symbolism and reality of minority exclusion sends a powerful and disturbing message to Florida citizens." [Denise M. Prescod and Brenda Wright, Jacksonville, supplement to written testimony, 4].

**Comparison to Minority Attorney and General Population**

Comparing, precisely, the number of minority judges to the population of attorneys who are eligible to serve as judges in Florida is not possible. Neither the Florida Bar nor any other agency currently maintains data on the number of minority attorneys in the state, although the Bar’s Commission on Equal Opportunities in the Profession is currently in the process of gathering, through a survey, more information on minority attorneys in the state. Based on information informally received from the president of the Florida Chapter of the National Bar Association, the Center estimates that there are 1000 African-American attorneys currently practicing in the state of Florida. It also estimates that there are 1542 Hispanic attorneys currently practicing in Florida.

The underrepresentation of minority lawyers reflects to a large degree the underrepresentation of minorities in the state’s legal profession and the underemployment of many minority attorneys. A recurring theme of the Commission’s public hearings has been that minorities, male and female, are underrepresented in Florida’s law firms. Based on the results of the survey presently underway by the Florida Bar and other data, the Commission will, in the next phase of
its work, turn to the professional status of minorities in the legal profession.

If the general population is used as a benchmark, much progress remains to be made. Minority judges are significantly underrepresented in proportion to the state’s general minority population, both generally and regionally. African-Americans make up 13.8% of Florida’s population, but only 4% of Florida’s judiciary. While Hispanics make up 8.8% of the state’s population according to the 1980 U.S. Census, and 11.5% according to 1988 non-institutionalized population data, only 1.5% of all Florida judges are Hispanic. Minority judges are most dramatically underrepresented in the northern region, where minorities make up 21.5% of the population, but only 3.4% of the judges in that region. The pattern of underrepresentation continues throughout the other two regions: in the central region, minorities constitute 10.9% of the population and only 4.8% of all judges there; in the southern region, minorities make up 17.4% of the general population and only 7.6% of the judges in that region.

Methods of Judicial Selection and Minority Underrepresentation

Although a vast majority of minority judges serve on the trial courts where election is the general manner of selection, most of these minority judges were originally appointed to the bench to fill unexpired terms. Of the minority judges serving on the circuit and county courts, 88% of the African-American judges and 80% of the Hispanic judges were originally appointed to the bench. Only five minority judges currently serving on the bench were elected in the first instance.

Clearly, the current election process, which provides for circuit-wide, at-large elections, is not yielding sufficient representation of minorities on Florida’s bench. At the same time, the dramatic underrepresentation of minority judges reflected in the above statistics compels the conclusion that the appointive system, as currently structured and implemented, has itself failed to achieve racial and ethnic diversity. The Commission strongly believes that serious measures need to be considered for implementation—in both systems—which are aimed at producing a more racially and ethnically sensitive judiciary.

The Appointment Process: Ethnic Composition of Judicial Nominating Commissions Impedes Recruitment of Minorities

Twenty-six judicial nominating commissions exist in Florida: one for the Supreme Court and one for each of the five appellate districts and the 20 judicial circuits. Each judicial nominating commission in-
cludes three lawyers appointed by the Florida Bar, three electors from the jurisdiction appointed by the Governor, and three electors (who are not attorneys) selected by the other six members of the commission. These commissions announce vacancies, accept and screen applications for those vacancies, and recommend to the Governor at least three nominees for each judicial vacancy. Uniform rules of procedure are developed by the judicial nominating commissions for each level of the court. Current rules do not include any consideration of the need for racial and ethnic diversity of the judiciary.

To analyze the activities of each judicial nominating commission, the Commission administered a survey to all judicial nominating commissions. Twenty-two of the 26 commissions provided information pursuant to this survey.

Minorities are underrepresented in the membership of the judicial nominating commissions in Florida, with minority females being especially underrepresented. Currently, 90.8% (n=77) of the membership of judicial nominating commissions are white, and 9.2% (n=18) are minorities. Of all commissioners, 5.6% (n=11) are African-American and 3.6% (n=7) are Hispanic. Only 2% (n=4) of all commissioners are African-American females and 0.5% (n=1) are Hispanic females. Twelve of the 22 responding commissions have no minority members at all.

Significantly, minorities have almost no membership on the commissions selecting judges for the appellate courts and the Supreme Court. Of the 12 all-white commissions, five are commissions responsible for nominating judges for the Supreme Court and four of the five district courts.

More of the minorities serving on the judicial nominating commissions were appointed by the commissions themselves, than by either the Florida Bar or the Governor's Office. Of the 22 commissions responding to the survey, judicial nominating commissions appointed 90% (n=9) of the African-American and 16.7% (n=1) of Hispanic members. The Governor's Office appointed 10% (n=1) of the African-American commissioners and 50% (n=3) of the Hispanic commissioners. The Florida Bar appointed none of the current African-American members and 34.3% (n=3) of the current Hispanic members.

While over 63% of the commissions' memberships are attorneys, not a single African-American attorney serves as a member of any of the 22 judicial nominating commissions that responded to the survey. All of the African-Americans sitting on the commissions serve in lay capacities. This lack of appointment of African-American attorneys
led one witness at the Commission’s public hearing, a female African-American attorney, to comment:

I think I'm a fairly intelligent person. I read my Florida Bar . . . the newspaper [and] the magazine. If [the judicial nominating commission] is not open to me as a member of the Florida Bar, then I have to wonder how serious people are about increasing representation.

[Cynthia Everett, Miami, 111).

The severe underrepresentation of minorities on the memberships of the judicial nominating commissions carries with it significant consequences. As the Center’s report shows, a strong correlation may exist between the lack of minority inclusion in the judicial selection process and the lack of minority judges. For instance, four of the five judicial nominating commissions for the appellate courts have no minority members, and the appellate courts in those districts have no minority judges. Fewer minorities apply for judicial vacancies to all-white judicial nominating commissions than apply for judicial vacancies to commissions which include minority members.

Survey findings indicate that of whites, African-Americans, and Hispanics who apply for judgeships, comparable percentages of each racial pool are recommended to the Governor and are ultimately appointed as judges. The percentage of minority applicants compared to white applicants (7.5% to 92.5%, respectively) is so small, however, that the recommendation and appointment of comparatively equivalent percentages of minority applicants, while appearing to reflect representative appointments, actually results in very few minorities recommended for appointment or ultimately appointed to the bench.

The Election Process: The Need for Re-examination

Although all circuit and county court judgeships are elected positions, in-term vacancies are filled by gubernatorial appointment. These elected positions represent 87.1% of the judicial seats available in Florida (n = 630). While most minority judges sit on the circuit or county court, only a handful of the minority judges currently serving were originally elected to the bench.

Several federal lawsuits have been filed in Florida challenging the current structure of electing judges through at-large elections. Suits are now pending in Leon and Duval Counties requesting an order striking down Florida’s judicial at-large election scheme as violative of section 2 of the federal Voting Rights Act. The plaintiffs in these suits argue that the at-large system of electing circuit and county judges,
under which all of the judges on a particular court are elected by county-wide or circuit-wide voting, unlawfully dilutes minority voting strength, thereby preventing minority voters from electing candidates of their choice. Those challenging the at-large system most often seek the remedy of dividing the at-large district into smaller election districts, some of which would have African-American or Hispanic voting majorities.

Florida is not the first state to face such a judicial challenge. Eight other states have faced or are currently facing legal challenges under the Voting Rights Act of 1965 to their at-large judicial election systems. In the first of these cases, a federal court sitting in the Middle District of Mississippi held on appeal that the Voting Rights Act applied to judicial elections. Following the court’s ruling, Mississippi’s judicial districts for trial court elections were redrawn in 17 counties, eight of which were redrawn into single-member districts.

The changes in these other states have come too recently to yield an extensive record that reflects the impact of a move to a single-member district system. In Mississippi, where special judicial elections have been held in court-ordered redrawn judicial districts, minorities experienced increased success in judicial elections, with five black judges being elected. Mississippi’s election marked the first time an African-American was elected to serve on the state’s supreme, circuit, or chancery courts.

While judicial and legislative races are certainly not identical, further guidance may be obtained by examining legislative elections in Florida. Of current legislative office-holders, single-member legislative districts have clearly elected higher percentages of minority legislators than the at-large judicial elective system has elected minority judges.

The Center’s study solicited the opinions of Florida judges as to the impact of the judicial selection process on minority representation on the bench. Of the African-American judges responding, 78% agreed that at-large elections favor non-minority candidates, while less than a majority of white judges agreed. Hispanic judges appeared to be evenly split, with 50% agreeing that at-large elections favor non-minority candidates.

In its deliberations during this first year, the Commission robustly debated whether a move away from the system of the at-large election of judges could facilitate the more frequent election of minority judges while not exacerbating ethnic tensions, divisiveness, and parochialism. Some members of the Commission asserted that electing judges from subdistricts or single-member districts would turn judges into “political animals,” beholden to a particular constituency, with the long-term potential of threatening the integrity of judicial deci-
sion-making. Other commissioners urged resistance of the notion that increases in minority representation through single-member districts would threaten the integrity or vitality of the judiciary. They assert that single-member districts, with a concentration of minority electors, would assure that minorities could elect at least some judges, whereas non-minorities are now virtually assured of electing all judges.

Philosophical issues have heretofore forestalled an analysis of whether single-member districts or subdistricts would increase minorities' access to the bench without increasing ethnic isolation. The office of "judge" is a position of immense dignity and exalted status in our system of justice. Judicial elections of any sort involving, as they do today, exorbitant campaign costs and resort to a candidate's proclivity to "get tough on crime" are sometimes inconsistent with the august nature of the judiciary. Moreover, a judge is manifestly unlike a legislator in the types of decisions he or she is called upon to make and in terms of the type of information which may properly factor into those decisions.

Notwithstanding the lack of consensus as to whether election reform should be immediately recommended, the Commission concurred that, as long as elections continue to remain so integral a part of the current judicial selection landscape, the State must begin to recognize the stumbling blocks for minorities' access to the elective bench and work with commitment to find appropriate and implementable means of eliminating those blocks. Thus, it concluded that practical issues need to be explored—and resolved—so that the utility of election reform involving single-member districts or other configurations can be fairly evaluated.

The creative process of district design will be at the forefront of legislative concerns in the upcoming session on reapportionment. In connection with that process, the Legislature should undertake computer-assisted analyses of the feasibility of devising subdistricts which would facilitate increased minority representation while avoiding fragmentation and parochialism. Concrete examples of what a single-member district or subdistrict system would look like—in real, geographic terms—should be arrayed before the State. This legislative analysis would greatly contribute to the public debate on this issue by illuminating what a conversion to this system would mean in practice, not simply theory. Thereafter, all Floridians—who ultimately would have to vote to amend the State Constitution to effectuate such a change—would be in a better position to assess whether a subdistrict election system represents a workable means toward leveling the playing field for minority aspirants to the elective bench.
The Commission's vigorous discussion in this area should be instructive to those who evaluate the efficacy of maintaining the status quo versus implementing reforms in this area. Accordingly, the full text of the Commission's deliberations in this area is included in the Appendix to this report. [Editor's note: The full Appendix, not reproduced here, is available at the Florida Supreme Court Archives, Tallahassee, Florida.]

**Conclusion As to Judicial Selection**

Florida's judicial selection processes have not provided appropriate access for minorities, because minorities are underrepresented in the pool from which judges are drawn and excluded from a role in the selection process. Because minorities are largely unrepresented as members of judicial nominating commissions, they have little or no influence in the appointive system. In addition, the current at-large elective process has not produced sufficient minority representation on the bench. Florida must now work to eliminate the stumbling blocks for minorities' access to the bench in both selection processes.

**Increasing the Diversity of Florida State Court System Personnel**

The State Court System encompasses all officers, employees, and divisions of Florida's appellate and trial courts. Although courts are administered at a local level, the Chief Justice of the Florida Supreme Court is the chief administrative officer for the State Court System and, as such, controls the manner of selection of employees, the determination of qualifications and compensation, and the establishment of policies relating to the work of state court employees.

Currently, 91% (n=1348) of the state court employees are white, and 9.0% (n=133) are a minority. Of these minority members, African-Americans represent 4.6% (n=68) of the work force; Hispanic individuals represent 4.0% (n=59); Native Americans represent 0.2% (n=3); and all other minorities represent 0.3% (n=3) of the work force. Minorities are especially underrepresented in positions of greater responsibility and authority within the State Court System. As of the date of the Center's study, 100% of all officials and administrators4 were white. In addition, of all professionals employed by the court system (including managers, administrators, certain assistants, attorneys, and accountants), African-Americans make up merely 3% (n=13), only one of whom is a male. Hispanics make up...

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4. "Officials and administrators" include department and program directors, trial court administrators, the chief auditor, marshals and clerks of the appellate courts, and the Supreme Court librarian.
only 4.7% (n=20), and Native Americans only 0.2%, of the professionals within the State Court System.

**Supreme Court**

A breakdown by the type of court reveals that at each court level—Supreme Court, district court, and circuit and county court—minorities fare poorly in terms of their representation in the work force. Among the Supreme Court’s work force, no African-Americans were represented as members of the Court’s top administrators, although it should be noted that, after the work force analysis was completed, an African-American male became the Court’s Marshal. Minorities number three of the 82 employees in the highest-level categories of employees, administrators, and professionals. Hispanics are particularly underrepresented at the Supreme Court, which has only one Hispanic employee, who is a technician. No African-American attorneys are employed in attorney positions by the Court, and African-Americans are underrepresented as members of the Supreme Court’s non-attorney professional staff.

**District Courts of Appeal**

Although minorities are poorly represented among the district courts’ work force generally, wide variation exists in the levels of utilization among the districts. At least one district currently employs no minorities. Starkly, as of June 1990, no district employed any African-American attorneys or non-attorney professionals.

**Circuit and County Courts**

As for the circuit and county courts’ work force, minorities generally comprise only 9% of the work force. Five of the 20 judicial circuits currently employ no minorities at any level of employment. All court administrators and 90% of all professionals employed by the trial courts are white. The only bright spot, comparatively speaking, appears to be in the category of attorneys employed by the trial courts: 6.7% are African-American, and 5% are Hispanic.

**Court-Related Workers Hired by the Counties**

Clerks of the Courts are elected county officials who serve as the recorders and custodians of all public records within the counties in which they serve. Because these employees are part of the broader “judicial work force” in the eyes of the public, the diversity of these county employees was analyzed by the Commission.
A representative sample of clerks' offices shows that, statewide, minorities are represented at 30.6% of the work force. Minorities are still underrepresented in the higher positions as officials and administrators, although most offices appear to employ a representative number of minorities as professionals. While these aggregated, statewide data reflect that minorities generally fare better in county-level than state-level judicial positions, the Center's study makes clear that improvement is still needed in several circuits and regions.

State Attorneys and Public Defenders

While approximately 30% of the total state attorneys' work force are minorities, actual minority utilization in the work force of Florida's state attorneys' offices varies widely by circuit, position, and race. For example, one state attorney's office employs 41.1% minorities, while another employs only 2.8%. In the top positions of officials and administrators, approximately 8% are minorities, and in the classification of "professionals," including assistant state attorneys, statewide 6% are African-American and 7.9% are Hispanic. A large number of state attorneys' offices report having no minorities at all among their administrative staff. With the exception of the Eleventh Circuit State Attorney's office, Hispanics are poorly represented in all state attorneys' offices.

Minorities appear to fare better in the work force of Florida's public defenders. A representative sample of public defender offices around the state reflects that minorities are well represented as officials and administrators, as well as professionals, at 18.2% and 21%, respectively, for each category.

Quasi-Judicial Executive Agencies

The Center also studied the composition of the work force in those executive agencies which perform quasi-judicial functions, including the Attorney General's Office, the Compensation Claims Court, the Department of Corrections, the Department of Health and Rehabilitative Services, the Office of Probation and Parole, and the Parole Commission. In the category positions of "official and administrators," minorities appear to be underrepresented in all agencies. Although minorities appear to be underrepresented in many categories in all of these agencies, the agencies as a group have achieved more diversity than is present in the State Court System.

5. No conclusion may be drawn as to HRS, inasmuch as the Center's study as to this agency was limited to the "professional" positions.
Conclusion: What Do All These Numbers Mean?

The Florida court system, as the people’s instrumentality for enforcing moral standards established by law, must be especially sensitive to the fairness of its own practices. The system-wide absence of minorities from all but a small number of employment posts in Florida’s courts must be addressed. The significant statistical disparity reflected in the Commission’s minority utilization analysis not only supports—but mandates—an increased commitment to alleviate the underrepresentation.

The Commission recognizes that the relatively small numbers of minority attorneys in the state limit opportunities for diversification. Part of the long-term answer lies in increasing the overall numbers of minority lawyers. On the other hand, the crisis of legitimacy which now faces the judicial system cannot passively await a new generation of minority attorneys to fill the ranks of the legal profession. Furthermore, the size of the new generation of minority lawyers will be curtailed if the perception persists that minorities will not obtain employment in Florida’s judicial system.

Not everyone who works in Florida’s courthouses needs a law degree. Efforts can—and must—be undertaken now to recruit, hire, and retain minority attorneys and non-attorneys, from both inside and outside the state, for positions within the judicial system. Otherwise, the failure to address the significant underrepresentation will continue to tarnish the image of a court system in which, as was stated at a public hearing, “Too often the only thing in the courtroom that is black other than the accused is the judge’s robe.”

The Court’s Demeanor: Ensuring Respect and Accountability

The judicial system can exhibit its sensitivity not only by including minorities in the work force, but by insisting that the overall work force accord minorities dignified treatment. Through its public hearings and other contacts with citizens and attorneys, the Commission has received testimony about conduct by judges, court employees, and lawyers which demeaned and humiliated minorities. While the Commission found no widespread evidence of an overtly discriminatory demeanor among judges, highly disturbing instances have been documented which lead the Commission to the conclusion that additional efforts must be made to increase the sensitivity and accountability of the total judicial system work force.

For example, one attorney told the Commission of a judge who consistently refers to African-American defendants as “Bobo” and Hispanic defendants as “Paco,” apparently oblivious to the insensi-
tivity such comments display. Another African-American attorney relayed her frustration at being consistently asked by judges if she really was a lawyer and whether she actually wrote the documents she presented to the court. "I don’t think you can begin to understand the frustration that black women lawyers feel," she concluded. Hispanic men and women related similar concerns to the Commission.

A judge has responsibility not only for his or her own conduct, but also for that of the lawyers and employees within that judge’s courtroom. Some minority attorneys described for the Commission the indignities they often face through the conduct of other attorneys. As one African-American female attorney described:

First of all, I’m here to tell you that, as a black woman lawyer, I am personally sick and tired of being insulted and having my intelligence questioned by white male lawyers. I cannot detail to you the number of times I have been mistaken for a secretary, a clerk, or a court reporter. No offense, those are noble occupations, but that’s not what I am. And when I am standing in a courtroom, before a podium, I can see no reason why I should not be taken for anything but a lawyer.

[Cynthia Everett, Miami, 51].

As our state grows more and more diverse, the need for better understanding and communication between judicial system personnel and those whom they service becomes critical. The Commission has found that some of the inappropriate conduct complained of among judges and others stem not from malice, but from a lack of understanding of cultural differences. One story from an Hispanic attorney vividly makes this point:

Once his client from Cuba was appearing before a judge for sentencing. The judge was on the verge of imposing a harsher sentence than normal because the client consistently turned his back to the judge when the judge addressed the client, choosing instead to face toward the back of the courtroom. The attorney quickly pointed out to the judge that his client was simply confused because, in Cuba, a defendant is required to face the public when being sentenced in view of that country’s custom that the people are the ultimate arbiter.

When it comes to the demeanor of the judicial system work force, Florida needs courts which are color-sensitive and culture-sensitive.

The Court’s Dialect: Ensuring Equal Access

Just as the judicial system must be color-sensitive in terms of its composition and demeanor, so, too, must it be sensitive in its dialect.
Individuals for whom English is not the primary language must not be disadvantaged in their rights and dignities by virtue of their dialect. The Commission has received testimony on the issue of the need to ensure that considerations of language do not present obstacles to receipt of equal justice, especially in the criminal justice system. The Commission is concerned about this issue and will be addressing it in more detail in future reports.

**Policy Recommendations: The Judicial System Work Force**

The Commission strongly urges that immediate and active steps be taken to increase the diversity of the judicial system work force, including both judges and court-related employees. Those recommended steps are outlined below.

1. **The Florida Legislature should, by statute, mandate representative minority attorney and citizen membership on each judicial nominating commission in Florida.**

   Minorities have traditionally been absent from the memberships of most of Florida’s judicial nominating commissions. The Legislature should immediately amend section 43.29, Florida Statutes, to mandate the appointment of minority attorneys to the commissions by the Florida Bar and of minority individuals by the Governor and the judicial nominating commissions. The Legislature should also develop procedures for scrutinizing the patterns of appointment for each commission. Responsibility for periodically reviewing the records of compliance of each nominating commission should be assumed by the judiciary committees of each house of the Legislature and by the Office of the Governor.

2. **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 quality and, as such, an element which shall be considered by all judicial nominating commissions when making recommendations on appointments to the bench.**

   The rules of procedure for the judicial nominating commissions list those elements, such as integrity and professional background of the applicant, which should be considered by each commission when making its appointment decisions. In the Commission’s view, increasing the racial and ethnic diversity of the bench is an extremely important factor and one which should be explicitly considered by each judicial
nominating commission when making its appointment decisions. The commissions' rules should be amended to reflect the importance of this consideration.

This recommendation is not intended to result in a constriction of opportunities for minority appointments. Rather, it is made to assist the commissions in increasing the current level of minority appointments to the bench.

3. 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 appointment. 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 on achieving an increase in the number of minorities recommended for appointment to Florida's bench.

The Commission believes that judicial nominating commissions have an obligation to employ active means to provide minorities, to the greatest possible extent, equal access to the appointment process. This recommendation provides a mechanism for ensuring that such an obligation is met.

The model recruitment plan should include the development of a list of and means for dissemination of vacancy notices to, among others, community organizations; local, ethnic, and minority bar associations; and minority newspapers and professional journals. Each commission should review annually the success of its plan. Commission members should be kept fully knowledgeable of the provisions and importance of the recruitment plan. The Judicial Nominating Procedures Committee of the Florida Bar should support the efforts of the individual commissions through seminars and other means of collaboration geared toward increasing the commissions' knowledge of effective recruitment techniques.

4. The Governor should establish, as a top priority, the increase of minorities among his appointments to Florida's bench.
Ultimately, it is the Governor, through his appointment power, who determines the identity of the individuals who will sit on Florida's appellate courts or fill mid-term vacancies on Florida's trial courts. All efforts to diversify the list of potential appointees submitted by the judicial nominating commissions will prove meaningless unless the Governor acts to fulfill the goal of diversity through his judicial appointment decisions.

5. 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.

Historically, the Florida Bar has not taken advantage of the excellent opportunity to appoint minority attorneys to the membership of the judicial nominating commissions in the state. In view of its importance, minority representation should be immediately established as a top priority of the Bar.

6. 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.

The theoretical arguments both in favor of and in opposition to a constitutional change to the election of judges from single-member districts or subdistricts must be translated now to concrete examples to facilitate a meaningful analysis of the feasibility and desirability of such districts. The current crisis of confidence in the judicial system resulting from the lack of minority judges requires a careful consideration of election reform alternatives.

7. 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.

Minorities must be represented in all capacities of employees working in Florida's courthouses. The National Center for State Courts encourages all state court systems to adopt EEO/Affirmative Action plans voluntarily, citing the National Advisory Commission on Criminal Justice:

If American courts are to retain—or regain—the confidence of the entire community, it is essential that no segment of the community believes that its members are denied the opportunity to participate in the court process. If court personnel do not include members of racial and ethnic minority groups constituting a significant segment of the population served by the court, these groups may not readily accept the judicial process as a legitimate government operation.

As chief administrative officer for the court system, the Chief Justice of the Florida Supreme Court has the authority and leadership role to propose such a plan. The plan would be binding upon and implemented by all courts and offices within the State Court System, including judges, when making employment decisions regarding the composition of their personal staff. Primary responsibility for drafting the plan should be vested in a newly-created Office of Equal Opportunity Employment (see Recommendation #8). The plan should be reviewed, prior to adoption, by a review committee of personnel managers, minority employees, and other interested individuals, who would make recommendations for appropriate revisions.

The Affirmative Action Plan for the Florida State Court System should provide flexible goals and timetables according to regional labor force analyses based on data to be regularly provided by each court and office within the State Court System. A labor force analysis should be completed annually and adjusted to conform to yearly findings.

8. The Florida Supreme Court should establish an Office of Equal Employment Opportunity and appoint a director experienced in personnel matters and in implementing affirmative action programs. The Director should be directly responsible to the Supreme Court for proper and active implementation of the Affirmative Action Plan. The Office should be provided with sufficient funding and support staff to carry out its assigned duties.
In January of 1989, the Judicial Council recommended that the Supreme Court employ a full-time equal opportunity employment officer. Although the Court subsequently requested funding for the establishment of such a position, funding was not provided. The Court has continued to demonstrate commitment toward this end by vesting an equal opportunity monitoring function in the current Supreme Court Marshal.

With proper staff support and consistent legislative funding, the establishment of a strong Office of Equal Employment Opportunity can become a reality. This full-time Office of Equal Employment Opportunity would carry out the following functions:

a. Develop and monitor the implementation of the Affirmative Action Plan;

b. Ensure through concrete and specific means that all chief judges and personnel managers of each court and office within the State Court System are fully familiar with the provisions of the Affirmative Action Plan and promulgate the plan to decision-makers throughout their circuits;

c. Identify and publish to all courts and offices within the State Court System an updated source list of community and professional organizations; ethnic publications; high schools; community college and university placement offices; and other resources from which to recruit minorities;

d. Develop, in conjunction with the higher educational system, programs to enhance minority recruitment and promotion, such as loan forgiveness tuition waiver programs for additional education for job advancement and in-house training programs for promotion to supervisory and advanced positions;

e. Develop partnership mentoring programs by which employees can be matched with partners at higher levels of employment to learn jobs, foster communication, and provide realistic expectations of advancement;

f. Develop an outreach program with education facilities that place court employees in the classroom and high school and college students in the courts as apprentices; and

g. Monitor compliance with the Affirmative Action Plan, review yearly affirmative action reports, and provide written findings to submitting courts and offices.

9. All chief judges, managers, and personnel officers within the State Court System should be trained, on a continuing and updated basis, on the provisions of the 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.

Adoption of an affirmative action plan will succeed only if its provisions and import are fully known to decision-makers throughout the State Court System. This recommendation is included to ensure that the adoption of the plan is only the first step—one to be followed by consistent and active implementation of its provisions by the entire system. The Director of the Office of Equal Employment Opportunity should ensure that adequate training is provided to judges and managers, through the Appellate, Circuit, and County Court Judges Conferences or other appropriate means.

10. 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.

The State Court System currently has in place no internal procedure or mechanism by which aggrieved employees may challenge employment decisions influenced improperly by the race or ethnicity of the employee. Grievance procedures of this kind have been in place in executive branch agencies for some time and, accordingly, may provide a prototype for use by the court system. Manifestly, employees of the justice system should be no less able to receive consideration of employment grievances than those who labor in the executive branch.

11. 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 are to be submitted to and approved by the Director of the Office of Equal Employment Opportunity of the State Court System. The approval shall be certified to the Appropriations Committees of both houses of the Legislature and to the appropriate executive branch officials who, together, 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.
While employees hired at the county level are not technically a part of the State Court System, these employees are rightly regarded as part of the judicial system by citizens who walk through the doors of Florida's courthouses. Like that of the State Court System, this work force must accordingly reflect the excellence and diversity of Florida's population. By mandating the adoption of affirmative action plans by each Clerk, the Legislature, with the guidance of the State Court System's EEO officer, may ensure proper attention is paid to the importance of minority representation in the work force of justice.

12. The Governor, as well as the Governor and Cabinet, should, by executive order or resolution, as appropriate, 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.

Over 10 years ago, the Governor, and the Governor and Cabinet, each required their executive agencies to adopt affirmative action plans. (The executive order and resolutions requiring those plans are contained in the Appendix to this Report. [Editor's note: The full Appendix, not reproduced here, is available at the Florida Supreme Court Archives, Tallahassee, Florida.]) Subsequently, a statute was enacted to formalize this adoption process. See section 110.112, Florida Statutes. The statute currently requires executive agencies to submit annual updates to the Department of Administration. It appears that some agencies are more diligent with regard to their statutory duties than others. The Governor and Cabinet ought to ensure compliance by all agencies with existing affirmative action/equal opportunity law.

13. The Legislature should increase funding for the efforts of Florida's public and private law schools to recruit and retain minorities as students and faculty members.

The absence of sufficient numbers of minority lawyers impedes efforts to diversify the bench and the Bar. A natural source of leadership to minority communities is unavailable by virtue of the shortage of minority lawyers. The democratic process suffers as a result. The Board of Regents' budget request for $60,000 for scholarships to stu-
dents who seek the LL.M. degree deserves support, along with more extensive initiatives to fund scholarships and pre-enrollment programs for minority students seeking the J.D. degree and salary incentives for the recruitment of minority law school faculty members.

**Initiatives to Increase the Number of Minorities in the Legal Profession**

The lack of minority attorneys in the state is an issue of particular concern to the Commission. The underrepresentation of minorities as lawyers in the state impedes efforts to increase the numbers of minorities as judges and has other negative consequences. The Commission has set in motion during its first year several initiatives geared toward ultimately increasing the number of African-American, Hispanic, and Native American attorneys in The Florida Bar. These initiatives will continue to be pursued and will come to fruition during the second year of the Commission's work.

**Examining the Bar Exam for Unintentional Bias**

An informal study conducted by the Orlando Sentinel in February of 1989 concluded that a substantial disparity exists in Bar examination passage rates among minority and non-minority students. The Commission decided early in its term to examine Florida's Bar examination to determine whether its contents, structure and administration needlessly impede access to the legal profession by minority students.

At the Commission's urging, the Law School Admissions Council (LSAC) embarked upon a retrospective study of the performance of minorities on Florida's Bar exam. This study will be part of a national study of broader scope undertaken by the LSAC. The study is designed to determine, for the first time, how well minority students are faring on the Bar exam and what factors inherent in the students' background correlate to success on the exam. Through the mediated efforts of the Commission, the Florida Board of Bar Examiners has expressed its support of and willingness to provide necessary data for the LSAC study.

As significant as the LSAC study will be for Florida, the Commission believes that an additional study, examining a related but distinct aspect of the overall issue, is also required. This additional study would examine the vehicle of the Bar exam itself for potential, unin-

**Editor's Note: This section was presented in the original publication as a special inset within the portion of the Report and Recommendations dealing with the judicial system work force. We have moved it here, to the end of that portion, for the convenience of the reader.
tended cultural biases in the language, structure or administration of the exam. The Commission has requested funding for this study from the Florida Bar Foundation, which has approved the funding request. The Commission appreciates both the Florida Bar Foundation’s and the Board of Bar Examiners’ continuing support of its efforts to conduct this additional study, findings from which will be contained in the Commission’s next report.

Increasing Minority Faculty and Student Presence in Florida’s Law Schools

The Commission is also concerned about the lack of representativeness of Florida’s law school faculties. The paucity of minority faculty to serve as role models is related to the low numbers of minority law students and attorneys. The LL.M degree can operate as a prerequisite to becoming a full-time, tenure-track law professor. The Commission has sought to expand the opportunities for minority students and practitioners to obtain this “pass-key” to the legal teaching profession, thereby increasing minority representation among law school faculties.

At the Commission’s urging, the Florida Board of Regents has included within its 1991-92 budget request an additional $60,000 to augment the Delores Auzenne Fellowship Program. This money will be earmarked to provide tuition and other financial assistance to minorities seeking to obtain their LL.M degrees in Florida.

Financial Assistance to Minority Recruitment, Retention, and Hiring Programs

The law school deans and law students who appeared before the Commission emphasized the need to increase the availability of scholarships as a means of increasing minority enrollment in the state’s public and private law schools. Some law schools have demonstrated commitment to minority recruitment and retention by allocating necessary resources. For example, the University of Miami Law School operates a pre-enrollment summer program for African-American students named in honor of James Weldon Johnson, the poet, lyricist, diplomat, activist who was the first African-American member of The Florida Bar. The cost of this program is approximately $70,000. The amount needed to provide tuition scholarships to ten first-year students of the University of Miami is approximately $130,000. Hence, for relatively modest sums, significant increases in minority enrollment can be achieved even at private universities. The University of Miami program, and others like it, deserve strong support from the State.
The promise of imaginative student recruitment and retention programs will not be fulfilled without hiring initiatives to assure that minority law graduates can find employment in the public and private sectors. The results of a survey of minority representation in the public and private sectors will be considered in the next phase of the Commission’s work. The fact of underrepresentation is sufficiently clear, however, that some initiatives are currently underway.

For example, the Dade County Bar Association, using funding from leading law firms in that area, has established a program to provide minority law students opportunities to have internships with federal judges while pursuing second- and third-year law studies. The firms which fund the program also make commitments to hire minority students in their summer clerkship programs. The Dade County Bar programs are steps in the right direction that should be followed by other organizations and firms elsewhere in the state.

**LAW ENFORCEMENT INTERACTION WITH MINORITIES**

*The “Warfare” Between Minorities and Police Organizations*

Testimony presented at the Commission’s public hearings from Pensacola to Miami has led the Commission to the inescapable conclusion that African-Americans from a wide array of occupations and professions perceive that members of their communities are subjected to abuse and brutality by law enforcement organizations in every region of the state. The testimony shows that African-Americans perceive the existence of a pattern of abuse, use of excessive force, harassment, and undue infringement of the basic liberties and mobility of young African-American males. The state of interaction between African-American males and police organizations was chillingly referred to as a state of “warfare.” With the commentary on this state of “warfare” so pervasive, the Commission finds that police-community relations must be addressed in a systematic, managerial, institutional manner and not simply in a manner calculated to respond solely, case-by-case, to the allegations of individuals. In a society in which the rule of law must prevail—irrespective of the depth or validity of grievances—efforts must be made to respond to the dangerously explosive relationships between minorities—young African-American males in particular—and police organizations in Florida.

* Allegations of “Bias” Abound

These comments from minority citizens are exemplary of allegations made to the Commission every place it met:
—From a young African-American father, with his two sons in tow: “I have the same problems that a lot of the other people . . . have. I drive through the community and I get stopped by the police. I’m a law-abiding citizen. I’ve been stopped about six times, and I haven’t done anything.” [Zeno Franks, Tampa, 57].

—From an African-American civil engineer working on a project for the city: “I was pulled over at night and was told, ‘You are not supposed to be in this part of town this time of day.’” [Hope Oniye, Miami, 86].

—From a public defender, representing both white and non-white clients: “There exists in this community a black male profile . . . You are likely to be picked up, questioned, and possibly arrested just because you are a black male. This will not happen to white males in the community.” [William White, Jacksonville, 24].

—From a concerned and active citizen: “There are a significant number of young males who are stopped because they drive expensive cars. I maintain that every young black male who drives an expensive car [and] has gold around his neck is not a drug dealer.” [Joanne Toakley, Tampa, 25].

These comments are only a sample of those received by the Commission describing the sense of frustration and indignity felt by minorities who said they were approached and questioned by law enforcement officials largely, if not solely, because of their color or ethnicity. These comments were echoed by some police officers: “Many times . . . rights are abrogated by a law enforcement official simply because the individual is black or he happens to come from a minority neighborhood.” [Cmdr. James Wilson, Tampa Business Meeting, 9].

Defense Attorneys Corroborate the Claims of Minorities About Police Abuses

As part of its study into law enforcement practices, the Commission administered a survey to over 1000 criminal defense attorneys in the state. Attorneys were asked to describe, based on their professional experience, whether and how frequently a number of given circumstances occurred (i.e.—“never,” “infrequently,” “sometimes,” “often,” or “very often”). When asked how frequently police officers stop and detain a minority individual where there would be no stop or detention of a non-minority individual, over one-third of the responding attorneys said this occurred often, and an additional 26% indicated that it occurred very often. The opinion that minorities were more frequently stopped and detained without justification is not dependent upon the race or ethnicity of the responding attorney: sur-
veyed white, African-American, and Hispanic lawyers all saw this as a major concern.

In addition, close to 60% of all attorneys responding to the Commission's survey felt that minorities were either often or very often treated with less respect or courtesy than non-minority individuals, and more than that asserted that, sometimes, often, or very often, police officers use unnecessary force against a minority individual where such force would not be used against a non-minority.

The concern among citizens in this area is evident:

When you come out of your car and speak, [the officers] do not want to know who you are. They don’t want to know what your are. All they want to know is your color and your accent.

[Hope Oniye, Miami, 87].

A female citizen echoed the concern: “The young black male . . . is becoming an endangered species. And it’s due to the police department, who don’t even treat us like humans.” [Sarah Merrell, Ft. Lauderdale, 79].

A criminologist and nationally-renowned scholar in race and the criminal justice system described a type of cultural difference relating to African-Americans which, being frequently misinterpreted by white officers, often leads to inappropriate action:

Black Americans, for example, do not react. Black Americans with a poverty background often react differently—they might under-react or over-react, at least from the perspective of the officer . . . . They often [do] not do the grunting that you expect when we speak and when someone's paying attention to you—"Yes, uh-huh" or even nodding their head up and down. Instead, they [often] look at you with this deadpan expression—called "Cool." It [isn’t] meant to be offensive or aggressive; it [is] meant to disguise their feelings. In turn, the officer . . . could misinterpret that body language or lack of expression.

[Daniel Georges-Abeyie, Ph.D, Tampa, 18].

The data and testimony received by the Commission also show that the relationships between police officers and Hispanic individuals are adversely affected by cultural differences. While they may appear to some to pale in significance when compared to the clash of black versus white in relations between African-Americans and police officers, the possibilities of misunderstandings and abuse are no less real. An Hispanic law enforcement officer vividly portrayed for the Commis-
sion what he regards as one common example of how cultural differences lead to inappropriate law enforcement behavior:

An Anglo officer who sees two Hispanics standing on a street corner discussing Cuban politics—with their voices getting higher and higher and their arms waving—may consider that to be an argument and may interfere, thinking he’s stopping a fight. In fact, these two gentlemen will, in a few minutes, shake hands and go have some coffee and smoke a cigar . . . [Individuals of Spanish descent oftentimes] get a little carried away when we have political discussions, and if you don’t understand what we’re saying, you’d think we’re getting into a big fight.

[Mjr. Gabe Venero, Tampa Business Meeting, 6].

Law Enforcement Organizations Responded by Cooperating with the Commission’s Inquiry

To prepare to make recommendations in this area, the Commission sought to understand the perceptions and practices of law enforcement organizations by communicating directly with law enforcement officers. Those officers—representing organizations ranging from municipal departments and sheriffs’ offices to rural towns and reservations for Native Americans—participated in the Commission’s public hearings and business meetings. They consulted cooperatively with the Commission in a variety of ways, including by releasing an array of information about their internal practices to a team of researchers retained by the Commission.

The opinions expressed to the Commission about police practices in relation to minorities have been a recurring subject of public discussion and scholarly debate. The flash point for each of Florida’s four most publicized “Race Riots” in the 1980’s was an incident between police organizations and a Floridian of African descent. Hence, the Commission’s recommendations include measures to increase training provided to police officers about matters of race and ethnicity.

Analyzing, Supporting, and Improving Law Enforcement Organizations’ Efforts to Improve Relationships with Minority Communities

To advance the analysis of police-minority conflict beyond comparisons of the perceptions of minorities and police organizations, the Commission sought also to collect data regarding the work force composition, training practices, and records of law enforcement organizations for the recruitment and advancement of minority police officers.
Thus, the Commission contracted with the Police Foundation, an independent, non-profit research organization based in Washington, D.C., to conduct a statewide study of law enforcement hiring, promotion, retention and training practices. The Police Foundation provides advisory services to law enforcement organizations but is not governed by law enforcement authorities. The following facts and figures concerning the law enforcement work force are derived from the Foundation's study for the Commission.

The Number of Minorities in Police Organizations is Declining

African-Americans and Hispanics are underrepresented in Florida's police agencies, representing, respectively, only 8.7% and 5.6% of all law enforcement officers. The most pronounced underrepresentation of African-American and Hispanic officers occurs in Florida's rural areas and northern region. Minorities appear to be losing ground in their representativeness in police agencies. For nearly the past six years, there has been continuing reduction in the degree of representativeness of minorities in the state's law enforcement organizations.

Few Minorities Are High-Ranking Police Officers

According to the Police Foundation's study, minorities are disproportionately underrepresented in the management and supervisory ranks of police organizations in Florida. The eight ranks for police officers (Officer, Corporal, Sergeant, Lieutenant, Captain, Major, Assistant and Deputy Chief, and Chief Executive) do not show equal representation by race. In fact, African-Americans and Hispanics barely register on the scale once past the rank of lieutenant. Even when controls are imposed for region, sex, education, years of experience, and beginning rank, race and ethnicity were still found to have contributed to the lower ranks for African-American and Hispanic officers.

As a corollary to the above, the Foundation's study documents that minority police officers tend to receive fewer promotions than similarly situated whites. For example, whites with seven years' seniority are promoted more than twice as often, on average, as Hispanics with comparable years of experience. Once again, this disparity cannot be

6. In this context, "police" refers to municipal officers, sheriffs' deputies, state troopers, and all other sworn personnel.

7. The Foundation has expressed some concern over the reliability of the state-level data upon which its numerical analyses are based. While the state-level data appear to be less than complete, the Foundation's conclusions, including that minorities are underrepresented in positions of authority, are well-substantiated.
explained away by other factors such as level of education or years of experience.

In sum, both African-American and Hispanic officers tend to be substantially underrepresented in almost every comparison with their white fellow officers. They tend to be:

* hired less frequently;
* substantially underrepresented in the state’s rural areas and northern region;
* promoted less frequently;
* less visible among the senior ranks of the operational levels; and
* less visible within the supervisory and command structures of the state’s law enforcement agencies.

The ramifications of these findings are serious. Minorities are hired less frequently than whites, creating a disproportionately large group of white officers which tends to advance more readily through the ranks of police organizations. In most police agencies, senior patrol officers are the individuals who informally guide the squad or platoon. They are the veterans who invariably influence the “tone” of police service delivered by the squad or platoon; their perspective and suggested methods for dealing with day-to-day situations tend to become the informal rule for the patrol staff. Thus, a lack of minority representation engenders a perpetuation of an organizational culture and modus operandi which reflects the beliefs, attitudes, and perceptions of the white officers who lack minority peers.

**Needed Improvements in Basic Recruit and Executive Training**

In addition to an analysis of the law enforcement work force in Florida, the Police Foundation also undertook, at the Commission’s request, a comprehensive review of the nature and sufficiency of the training given at both the basic recruit and in-service levels in curriculum areas which have significant relation to the treatment of minority offenders and controlling racial and ethnic bias. Working in conjunction with the National Organization of Black Law Enforcement Executives (NOBLE), the Foundation observed first-hand how the training in certain areas is (or is not) being delivered to law enforcement personnel. While Florida’s police training curriculum in areas relating to ethnic bias compares quite favorably to that of other states, several areas require improvement.

The Florida law enforcement training system is a highly decentralized process, utilizing forty separate certified training centers, each of which is responsible for the delivery of law enforcement and correctional officer training to a constituency base of law enforcement and
correctional executives surrounding the individual site. The chief exec-
utives of the region’s police, sheriff, and correctional agencies are in-
fuential in setting the terms of the quality and “tone” of the training
delivered at each site. While the state’s Criminal Justice Standards
and Training Commission (staffed through the Florida Department of
Law Enforcement) establishes the minimum training requirements for
basic recruits, the manner in which those minimum requirements are
met varies from center to center.

Cultural Awareness Training

Currently, FDLE mandates that, out of approximately 520 hours of
basic recruit training, only two of those hours must be devoted to
training in cultural and ethnic groups. Training instructors most fre-
quently deal with topics of racial and ethnic bias in their courses on
community relations, and ethnic and cultural groups. Reportedly,
many of the training centers are using outdated video tapes, produced
in the 1970s and early 1980s, to teach this subject area. Racial and
ethnic bias appears frequently not to be discussed at all in other criti-
cal courses, such as police ethics and professionalism; powers of ar-
rest; field stops; interviews and interrogation; use of force; and verbal
commands and compliance.

Furthermore, current training in cultural awareness is listed merely
as an “orientation” component of the FDLE curriculum, rather than
as a “proficiency” item, thus marginalizing its significance. The con-
sequence of this categorization is that no standardized testing is given
on this subject. Rather, the individual training centers devise inde-
pendent testing and examination procedures for “orientation” items.
Hence, officers are not, through testing, made accountable for mas-
tery of even rudimentary knowledge about cultural considerations per-
tinent to police work.

Conclusion As To Law Enforcement Interaction with Minorities

Long-simmering tensions between police organizations and minority
communities became apparent at each public hearing held by the
Commission. A majority of criminal defense attorneys similarly
opined that minorities are subjected to mistreatment by law enforce-
ment authorities. There is a perception that police organizations disre-
gard the basic rights of minorities because they are relatively
powerless to defend their rights.

The underrepresentation of minorities among the higher echelons of
law enforcement and the difficulties encountered by minorities in
gaining promotions reinforces the perception that police organizations
are hostile to minorities.
The effectiveness of law enforcement organizations seems directly related to their ability to obtain the cooperation and support of the communities they service. To facilitate law enforcement, a series of initiatives must be undertaken to assure that police treatment of minorities is both perceived as fair and is fair in fact.

**Policy Recommendations: Law Enforcement**

Addressing instances of racial and ethnic bias in Florida’s law enforcement system will require a creative, multifaceted approach affecting work force, accountability, and training concerns.

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

   The Police Foundation has noted a disparity in the rates at which minorities and non-minorities are represented and promoted in the state’s law enforcement agencies. Law enforcement organizations should develop and implement plans designed to identify goals, objectives, and final outcomes critical to improving minority representation in local law enforcement. These goals, objectives, and final outcomes should be calculated and included in the plan to ensure fairness in minority recruitment, hiring, retention, and promotion.

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

   A comprehensive minority career development program should be outlined by the State and supported among local law enforcement agencies. The minority career development program should identify and provide minority members with opportunities to engage in a process of training and career development which would enable them to gain the experience, skills, and knowledge necessary to achieve upward mobility. Such a program should include management internships, specialized training, job sharing, and other programs designed to enhance the knowledge and experiential base of minority officers. Merely improving the qualifications of minority candidates may not be sufficient. Personnel stipends, by which the municipality would provide salary supplements for minority supervisors and managers, and other incentives may be necessary.

3. **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 suits in the name of the state against individuals and agencies, including law enforcement agencies, which engage in harassment and brutality against minorities.

Police brutality and harassment are inimical to the aims of a democratic society. They foment disrespect for the laws that police organizations are pledged to support. As the state’s top law enforcement officer, the Attorney General should help to send the message that police abuse of minorities, where proved, will not be tolerated and will not be left to multifarious, uncoordinated, individual attempts to achieve accountability.

4. 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.

All law enforcement agencies should be required to develop written policies governing the use of force and domination against all suspected offenders, including minorities. Adoption of such policies will tend both to increase the consistency of appropriate conduct and the accountability for inappropriate conduct against racial and ethnic minorities.

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

Training for police officers presently is provided in forty different places and in many different ways. Collaboration, for example, through the use of the community college satellite network, may provide opportunities to increase the quality of instruction and to decrease program costs. A legislative audit of the structure for managing and funding “police academy” instruction should be undertaken with the objective of increasing the accountability of all training sites for the delivery of a curriculum that includes pertinent, sophisticated instruction on police matters related to race and ethnicity.

6. 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.

In the 1990 regular session, the Legislature created a law enforcement institute affiliated with the State University System. The mission of that institute should be expanded to include the design and implementation of research projects which will combine the talents of post-secondary educational institutions, including community colleges and universities, toward the end of improving law enforcement efforts, from the officer on the beat to police executives.

The community colleges presently provide instruction to numerous police departments. Separately, university-based programs in criminal justice are involved in extensive research. These training and research functions can be coordinated through a “Type I Institute,” having statewide affiliates and responsibilities, which is budgetarily situated in the State University System but specifically charged to conduct applied research of a kind that will ultimately inform and improve the training programs of the academies operated by community colleges and other providers of instruction.

Collaboration of this kind between post-secondary educators and law enforcement organizations should spawn experiments and innovations that will not only increase sensitivity to minorities but enhance managerial techniques as well as public safety.

7. 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 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 community 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.

Racial, ethnic, and cultural awareness training should be required at all stages of law enforcement training. The quality of interaction between law enforcement and local communities is directly impacted by how well-equipped law enforcement officers are to do their jobs.

**Juvenile Justice: The Need For Further Reform**

*Why Focus on the Juvenile System?*

An attorney told the Commission, "If you’re going to look at the criminal justice system, you’d better start with the juvenile justice system, because it’s those children that ultimately become the inmates in the penal institutions throughout the state." [Curtis L. Jones, Miami, 78]. This is so because many youth who begin their lives as “juvenile delinquents” become permanently ensnared in a web of criminal conduct that keeps them in an endless cycle of trips through the state’s adult jails and prisons.

Even though we focus here on disparities in the juvenile justice system, we note that the disparities reflect trends set into motion far beyond the doors of the courthouse. Disparities of education, income, health, early childhood support, and social status must be more thoroughly addressed in the circumstances in which they originate. If the State implements strategies to address disparities earlier in the lives of minorities, then minorities probably would become less entangled in the juvenile justice system. Clearly, the State must act, above all, to repair the social, economic, and educational deficits which too often lead to despair and delinquent behavior among minority youth.

In 1990, the Florida Legislature enacted a landmark juvenile justice law which rests on the proposition that an ounce invested in improvements to the juvenile justice system at the front end will likely produce ten pounds of dividends—in the saving of young lives and money—at
REPORT AND RECOMMENDATIONS

the back end. The Juvenile Justice Reform Act of 1990 represents the most significant piece of legislation involving the juvenile justice system the state has witnessed in many years. Largely incorporating the recommendations of the Juvenile Justice System Review Task Force, created by the Legislature a year earlier, the Act seeks to restructure Florida’s juvenile justice system by, among other things:

* committing more money into developing diversionary and counselling programs at the front end of the system;
* instituting a case management and assessment procedure to better ensure appropriate placement for each juvenile;
* creating more appropriate sanctions and a greater range of placement options within the system for serious habitual juvenile offenders;
* establishing delinquency prevention councils in each judicial circuit to develop, coordinate and fund community-based programs to meet local needs;
* establishing a permanent Commission on Juvenile Justice to develop long-range policies in this area; and
* providing for juvenile justice training academies to train relevant HRS employees, according to policies established by a newly created Juvenile Justice Standards and Training Council.

The Act attempts to effectuate the primary purpose of the juvenile justice system, which is to reduce juvenile crime systematically by vigorously enforcing the law and by adeptly nurturing the development of individual responsibility. Manifestly, the Act’s fundamental purpose must be pursued through means which are fair and just, which recognize the racial and ethnic characteristics and needs of individual juveniles, and which provide a system of programs and services extending to all juveniles equal access to opportunities for growth and development.

Funding Is Needed to Implement Mandated Reforms

With strong funding, substantial minority representation on the newly created councils, and effective implementation, the Juvenile Justice Reform Act of 1990 could result in a better, more responsive system for all juveniles, including minorities. Regrettably, mandated budget cuts threaten to effectively eliminate progressive, desperately needed programs instituted by the Juvenile Justice Reform Act of 1990. Adequate funding must continue to be appropriated to implement the provisions of this Act. Without adequate funding—particularly during periods of state fiscal crisis—the import of this critical restructuring will be lost. The 1990 Act, even with appropriate fund-
ing, however, would not alone alleviate the special problems facing minority juveniles. The Legislature must take the next logical step—recognize that extra burdens are carried by the minority juvenile and facilitate the efforts of families and communities to help carry those burdens.

An Overview: Florida’s Two Juvenile Justice Systems

It is frightening to watch our children leave one institution, their elementary, junior, or high school, and enter another institution, the juvenile justice system. We’re losing generation after generation to various forms of subtle bias and our children are being swept up unfairly by the system.

[Commissioner Willie Junior, Pensacola, 11].

Public testimony presented to the Commission—and sophisticated statistical analyses conducted by experts at the University of Florida—show that Florida operates two systems of juvenile justice, one effectively for whites, the other for non-whites. This is neither by judicial decree nor nefarious design of system professionals. But the existence of a dual system is as clear as black and white.

Through its study, the Commission has learned that:

* misunderstandings based on cultural differences between law enforcement officers and minority juveniles too often escalate what is bound to be an already tense situation into a highly charged powder keg;
* some officers tend to display less respect when handling minority juveniles than they do when handling non-minority juveniles;
* minority juveniles are more likely to be formally arrested than similarly-situated white juveniles;
* a minority juvenile is significantly more likely to be recommended by HRS intake personnel for formal processing than a non-minority juvenile with substantially the same prior criminal record and for the same violation of the law;
* minority juveniles are more likely than non-minority juveniles with substantially the same prior record and for the same conduct to be transferred by prosecutors to the adult criminal court for more serious handling and consequences;
* the risk of being detained in a secure facility is higher for a minority juvenile than for a similarly-situated non-minority juvenile, especially where the juvenile has a prior record;
* educational and counselling opportunities for minority juveniles while in secure detention are deficient;
* minority juveniles are not being referred into diversion programs as readily as non-minority juveniles; and
* more minority juveniles are being committed to deep-end programs (training schools and serious offender programs) than non-minority juveniles with similar backgrounds and offenses.

In short, the reality is that African-American and Hispanic juveniles are being treated differently at several stages of the juvenile justice system. When the object is punishment — detention, formal adjudication, or commitment — minorities get more; when what is being handed out is informal processing or diversion, minority juveniles get less. This differential treatment results, at least in part, from racial and ethnic bias on the part of enough individual police officers, HRS workers, prosecutors, and judges to make the system operate as if it intended to discriminate against non-whites. It results as well from bias in institutional policies, structures, and practices.

**The Commission’s Studies in This Area**

The Commission employed three professional consultants to each undertake empirical studies relating to the effect of race and ethnicity in the juvenile justice system. Each study explored a related but distinct aspect of the overall issue. While the full names of the consultants and their studies appear in the Acknowledgements Appendix, each study will be referred to throughout this chapter by the last name of its principal investigator(s) (i.e., “the Tollett study,” “the Durham study,” and “the Bishop and Frazier study.”)

In addition to these reports, the Commission has been aided by other sources of information. First, Commission staff conducted an extensive review of state and national studies and articles on this topic. Several of those studies document the differential treatment of minority juveniles at the law enforcement arrest stage. A survey of criminal defense lawyers, with over three hundred (300) respondents, yielded pertinent information concerning the experiences of public and private attorneys with regard to the differential processing of minority juveniles. Likewise, the Commission received pertinent information in response to its survey to all Florida prosecutors as to their policies, practices, and opinions with regard to the processing of juveniles. Finally, the Commission received a great deal of information—some anecdotal, some based on personal experiences, all vivid and poignant—through its public hearings.

**The Staggering Numbers**

The last several years have witnessed a staggering increase in Florida in the proportion of delinquency cases involving black youth.
Since 1982, the number of delinquency cases involving black youth has increased 113%, even though the population of black juveniles has grown by only 11% during the same time period. Drug offenses account for the bulk of this increase: since 1982, the proportion of felony drug cases (excluding marijuana) involving black males increased from 15% to 86% of the total number of male delinquency cases received. While felony drug cases increased by 103% for white males, the increase for black male juveniles was an astounding 6706%!

Numbers documenting the overrepresentation of non-white youth in the juvenile justice system certainly do not alone demonstrate the presence of racial bias in the system. Comparisons of similar but separate cases involving white and non-white youth, as well as interviews with juvenile justice practitioners, however, compel the conclusion that racial bias, in one of its various forms, accounts for at least some of the overrepresentation demonstrated by the dramatic statistics.

It should be clearly noted that the numbers presented throughout this report refer to “white” and “non-white” or “black” juveniles. State-level juvenile data systems collect information only in this “white” vs. “non-white” form. Thus, in the juvenile context, quantitative information concerning juveniles from Hispanic or other ethnic backgrounds is lacking. However, as the Commission is concerned about all underrepresented minorities, it has sought to compensate for this data insufficiency through qualitative interviews and surveys noted throughout this section.

**Arrest Rates**

According to the Tollett study, the arrest rate for black youth in Florida in 1989 was two and one-half times higher than for white youth. Blacks accounted for 42% of all juvenile arrests in 1989-90, even though blacks make up only 21.96% of all youths between the ages of ten and seventeen (known as “the population at risk”). Drug offenses certainly account for a large portion of this increase.

Each of the Commission’s juvenile consultants interviewed juveniles or juvenile justice officials to gain opinions which would serve as “windows” into the attitudes of persons who are currently part of or working within the juvenile justice system. An overwhelming majority of those interviewed (including, significantly, law enforcement officials) believed that minorities are treated differently from and more harshly than non-minorities at the arrest stage. Many interviewees cite the example of a juvenile caught driving his or her parents’ or friend’s car. In the case of a minority juvenile, the officer is more likely to assume the youth stole the car and, thus, to take the juvenile into
custody. Where a non-minority juvenile is involved, however, the youth is assumed only to be “joy-riding” and, frequently, may be returned home without any official action being taken by law enforcement personnel.

Cultural stereotypes and misunderstandings lead to an increased likelihood of arrest for the minority juvenile. Many officials commented that law enforcement officers are socialized to believe that minority juveniles, oftentimes living in low income areas, are more likely to be guilty of committing a crime. As one state attorney interviewed explained, “Police officers, because of fear and ignorance, will probably see black as more of a problem.” [Bishop and Frazier, 40]. This opinion is echoed by an HRS intake worker, who shared:

Based on complaints I have received when youths are referred, blacks are treated differently than whites at arrest. There is the perception all through the system that the non-white community needs more cleaning up. . . . People expect black neighborhoods to be crime-ridden.

[Bishop and Frazier, 46].

Cultural differences too often produce an escalated level of tension, leading to a greater likelihood of arrest for the minority juvenile. As the Durham study describes, some minority youth, especially those deemed “serious or violent offenders,” learn the art of survival at very early ages and become intolerant of authority figures, earning the label among law enforcement as “behavioral problems” or “trouble-makers.” The “tough guy” attitudes and uncooperative behavior of these minority youths present a unique challenge to the white police officer who, usually untrained in cultural differences, is less tolerant of behavior he or she does not understand and does not respect. This natural clash often results in the police officer taking out his or her anger and disrespect for the juvenile in more aggressive ways, such as harsh words and actions, including formal arrest. One attorney put it this way:

I’m sure it [bias] goes on . . . . An example might be when law enforcement is concerned—a young white officer is in a black neighborhood and arrests a kid for disorderly conduct because the police are trying to “set the ground rules.”

[Bishop and Frazier, 50].

Delinquency Referrals

In Florida, once a juvenile is referred for conduct thought to be delinquent behavior, HRS intake officials review the facts of the case,
interview (where possible) the juvenile and his or her parents or guardians, and then make a non-binding recommendation to the state attorney as to the best method of handling the juvenile. Intake officers may recommend that no petition for delinquency be filed (e.g., a case be closed without action or diverted from the system for pre-trial intervention or other non-judicial handling) or that a petition for delinquency be filed with the court for formal processing. The ultimate decision whether a juvenile delinquency petition will be filed rests with the state attorney.

According to the Tollett study, during 1989-90, HRS recommended that no petition of delinquency be filed for white male cases approximately two and one-half times more often than it recommended not filing a petition of delinquency in the cases of black males. Similarly, the Department recommended that no petition be filed for delinquency for white female cases at two times the rate for black females.

While these contrasts are alarming, they would not, on their own, indicate the presence of unequal or unfair treatment. The Frazier and Bishop study examined cases of more than 160,000 juveniles in 1987 to attempt to determine whether juveniles who were similar in major respects except for their race or ethnicity were treated fairly and equally at the HRS recommendation stage. Their study concluded that, when a white and a non-white juvenile offender are alike in terms of age, gender, seriousness of the offense which prompted the referral, and seriousness of their prior records, the probability that HRS would recommend that the non-white youth be petitioned to court was greater than for the white youth.

The Bishop and Frazier study also examined the effect of race on prosecutors’ decisions to refer juveniles for judicial handling. The study concludes that prosecutors are modestly more likely to recommend for formal handling a non-white youth than a similarly-situated white youth. Racial inequality at the court referral stage becomes more marked, however, when detention status is considered. Juveniles who are detained are more likely to be prosecuted. Because non-white youth are the ones most likely to be detained, they become those prosecuted most frequently.

Institutional bias is contributing to the unequal treatment afforded minorities at this early stage of court referral. Several HRS intake supervisors have indicated that policies and practices are in effect in their offices which inadvertently result in differential handling of minority youths. In many offices, when a youth is referred to HRS intake for delinquency, the youth is ineligible for diversion from formal processing unless his or her parent(s) could be interviewed. This policy disproportionately disadvantages minority juveniles, whose parents
are often single working mothers without private transportation or lacking access to public transportation to get them to the HRS offices, and who sometimes do not have telephones, making it more difficult to be contacted by HRS workers. In addition, some intake officials indicated that minority parents appeared more likely to be distrustful of the juvenile justice system and, therefore, less likely to cooperate with HRS officials even when capable of coming to HRS for an interview.

*Prosecutor's Decision to Direct File in Adult Criminal Court*

Youths who have committed particularly serious crimes or have extensive records of juvenile offenses are increasingly transferred for the processing of their cases to adult criminal court. Where the juvenile is at least 16 years of age, the state attorney has the power to "direct file" the case in adult court. Over 90% of all juvenile cases transferred to adult criminal court enter the adult system through the prosecutor's "direct file" process.

The prosecutor’s direct file authority is obviously a significant one. Juveniles whose cases are processed in adult court face the imposition of adult sanctions and incarceration in adult prisons. According to the Tollett study, black juveniles are currently incarcerated in adult prisons at a rate eight and one-half times greater than that of white juveniles and are sent to adult facilities at an earlier age. State attorneys direct file in more cases than recommended by HRS, and the increase in the minority overrepresentation of those juveniles who are directly filed continues.

Between 1982 and 1990, of all the male cases transferred to the adult court, the proportion of black male juvenile cases increased from 47% to 55%. When felony drug offenders (excluding marijuana) are examined separately, in 1989-90, black males constituted 86% of these cases in general, and 91% of those cases which were transferred to adult court. Statistics such as this led one mental health counsellor, testifying at the Commission’s public hearing, to share in frustration:

*I really question why, if you can hold a juvenile for a year in the adult system, we can’t develop an appropriate way to handle youth in the juvenile system. [Janet Louk, Tampa, 43].*

In their quantitative analysis of juvenile cases, Bishop and Frazier conclude that race has a marginally significant effect on transfer decisions. Specifically, among those juveniles who are transferred to adult
court, non-white offenders were modestly more likely to be transferred than their similarly-situated white counterparts.

Especially in view of the large consequences of these "direct file" decisions, the Commission strongly believes that close scrutiny should be given to the use of the direct file authority. The Juvenile Justice Reform Act of 1990 specifies that "each state attorney shall develop written policies and guidelines which govern determinations for filing an information on a child, to be submitted to the Executive Office of the Governor and President of the Senate, and the Speaker of the House of Representatives not later than January 1, 1991." The Commission encourages the Governor and the Legislature to actively monitor the submission of these policies and guidelines, so that fair and equal use of this significant authority may be appropriately ensured.

**Detention Decisions**

Decisions regarding a juvenile's detention status are made shortly after a delinquency referral is received. Detention decisions are made jointly by HRS intake staff, law enforcement officials (when the referral is police-initiated), and prosecutors.

During its public hearings, the Commission time and again heard poignant testimony that minority juveniles are too often kept in secure detention facilities pending trial, rather than referred for home detention or no detention at all. This observation is corroborated by the Commission's research. Even though black males accounted for 42% of juvenile arrests in 1989, they accounted for 57% of all juveniles who were securely detained pending adjudication. Unfortunately, the trend toward increasing overrepresentation of minority youth in secure detention facilities appears to be getting worse.

The increase of the proportion of minority youths who are detained in secure facilities prior to adjudication cannot be accounted for simply by an increase in the number of cases brought to the juvenile system in the first place. Felony marijuana cases provide a clear example. While intake reports consistently show a larger number of cases received for white juveniles, both male and female, black youth now make up the majority proportion of juveniles detained for this charge. In 1982, 24% of the male felony marijuana cases were black, and 30% of those cases which were detained were black. Figures for 1989-90 show blacks constituting 39% of felony marijuana cases but making up 58% of those who were detained prior to adjudication for that charge!

In their study comparing similar cases of white and non-white juveniles, Bishop and Frazier concluded that the probability of being held in secure detention prior to the adjudicatory hearing was higher
for non-white youths than for similarly situated white youths. This is particularly the case, they found, with youth possessing prior records. A comparison of a white youth and a non-white youth with similar prior records indicating serious or frequent offenses shows that the risk of being detained is significantly higher for the non-white youth—even when he or she is charged with the very same offense. This is all the more significant in view of the fact that secure detention is an important determinant of both referral to court and the imposition of a harsh judicial disposition.

The trend toward the increasing overrepresentation of minority juveniles in secure detention is of particular concern in light of related public testimony consistently received by the Commission. A number of witnesses, including detention facility educators and counsellors, have pointed to the inadequate attention received by minority juveniles while in detention. As one educator described:

I look in my classes everyday and I see almost all black faces. I see the flurry of attention when a white student comes in—Social workers come, counsellors come, and the student is out of there very quickly. The black students sit there for days—21 days, 45 days, two months—and no one pays that much attention to them.

[Rita Logan, Miami, 92].

An HRS intake worker concurs:

Bias is there through all stages . . . . In detention, a juvenile acts out. Minorities are seen as more difficult to reason with so they get the harshest response. Counselling efforts aren’t tried with minorities.

[Bishop and Frazier, 50].

Racial bias, especially in the form of subtle bias stemming from cultural misperceptions, accounts for too much of this racial disparity. Stereotypical notions of what constitutes a functional family unit influence juvenile justice officials to the disadvantage of minority juveniles, who are more likely to come from the home of a single, working mother. Additionally, juvenile justice officials too often stereotypically—and unfairly—allow the juvenile’s neighborhood to influence their decision as to whether the youth will re-offend or fail to appear in court. As an HRS intake supervisor explained:

There are more matriarchal families and parents gone during the day; this is more common among blacks. But there is also the fact
that law and justice don’t take into account racial and cultural differences.

[Bishop and Frazier, 45-6].

A private attorney handling a number of juvenile cases confirms:

I dare say, on the basis of the number of cases I handled in the juvenile justice system, that your parents’ background has a great bearing on whether or not you are going to be detained pending resolution of the matter.

[Curtis L. Jones, Miami, 79].

**Formal Adjudication and Commitment Decisions**

Youths whose cases are formally processed in the juvenile court may ultimately be committed by the presiding judge. Committed juveniles are placed into delinquency commitment programs run or funded by HRS. The number of commitments each year are limited largely by the number of commitment slots available. As many witnesses at the Commission’s public hearings feared, the deeper the penetration of the juvenile justice system towards “deep-end” commitment, the greater the overrepresentation of minority juveniles. Felony marijuana cases provide a vivid example. During 1989-90, black juveniles constituted only 39% of all male marijuana cases but over 71% of the juveniles actually committed after adjudication to a state facility for that charge. In their study comparing similar juvenile offenders, Bishop and Frazier concluded that a black juvenile is substantially more likely to be formally adjudicated and sanctioned, including the sanction of residential commitment, than a white juvenile with the same charge and prior record.

Insensitivity of some judges to cultural differences, or their misperceptions of the significance of those differences, contribute to the unequal treatment of similarly situated minority and non-minority juveniles. As one public defender put it:

[Juvenile justice officials generally] think if you have a minority in front of you, they are more likely to be poor, more likely to have failed on probation before, more likely to have a family in crime. Judges have these biases.

[Bishop and Frazier, 40].

A juvenile judge interviewed echoed the same thought: “Institutional racism is particularly seen as relating to the myths held [by ju-
venile justice officials] about families of blacks, their culture, etc.'
[Bishop and Frazier, 45]. Another judge expressed it this way:

Yes, no doubt, I see it all day. I have had judges and police make racial slurs in my presence. Some are innocent in their belief that black and Hispanic parents are less likely to be able to successfully nurture their children to make it into the mainstream.

[Bishop and Frazier, 50].

At the same time, many juvenile judges formally adjudicate minority juveniles as delinquent in a benign effort to provide youths with treatment they could not otherwise afford or obtain. When juveniles from middle to upper socioeconomic status backgrounds commit delinquent acts, their parents are commonly able to arrange for their children to receive counselling provided by private mental health providers. These services include, for example, private drug rehabilitation services of a quality that is not generally available through public providers. Because parents from low socioeconomic status backgrounds are often unable to afford such private services, their children are more frequently petitioned to court and referred to HRS community control, Stop camps, Step camps, or training school facilities where the youths may receive treatment and/or counselling. As one HRS worker put it:

Resources for clients never seem to get to the minority community. Minorities, then, don’t have the transportation [or] finances to get counselling and private attorneys. Their families can’t afford to purchase alternatives that middle class families can afford . . . so they go into the system . . .

[Bishop and Frazier, 42].

A juvenile judge concurred in this way:

Minorities or low income kids get more [juvenile justice system] resources. If the parents can afford [a private treatment facility], he gets probation. If not, he gets committed . . . As income decreases, the ability to do these programs lessens . . . Maybe there is institutional bias.

[Bishop and Frazier, 42].

Unlike the higher socioeconomic status youth, the lower socioeconomic status youth, who is more likely to be a minority, receives the stigma of the “delinquent” label, even though his or her behavior may not differ from that of the more well-to-do counterpart. In addi-
tion, unlike private services, services provided through the juvenile justice system tend to be more punitive, placing major emphasis on monitoring and punishment. Finally, services provided through the system are more frequently performed by inexperienced counsellors and counselling interns whose expertise is generally not equivalent to that of private service providers.

**The "Snowball Effect" of These Decisions**

The previous sections have demonstrated that minority youth are less likely than non-minority youth to be diverted out of the system at its earlier stages and more likely to be formally adjudicated and committed at its later stages. In addition to the immediate consequences this presents for the youth, this reality carries with it a compound inequity. Unlike the non-minority youth, the minority youth develops a prior record which he or she carries as a liability into the future. The presence of that prior record is likely to increase the severity of treatment which that youth will receive should he or she reoffend and/or be brought back to the juvenile system. Thus, bias has a "snowball effect"—one which leads to a characterization of habitualization for that minority youth which may not be fully warranted by the circumstances.

**The Impact of Drugs and the Implications of the State’s Current Drug Enforcement Policy**

According to state projections, by the 1994 fiscal year, 40% of the non-white male population between the ages of 18 and 34 will be incarcerated or under some form of state supervision or control. The explosive increases in the numbers of minority males under the control of or in Florida’s criminal justice system are directly related to the burgeoning arrests and incarceration for drug offenses. In 1989, 52% of those arrested for drug offenses were black, and approximately 78.6% of those convicted for drug offenses were black. Forecasts suggest that, by 1994-95, drug convictions will account for 49.9% of all prison admissions.

These statistics are so staggering that they call into question the efficacy of the manner in which law enforcement and the legal system have responded to Florida’s rapidly worsening drug problem. At least part of the rationale behind the current “get tough on crime” policy stems from the belief that drug users will engage in serious criminal activity to support their habits. While a majority of the 45,906 persons arrested for possession of an illegal substance in 1987 had prior drug arrests, 76% had no prior arrest for a violent crime. In addition,
88% had never been arrested for property crimes such as burglary and possession of stolen goods. Citing these statistics, a recent study conducted by professors from Florida State University concluded that the state may be incarcerating people for the use of drugs even though they do not and will tend not to commit other crimes.  

There are many who contend that an appropriate response to the problems of drug sale and use in Florida is to increase the availability of rehabilitative treatment and diversion to alternative programs in lieu of incarceration. With the passage in 1990 of the Drug Punishment Act, the Legislature began to emphasize the need for rehabilitative treatment for drug offenders. A study of Florida's drug enforcement policy recently performed by the Office of the Senate President Pro Tempore also urges the development of more coordinated strategies to meet the twin goals of reduction of substance abuse and crime. Moreover, the establishment of a "Drug Court" in Dade County signaled the readiness of one metropolitan area in Florida to direct drug offenders to treatment programs to deal more creatively with urgent situations. All of these efforts are supported by a new study, issued by the Institute of Medicine of the National Academy of Sciences, which generally concludes that drug treatment is a cost-effective and result-oriented way to reduce crime.

The confluence of crime, race, ethnicity, and drugs has produced an enforcement pattern which disproportionately impacts upon black and other minority juvenile and adult males. A more comprehensive approach is needed to proscribe illegal drug activity, while avoiding the reflexive, needless, and counterproductive incarceration of young drug offenders. State policy should emphasize: 1) intervention in cases of drug use to deliver treatment and supervision outside the jail; and 2) appropriate education and employment programs for those who are diverted to alternate dispositional programs. The State must simply shift its pattern of enforcement from incarceration to drug treatment.

Drugs are, unfortunately, a reality which often lead to real—and violent—crime. No one suggests that the State should not be fully prepared to deal quickly and firmly with the criminal conduct which can accompany drug possession, use, or sale. New efforts are needed both to ensure that the State adeptly fights drug-related crime and to reverse the destructive trend of the over-incarceration of racial and ethnic minorities.

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8. This study was performed by Drs. David Rasmussen and Bruce Benson from the Florida State University Department of Economics, dated July 1990.
Conclusion

Minority juveniles are being treated differently than similarly situated white juveniles at almost every stage of the juvenile justice process. Some of this unequal treatment results from individual race prejudice on the part of juvenile justice officials. A substantial part of this unequal treatment results from subtle bias, oftentimes arising out of cultural differences, and institutional bias, in the form of policies and practices which systematically disadvantage minority racial and ethnic groups over others. The juvenile justice system must respond now to address this bias, in all its forms.

Policy Recommendations: Juvenile Justice

The Juvenile Justice Reform Act of 1990 was a bold and comprehensive step toward making the juvenile justice system more responsive toward all juveniles. Its provisions must be actively funded, implemented, and monitored. The Legislature and other responsible agencies should take the next step to put into place measures aimed specifically at eliminating the unequal treatment afforded minority juveniles at several stages of the process.

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

The newly created Commission on Juvenile Justice stands to be an important body in view of its responsibility in setting long-range policies and ensuring the proper implementation of the Juvenile Justice Reform Act of 1990. The statute creating the Commission does not provide for minority representation on the Commission, and no other mechanism is currently in place to guarantee the opportunity for significant minority input. Statutorily providing for minority membership is in order.

2. 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.

Oftentimes, the interaction between Florida’s law enforcement officers and juveniles goes unrecorded. This lack of documentation severely hampers the ability to determine, in any individual case,
whether a juvenile has been subjected to inappropriate treatment based on his or her race or ethnicity or, in any pattern of cases, whether the liberties and rights of minority juveniles are systematically being violated. The Commission also believes that the absence of recordation leads to a perceived or actual lack of accountability, which may of itself exacerbate the tension discussed in the previous chapter.

Because this recommendation is likely to dramatically alter current law enforcement practices, it may be appropriate to have initial implementation through a pilot project, funded by the Legislature and monitored through the House and Senate corrections committees.

3. 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.

The majority of juvenile justice professionals who are repulsed by individual race bias should have an effective official means available to redress it. When, for example, juvenile justice professionals observe others in their own or other agencies responding toward racial and/or ethnic minorities by ridiculing racial or ethnic characteristics, customs, or manners of speaking, means should be available for them to initiate a process of investigation. If ultimately there is a finding of impropriety, strict disciplinary measures should follow.

4. HRS policies and practices 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.

A number of HRS intake supervisors have reported that minority juveniles are often disadvantaged by a HRS policy or practice which provides that, when a youth is referred to intake for delinquency, he or she is ineligible for diversion from the juvenile justice system unless his or her parent(s) can be interviewed. Every effort should be made by intake workers to solicit parental cooperation and to visit parents in their homes in cases where the parent is unable or unwilling to arrange for transportation to the intake office. This may be accomplished by establishing night shifts in intake offices, or providing other means by which officials can more easily make contact with parents.
5. To determine the necessity of 1) detention versus pre-hearing release, and 2) secure detention versus home detention, HRS should promulgate criteria that are sensitive to racial, cultural, and ethnic differences in family structure and styles of childrearing and supervision.

Minority juveniles must not continue to be subjected to more severe treatment prior to adjudication than other similarly situated majority juveniles. Home detention should remain an option for the child whose parent(s) work, as long as extended family support or community-based support and supervision programs are available. Importantly, the kind of neighborhood in which a youth resides should not be a consideration in calculating the individual risk that the youth will re-offend or fail to appear in court.

6. 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.

The Commission's study has shown that juvenile justice officials, including HRS intake officials and judges, will not infrequently formally process a minority juvenile or send the juvenile to a traditional facility, in situations where other juveniles are being diverted out of the system altogether, in the well-intended attempt to provide that youth with counselling or treatment services. Manifestly, youths from economically disadvantaged families should have equal opportunities to be diverted from the juvenile justice system, and to have treatment available to them outside of the juvenile justice system.

The Commission strongly urges that the Legislature set aside a Youth Social Services Fund, to provide counselling and other treatment services to economically disadvantaged youths. This recommendation does not entail the establishment of traditional diversion programs, which frequently widen the net of social control and come with "strings" attached (i.e., the dropping of charges is often contingent upon satisfactory completion of a program, rather than being voluntary). Rather, a fund should be created to enable those juveniles with financial need to obtain the services of existing private service providers without the stigma of court referral. Moreover, experiments should be initiated, with state assistance, to enable community groups
to assume supervisory responsibility over minorities who cannot afford to purchase care in the private sector.

7. 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.

The Juvenile Justice Reform Act of 1990 established a Juvenile Justice Standards and Training Council to oversee the training of HRS employees at regional training academies around the state. Currently, no mechanism is in place to ensure that the Council receives the invaluable continuing counsel and input of minority practitioners and professionals in the area of education and training for juvenile justice officials. This recommendation would achieve that goal.

8. 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.

While education and training cannot be relied upon alone to achieve ethnic and racial sensitivity, they are important tools which should be utilized on an active and mandatory basis for all individuals and officials involved in the juvenile justice system.

9. The State, through all appropriate agencies including, but not limited to, the Legislature, 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.

The State must set as a priority the restoration of a creative and equitable juvenile justice system which meets the needs of Florida's minority youths. To carry out this goal, a solid partnership must be built among the State and other entities, including community groups, educational institutions, churches, businesses, and professional associations, to establish and support programs which address the needs of minority juveniles in each region. The delinquency prevention councils
established by the Juvenile Justice Reform Act represent a viable mechanism for meeting these local needs. As a first step, juvenile justice delinquency prevention funds allocated to the State by the federal government, which are to be administered by these councils, must be made widely available to encourage programs and services for minority youths. A portion of these funds should be set aside specifically to enhance the educational and counselling opportunities for minority youths while in secure detention facilities. In this regard, the link between juvenile justice rehabilitation, employment training, and education must be made much stronger through coordination of the efforts of the Florida Departments of Education, of Health and Rehabilitative Services, and of Labor and Employment Security, with that of local public and private agencies.

The Commission is encouraged by the creation of a program at Florida A & M University which is designed to offer comprehensive services to minority juveniles at risk of delinquency and failure to complete their high-school education. Through programs such as this, the State can move forward toward realization of the goal of a racially and ethnically sensitive juvenile justice system.
APPENDIX

Listed below are the full names of the studies performed for the Commission by its research consultants in each area.

Judicial System Work Force


Law Enforcement Interaction with Minorities


Criminal Defense Attorney Survey


Juvenile Justice System


