

**REPORT OF
THE FLORIDA SUPREME COURT
GENDER BIAS STUDY COMMISSION**

Executive Summary

March 1990

Copyright 1990, The Florida Supreme Court
All Rights Reserved

MEMBERS OF THE COMMISSION

The Honorable Gerald Kogan, Chair
Gill Freeman, Vice Chair
The Honorable Natalie Baskin
The Honorable Bobby Gunther
The Honorable James Joanas
The Honorable Susan Bucklew
The Honorable Major B. Harding
The Honorable William Norris
The Honorable Fredericka Smith
The Honorable T. Michael Jones
The Honorable Lynn Tepper
The Honorable Helen Gordon Davis
The Honorable Karen Thurman
John Beranek
Dean Mary Doyle
The Honorable Joseph DuRocher
Professor Marilyn Hoder-Salmon
Bettye J. King
Lieutenant Sal Lomonaco
Miriam Mason
Raquel Matas
William McBride
Jack McLean
Gregory Pressnell
A. Lynne Roth
Ricki Lewis Tannen
The Honorable Kirk C. Zuelch

Virginia Daire, Executive Director
Lynn Hecht Schafran, Advisor

I. INTRODUCTION

The Commission found during its two years of hearings and study that gender bias--discrimination based solely on one's sex--is a reality for far too many people involved in the legal system. And invariably, those who regard gender bias as an illusion have never suffered its effects. Indeed, the overwhelming weight of evidence and research gathered by the Commission supports only one possible conclusion: Although some may ignore its existence, gender bias permeates Florida's legal system today. Certainly the Commission is aware that the practice of law often only reflects our society's larger culture. Gender bias surely did not originate with lawyers alone. Nevertheless, gender bias is practiced to a disturbing degree by members of this state's legal profession, often in forms that have become highly institutionalized. The refusal of some lawyers to acknowledge this fact is one of the primary mechanisms by which gender bias is perpetuated.

From its inception, the Commission's charge was to document the true scope of this problem and propose solutions. We were not asked simply to determine if gender bias exists in Florida, because this question already had been resolved by a detailed monograph published by Charlene Carres and the Florida State University Policy Studies Clinic. After reviewing this monograph, the Chief Justice of Florida and his colleagues on the Florida Supreme Court concluded that gender bias does in fact exist in the state's legal system. The Court then created the Commission and ordered it "to determine in what areas of our legal society bias based on gender exists, and recommend measures to correct, or at least minimize the effect of, any such bias."

This Report fulfills the Commission's mandate. The findings and recommendations made by the Commission are based upon public hearings, regional meetings, case studies, scholarly research and a variety of empirical studies.

The Commission undertook a multidisciplinary approach to the investigation and preparation of its Report. It held public hearings and regional meetings around the State, receiving testimony and reports from legislators, professionals in a wide array of fields, and all others who wished to speak on the subject of gender bias. Regional meetings were informal discussions primarily with women lawyers and other interested residents of communities around the State.

In addition to the hearings, the Commission undertook extensive research. Our studies included five major surveys of members of The Florida Bar, Florida judges, members of the Florida Association for Women Lawyers, and students in Florida law schools. Among the topics addressed by these surveys were judicial attitudes, equitable distribution and disparate treatment. Other supplemental studies examined adult arrest and sentencing patterns, the juvenile justice system, prostitution, and the treatment of male and female court personnel, including assistant state attorneys and assistant public defenders. We also conducted a preliminary study on facilities and programs for men and women incarcerated in Florida's jails.

The Commission heard detailed presentations on child support enforcement by the National Conference of State Legislators and on domestic violence by the Dade County Domestic Violence Program. We conducted an analysis of all reported family law decisions from January through June 1989 and completed a review of published and unpublished scholarly works in all areas of the law relevant to this Report.

The full Commission discussed each finding and recommendation before its adoption. Not

every Commissioner agreed with every finding and recommendation. Nevertheless, the Report in its totality represents the consensus of the entire Commission.

This Executive Summary reproduces these findings and recommendations and summarizes the discussion that accompany them. The topics covered here are gender bias in the dissolution of marriage, custody and child support; gender bias in criminal justice; and gender bias in the legal profession.

The section on "Gender Bias in the Dissolution of Marriage, Custody and Child Support" addresses access to justice, judicial attitudes and conduct, alimony, equitable distribution, custody, visitation, child support and child support enforcement.

The section on "Gender Bias in Criminal Justice" addresses domestic violence, sexual battery, crime and incarceration, prostitution and juvenile justice.

Finally, the section on "Gender Bias in the Legal Profession" addresses the courthouse environment, professional opportunities, the law firm environment, legal education and gender bias in usage of language.

II. GENDER BIAS IN THE DISSOLUTION OF MARRIAGE, CUSTODY AND CHILD SUPPORT

Women and children experience life after divorce far differently than men. While all family members suffer the trauma of divorce, only the women and children's pain is compounded by being deprived of their economic well-being. This is the harsh reality of most divorce in Florida today. Although Florida's "no-fault" divorce statute is written in gender-neutral language, the Commission found that judicial decisions based upon this language are gender-discriminatory in application. The reason largely is an unrealistic assumption by judges that men and women are economic equals in present society.

The Commission also determined that men customarily retain more than half of the assets of the marriage and leave with an enhanced earning capacity. The remaining family members, however, are left with less than half of the marital assets and a severely diminished and declining earning capacity.

The Commission has concluded that Florida's judiciary minimizes the time, energy, and lost opportunities involved in being a homemaker and primary caretaker of children. Judges generally are reluctant to acknowledge that these contributions are a genuine partnership asset of the marriage. Moreover, the Commission found that Florida's judiciary denies women the economic resources to retain competent legal representation. As a result, women are critically disadvantaged in enforcing their legal right to alimony, equitable distribution of marital assets, and child support.

Findings

a. Economics of Divorce

1. Men customarily retain more than half of the assets of the marriage and leave with an enhanced earning capacity. The remaining family members are left with less than half of the marital assets and a severely diminished and declining earning capacity.
2. A homemaker's contributions of time and energy, as well as the opportunities she has foregone, often are minimized by Florida's courts. Many judges are especially reluctant to acknowledge that these contributions are a genuine resource of a marriage.
3. Post-divorce families headed by women are the fastest growing segment of those living in poverty.
4. Older women whose marriages end in divorce are most likely either to have abandoned their own aspirations or to have devoted their lives to furthering their husbands' careers. They are not adequately compensated by application of the present system of alimony and equitable distribution of marital assets.

b. Access to Justice

1. Women who lack means are routinely denied their statutory right to retain competent legal representation. Without competent counsel, women are critically disadvantaged in enforcing their right to alimony, equitable distribution of marital assets and child support.
2. Many lawyers will not represent women in divorce cases because women generally have fewer economic resources and therefore cannot afford the fees.
3. Florida's public legal aid system is not a realistic alternative to private representation. There are not enough legal aid attorneys, nor are there any plans to increase the number to meet the need.
4. Current statutes require a judge to order the more financially secure spouse to pay the other spouse's ongoing legal fees and support if the request is well founded. However, these laws generally are not observed or are observed in a manner biased against women.
5. Many judges fail to require the more financially secure spouse to pay the other spouse's fees and costs because of a false perception that attorneys can or are willing to "finance" divorce actions for their clients.
6. An award of attorney's fees, if it occurs at all, usually comes at the close of the case. Often, the award is reduced by the judge, especially if a woman attorney represented a

woman litigant.

c. Judicial Attitudes

1. Most of Florida's circuit court judges dislike dealing with family law matters. This attitude can affect the outcome of cases.
2. Many judges in Florida presume that a woman will enter the job market after divorce regardless of the length or conditions of the marriage and notwithstanding her age, lack of training or justifiable expectations.
3. Many Florida judges fail to appreciate or recognize the difficulties for women in starting a career at an age when many men are close to retirement.

d. Appellate Review

As a consequence of limited finances, many women are virtually foreclosed from appellate review of trial court decisions. Frequently they cannot afford the trial transcripts or appellate counsel necessary for an appeal.

e. Equitable Distribution and Spousal Support

1. Fault plays a definite role in some marital dissolutions, despite the characterization of Florida's divorce law as being "no-fault." The statute's alimony section provides that the adultery of either spouse may be considered when determining the amount of the alimony, if any. Because women historically are the ones who must seek alimony, however, they have been disproportionately affected by findings of fault.
2. In many areas of the state, the courts have virtually abandoned permanent alimony or substituted in its place unrealistic rehabilitative alimony awards.
3. Many judges fail to award permanent alimony, preferring instead to use the vehicle of equitable distribution. Yet, because men usually have a greater earning potential, women are disadvantaged by "equitable" distribution when marital assets are too slight to provide sufficient income.
4. In equitable distributions, men generally receive sixty-five to seventy-five percent of the marital assets compared to twenty-five to thirty-five percent for women.
5. The new equitable distribution statute has an extensive list of factors to be considered in distributing assets, but it lacks a requirement of written findings of fact. This allows a trial court almost unreviewable discretion in dividing marital property.

6. The major asset of most marriages is the earning capacities of the partners.
7. Before the no-fault divorce and equitable distribution statutes were adopted, courts usually allowed the custodial parent and children to occupy the family home after divorce, in addition to receiving support. Common practice today, however, is to order sale of the family home so that a cash settlement can be made for equitable distribution purposes.
8. As a result of their almost unlimited discretion, trial courts distribute marital assets either as property or alimony with a lack of certainty and consistency. This may lead to inappropriate property settlements between the parties.

f. Shared Parental Responsibility

1. Many men file proceedings to contest custody as a way of forcing an advantageous property settlement. Too many attorneys knowingly participate in this practice.
2. When a court decides custody, it must consider Florida's presumption for shared parental responsibility. The Commission is concerned that the judiciary is improperly converting this presumption into a mandate by ordering shared parental responsibility without due consideration of factors specified in the statute, including parental desires and the best interests of the child.
3. Contrary to public perception, men are quite successful in obtaining residential custody of their children when they actually seek it.

g. Visitation

1. Noncustodial fathers are disadvantaged in the allotment of visitation.
2. Some courts use a standardized visitation schedule regardless of the circumstances or the employment situations of the parties, resulting in discrimination against men.

h. Child Support and Enforcement

1. There is little consistency in child support awards, even among cases involving similar facts.
2. Child support arrearages are frequently reduced or forgiven without justification. Some judges also routinely reduce future child support payments in response to support enforcement motions.
3. In many child support decisions, courts do not consider the prosperity of the nonpaying parent.

4. The judiciary often fails to incarcerate parents who ignore child support orders, even when they have the ability to pay. Judges too often decline to impose attorney's fees, court costs and interest at enforcement hearings.

Recommendations

a. Equitable Distribution and Spousal Support

1. The legislature should adopt the concept of community property by providing that marital assets enumerated in the equitable distribution statute be considered joint marital assets.
2. There should be a presumption that all marital assets be divided evenly.
3. Even if it rejects the concept of community property, the legislature should amend the dissolution statute to require that equitable distribution awards have explicit findings of fact that include the valuation of assets. Also, the certainty and consistency previously lacking in Florida appellate decisions should be encouraged by a presumption in favor of equal division and a statutory requirement that unequal division be supported by factual findings based on enumerated factors. Without such a requirement, the disparities of the past will continue. A presumption of equal division and the requirement of factual findings would reduce the husband's incentive to gain an advantage through continued litigation and would improve the ability of the appellate courts to review cases.
4. Judges should always consider the best interests of the child in making an equitable distribution of marital assets. This may include a determination of whether to temporarily defer the sale of the family home.
5. Spousal support awards for marriages of long duration should be designed to equalize the standards of living of post-divorce households at the time of dissolution. The current standard seeks only to maintain the standard of living established during the marriage. A rebuttable presumption in favor of permanent periodic alimony in long-term marriages is appropriate.
6. The legislature should amend the dissolution of marriage statute to require that:
 - (a) Each equitable distribution judgment should contain findings of fact, including determination of values of the assets and the reasons for the award; or
 - (b) In the alternative, if a trial judge does not divide property evenly, the judgment should contain findings of fact justifying the result.
7. If a judge awards periodic alimony for equitable distribution purposes, the award

should not terminate on remarriage or death. The party wishing to terminate spousal support then would be required to file a modification petition, and written findings should be required.

b. Visitation

1. Visitation must be encouraged by the courts.
2. The courts should comply with the mandates of section 61.13(4), Florida Statutes, which allows the court to award additional visitation and hold in contempt those who violate a visitation schedule. This would encourage adherence to the court-ordered visitation schedules.

c. Child Support

1. Legislation should be enacted to permit the State to accept credit card payments of child support. The State would charge the payor for all credit costs. Thus, if the credit card company charges the state two percent, the payor would be charged the support amount plus two percent.
2. An administrative hearing system should be instituted, modeled on the Michigan Friends of the Court System. The hearings would be limited to child support enforcement and visitation. Pro se representation and simple procedures with prompt hearing dates would be essential. The determinations of the hearing officers would have the full effect of law, and appeal would be to the circuit court. The Michigan Friends of the Court Council reports an eighty percent success rate at resolving complaints, and Michigan collects \$8.33 in support for each dollar spent in collection, according to the Michigan Department of Health and Human Services. The majority of the enforcement efforts initiated by the Michigan Friends of the Court were in the form of warning letters and telephone calls.
3. After notice, delinquent child support payments would be reported to credit bureaus, just as delinquent credit card, auto and mortgage payments are.
4. Courts should require mandatory security deposits by parents who owe delinquent support payments and are not subject to an enforceable wage assignment, such as self-employed parents. The deposit would be returned to the parent after two years of timely payments.

d. Judiciary

The Florida Conference of Circuit Judges should establish an annual comprehensive judicial training and education program in family law that includes the economic consequences of dissolution and ways in which judicial decisions disproportionately affect

each gender. Attendance should be mandatory for all judges hearing family law matters.

e. Access to Justice

Judges must eliminate the egregious inequity caused by their failure to award a disadvantaged spouse temporary and final fees and costs provided by law.

f. Prenuptial Agreements

Because of the failure of equitable distribution, some couples enter into prenuptial agreements requiring an even split of assets upon dissolution. Unfortunately, the majority of persons remain unaware of their legal rights upon entering a marriage. Thus, when a couple applies for a marriage license, they should receive a pamphlet outlining current Florida case law and legislation regarding marital rights, dissolution, custody, child support and enforcement.

g. Family Court or Family Divisions

Where feasible, the chief judge of each circuit with more than five circuit judges sitting in a single county should create a family law division.

h. Mediation

1. The Commission recommends mandatory mediation for disputes about parental responsibility, except when domestic violence is reported to exist in the family. The primary focus of mediation would be to require parents to formulate a parenting plan. This would divert parents from fighting over possessory labels, such as custody, by focusing instead on formulating a practical plan for raising the children.
2. Mediation services should require divorcing parents to attend classes on the impact of divorce trauma on their children, as well as the problems they are going to encounter as they divorce and what is expected of them. Noncompliance would be a factor for the court to consider in approving a parenting plan and subsequent visitation.

III. GENDER BIAS IN CRIMINAL JUSTICE

The Commission's inquiry into Florida's criminal justice system concentrated on crime and incarceration, domestic violence, sexual battery, prostitution and juvenile justice. The findings and recommendations of the Commission are broken down into these individual categories.

Crime and Incarceration

Women and men commit different crimes for different reasons. Men tend to commit violent crimes whereas women tend to commit economic crimes. When women commit violent crimes, they usually do so in the company of a male companion or against a man who has abused them. Despite the perception that the criminal justice system is lenient to women, the Commission found that women generally commit less serious offenses but are treated more harshly than similarly situated male offenders.

The Commission found that women incarcerated in Florida's jails and prisons have fewer opportunities for rehabilitation and fewer treatment programs available to them than do men.

Findings

1. Women and men tend to commit different types of criminal offenses.
2. Women tend to commit economic crimes. Arrest patterns show an increase in female arrests for economic crimes.
3. Women involved in violent crime generally act with a male companion, or against someone who has physically abused them or their children.
4. Frequently, women incarcerated for homicide have been victims of physical and sexual abuse.
5. Women convicted of crimes have fewer opportunities for rehabilitation, training and treatment throughout Florida.
6. There are currently only two maximum security state facilities for women. Minimum security inmates thus must endure conditions designed for maximum security inmates.
7. Some women's facilities fall below the requirements for exercise facilities and, in any event, are not comparable to those provided for men.
8. Women generally are imprisoned for less serious offenses than their male counterparts but have significantly limited access to alternative programs or rehabilitative treatment. Men have programs and alternative treatment centers throughout Florida.
9. In the county jails, overcrowding in the male population results in men being released. However, there is less overcrowding among women inmates. As a result, women serve longer sentences than men who have committed more serious crimes.
10. Women have limited access to trusteeships and work release programs in comparison

to men, thus restricting the availability of early release for good behavior.

11. Women sentenced to work release by the courts nevertheless are often incarcerated because of the lack of work release programs or the shortage of openings in similar programs for women.

12. Women unable to participate in work release programs lack the opportunity to gain useful work experience. This results in less successful reentry into society after incarceration and more time spent incarcerated than similarly situated male offenders.

13. Men are favored in experimental and alternative programs around Florida.

14. The remote location of some jails for women restricts family visitation, access to counsel and information.

Recommendations

1. Legislation should mandate that women have the same alternatives to incarceration as similarly situated men. This would include but not be limited to diversion programs, work release programs, treatment for substance abuse and other opportunities for rehabilitation.

2. The legislature, state and local law enforcement and the Department of Corrections (DOC) should examine early release procedures to ensure that the same opportunities are available to both women and men.

3. Legislation should be initiated to mandate that prisons and jails have equal facilities, whether for women or men. This would include, but not be limited to, exercise, recreation and visitation with children and family.

4. DOC should adopt a policy on female offender services similar to that of the American Correctional Association. This policy addresses access to alternative treatment and rehabilitation, staff training and visitation. It also covers vocational training, work release programs and decreasing the numbers of men used as correctional officers in women's facilities.

Domestic Violence

"Domestic violence" generally means physical and psychological spouse abuse, child abuse and neglect, sexual abuse and elder abuse occurring within a family or household. However, because ninety-five percent of all such incidents involve exclusively male violence, "domestic violence" as used in this Report will mean the coercive and forceful physical and psychological behavior against a woman by a man within a family or household context.

The testimony and empirical research presented to the Commission indicate that many members of the criminal justice and legal system are influenced to a significant degree by a long-standing and still prevalent belief that violence against women can be acceptable. The result is a reluctance to acknowledge the criminality of domestic violence at every stage of the law enforcement and judicial processes.

Findings

a. Society and the Criminal Justice System

1. Our society shows an unwillingness to acknowledge the criminality of domestic violence.
2. Our society continues to provide abundant support for the assumption of male authority and expectation of female obedience.
3. The unwillingness to acknowledge the criminality of domestic violence results in the legal system responding to victims and perpetrators in a distinctively different way than for other types of assault.
4. The criminal justice system generally blames both the victims and perpetrators of domestic violence. This occurs because the system fails to appreciate or confront the criminality of domestic violence in an objective, fact-based manner.
5. The reluctance to acknowledge the criminality of domestic violence exists at every stage in the legal process and among all groups involved in the handling of domestic violence cases, including law enforcement, court clerks and the judiciary.
6. The inadequate response of the legal system to domestic violence is based upon the long-standing perception that violence within a family is not a "proper" matter for the legal system to confront.
7. Successful treatment of batterers must rest on a recognition of the criminal nature of the conduct and not on any rationalization of why the conduct occurred.
8. Juries tend to reflect societal views and scrutinize the testimony of domestic violence victims more closely than that of other assault victims.

b. Law Enforcement

1. The legal system's implicit policy of noninterference and inadequate enforcement of Florida laws gives domestic violence the imprimatur of acceptance. The effect is to sanction the abuser's criminal conduct.

2. The fault does not lie primarily with current statutes, but with the enforcement, interpretation and application of these laws. At the same time, most victims are so immersed in the "cycle of violence" that they are psychologically unable to cooperate in the enforcement of domestic violence laws. As a result, existing laws are inadequately enforced.
3. Police seldom arrest, even when there are injuries serious enough to require hospitalization of the victim.
4. Victims are often not given the statutorily mandated Notice of Legal Rights and Remedies and are often given incorrect information by law enforcement. This allows some perpetrators to escape the legal consequences of their criminal conduct.
5. The Florida Uniform Crime Reports do not treat domestic violence as a separate offense category. Thus, there is no current method of monitoring domestic violence on a statewide basis.
6. There are only twenty-seven diversionary programs for batterers in Florida. This shortage of programs has an impact on the arrest rates of the local law enforcement agencies.
7. The police are largely unaware of their duties or their power to arrest under current domestic assault legislation. This is partially a result of the many forms and types of injunctions and restraining orders used throughout Florida.

c. Prosecution

1. Prosecutors are perceived as insensitive and often hostile toward women. There is widespread use of prosecutorial discretion to drop domestic violence cases. This is due to an inadequate understanding of the psychological impact of violence on women and a general reluctance to view domestic violence as criminal conduct.
2. Prosecutors decline to prosecute most domestic violence cases. Most of these no-actions are based on the victim's refusal or reluctance to cooperate, even though a cooperative victim is not always essential to successful prosecution. Many prosecutors refuse to prosecute when there are no visible injuries or corroborating witnesses.

d. Mediation

1. Some Florida counties prefer mediation to criminal prosecution in criminal domestic violence cases. However, mediation is particularly inappropriate in this context because it rests on the assumption that those coming to the mediation table are on roughly equal footing. This assumption is incorrect as applied to domestic violence.
2. Mediation does not deal with the criminal aspects of the assault. Rather, a referral to

mediation may imply that the victim had some culpability and should modify future conduct in order to curb the hostilities of the perpetrator.

e. Injunctions for Protection

1. Judicial custom, rather than standardized rules, tends to determine what procedures are followed when a request is made for an Injunction for Protection. This lack of uniformity has resulted in different procedures throughout Florida, depending on locale and judge.
2. The effectiveness of the Injunction for Protection Against Repeat Violence served on an unmarried cohabitant has yet to be demonstrated.
3. Victims are generally unable to secure an Injunction for Protection against domestic violence over a weekend in emergencies.
4. In many cases, serving an Injunction for Protection on an offender is nearly impossible.

f. Judicial Attitudes

1. In too many instances, judges minimize or do not recognize victims' rights. This problem is compounded by a lack of training and a reluctance to appreciate the significant impact that these attitudes have on the outcome of many domestic violence cases.
2. Courts rarely award temporary child support in domestic violence cases, either before or after notice to the abuser. They generally refuse to remove the abuser from the home and may continue to allow unsupervised visitation between the abuser and the children. These practices contribute greatly to the victim's feeling that there are no viable alternatives other than to return to an abusive husband, who generally is more financially secure. In addition, the batterer often may threaten to harm or hide the children to regain dominance and restore the status quo between the parties. Batterers use these same tactics to coerce their victims into dropping criminal charges.
3. Some courts routinely exclude expert testimony on the battered women's syndrome. There is no uniformity in the way courts determine whether this evidence is admissible.

Recommendations

a. Legislation

1. The legislature should create a new chapter in Florida Statutes to be entitled "Domestic Violence." This new chapter should contain and revise current section 741.30,

Florida Statutes, with alterations that include but are not be limited to:

(a) explicitly providing that all household members, including those related by blood or marriage and cohabitants, are entitled to the protections of the domestic violence laws;

(b) a mandatory arrest directive for law enforcement whenever there is probable cause that an act of domestic violence or a repeat act of domestic violence has occurred;

(c) a requirement that funding be allotted to the Florida Department of Law Enforcement (FDLE) for the adoption and change in the Uniform Crime Reports to include domestic violence;

(d) new funding to develop a standard computer program for monitoring local and statewide statutory compliance through analysis of all domestic violence arrests and reports;

(e) a requirement for follow-up to ensure that batterers comply with diversionary programs, and mandatory prosecution if the program is not completed;

(f) revision of the Injunction for Protection statute to require its enforcement by law officers;

(g) requirement that the FDLE update the Legal Rights and Remedies Notice To Victims using simple English as well as Spanish, and to print and circulate enough copies to make them available to all state law enforcement agencies;

(h) a requirement that every FDLE Crime in Florida Annual Report include the results of the mandatory arrest policy and the results of monitoring for compliance;

(i) ongoing and periodic training for law enforcement in domestic violence as a continuing education requirement and as a prerequisite for initial certification;

(j) implementation of these recommendations with funds derived from marriage license and divorce filing fees; and

(k) a request that the Supreme Court promulgate a standardized injunction order.

3. The legislature should ensure that police officers responding to domestic violence calls have authority to arrest the perpetrator on the basis of probable cause, whether or not the victim cooperates. The legislature should explore other alternatives that would allow law enforcement to act when it is clear that domestic violence is imminent, even if no other grounds for intervention exist.

4. Defendants arrested for domestic violence, repeat violence or violation of a

temporary Injunction for Protection must have a first appearance before bond is set. The judge should set bail that is not subject to an automatic schedule and, at the first appearance, should exercise caution in releasing defendants.

5. (i) Domestic violence task forces should be created in each judicial circuit for the following purposes:
- (a) To facilitate interagency education.
 - (b) To recommend and implement appropriate methods to increase interagency communication.
 - (c) To develop a local diversionary program.
 - (d) To create a local public relations plan to educate the public about the dynamics of the cycle of domestic violence, resources for victims and protection available under Florida law.
- (ii) The membership of the task forces should include but not be limited to representatives of the following:
- (a) Each law enforcement agency.
 - (b) The judiciary.
 - (c) The state attorney's office.
 - (d) The defense bar.
 - (e) The clerk of court.
 - (f) Victims' advocate programs.
 - (g) Batterers' programs.
 - (h) Local mental health programs.
 - (i) Community service offices.
 - (j) Spouse abuse shelters.
 - (k) The probation office.

(l) The local media.

6. Legislation should be enacted requiring every law enforcement officer to accept a certified copy of a Domestic or Repeat Injunction for Protection from the petitioner and immediately serve it upon a respondent who has been located but has not yet been served.

b. Services to Batterers and Their Victims

1. HRS should immediately adopt regulations under which social workers, psychologists, family therapists, psychiatrists and others are certified as domestic violence counselors. These regulations should be based on the Florida Coalition of Batterers' Minimum Standards.

2. Victims' advocates should be available in each county. These advocates could be volunteers, such as in the current guardian ad litem programs, and should be trained in the battered women's syndrome and all other dimensions of family violence. These victims' advocates would accompany the victims of domestic violence through the criminal process.

3. Victims' advocates should respond immediately when domestic violence cases are reported. Contact must be made while the defendant is still in the custody of a law enforcement agency. This program should be modeled on the rape advocate program.

c. Clerks of Court

1. Clerks of court must effectively assist petitioners in seeking Injunctions for Protection and Injunctions Against Repeat Violence.

2. Clerks of court should receive training in the effective assistance of petitioners, and a program of monitoring for compliance should be instituted.

3. Clerks of court should provide a private space for petitioners to complete the forms for Injunctions for Protection and Injunctions Against Repeat Violence.

4. Clerks of court should advise petitioners of the availability of affidavits of insolvency or indigence in lieu of payment for the cost of the filing fee.

5. Clerks of court should provide petitioners with two certified copies of the order of injunction.

d. Law Enforcement

1. Uniform statewide policies and procedures must be developed dealing with domestic assault, which are incorporated in academy training and in-service education.

2. A statewide policy should be implemented that requires a written report to be made whenever anyone alleges that domestic violence has occurred. If no arrest is made, written reasons must be stated. These reports and arrests should be on a standard form and should be transmitted for inclusion in the Uniform Crime Reports of the FDLE. Each local law enforcement agency would be responsible for monitoring and providing quarterly reports to the FDLE for statistical comparison and analysis.
3. The uniform arrest/no-arrest report should contain a space to check that a copy of the Legal Rights and Remedies Notice to Victims was given. The victim would verify receipt with a signature.
4. Law enforcement should accept a certified copy of a Domestic or Repeat Injunction for Protection from the petitioner and immediately serve it upon a respondent who has been located but has not yet been served.
5. The police should forward to the local women's shelter a copy of the report made in each domestic violence incident regardless of whether an arrest is made. This would enable the shelters to contact the victims and answer any questions that they have concerning available services. At a minimum, law enforcement should ensure that records of domestic or repeat violence be made available without fee or other charge for review by the shelters and victims' advocates.
6. The Commission recommends that law enforcement try to obtain photographs and a written statement from the victim and witnesses for use in future prosecution.
7. Law enforcement should be required to serve the Injunction for Protection within 24 hours of receipt unless just cause is shown.
8. Law enforcement, state attorney offices and the judiciary must know of the issuance and service of a domestic or repeat violence injunction and of any arrest for violating a temporary restraining order. Thus, a central repository of domestic violence reports, arrests, injunctions and violations should be established within each county. Each local law enforcement agency should have access to the information in the repository. This information should be provided to the judge at first appearance hearings.

e. Prosecution

1. All state attorney offices should adopt a policy of not dropping domestic violence prosecutions. The filing or lack of filing of criminal charges must be determined by the prosecutors, not the victim, even if the latter requests that charges be dropped.
2. All state attorney offices should prosecute felony offenses as felonies, without offering to reduce the charges. They should vigorously prosecute misdemeanor filings to

deter future escalation of the "cycle of violence."

3. Advocates should work with the victims throughout all phases of the court process. Educational support groups should be available so that the victim understands that proper use of the legal system can effectively diminish or stop continued violence.

4. Mediation should be avoided in all domestic violence cases.

5. Diversionary programs must monitor offenders for compliance. Noncompliance with diversion should automatically trigger prosecution. Compliance with treatment programs after sentencing should be monitored by probation officers. Further noncompliance should result in incarceration.

6. All counties should strive to develop special units to process domestic violence cases. In small rural counties either one prosecutor should be designated to process domestic violence cases or the entire office shall be designated. The Florida Prosecuting Attorney's Association should develop continuing legal education courses on domestic violence issues, which would be required for assistant state attorneys designated to prosecute domestic violence cases.

f. Judicial Attitudes and Education

1. Judges should treat all instances of domestic violence as serious criminal offenses.

2. Judicial education should include materials that stress the use and value of expert testimony about battered women's syndrome and the dynamics of domestic violence.

3. Victim participation in domestic violence proceedings should not be prohibited by any court in Florida.

4. Judges should make counseling alternatives mandatory and attractive to the batterer. When counseling programs are available, judges should make counseling a condition of probation.

5. The routine withholding of adjudication is counterproductive for the batterer and the victim. Withholding adjudication contributes to the anonymity of the batterer within the system.

6. Since at present the judiciary often minimizes the severity of the batterer's offense, judges are encouraged to impress upon defendants the severity of their criminal conduct.

7. Temporary child support should be considered in Injunction for Protection hearings, when the pleadings raise the issue.

8. The alleged batterer should be served with a blank financial affidavit, attached to the Notice of Hearing, prior to any hearing on Injunction for Protection. Instructions attached to the notice should require the defendant to complete the affidavit before appearing in court. Also, the instructions to respondent should direct him to bring to court the last two months of pay stubs, the most recent tax return and the last six months of bank deposit statements. These same instructions are to be attached to the initial paperwork completed by the petitioner, with directions to bring the finished information to the hearing.
9. The duty judge assigned to the first appearance on any particular weekend should process all emergency requests for injunctions during the same weekend.
10. Trials on misdemeanor domestic violence should be expedited.

Sexual Battery

Rape traditionally has been seen as an accusation easy to make and hard to rebut. The Commission found that this perception is wrong. Rape is an accusation very difficult to make; and once made, the victims usually have the burden of proving themselves to be the innocent objects of criminal acts. Despite the realization that rape is a crime of violence, not passion, society still views rape as something caused by the behavior of those who are raped. Yet this logic is not carried over into other types of crimes. Neither society nor the law permit an accused robber, for example, to defend by alleging that the victim caused the crime by wearing or displaying valuable jewelry or other objects.

The myth that victims sometimes prompt their own rapes has resulted in a criminal justice system that believes there are really two kinds of rape, "real rapes" and "other rapes." The Commission found that many lawyers, judges and law enforcement personnel believe that some people who are sexually molested somehow precipitate it through their dress or behavior. The Commission has determined that this belief effectively removes responsibility from the offenders and excuses coercive sexual abuse and personal humiliation of the victim.

The Commission also found that the criminal justice system generally does not vigorously prosecute rapes by assailants who are acquaintances of the victims. The net effect of society's bias against rape victims is to deny them equal protection of the laws.

Findings

1. Florida has one of the highest rates of reported forcible sexual offenses in the nation.
2. The FDLE reported 6,524 cases of forcible sexual assaults for the year 1988. This figure reflects only those offenses in which the element of force or threat of force is reported. Therefore, statutory rape is not included in these figures.
3. Of the 6,524 cases involving forcible sex offenses, arrests occurred in less than a third. There are no statistics detailing how cases are processed through the system, although

there are statistics on those actually sentenced for forcible sex crimes under the sentencing guidelines. Testimony before the Commission indicates that a minority of arrests result in convictions.

4. The majority of rapes--between fifty and ninety percent--are never reported to the authorities.
5. Approximately ninety percent of all forcible sexual assault victims are women. The most frequently arrested persons for forcible sexual assault are white males between the ages of twenty-five and thirty-four. The most frequent victims of rape are white females between the ages of eleven and seventeen; and the most frequent victims of forcible sodomy and forcible fondling are children under ten years of age.
6. Trauma suffered by victims of sexual assault is often long-term or permanent.
7. Stereotypes and myths about the causes and prevention of rape still prevail in the criminal justice system.
8. Despite research and statutory recognition that sexual assault is a crime of violence and not a crime of passion, there is a perception that society still expects victims to prove they did not "cause" the assault.
9. Although improvements have been made, victims of sexual assault still report being victimized by the criminal justice system.
10. National surveys have shown that children between the sixth and ninth grades have reported that forcible sex is acceptable behavior (a) when a man has spent money on a woman, or (b) after dating a woman for a period of six months or more. In addition, children believe that a woman who dresses seductively and is on the street alone at night is asking to be raped.
11. Many law enforcement agencies routinely use lie detector tests on sexual battery victims as part of their investigative process.
12. Approximately half of all sexual assaults are committed by persons known to the victim, yet state attorney offices report little success in obtaining convictions in cases of acquaintance or date rape.
13. Many state attorney offices do not prosecute cases of acquaintance or date rape because of the unlikelihood of a conviction.
14. There are increasing numbers of victim advocates and victim advocate programs working to assist rape victims in Florida. However, as of 1988 many Florida communities

still lacked such services.

15. Several state attorney offices have established sexual battery prosecution units in which the members specialize in sexual assault crimes.

16. Official statistics do not distinguish between plea bargains and those instances in which a judge decides to impose a "downward departure sentence" less severe than that recommended by Florida's sentencing guidelines. However, the Commission independently has determined that judges "depart" downward from recommended sentences in sexual battery cases at a rate three times that of other violent personal crimes, four times that of burglary or theft, five times that of drug offenses and seven times that of weapon offenses. Only three percent of all defendants convicted of sexual battery qualify under the guidelines for the least severe sentence, the so-called "non-state prison sanction" consisting of either probation or community control; yet twenty-seven percent actually receive it. The Commission believes that the majority of these departure sentences are the result of plea bargaining.

17. The Federal Justice Department Bureau of Justice Statistics has determined that convicted rapists, after release, are almost eleven times more likely than other offenders to be arrested later as repeat offenders.

18. Incarceration without further treatment is unlikely to alter the sex offender's problems or proclivity to commit sexual battery.

Recommendations

1. The State should increase resources and programs for rape victim services and rape preventive education.

2. Mandatory educational programs for judges, state attorneys and law enforcement personnel need to be put in place to dispel myths and stereotypes about rape, to increase effective investigation and prosecution of sexual battery cases, and to assist the victims in recovering from sexual assaults.

3. All levels of government must pay greater attention to preventing rape and sexual assault. This should include schools, law enforcement, state attorneys and the judiciary.

4. The Rape Awareness Program of HRS must be better funded to develop public educational programs and materials for statewide distribution.

5. Written protocols for processing sexual assault cases should be developed by all law enforcement agencies.

6. Specialized sexual assault units or investigators should be established at larger law enforcement agencies. Smaller rural departments should identify one or two officers to specialize and receive appropriate training in sexual assault offenses.
7. Law enforcement and state attorneys' offices need to keep sexual assault victims informed and involved in the investigation and prosecution of cases.
8. Lie detector tests of sexual assault victims should cease.
9. The rape kit exam should be standardized throughout the state and victims should be advised of the purpose of the examination.
10. Each state attorney's office should designate special prosecutors or units to deal primarily with sexual assault and battery cases. These units should receive specialized training and maintain regular contact with law enforcement and community agencies involved with rape victims.
11. Every state attorney's office should establish written guidelines for prosecuting sexual battery offenses based on the technical merits of each case, with a goal of increasing the number of prosecutions.
12. A single prosecutor should handle a sexual battery case from beginning to end.
13. State attorney offices should inform and invite victims to the pre-filing interview on the case.
14. State attorney offices should maintain regular contact with the victim either directly or indirectly through a victim advocate.
15. Victims' advocates should be made available and assigned to victims of sexual assault. They should be permitted to attend depositions, hearings, and trial with the victim. Victims' advocates should interview victims about three months after the close of the case on the issues of support services, crime compensation and restitution.
16. Professional standards and training for victim and witness advocates should be developed and instituted by the Office of the Attorney General, Office of the Governor and Florida Prosecuting Attorneys Association.
17. Judges and state attorneys should actively enforce the rape shield statute.
18. State attorneys should consider educating juries about rape trauma syndrome through the use of expert witnesses.

19. All convicted sex offenders should be subjected to DNA fingerprinting, a new scientific technique that can record the exact pattern of genetic material unique to each person.
20. Research needs to be done on the causes and prevention of sexual assaults.
21. Treatment programs need to be developed specifically to stem recidivism by sexual assailants.
22. The Office of the State Court Administrator should maintain records and statistics on the filing and non-filing of all sexual assault cases, as well as the ultimate disposition of all cases.
23. A central depository of information regarding sexual offenses should be developed to aid the investigation of rape cases statewide.
24. State attorneys should seek court orders prohibiting all courtroom participants from disclosing victims' names.

Prostitution

The Commission found that current methods of enforcing laws against prostitution have resulted in one of the most egregious instances of gender bias in the legal system. The laws against prostitution are enforced primarily against women, not the men who coerce them into prostitution or the customers who use their "services." The Commission has determined that prostitution is not a victimless crime. Its victims are the girls who run away from abusive and incestuous relationships at home and are treated first by the legal system as errant children and later as hardened criminals. The Commission concludes that the dimensions of the problem are staggering and, by comparison, the legal system's efforts to combat prostitution have been futile at best.

Findings

1. Prostitution is not a victimless crime. Thus, legalization is not the appropriate way to confront or minimize the gender bias caused by the legal system's current response to the problem.
2. The legal system's efforts to combat prostitution have been futile at best and counterproductive at worst.
3. Almost all young prostitutes have run away from sexual and physical abuse in their homes. Upon being apprehended, they then are returned to these homes by juvenile courts that often are oblivious to the causal link between sexual abuse in the home, runaway teenagers and prostitution.

4. Runaway teenagers often engage in prostitution. When they are picked up by law enforcement, they are identified as status offenders and not identified or treated as having been involved in prostitution. Upon arrest and conviction after the age of eighteen, females are then categorized and criminalized as prostitutes by the legal system.
5. Prostitutes are most often the victims of coercion. Most women do not freely choose to prostitute themselves. Prostitution is an attempt to survive.
6. Ninety percent of street prostitution is controlled by "pimps" who use a variety of coercive methods to control the prostitute.
7. Florida's legislation on prostitution is gender-neutral in its language, but not in its application. Statewide enforcement practices hold women culpable for the offense. The overwhelming majority of those prosecuted for prostitution are women.
8. Prosecutions for male clients and pimps are nearly nonexistent. The male client generally is thought to be less culpable than the prostitute. However, the Commission finds that those who coerce prostitution, whether described as pimps or procurers, actually are more culpable because they are the ones who organize, maintain and pay for the institution of prostitution.
9. Prostitutes, who largely are female, receive more severe treatment in the courts, in the jails and in bail hearings than their clients.
10. Many state attorney offices offer the client the opportunity to become a state's witness against the prostitute. In exchange, charges against the client usually are dropped.
11. Prostitution cases rarely go to trial. The prostitute usually waives the right to trial and to counsel in exchange for a sentence of time served.
12. Prostitute rape is rarely reported, investigated, prosecuted or taken seriously.
13. Rape and prostitution are manifestations of violence against women.
14. The criminal justice system is spending enormous amounts of money on sanctions that fail to significantly deter prostitution.
15. There are successful models of treatment and rehabilitation that would require a smaller outlay of funds than the present enforcement efforts in Florida.
16. Proven programs such as the Miami Alternative Life Management for Streetwalkers (ALMS) project and the Fort Lauderdale Covenant House cost no more per person than incarceration.

Recommendations

The jailing of prostitutes is a woefully inadequate response to the problem of prostitution. Rehabilitative and therapeutic options are needed to address the practical needs of prostitutes as well as the coercion they endure and the psychological factors that predispose them to this lifestyle. To begin the process, the Commission recommends the following:

1. Effective treatment programs must be established to offer prostitutes realistic alternatives to prostitution. The state should cease spending money on ineffective sanctions that will never make an impact on the situation. Accordingly, the Commission recommends the establishment of programs such as the Miami ALMS project and the Fort Lauderdale Covenant House.
2. Funding should be increased for outreach services in existing battered women's shelters and victims' services organizations. Special training should be instituted for shelter and organization workers who deal with young runaway girls. The goal would be to identify girls who are at risk of becoming victims of prostitution and to offer them realistic alternatives to street prostitution.
3. Florida law is gender-neutral as to criminalizing the prostitute and the client. In reality, the parties are not similarly treated. The least that should be expected is equal enforcement of the law. At a minimum, police agencies should establish procedures to ensure parity of enforcement against both prostitutes and clients. Such procedures would include greater and institutionalized use of decoy operations.
4. Judges should enforce section 322.26(7), Florida Statutes, under which a drivers license can be revoked for acts of prostitution or assignation accomplished through use of a motor vehicle.
5. State and local governments should enact new statutes and ordinances against "curb crawling," the practice of soliciting from a motor vehicle.
6. Judicial education should be mandated to inform and sensitize the judiciary about the true nature of prostitution and the causal link between juvenile and adult prostitution.
7. The Commission has found that those who coerce prostitution, whether described as pimps or procurers, are more culpable than the prostitutes themselves. Based on this finding, the Florida legislature should make three changes to current Florida law:

(a) All present misdemeanor statutes prohibiting procurement and "pimping" should be raised to third-degree felonies. These statutes then should be consolidated under

section 796.03, Florida Statutes, which currently deals only with the second-degree felony of procuring children under the age of sixteen. The crime of procuring persons under the age of sixteen should remain a second degree felony, as under present law. Coercing or forcing someone to become a prostitute, a third degree felony, should remain a separate offense under section 796.04.

(b) Section 796.05(1), Florida Statutes, currently only makes it unlawful to derive support from a person the offender knows to be engaged in prostitution. The statute should be amended to read: "It shall be unlawful for any person knowing or who should know another person is engaged in prostitution to live or derive support or maintenance in whole or in part from the earnings or proceeds of such person's prostitution." The standard for guilty knowledge should be on a par with that for other offenses such as theft or dealing in stolen property. This change thus would allow for increased prosecution of pimps.

(c) New legislation should be enacted to create a civil cause of action on behalf of women against their pimps, thus further discouraging trafficking in women.

8. The Commission recommends the establishment of a multi-agency task force to further examine the problems posed by prostitution and its relationship with substance abuse and the spread of acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases. The task force should include representatives of professions such as psychology, psychiatry and law, as well as public health officials, academics and social workers.

Juvenile Justice

The Commission found that young women generally commit different types of crimes than young men, just as adult women generally commit different crimes than adult men. In its studies and hearings, however, the Commission found that Florida's juvenile justice system is designed primarily to deal with male delinquency. This model then is applied to female juveniles, often without consideration of the differences between the criminal conduct of male and female juveniles.

The Commission found that, at some stages in the juvenile justice system, girls are treated more harshly than boys. At other stages, the reverse is true.

The Commission also determined that girls did not have access to the programs and treatment alternatives generally available to boys throughout the system.

Findings

1. Florida has one of the highest rates of juvenile detentions in the country.
2. Girls generally commit different types of crimes than do boys.
3. Florida's juveniles are often incarcerated in overcrowded, inadequate and

inappropriate facilities because there are few alternatives to detention.

4. Girls are more likely than boys to be held in detention for so-called "status offenses," such as running away from home, or being "ungovernable" or truant. Most detained boys are criminal offenders, not status offenders.

5. Runaway children are the single largest group of status offenders. Yet these children usually run from physical and sexual abuse in their homes. Girls make up the majority of status offenders in Florida.

6. In order to survive, girls who run away from home usually become involved in criminal activities, frequently prostitution.

7. Oftentimes, the return of female juveniles to abusive home environments unwittingly lays the foundation for future prostitution. It encourages distrust of the justice system and renewed resolve to run away again, whatever the cost. Sometimes, the cost is prostitution. Indeed, a direct causal link appears to exist between the treatment of runaway girls by the juvenile justice system and their future recruitment as prostitutes. The impact of prostitution upon runaway girls cannot be minimized.

8. Prostitution charges against juveniles are less likely to be informally handled or dismissed prior to court adjudication than other charges.

9. With girls, the juvenile justice system generally intervenes at the earlier stages of delinquency, often through status referrals and misdemeanor arrests. However, for boys, the system focuses more on arrest and adjudication, due in part to the more serious nature of male offenses.

10. The most acute problem in the juvenile justice system is the overall lack of alternatives for juvenile placement and treatment after adjudication.

11. Nowhere in Florida are there adequate or sufficient alternatives to detention for juvenile girls.

12. Funding is routinely available for a variety of detention alternatives for juvenile males. Proportionately equal funding and programs are not available for juvenile females.

13. The courts in Florida do as well as can be expected, given the current extreme limitations imposed on alternatives to detention.

14. The Federal Juvenile Justice Delinquency Prevention Act prohibits status offenders from being held in detention facilities meant for delinquents. However, status offenders continue to be placed in these detention facilities in Florida.

15. Rather than being adjudicated delinquent, status offenders coming to court a second time can be held in contempt for failure to obey prior court orders. A finding of contempt permits the juvenile court to place a status offender in a secure detention facility, a disposition not prohibited by the federal act.

Recommendations

1. Mandatory judicial education programs already offer instruction on the causal connection between juvenile runaways, abusive homes and prostitution. Judges must become more sensitive to this problem. The Commission realizes that a judge's ability to deal with the problem is complicated by the fact that in many cases there are no meaningful alternatives except incarceration or returning the girl to an abusive home.
2. Juvenile programs required by present law are seriously underfunded. Thus, the legislature should avoid mandating specific activities or the development of new programs unless funding also is provided. The legislature should fund all juvenile programs it enacts.
3. Residential and other treatment facilities should be made available to female status offenders so that courts have options other than detention or returning a girl to an abusive home.
4. Facilities and alternative treatment programs currently available to boys should be provided for girls as well. These should be located in each region of the state, as programs for boys currently are.

IV. GENDER BIAS IN THE LEGAL PROFESSION

Gender bias permeates the legal profession. Although women account for almost twenty percent of the profession's membership, they are not proportionately represented in law firm partnerships, judgeships or tenured faculty positions. A disproportionate number work in government and legal services, but even here women are underrepresented in policy-making and administrative positions.

Elsewhere in the legal system, witnesses and litigants frequently experience gender bias that often affects the outcome of cases. Some of the judges who try these cases themselves exhibit bias, at least partly because the Judicial Nominating Commissions that helped put them in office also engage in biased activities. Indeed, the Commission found that bias unfairly restricts access to an array of professional opportunities, including those that generate fees. Gender bias not only pervades the professional life of lawyers but also the very process of legal education and the language commonly used in the law.

Findings

1. Female employees in the state court system generally are employed in the lowest-paying positions. Female assistant state attorneys and female assistant public defenders receive significantly lower salaries than their male counterparts.
2. Women attorneys still encounter both flagrant and veiled antagonism throughout the legal system. This antagonism can influence the outcome of cases and client relationships.
3. Influential members of the profession, particularly in large law firms, continue to ignore or minimize the need of all lawyers--but particularly women--to balance their career and family responsibilities.
4. Assertive advocacy by female attorneys is viewed unfavorably, whereas similar conduct by men is not.
5. Too many members of the judiciary use inappropriate, demeaning language when addressing or talking about female attorneys, witnesses and litigants. Similarly, too many members of the judiciary fail to conduct themselves in a professional manner when interacting with women.
6. Courthouse personnel, especially bailiffs, judicial secretaries and judicial assistants, sometimes conduct themselves inappropriately in the presence of female attorneys.
7. Women litigants tend to have their memory and credibility questioned more often than similarly situated men. When attorneys consider whom to employ as expert witnesses, they fail to consider using female experts.
8. Female attorneys generally receive lower fees than their male counterparts. They are asked to justify the fees they charge more often and more intensively than are men, especially in fee awards by courts. In fact, judges are more likely to discount the fees of women lawyers, but less likely to appoint women to fee-generating cases.
9. The Judicial Nominating Commissions generally apply different standards to male and female judicial candidates. In reviewing the merits of nominees, the commissions give greater weight to traditionally "male" areas of practice. They give less weight to "female" fields of practice, even when expertise in these areas more closely represents the actual duties of the judgeship under consideration. The commissions are unduly concerned with the child care arrangements of women candidates. As a result of these and other biases, women have not been appointed to judgeships in numbers proportionate to their membership in the Bar.
10. Women generally occupy a second "tier" within law school faculties, law firms and government agencies. Women are not proportionately represented in policy-making

positions within any segment of the legal profession.

11. In law firms, women lawyers often are given less desirable assignments than their male counterparts, thus making it more difficult for them to earn the credentials needed to become a partner. Partners still steer women away from certain areas of the law perceived as exclusively "male." This is a practice occurring throughout the legal profession.

12. Female attorneys are excluded from "private clubs" in which much legal business is conducted. If admitted to these establishments, women are sometimes segregated from the main activities or facilities. These practices unfairly discriminate against female attorneys.

13. The Florida Bar and Board of Governors have not appointed women to leadership positions proportionate to their membership in the profession. Women also have not been proportionately appointed to the Judicial Nominating Commissions and Judicial Qualifications Commission.

14. Legal education is dominated by a traditional male culture. This results in few women on law school faculties, the disparagement of "women's studies" and the absence of areas of importance to women from the law school curriculum.

Recommendations

a. In general

To minimize the existing gender bias in the legal profession, the Commission recommends that the following changes be made:

1. The salaries of all court personnel, assistant state attorneys and assistant public defenders must be reviewed immediately. Wherever inequities exist between the sexes, they must be eliminated. Comparable skills, experience and responsibility should result in comparable pay.
2. The mandatory continuing legal education in ethics required of all Bar members should include instruction in appropriate professional conduct toward female witnesses, litigants, and attorneys.
3. The Florida Supreme Court and The Florida Bar should amend the Code of Judicial Conduct and the Rules Regulating The Florida Bar to prohibit inappropriate, unprofessional behavior toward female litigants, witnesses and attorneys. The Code and Rules should also forbid membership in any club that practices invidious discrimination, including discrimination based on sex. On this last matter, the Commission recommends adoption of the American Bar Association model rule making it unethical to belong to organizations practicing such discrimination.

4. The Florida Court Education Council should develop instructional materials on the way gender bias influences judicial decisions and case outcomes. These materials must be incorporated into mainstream educational programs, not isolated in special "gender bias" seminars. For example, the influence of gender bias on judicial decisions can be incorporated into juvenile, criminal and civil course work. The problem of gender bias also can be included in standard subjects of the current curriculum, such as appellate procedure, burdens of proof, judicial ethics, dependency proceedings and the family law updates. Faculty versed in gender issues should be recruited to provide instruction.
5. Voluntary bar associations should help identify and eliminate gender bias. In their regular educational programs, for example, they should sponsor discussions between the judiciary and attorneys on professional courtesy and conduct, emphasizing the elimination of gender bias. The judiciary also should be closely involved in all other programs on gender bias.
6. Those courts that keep lists of experts available for court appointment should include women.
7. The State Courts Administrator should keep statewide records of all fee appointments and amounts paid to attorneys by the courts. This data should be compiled by each judge's office and forwarded quarterly to the State Courts Administrator. Every year a statistical abstract should be issued on a county by county and judicial circuit basis. This abstract should identify to whom, and how often, fee-generating appointments are made. Total amount of fees paid to attorneys also should be reported. Finally, the State Courts Administrator should develop and circulate a standard plan by which attorneys are assigned to fee-generating cases on a rotating basis.
8. The Florida Supreme Court and The Florida Bar should recommend standardized criteria to be used by the Judicial Nominating Commissions for evaluation of judicial candidates. The criteria should prohibit nomination of candidates who are members of, or frequent, clubs that practice invidious discrimination.
9. The Judicial Qualifications Commission should act promptly on all allegations of gender bias by judges, with an appreciation for the vulnerability and difficulties involved in bringing such a complaint. Sanctions for inappropriate judicial conduct should include measures designed to protect complainants from retribution.
10. The Florida Supreme Court should require the chief judges in each circuit to develop complaint procedures to investigate charges of biased judicial conduct.

Under these procedures, the chief judge should attempt to resolve these complaints by conferring with the judge in question and by receiving information from the complainant. The chief judge also should keep internal documentation on each complaint made. When the complaint is against the Chief Judge or when the complainant does not wish to come before the Chief Judge, the complaint should be made directly to the State Courts Administrator.

11. Judicial polls used to rate judges statewide should also measure attributes that have a direct bearing on biased conduct in the courtroom. The Florida Bar, with assistance from the local voluntary bar associations, should circulate a uniform index of bias measures to be used.

b. Law Schools

Law schools must continue to instruct students that bias in the practice of law is unacceptable. To augment this process, the Commission recommends the following:

1. Law schools should place a high priority on recruiting women into tenure-track positions.
2. The Florida law schools should cooperate in establishing an intercollegiate committee of faculty and deans to identify and recommend teaching materials that adequately cover areas of concern to women and that do not portray women in a demeaning fashion.
3. Internal policies about law school class schedules largely assume that students have no family commitments. When scheduling classes, law schools should try to accommodate the family commitments of their students.
4. Each law school should adopt a written policy against gender bias and sexual harassment, including the means to enforce the policy. The policy should be made public and should be distributed to freshmen during orientation.
5. The Commission recommends that all Florida law school placement offices jointly adopt a policy on gender bias in the recruitment process. This policy specifically should identify the types of interview questions that are impermissible and the penalties that will result from a violation. All Florida law schools should agree to this policy to avoid competitive disadvantage.

c. Language and the Law

1. The legislature should amend section 11.242, Florida Statutes, to require the Division of Statutory Revision to replace gender-specific language in current Florida law

with gender-neutral language. Both houses of the legislature should adopt rules requiring gender-neutral language in all future legislation.

2. The Supreme Court should order that gender-neutral language be used in all future court publications, such as the Florida Rules of Court and the standard jury instructions. All other legal publications should have gender-specific language replaced with gender-neutral language. The Supreme Court should instruct The Florida Bar to replace all gender-specific language in the Code of Professional Responsibility and the Code of Judicial Conduct.