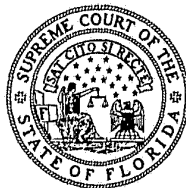


REPORT OF
THE FLORIDA SUPREME COURT
UNDER BIAS STUDY COMMISSION

1990



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

127546

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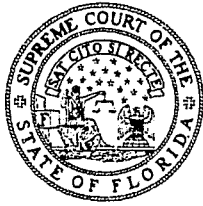
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March, 1990

Just more than two years ago, then Chief Justice Parker Lee McDonald issued an order on behalf of the Court, creating the Gender Bias Study Commission. Its work complete, the Commission has now prepared the attached Report, which contains its findings and recommendations.

The Commission's two-year study of gender bias in the legal system is part of a continuing effort by this state's judiciary to eliminate any vestiges of unfair and prejudicial conduct in Florida's legal profession and courts. Through such means we hope to ensure that our justice system abides by the Florida Constitution's goal of guaranteeing "equal civil and political rights to all."

Trusting that lawyers and judges alike are equally committed to this goal, the Court is publishing this Report throughout the state so that we may better identify problems in need of a solution, and solutions in need of our earnest support.

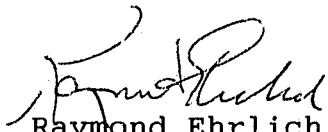

Raymond Ehrlich, Chief Justice

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PREFACE

On June 9, 1987, the Chief Justice of Florida issued *In Re: Gender Bias Study Commission Administrative Order*, which stated:

The undersigned has previously been requested to create, and appoint members to, a Gender Bias Study Commission. Such a Commission's role would be 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. The undersigned appointed a Steering Committee to make recommendations as to whether such a study should proceed, and the composition of it. The Committee recommends the implementation of the study and has recommended members to it. The 1987 legislature has appropriated funds to start the program.

Accordingly, I hereby create, as a committee of the Florida Supreme Court, a Gender Bias Study Commission.

/s/ Parker Lee McDonald
Chief Justice of Florida

To fulfill this mandate, the Commission began a thorough investigation of Florida's legal system. A multidisciplinary approach was taken in the investigation and preparation of this Report. The Commission held public hearings and regional meetings around the State. It received testimony and reports from judges, legislators, attorneys, law professors, criminologists and law enforcement officers. The Commission publicly questioned social scientists, social workers, probation officers, psychologists, prosecutors and public defenders. At its hearings, the Commission consulted representatives of fathers' rights groups, women's rights groups, and sexual and domestic abuse treatment programs. Statements were received from legal aid attorneys, lawyers with the Florida Department of Health and Rehabilitative Services (HRS) and persons working with displaced homemakers programs. Anyone who wished to address the Commission was invited to testify.

At the regional meetings, informal roundtable discussions generated candid observations about specific instances of gender bias by attorneys and other

professionals. In addition to the public hearings and regional meetings, the Commission undertook extensive research studies that included:

- (1) A survey of 1,500 members of The Florida Bar;
- (2) A survey of 2,000 members of the criminal, family and trial practice law sections of The Florida Bar;
- (3) A study of adult arrest and sentencing patterns, including a preliminary study on sentencing patterns in sexual battery cases¹;
- (4) A study of juvenile justice decision-making patterns²;
- (5) A study of prostitution in Florida³;
- (6) A study of salaries and positions of court personnel statewide⁴;
- (7) A review of salaries of assistant state attorneys and assistant public defenders statewide⁵;
- (8) A survey of law students regarding sexual harassment, and disparate treatment in employment interviews and classroom exchanges⁶;
- (9) A survey of the Florida Association for Women Lawyers regarding career conflicts and gender bias in employment⁷;

¹ Dr. Thomas Blomberg, Florida State University School of Criminology.

² *Id.*

³ Dr. Philippa Levine, Policy Studies Clinic, College of Law, Florida State University.

⁴ Dr. E. Walter Terrie, Center for Population Studies, Florida State University.

⁵ *Id.*

⁶ Gender Bias Study Commission staff.

⁷ *Id.*

- (10) A preliminary survey of facilities and programs for men and women incarcerated in Florida's jails⁸;
- (11) A survey of The Florida Association for Women Lawyers on appointments to the Judicial Nominating Commissions, judicial appointments and complaints made to the Judicial Qualifications Commission⁹;
- (12) A survey of judicial appointments to fee-generating cases and fee awards made to attorneys¹⁰;
- (13) An analysis of judicial polls¹¹;
- (14) A study on gender and incarceration¹²;
- (15) A study of judicial attitudes based on interviews with Florida's circuit and county judges¹³;
- (16) A survey of Florida's judges¹⁴;
- (17) A review and analysis of reported family law decisions from 1983 to 1988¹⁵;
- (18) A review and analysis of all reported family law decisions from January through June 1989¹⁶; and

⁸ Mildred George, director of the Comprehensive Alternatives of the Public Defender's Office, 15th Judicial Circuit.

⁹ Virginia Daire, executive director of the Gender Bias Study Commission.

¹⁰ *Id.*

¹¹ *Id.*

¹² Dr. Philippa Levine, Department of History, Florida State University.

¹³ Dr. Philippa Levine.

¹⁴ Barry Sapolsky.

¹⁵ Commissioner Ricki Lewis Tannen.

¹⁶ *Id.*

- (19) A review of scholarly publications and unpublished research encompassing all areas of the legal system.¹⁷

¹⁷ *Id.*

ACKNOWLEDGMENTS

Many people and organizations contributed generously to the work of the Gender Bias Study Commission. The Florida Association for Women Lawyers worked to convince the Supreme Court to appoint the Commission and later provided support. Dean Talbot "Sandy" D'Alemberte and The Policy Studies Clinic of Florida State University College of Law, along with author Charlene Carres, laid the foundation by demonstrating the need to appoint this Commission.

Many members of The Florida Bar, including Sandy Karlan and past presidents Joe Reiter and Ray Ferrero, Jr., gave constant encouragement and were instrumental in implementing the Commission's work and providing funding for special projects.

The law firms of Ruden Barnett McCloskey Smith Schuster & Russell, Ferrero Middlebrooks Strickland & Fischer, Klein & Tannen, and Holland & Knight provided support services, office space, computers, copying and a variety of other services, without which this Report could not have been produced. Sue Justice and Barbara Juza deserve special thanks for their dedication and unrelenting work as support staff.

Many individuals reviewed portions of the Report because of their expertise in their respective fields. Professor Margaret Baldwin of Florida State University provided invaluable assistance in the prostitution, domestic violence, crime and juvenile justice chapters. Professor Walter Weyrauch of the University of Florida College of Law reviewed the chapter on family law and provided insights. The comments of University of Miami Law School Professor Mary Coombs on the legal education section were constructive. Special thanks are owed to Dr. Philippa Levine for assisting in completion of the study on gender and incarceration and conducting a qualitative analysis of judicial attitudes when funding was exhausted.

State Court Administrator Ken Palmer, Deputy Administrator Dee Lawton and their staff gave graciously of their time and energies, often on short notice. Their statistical and legislative analyses were most helpful.

Advisor to the Commission, Lynn Hecht Schafran, director of the National Judicial Educational Program to Promote Equality for Women and Men in the Courts, was a consistent source of information, advice and encouragement.

The entire Commission expresses special thanks to Commissioner Ricki Tannen for conducting the review of scholarly works, contributing original research, analyzing the studies done for the Commission and drafting the final report with the exception of the chapter on sexual battery. Special thanks go to Commissioner and Vice Chair Gill Freeman for drafting the sexual battery chapter.

A final note of thanks to the entire staff of the Gender Bias Study Commission for their contributions. Special thanks to Commission Director Virginia Daire for her tireless efforts and to Commission Secretary Evelyn Beazley for assisting Commissioner Ricki Tannen in compiling the material contained in this report.

Lastly, the Commission expresses special gratitude to Robert Craig Waters, law clerk to Commission Chair Justice Gerald Kogan, for final editing of the Report, rewriting several sections of the draft Report, supplying additional research material, and preparing the final page layout and typography. The Commission also thanks Florida State University law student Rafael Gonzalez, legal intern to Justice Kogan in early 1990, for assisting Mr. Waters.

EXECUTIVE SUMMARY

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

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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 co-habitant has yet to be demonstrated.
3. Victims are generally unable to secure an Injunction for Protection against domestic violence over a week-end 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 As-

sociation 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 felo-

ny 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 creden-

tials 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.

I. INTRODUCTION

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. 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 and prostitution 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.

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

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

A. Introduction

Women and children experience life after divorce far differently than men. Everyone touched by divorce experiences emotional hurt, but women and children usually are the only ones whose emotional pain is compounded by being stripped of their economic well-being. This is the harsh reality of most divorce in Florida today.

Florida's "no-fault" divorce legislation is written in gender-neutral language. However, the Commission found that judicial decisions based upon this language are gender-discriminatory in application. The reason is an unrealistic assumption 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 typically leave with their enhanced earning capacity intact. The remaining family members are left with less than half of the marital assets and a severely diminished and declining earning capacity.

The gender-biased application of dissolution law expresses itself in several forms. For instance, many of Florida's courts tend to minimize the time, energy and lost opportunity required to be a homemaker and primary caretaker of children. The Commission found the courts especially reluctant to acknowledge these contributions as a genuine partnership resource of marriage.

Some courts also routinely decline to order a more financially secure husband to pay the wife's temporary and final fees and costs, as provided by current law. This deprives the woman of economic resources needed to retain competent legal representation. Without a good attorney, the woman is critically disadvantaged. She may be unable to enforce her legal right to alimony, equitable distribution of marital assets and child support. This conclusion cannot be overstated. In an adversarial legal system--one that depends upon the skills of competing lawyers--any denial of qualified legal representation to women not only is gender-biased but constitutes a denial of equal access to the courts.

This bleak assessment of Florida's family law legal system is not unique to the Gender Bias Study Commission. Studies by The Florida Bar,¹ the Governor's Constituency for Children² and a number of others³ have reached the same conclusion.

This section of the Report sets forth testimony, findings and recommendations regarding biased judicial conduct in the handling of family law matters. The Commission recognizes that there are many judges who are sensitive to the issues discussed here. Unquestionably, the testimony we received focused primarily on problems in the courts of Florida, not the positive occurrences. The Commission also notes that crowded dockets, time limitations and insufficient judicial manpower contribute to the problems at issue here. Nevertheless, the

¹ Bench-Bar Committee of the Family Law Section of The Florida Bar, *Results of a Survey About the Role of the Judiciary and Lawyers in Family Law Matters: A Two-Part Analysis* (June 1987) (available from The Florida Bar) [hereinafter *Bench-Bar Committee Survey*].

² Florida Governor's Constituency for Children, *A Family Court For Florida: A Special Project of the Governor's Constituency for Children* (September 1988) (available from Governor's Constituency for Children).

³ See, e.g., M. Frumkes & E. Langan, *Equitable is Not Necessarily Equal* (1988) (available from Gender Bias Study Commission); Fuller, *Is There Fault in No-Fault? An Examination of Florida's Dissolution Law*, Fla. B.J., Oct. 1988, at 77-88. A separate report from the Bench-Bar Committee of the Family Law Section of The Florida Bar stated:

This article . . . is intended to sound a warning, to stir judicial and Bar awareness of serious problems, and to urge a joint and healthy response by Bench and Bar to improve not just the public's perceptions of the judicial resolution system in family law, but to improve the realities and help solve the problems giving rise to those perceptions which, unfortunately, appear to be well-founded and widely held.

Bench-Bar Committee of the Family Law Section of The Florida Bar, *Indictment from Within*, Fla. B.J., Nov. 1987, at 12 [hereinafter *Indictment from Within*]. The article was based on a Bench-Bar Committee Survey sent to all members of the Family Law Section of The Florida Bar. One hundred seventy-one judges and over 1,000 attorneys responded. *Id.*

Commission found many examples of unfortunate judicial behavior in the handling of family cases. A representative sampling is presented in this section.

B. The Economics of Divorce

Divorce is a common occurrence in society and in Florida.⁴ Poverty for women and children following a divorce is also common. In Tallahassee an attorney brought to the Commission's attention a study concluding that divorced women and their children

suffer a seventy-three percent drop in their standard of living in the first year after divorce, in contrast to the forty-two percent rise in the standard of living of divorced men.⁵

The Commission found that female-headed families are the fastest growing segment of those living in poverty. Fifty-four percent of all single-parent families live below the poverty level, and more than ninety percent of these single-parent families are headed by women.⁶ Living in a female-headed

⁴ In 1987, over fifty-seven percent of all Florida marriages ended in divorce. Florida Bureau of Economic and Business Research, Florida Statistical Abstract 69 (1988).

⁵ M. Taps, legal aid attorney, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission (relying on L.J. Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (1985) [hereinafter Weitzman]). Similar studies in other states have also found a sharp disparity in women's post-divorce standard of living. See also Arendell, *Women and the Economics of Divorce in the Contemporary United States*, 13 Signs: Journal of Women in Culture and Society 121 (1987) [hereinafter Arendell]; C. Bruch & N. Wikler, *The Economic Consequences*, Juv. & Fam. Ct. J., Fall 1985, at 5.; M.A. Mason, *The Equality Trap* (1988) [hereinafter Mason]; Weitzman, *supra*, at 126.

⁶ Mason, *supra* note 5, at 22.

household increases a child's chances of growing up in poverty by more than 300 percent.⁷

It is not just mothers with young children who are experiencing this "feminization of poverty."⁸ Since 1975 over one-third of all divorces occurred in marriages of ten years or more and another twenty percent involved people forty-five and older.⁹ These older women are the most likely to have given up their own aspirations to further their husbands' careers, expecting that their contributions would inure to the families and thus their own benefit. When these women are divorced, however, they encounter a legal system that assumes a few years of rehabilitative alimony will permit them to go out into the world and attain a standard of living commensurate with that of their married life. This turns out to be a cruel joke for many Florida women:

I was raised in the school of thought that [said] . . . [i]f you're a good wife and "stand by your man, you will be rewarded." It seems my "reward" is a life of poverty.

From the Jacksonville Public Hearing

How does this feminization of poverty relate to gender bias in Florida's legal system? This was the question posed by the Commission to Janet Reno, the state attorney for Dade County. Reno argued that the legal system was the cause and that the legal system thus must formulate a solution:

I just think that if you have this many children living in poverty, and over 50 percent of them live in female-headed houses, that the law has set up a system that discriminates against women.

⁷ The American Woman, 1988-89: A Status Report 349 (S. Rix ed. 1988) (American Women Today: A Statistical Picture, Table 29) [hereinafter American Woman].

⁸ This feminization of poverty is fast becoming a national crisis. See generally, H. Scott, Working Your Way to the Bottom: The Feminization of Poverty (1984).

⁹ Arendell, *supra* note 5, at 126.

It's going to require a massive effort in terms of a structure that lawyers create--and lawyers say, "well, this is a social worker's problem"--but lawyers have generally created this structure that gives people opportunity.

From the Miami Public Hearing

C. Access to Justice

A conspicuous form of gender bias is the lack of adequate legal representation for women who are involved in a dissolution of marriage. Women generally do not have the economic resources to retain good legal advice. The inevitable consequence is a severe restriction on women's access to the courts, which adversely affects the outcomes of their cases. Women are without the economic resources to hire adequate counsel because they do not have access to the finances in many families.

However, this factor should not preclude women from obtaining good representation. Florida has legislation providing for temporary attorneys fees in divorce actions. But as one family lawyer pointed out at the Miami Public Hearing, "gender bias occurs because it is women who must request the fees to continue their cases."¹⁰

In Tallahassee another family law practitioner told the Commission that women were foreclosed from adequate legal representation because courts were not complying with the temporary fee statute:

The policy adopted by the legislature and in our statute allows attorney's fees to be awarded to the disadvantaged spouse, generally women, so they can have equal access to appropriate representation. . . . [This] is a good public policy, however, in practice, most practitioners find that it doesn't work.

¹⁰ Melvin Frumkes, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

Attorneys throughout the state testified that judges generally do not grant women temporary attorneys fees--"suit money"--in dissolutions:

I can answer the question you asked--the question as to whether there are any interim fee awards. . . . There are not any interim fees.

From the Tampa Regional Meeting

I've heard time and time again . . . and unfortunately I've heard: "I don't award temporary fees."

From the Miami Public Hearing

Temporary fees in Duval County are very, very rare.

From the Jacksonville Public Hearing

The consequence of this judicial refusal to award interim fees is that attorneys stop representing women:

What is happening in this area, one of our finest family law attorneys, a male who has practiced for 20 years, has totally refused to take women as clients.

From the Orlando Regional Meeting

The Commission also found that when attorneys fees are awarded, they tend to be awarded at the close of the case, and are often reduced, especially if a woman attorney is representing a woman litigant:

It is not uncommon for me to go and ask for fees and have them questioned in detail whereas when my opponent who is male has no questions--the basic attitude is that I don't need those fees.

The Commission's survey of family law attorneys disclosed that more than half reported being unable to accept or continue representation of women

due to the likelihood of not receiving adequate fees.¹¹ The impact on the outcomes of women's cases cannot be overstated. Without the funds to hire an attorney, many times there simply is no case and women must "settle":

The "wait until the end" attitude regarding the award of temporary attorneys fees, suit monies and costs in matrimonial litigation, is analogous to the "just prevent them from going to the poorhouse until the case is over" view.^[12]

This approach gives the spouse controlling the purse strings enormous leverage and psychological advantage in contested matrimonial litigation . . . and it has become more and more difficult for the impecunious spouse to obtain competent counsel.

At the core of the problem is the fact that "the end" is frequently too late because the impecunious spouse has already been "browbeaten," "starved," and "psychologically defeated" before the end arrives. Frequently, the impecunious spouse takes the only course he or she can afford, i.e., the course of "least resistance," thus settling on unfavorable or less favorable terms because of the absence of an equal bargaining position.¹³

The Commission has concluded that despite the clear mandate of the fee statute, Florida courts discriminate against women by seriously restricting their ability to pay for legal representation. Case outcomes invariably are affected by this bias. Indeed, it obstructs women's access to proper and necessary discovery and denies equal access to information needed to make a valuation of marital assets. As one family law attorney told the Commission, the judicial

¹¹ Florida Supreme Court Gender Bias Study Commission, *Survey of Marital Law Section Attorneys of The Florida Bar*, at 185 (June 28, 1988) (table 157, question 4) (unpublished). A majority of the family lawyers also reported that some attorneys take a mortgage on a woman's residence in lieu of fees. Testimony indicated that some women had been forced to sell their homes to pay their legal fees in divorce cases.

¹² This view was disapproved in *Vickers v. Vickers*, 413 So.2d 788 (Fla. 3d DCA 1982).

¹³ Miller, *A Matter of Access to the Courts*, 11 Fam. L. Commentator 2 (1985).

aversion toward making a proper award of temporary attorneys fees has had the inevitable consequence of making women second-class litigants:

Until the issue of assuring adequate compensation for, and thereby availability of, equal quality of legal representation for women is addressed and remedied, women will continue to be underprivileged litigants in our current system.¹⁴

The Commission has also found that women who are able to obtain legal representation are virtually foreclosed from appellate review of court decisions. For many of the women in Florida, the trial court is the court of last resort:

[I]t's just a simple reality. You run into situations in the representations specifically of women who generally don't have the purse strings and by the end of the divorce they have run out of money, they have run out of credit worthiness, they have run out of every possible relative or friend [from whom] they could borrow money in pursuing the litigation itself, because judges in the Panhandle are not really keen on awarding temporary attorneys fees or suit money to do the discovery sometimes necessary involving a professional or a business or a small corporation; they are asset poor, liquid asset poor shall we say. At that point, they are unable to risk or gamble three to five thousand dollars on an appeal.¹⁵

Another problem that makes appellate review less meaningful is the lack of any requirement of an adequate record. Trial courts in Florida are not required to make findings of fact in dissolution cases. Moreover, testimony statewide indicated that many women cannot afford to have records kept of their hearings. Without findings or a transcript there is no basis for meaningful appellate review:

¹⁴ Letter from J. Fraser Himes to the Gender Bias Study Commission (Mar. 11, 1988).

¹⁵ Kathleen Gainesley, remarks at the Pensacola Public Hearing of the Gender Bias Study Commission.

[I]t sounds easy, 'Did you have a court reporter when all these comments were made?' but it's just not part of the practice in rural counties. I am a private practitioner and--and the reality is my clients are barely able to afford the filing fee and they are not going to appeal, I don't care how bad the rulings are against them.¹⁶ They can't afford the luxury of even considering appeal.

D. Judicial Attitudes

The reluctance to award fees is only one example of gender bias in Florida's courts. A majority of Florida's judges also dislike having to consider family law matters.¹⁷ This attitude is exacerbated by the fact that dissolution of marriage and child support controversies account for over forty percent of all civil filings,¹⁸ and constitute the single largest category of cases heard by the civil bench. Family matters¹⁹ are second only to criminal filings statewide. Attorneys statewide testified that these unfavorable judicial attitudes inevitably influenced case outcomes:

I feel that it is a tragedy that most of the cases most of the time that touch everyday lives of people in the State

¹⁶ From the Pensacola Regional Meeting of the Gender Bias Study Commission.

¹⁷ In a survey conducted by the Bench-Bar Committee of the Family Law Section, sixty-five percent acknowledged that they disliked having to hear family law matters. *Bench-Bar Committee Survey*, *supra* note 1, at 3.

¹⁸ Data supplied to Commission by the Office of the State Courts Administrator placed the figures in 1988 at 51 percent in the first district; 42.6 percent in the second district; 34 percent in the third district; 36.4 percent in the fourth district; and 45.4 percent in the fifth district. Memorandum from the Office of State Courts Administrator to the Gender Bias Study Commission (Aug. 8, 1989) (available from Office of State Courts Administrator, Florida Supreme Court).

¹⁹ Dissolution, child support, custody and child support enforcement are the categories counted as family matters for statistical purposes.

of Florida are the very cases that the judiciary most dislike and don't want to hear.

From the Tallahassee Public Hearing

Dislike of family law may lead to being uninformed and insensitive about family law. Sixty-eight percent of family law attorneys responding to a Bench-Bar Survey opined that judges were uninformed, insensitive or both when presiding over family law matters²⁰; and more than seventy-five percent of the family law attorneys agreed that courts have preconceived notions about family law matters and really do not want to see the "total picture"²¹:

Apparently, most judges really do not want to hear family law matters and it shows. . . . It cannot be comforting to find that the one who holds the future of your access to your children and your financial future in his or her hands has, at best, little interest in that role, or, at worst, a distaste for it.²²

E. No-Fault Divorce

Traditional notions of family law aspired to preserve a marriage and the family it produced. Obtaining a divorce thus was extremely difficult and sometimes impossible. Before a divorce would be granted, the courts required that fault be established--a practice that frequently led to subterfuge and perjury. When a divorce did occur, the legal system recognized entitlement to alimony and child support. This basic system remained relatively stable for many years.

As public acceptance of divorce increased, the states began to adopt new laws that did not require a showing of fault. At the present time every

²⁰ *Indictment from Within*, supra note 3, at 11-16.

²¹ *Id.* at 13.

²² *Id.* at 6.

state in the United States has some form of no-fault divorce except South Dakota.²³

However, many of the positive results expected of no-fault divorce have not materialized. Indeed, recent empirical studies²⁴ as well as twenty years of practical application have led to the inescapable conclusion that no-fault divorce is significantly biased against most women and children and highly advantageous for most men:

[I]n every facet of women's settlements [under no-fault] as compared with settlements under fault regimes, alimony is granted less frequently, in smaller amounts, and for shorter durations. Similarly, child support awards shrank in size and were granted less often. Women also received smaller shares of the family assets and greater shares of the family debt.²⁵

As many studies have established,²⁶ husbands generally were the parties seeking divorce under the fault system. Thus, the adoption of unilateral no-fault dissolution abrogated the primary bargaining power wives had--to withhold divorce until they received more advantageous settlements.²⁷

But is Florida really a no-fault state? Despite the statutory language, one judge testified that Florida was not a true no-fault state:

²³ Mason, *supra* note 5, at 22.

²⁴ See, e.g., McLindon, *Separate But Unequal: The Economic Disaster of Divorce for Women and Children*, 21 Fam. L.Q. 351 (1987); California Senate Task Force on Family Equity, *California Senate Task Force Final Report* (June 1987). See also K. Shortridge, *Poverty is a Woman's Problem* in *Women: A Feminist Perspective* 485-92 (4th ed. 1989); Ellman, *The Theory of Alimony*, 77 Calif. L. Rev. 1 (1989).

²⁵ McLindon, *supra* note 24, at 352.

²⁶ See W. Goods, *Women in Divorce* (1965).

²⁷ Sessums, *What Are Wives' Contributions Worth Upon Divorce: Toward Fully Incorporating Partnership Into Equitable Distribution*, 41 U. Fla. L. Rev. ___ (1989) (to be published) [hereinafter Sessums].

The Court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. What's the difference? Are we a no-fault state or are we a fault state? If we are a fault state then there should be equal considerations for all types of fault not just adultery in terms of alimony . . . and therefore who is going to be charged with the burden of the adulterous conduct? Obviously it's going to operate primarily against women.

From the Pensacola Public Hearing

F. Alimony

Another consequence of no-fault divorce in Florida has been the appearance of the concept of equitable distribution and the virtual abandonment of permanent alimony.²⁸ Equitable distribution is based on the theory that a divorcing couple will split the marital assets accumulated during the marriage and go their separate ways. The underlying theory has been reinforced by the increasing influx of women into the working world, resulting in a belief that women are as fully able as men to earn a living and support families. The historical and traditional attitudes that justified alimony awards thus have evaporated under the myth of women's economic "equality." In every part of the state the Commission heard of courts that have abandoned permanent alimony²⁹:

[A]limony is either awarded in minimal amounts or not awarded at all based upon [a woman's] presumed ability to

²⁸ Florida State University Policy Studies Clinic, *Gender Bias and Family Law: A Study of Judicial Decisions in Florida*, (Aug. 1988) (unpublished) (available from Florida Supreme Court Gender Bias Study Commission).

²⁹ The U.S. Census Bureau determined that only 13.9 percent of spouses seeking alimony succeeded. Of those successful spouses, seventy-five percent received at least a partial payment, and almost twenty-five percent of those awarded alimony received no payments at all. United States Bureau of Census, *Child Support & Alimony* (Current Population Reports, series P-23, No. 141) (available from U.S. Government Printing Office, Washington, D.C.).

go out and get work, [but] there is no equality; and I would quote Lenore Weitzman³⁰ [that] to grant equal rights in the absence of equal opportunity strengthens the strong and weakens the weak.

From the Miami Public Hearing

Repeatedly, witnesses criticized judges for

incorrectly assuming that a woman--middle-aged woman--is going to be able to find gainful employment rapidly.³¹

It is unrealistic for judges to assume that a woman will enter the job market no matter what her age, previous training or justifiable expectations may be, and despite the length or conditions of the marriage. Women who do enter the work force in mid-life find that they will more than likely be segregated in a low-paying job,³² and are poorly situated for starting a new career:

She has just completed one career as a homemaker . . . when she is retired without benefit of a pension, savings plan, access to health insurance, or any other earned economic security upon which she can depend. It is neither just [n]or practical to now expect her to begin a career as if she had the p'ysical stamina, opportunities, and responsibilities of a 20-year-old male and 20 or 30 more³³ healthy years to build a retirement income and insurance.

³⁰ Weitzman, *supra* note 5.

³¹ Deborah Schroth, legal aid attorney, remarks at Jacksonville Public Hearing of the Gender Bias Study Commission.

³² Segregation of women in low-paying jobs is increasing rather than decreasing. In 1950, sixty-two percent of all clerical workers were women. By 1978, the percentage had risen to seventy-nine percent. Neely, *The Hidden Cost of Divorce, Barter in the Courts*, New Republic, Feb. 10, 1983, at 13-16 [hereinafter *Barter in the Courts*].

³³ K. Berson, W. Schlachter & K. Church, *Gender Bias in the Judicial Approach to Divorce*, at 2 (unpublished & undated) (available from Gender Bias Study Commission). The authors of this material work for the Fresh Start Program for Displaced Homemakers at Daytona Beach Community College Women's Center.

Most divorcing women will work in a secretarial or clerical job, as a saleswoman or in a service industry, perhaps as a waitress or hairdresser.³⁴ With four or more years of college, a woman will make roughly the same income as a man with one to three years of high school. Women with high school educations will only make as much as men who did not complete elementary school.³⁵

Furthermore, men continue to ascend an upward spiral of earnings until they reach their late fifties and sixties. Women's peak earning period occurs in the twenty-five to thirty-four-year-old bracket.³⁶ The earning capacity of a woman who stays at home atrophies by 1.5 percent for each year she is out of the paid labor force.³⁷

These data reveal that women who forego a career outside the home suffer a permanent economic loss justifying compensation in the form of alimony upon dissolution. The Commission thus concludes that alimony cannot be discarded in favor of property distribution. When property is used as the sole method of distributing marital assets, women suffer a disproportionate impact upon their future, compared to men. This occurs because few marital assets are in the form of divisible property and because there is an enormous gap in earning potential between men and women at every stage of their lives, regardless of their education.

Thus, alimony should be considered as general compensation for the wife's lost opportunities rather than a claim for support based upon need. In

³⁴ C. Bruch & N. Wikler, *The Economic Consequences*, Juv. & Fam. Ct. J., Fall 1985, at 8. Of the Census Bureau's 420 occupational categories, the majority of women are segregated into only twenty, such as clericals, nurses, teachers, bookkeepers and child care workers. L.H. Schafran, *Eve, Mary, Superwoman: How Stereotypes About Women Influence Judges*, 24 Judges J. 12 (1985) [hereinafter *Eve, Mary, Superwoman*].

³⁵ *Id.* at 51.

³⁶ U.S. Department of Labor, *Earning Gap Between Women and Men* 19 (1979).

³⁷ Sessums, *supra* note 27, at 42.

this light, the necessity of continuing to grant alimony in appropriate cases becomes discernible.³⁸

G. Equitable Distribution

Equitable distribution is anything but equitable. The Commission is compelled to this conclusion by the overwhelming weight of the evidence collected, the special empirical studies conducted, the cases analyzed and the testimony of family lawyers and those who have run the gauntlet of Florida's family law court. The language of reported cases, for instances, makes frequent references to "generous awards." Yet this implies a "gift" to the wife--as if being a wife, mother and homemaker entitles one to no more than room and board upon dissolution.

The research indicates that Florida's courts routinely award sixty-five to seventy-five percent of the marital assets to the husband and twenty-five to thirty-five percent to the wife.³⁹ Two-thirds of the family lawyers responding to the Commission's survey also concluded that Florida's courts favor the husband in the division of marital property.⁴⁰ The Commission's review of written appellate decisions published in the first half of 1989 tends to confirm these observations.⁴¹

³⁸ Ellman, *supra* note 24, at 39. Marriages of long duration, in which one spouse had foregone educational and career opportunities, are especially appropriate for permanent alimony.

³⁹ See Frumkes & Langan, *supra* note 3, at 12. In Frumkes and Langan, the authors list all of the appellate cases beginning with *Canakaris* and up through 1986. They conclude that of the thirty-five cases, the average award was less than twenty-five percent of the marital assets. *Id.*

⁴⁰ Florida Supreme Court Gender Bias Study Commission, *Report on the Gender Bias Study Commission Survey of the Criminal, Family & Trial Law Sections of The Florida Bar* 42 (June, 1988).

⁴¹ All decisions reported in the Florida Law Weekly from January through June 1989 were reviewed.

The legislature has recently passed a new statute containing an extensive list of factors to be considered in determining equitable distribution.⁴² Despite these enumerated factors, a court may also consider "[a]ny other factors necessary to do equity and justice between the parties."⁴³ This clause in conjunction with the lack of any requirement for written findings allows a court almost unreviewable discretion in determining what constitutes an "equitable" distribution.⁴⁴ The predictable result is a marked inconsistency in decisions.

Indeed, this sort of inconsistency was the focus of much criticism from attorneys throughout the State. The Bench-Bar Survey of the Family Law Section of The Florida Bar showed that most of those polled thought judges either ignored the law or simply did not know what the law was.⁴⁵ One family law practitioner, however, had another theory--that courts reject the partnership theory of marriage upon which equitable distribution rests:

The equitable distribution question, I think the problem is a lack of a true partnership analysis to family problems.

From the Pensacola Public Hearing

Florida courts, including the Supreme Court, have approved in theory the idea that marriage is a partnership.⁴⁶ Yet this theory largely has not been put into practice. Over and over again, the Commission was told that, as the amount of marital assets increases, the percentage the wife gets decreases. Testimony also revealed a perceptible judicial attitude that women are not bona fide partners of a marriage regardless of their contributions:

⁴² Fla. Stat. § 61.075 (1989).

⁴³ *Id.* § 61.075(1)(h).

⁴⁴ See *Canakaris v. Canakaris*, 382 So.2d 1197, 1202-03 (Fla. 1980) (describing scope of trial court's discretion).

⁴⁵ See *Bench-Bar Committee Survey*, *supra* note 1, at 29.

⁴⁶ See, e.g., *Neff v. Neff*, 386 So.2d 318, 320 (Fla. 2d DCA 1980).

[J]udges still question why a bright, attractive, talented woman would so aggressively pursue an equitable distribution of property in a divorce settlement when after all, she is bright, attractive and talented and shouldn't need anything else.⁴⁷

Family lawyers testified that they routinely advise female clients that, regardless of their contributions to the marital partnership, they will not share equitably when the marital partnership dissolves:

Today I tell any client who comes in who is a woman, that notwithstanding the fact that she perhaps has a very long-term marriage, maybe in excess of 30 years and she has contributed significantly to the marriage, that it will be a miracle . . . if she ends up with 50 percent of the assets.

From the Tallahassee Public Hearing

One family practitioner spoke of a "value extravagance on the husband's side and a value diminishment on the wife's side."⁴⁸ Over and over, family attorneys reminded the Commission that the majority of people who are divorced in this State have little or no property to divide.⁴⁹ Despite this fact, over two-thirds of the family law section attorneys polled by the Commission reported that the larger share of marital property goes to the husband when he has been the income producer and the wife has been the homemaker.⁵⁰

The Commission learned that the major asset of most marriages is the earning capacities of the partners. Yet this asset generally is not recognized by

⁴⁷ Cora Hernandez Murrell, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

⁴⁸ From the Tampa Regional Meeting of the Gender Bias Study Commission.

⁴⁹ One study was cited that showed sixty percent of divorcing couples have a net worth of less than \$30,000. Cynthia Greene, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

⁵⁰ Florida Supreme Court Gender Bias Study Commission, *Gender Bias Study Commission Survey of the Criminal, Family and Trial Law Sections of The Florida Bar* (June, 1988).

the courts of Florida as subject to equitable distribution.⁵¹ Other than earning capacity, the family home constitutes the largest asset of most families.⁵² Today, trial courts typically order, and the appellate courts routinely affirm, the immediate sale of the marital home to effectuate a cash settlement for equitable distribution.⁵³ Before the adoption of no-fault and equitable distribution, in most cases the residential parent and children continued to occupy the family home in addition to receiving support.

Attorneys around the State were especially critical about the lack of certainty and consistency in judicial decisions. Inconsistency, many argued, leads to premature property settlements when the judge to which a case is assigned is prone to make inequitable distributions of marital assets. The concept of community property--a presumption in favor of equal division of assets--would encourage the certainty and consistency sorely lacking in Florida appellate decisions dealing with similar issues and facts. Under this concept, all unequal distributions could be made only when based on specific factual findings regarding the factors enumerated in the present statute. Without such a requirement, the disparate results of the past will continue to be the reality of the future.

H. Custody

People largely believe that the wife is the favored party in child custody decisions. Yet this perception is not always borne out by fact. For in-

⁵¹ *E.g.*, *Moebus v. Moebus*, 529 So.2d 1163 (Fla. 3rd DCA 1988).

⁵² *McLindon*, *supra* note 24, at 375.

⁵³ *See, e.g.*, *Trager v. Trager*, 541 So.2d 148 (Fla. 4th DCA 1989). In *Trager*, the court admitted that the sale would "affect[] the well-being of the child by her being uprooted from the physical security of her surroundings." *Id.* at 151. But it affirmed the sale nevertheless, characterizing the home as the parties' "principal asset." *Id.* The dissent pointed out that the child had lived in the home her entire eleven years, that there was no mortgage on the house and that the husband would not be greatly inconvenienced by a temporary loss of his interest in the home because he retained "substantial liquid assets." *Id.* at 152.

stance, on one hand the Commission was told that women always get custody, no matter what the circumstances. On the other hand, the Commission heard that when men actually contest custody, they do well. This apparent inconsistency itself indicates something amiss in the process of resolving child custody disputes. Indeed, the most recent and reliable research indicates that women experience a cognizable degree of bias in custody decisions.

Everywhere in the state, for instance, the Commission was told that men threaten to contest custody not for custody of their children but as a bargaining tool--a way of forcing a more advantageous property settlement. In conjunction with the restriction on women's access to legal representation, these threats make women especially susceptible to custody "blackmail." Thus, while it may be true that women often get custody, this by no means indicates that women are being favored. As one family practitioner stated in Ft. Lauderdale, the "custody vs. property" tactic is standard practice among lawyers who represent fathers.⁵⁴ The strategy was illustrated by an unsolicited letter received by the Commission:

[T]he first question a man asks of his lawyer when seeking a no-fault divorce is, 'What's this going to cost me?' The lawyer for the man usually replies, 'My advice is to go for the kids--that way she'll settle for less, and she'll be too frightened to go to court. You'll save a lot of money that way.'⁵⁵

National studies also found that men frequently threaten custody battles to coerce women into accepting lower property settlements,⁵⁶ thus settling the

⁵⁴ Sandor Genet, remarks at Fort Lauderdale Public Hearing of the Gender Bias Study Commission. A recent study supports the testimony heard by the Commission that the "custody vs. property" tactic prevalent in Florida encourages litigation in which money in effect is traded for children. See *Barter in the Courts*, *supra* note 32, at 16.

⁵⁵ Memorandum from Marion McDaniel to Gender Bias Study Commission (Jan. 25, 1988).

⁵⁶ See Chesler, *Mothers on Trial: The Battle for Children and Custody*, Boston Phoenix, Mar. 4, 1986, § 1, at 16; Polikoff, *Custody and Visitation: Their Relationship to Establishing and Enforcing Support*, Clearinghouse Review, July 1985, at 274 [hereinafter *Custody & Visitation*].

dispute before a court hearing is scheduled. These pretrial custody and property settlement decisions usually are merely ratified by the court. No judicial custody decision is actually made.

When a court is asked to decide the custody question, it must consider Florida's presumption for shared parental responsibility. In 1982 the Florida legislature amended Florida law to provide that parental responsibility for minor children shall be "shared by both parents" unless the court finds it would be detrimental to the child. Thus, the legislation adopted the "best interests of the child" as the primary factor used in determining where a child was to reside. The statute also stipulated that the father was to be given the same consideration as the mother in determining primary residence.⁵⁷

Testimony before the Commission indicates, however, that courts automatically order shared parental responsibility without due consideration of the best interests of the child or of other factors that would justify sole custody under the statute:

He drew joint custody, automatic joint custody and, at one point, my ex-husband who is Iranian, threatened in front of the judge to take the child to Iran with him and he was still awarded joint custody.

From the Tampa Regional Meeting

Other testimony indicated that, despite the adoption of shared parental responsibility in Florida, courts still presume that mothers are the best residential parent:

Society views motherhood with a certain sanctity[,] that mothers know what is best for their children, and that they will act in their children's best interests.

From the Jacksonville Public Hearing

⁵⁷ Ch. 82-96, 1982 Fla. Laws 233, 233-35 (codified at Fla. Stat. §§ 61.13(2)-.13(3) (1989)).

If a father is willing to take on the responsibility of sharing in the upbringing, he should be allowed to do that. He shouldn't be denied that strictly because he is a man and not in this society considered equal to a mother.

From the Miami Public Hearing

However, there is an identifiable reason why some men are being denied this opportunity. Testimony from psychologists and family therapists revealed that mothers still are the primary residential parents because they continue to be the primary caregivers. Indeed, this seems to be the heart of the matter. While fathers are more involved in child care than in any period in recent history,⁵⁸ they have not generally become the primary caretaker parent even today. The father generally is not the one who changes the diapers, dresses and bathes the child, takes the child to school, cares for the child's health, or interacts with others involved in educating and caring for the child.⁵⁹ When fathers do actively seek residential custody, research indicates they are quite successful.⁶⁰ The Massachusetts Gender Bias Study Report found that fathers are successful seventy percent of the time when they seek custody.⁶¹

Another study found that

⁵⁸ With the trend toward greater involvement with children, the father may be ill-prepared for his "visitor status" after a divorce. Some studies argue that fathers have coped with this disenfranchisement by distancing themselves from the parent-child relationship. Everett, *Patterns and Implications of Child Support and Enforcement Practices for Children's Well-Being 9* (1984) (Working Paper No. 28, Wellesley College Center for Research on Women) [hereinafter Everett].

⁵⁹ *Barter in the Courts*, *supra* note 32.

⁶⁰ Lenore Weitzman and Ruth Dixon found in a 1977 study limited to Los Angeles County that sixty-three percent of all fathers who requested custody were successful. A study of 196 Minneapolis cases showed a forty-five percent success rate. A survey of North Carolina judges in 1979 found that fathers prevailed in almost fifty percent of custody cases. Polikoff, *Why Are Mothers Losing: A Brief Analysis of Criteria Used in Child Custody Determinations*, 7 *Women's Rights L. Rep.* 235, 235-36 (1982) (reviewing studies).

⁶¹ Massachusetts Supreme Judicial Court, *Massachusetts Gender Bias Study of the Court System in Massachusetts* 62 (1989).

[f]athers are not discriminated against in custody or family law cases. The fact that 90 percent of children live with their mothers is not a result of judicial bias, but of paternal preference. This 90 percent figure includes those cases where fathers have abandoned their families, do not contest custody, or agree to custody in the mother.⁶²

The same study also revealed an unforeseen bias against women in joint custody awards:

[Ninety] to 95 percent of joint custody awards are for "joint legal custody." This gives both parents equal rights, but retains the entire responsibility for raising children in the physical custodian (usually the mother).⁶³

Statements from family lawyers in Florida indicate that Florida women also experience gender bias in custody decisions:

During pendency of litigation, wife allows husband to see the children very often. She was advised by counsel that one of the criteria in awarding primary residence was which parent is more likely to allow the other parent to have contact. At the final hearing, judge grants primary custody to husband, because wife lets husband see children so often, she must not really want them herself.⁶⁴

Testimony also indicated that, in awarding residential custody, Florida's courts oftentimes hold women to higher or different standards of behavior than men:

⁶² National Center on Women and Family Law Child Custody Project, National Conference of State Legislatures, *Joint Custody: An Attack on Women and Children 2* (undated).

⁶³ *Id.* at 1.

⁶⁴ Florida Supreme Court Gender Bias Study Commission, *Report on the Gender Bias Study Commission Survey of the Criminal, Family & Trial Law Sections of The Florida Bar* (June 28, 1988).

When I sat down and looked at the grounds that were present in the transcript for taking custody away from the mother, the only thing they showed were the aerobics, that she worked outside the home, and one night a week, she went out with her girlfriends.⁶⁵

From the Pensacola Regional Meeting

A study done of over 875 Florida appellate cases from 1983 to 1988 concluded that men were more likely to prevail in child custody and visitation issues than women.⁶⁶ Significantly, the study found that all-male panels--the majority of panels in the State--were most likely to rule in favor of males in child custody decisions. When a woman was present on the panel, which is unusual throughout Florida, women and men were equally as likely to prevail on the custody issue.⁶⁷

⁶⁵ Lifestyle considerations are not restricted to custody decisions. See, e.g., *Waldman v. Waldman*, 520 So.2d 87, 90 (Fla. 3d DCA 1988) (alimony modification hearing in which woman's "profligacy" was considered) (corrected opinion).

⁶⁶ Florida State University Policy Studies Clinic, *Gender Bias in the Family Law Arena* 3 (May 15, 1989) (preliminary summary report on statistical data) (available from the Florida Supreme Court Gender Bias Study Commission).

⁶⁷ *Id.*

I. Visitation

Despite the adoption of shared parental responsibility, noncustodial fathers told the Commission of their disappointment with the visitation allotted them:

I went from seeing my children everyday and being able to call them everyday while at work to a situation of seeing them once a week and every other weekend, if I was lucky--once a week and every other weekend is what the judicial system views as usual noncustodial visitation.

From the Jacksonville Public Hearing

Testimony also indicated that obtaining a hearing on visitation was difficult and that standardized visitation schedules were used indiscriminately, without regard to the circumstances of the father:

It doesn't matter if your male client works weekends for the police department or whatever. . . . [He gets] 23 percent of a 365-day year.

From the Pensacola Regional Meeting

There was testimony that the blind adherence to standardized visitation schedules resulted in fathers withholding court-ordered child support. Other men contended that they sometimes conditioned compliance with support orders on receiving certain visitation rights. However, the Commission's research does not bear out these allegations.

It is true that fathers who regularly visit their children are more involved with them in all respects, and "fathers who pay are more involved with their children."⁶⁸ However, the American Bar Association's National Legal Resource Center for Child Advocacy and Protection has issued a report concluding

⁶⁸ American Bar Association National Legal Resource Center for Child Advocacy and Protection, Child Support Project, *Child Support, Custody and Visitation: A Report to State Child Support Commissions* 23 (July 1985).

that "it is not clear . . . whether there is a causal relationship between these two or whether other variables influence the outcome."⁶⁹ The report cited other studies revealing a positive correlation between frequency of visitation and support, but concluded that they were indecisive and did not "show which was the cause and which was the effect."⁷⁰ Indeed, other studies have identified full employment of the father as the single greatest determiner of whether child support is paid.⁷¹ Viewed as a whole, these studies show only that there is some undefined correlation between visitation and child support; as yet, there is no indication of a causal relationship between the amount of visitation and the level of support provided.⁷²

The Commission has determined that visitation must be encouraged by the courts. Whether or not visitation promotes payment of child support, prompt enforcement of visitation schedules and regularly scheduled reconsideration of visitation schedules is mandated. The courts also should consistently apply section 61.13(4), Florida Statutes, which allows the court to award additional visitation and hold in contempt those who violate a visitation schedule.⁷³ This is an appropriate method of encouraging compliance with visitation schedules.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.* at 23.

⁷¹ *Custody and Visitation*, *supra* note 56, at 275.

⁷² In *Trager v. Trager*, 541 So.2d 148 (4th DCA 1989), for example, the court cites extensively from the article by Pearson and Theonnes, *Supporting Children After Divorce: The Influence of Custody on Support Levels and Payments*, 22 *Fam. L.Q.* 319 (1988). See also *Custody and Visitation*, *supra* note 56.

⁷³ Fla. Stat. § 61.13(4) (1989).

J. Child Support and Child Support Enforcement

The Commission has determined that indifference to and nonenforcement of child support orders are the norm rather than the exception in Florida. As Judge Charles McClure stated in the Commission's Pensacola Public Hearing, some women who repeatedly had been unable to enforce child support awards often

had the kind of look of a prisoner of war. It reminded me of some of the pictures you see of the hopeless people hanging on to the barbed wire in Auschwitz and places like that. They just had this hollow look about them.

From the Pensacola Public Hearing

The Commission's survey of the Criminal, Family and Trial Law Sections of The Florida Bar disclosed that child support arrearages frequently are reduced or forgiven without justification.⁷⁴ The survey revealed that courts routinely reduce future child support payments in response to support enforcement motions.⁷⁵ In fact, courts oftentimes simply accept the testimony of nonpaying parents that they cannot afford to pay past-due amounts. Thus, the arrearages are simply forgiven.⁷⁶

One Dade County judge testified that most courts emphasized the wrong issues in support enforcement, resulting in gender bias against women:

[T]he emphasis that we seem to pay exclusively to the ability to the party owing usually, almost exclusively, to the father to pay, as opposed to really paying much attention frankly as we should to the fact that even though he

⁷⁴ Florida Supreme Court Gender Bias Study Commission, *Gender Bias Study Commission Survey of the Criminal, Family and Trial Law Sections of The Florida Bar* 45 (June 28, 1988).

⁷⁵ *Id.*

⁷⁶ *Id.* at 44.

can't afford to pay, she can less afford the financial burden that she is put to when she has the kids."

From the Miami Public Hearing

In one case brought to the Commission's attention, the father's income had increased from \$22,000 in 1974 to over \$125,000 in 1981. At the hearing on the request to modify the child support payments, the judge granted an increase of ten dollars per week and then stated to the wife's attorney:

[T]here is a limit to the amount of ⁷⁷child support any man should pay, regardless of his income.

Other testimony indicated that disparities in child support awards were the rule rather than the exception:

[O]ne person is receiving \$700 a month for child support for one child and someone else is receiving \$250 a month for three children, and their incomes are not significantly different; it's very difficult for these people to ⁷⁸come to an understanding that this is equality before the law.

Regardless of whether an award is adequate or inadequate, the empirical data and the testimony indicate that child support awards are nearly impossible for women to enforce:

Child support enforcement, I think we all know, is a joke. I think the system--or the application of the system to enforce child support certainly in Duval County, and I suspect in the rest of the State--is deplorable. . . . Not only is there a free lunch for the guys who don't pay child support, but a lot of times they get rewarded. You have

⁷⁷ Unsigned memorandum to the Florida Supreme Court Gender Bias Study Commission (May 2, 1988).

⁷⁸ Paula Walborsky, attorney, remarks at Tallahassee Public Hearing of the Gender Bias Study Commission.

to sit in child support enforcement hearings to realize it's almost a situation comedy for television.

From the Jacksonville Public Hearing

The weight of the testimony also indicated that most courts do not use the full measure of their judicial powers to enforce child support. Usually the courts give no more than

a slap on the wrist. . . . [T]hat's a judicial attitude that we see here a lot. . . . I've seen this happen, where a guy was paying more money on a car payment than he was willing to pay on child support. I argue, "Your Honor, this guy should at least be required to pay more child support than he pays on his new 'Z' car." The judge doesn't buy it. The judge does not buy it. The judge lets that guy pay less than half of what he should have been paying in that particular case.

From the Pensacola Regional Meeting

The Chief of the Florida Department of Health and Rehabilitative Services (HRS) Child Support Enforcement program testified in Tampa that nonpaying parents manipulate the system with a certainty that no support enforcement will occur, even when they appear before a judge:

He had been unemployed for four months. He had lost his job that he had at a warehouse because of unexcused absences so he couldn't apply for unemployment. He didn't have any assets. He had not worked a day in the past four months. He said he lived with his girlfriend who is providing for all his basic needs and who had all the possessions. He didn't own anything. There were no personal goods of his own. He didn't even own a car, although he did have unlimited use of one of his girlfriend's two vehicles. The girlfriend was providing all of this on a \$6-an-hour wage. When he was finished talking to me, he looked at me and smiled and said, "You can't touch me." We went before the judge and sure enough, he had no assets, had no job [H]e left the courtroom that day without an obligation to do anything other than continue his fu-

tile search. The mother left the courtroom that day with her unpaid bills, and that was all there was to it.⁷⁹

But the testimony of one judge illustrates that enforcement of child support is well within the power of the court, if the court only places a higher priority on enforcing child support:

I know those of you who are on the bench have heard the excuses of, "I've remarried," "I got a new truck," "I bought new clothes," "I've got a new house," and as I said, I had to rearrange some of those priorities. And in my pursuit, of which I guess I've both received criticism and praise for, I've gotten watches. I've gotten real estate. I've gotten trucks. And we had in the jewelry, I've gotten gold chains. I've collected whatever tangible property they have and I had a jeweler appraise, and they were given credit and they could either buy it back through Child Support Enforcement or it would be sold or turned over to the custodial parent.

So I've even gotten, one time, a gold earring out of a man's ear, and that was more symbolic than anything else. He was standing up in front of me and I said, "Take off all your rings and your earrings and your necklaces and put them over here on the table." And I would make people empty out their wallets. That has a lot of ripples down the road. . . . "Do you have any money on your body?" And he said, "Well, yes, I do." I said, "Where is it?" He said, "It's in my sock." And he pulls out a roll of \$900 and I said, "Put it on the table and we'll credit you with that."

I have found that the clinking of the cuffs and the cell door produce a lot of income for the children.

From the Pensacola Public Hearing

As one attorney testified, the practical consequence of the failure to enforce child support orders was yet another bureaucratic layer for women and their children to contend with:

⁷⁹ From the Tampa Public Hearing of the Gender Bias Study Commission.

A whole new administrative system has sprung up because the lower court judges aren't doing their jobs, and that's this collection system.⁸⁰

The Commission repeatedly heard that this "administrative system" simply does not work for the women who need to use it. Officials of HRS, for instance, informed the Commission that there currently are 544,349 open cases for child support enforcement representing some \$1.5 billion in unpaid child support.⁸¹ An attorney in Jacksonville noted:

For my clients in Clay County, there is a delay of at least six months from the time they first call HRS and ask for the services at Child Support Enforcement, until the day they get into⁸² court for an order to get them any temporary support.

In Pensacola another attorney told of similar experience with the "system":

[R]ather than getting a responsive attitude from the system, I think that what these ladies are really hearing is, "I'm sorry, but it's going to be six months or a year before we're going to be able to file anything for you. . . ." [T]he system has given a clear message, "Ladies, it's not that important that you get your child support."

Efforts currently are being made to correct these problems. Under federal mandate, HRS recently has significantly altered the time frames criticized in Commission testimony. Once HRS Child Support Enforcement Services is notified of a delinquency in child support payments, a notice goes out within forty-eight hours and an appointment is made for the parent not receiving sup-

⁸⁰ Joel Goldman, remarks at the Jacksonville Public Hearing of the Gender Bias Study Commission.

⁸¹ Written testimony submitted by Marlin Seay of the Florida Department of Health & Rehabilitative Services to the Gender Bias Study Commission (Jan. 25, 1988).

⁸² Deborah Schroth, legal aid attorney, remarks at the Jacksonville Public Hearing of the Gender Bias Study Commission.

port to meet with an attorney within fourteen working days. Under new federal guidelines that will take effect October 1, 1990, the State will be required to set the initial appointment within five days, and to take action within ten days, of being notified of a delinquency in payments.⁸³ However, the HRS field operations bureau chief cautioned the Commission:

We can do all the work necessary to locate, work up and present evidence to the court and if we come away with no order of contempt, the custodial parent will continue to have⁸⁴ a less than high level of esteem for the legal system.

Specific complaints were made about court reluctance to "pierce the corporate veil" when a nonpaying parent transfers property to a corporation. This practice effectively leaves HRS without any property on which to place a lien after judgment. Other complaints were made about courts that routinely ignore obvious evidence of prosperity and interpret case law in a way that disadvantages women and children:

We are continually asked by custodial parents why the court does not consider that the obligor owns property, drives a new car or has expensive jewelry--not to mention he or she might be a very healthy, college graduate who is living with mom. Many cases in which we are involved are decided solely upon financial⁸⁵ resources which are present and immediately available.

Testimony indicated that Florida courts are especially reluctant to invoke their inherent contempt powers, despite its proven success in producing support for children. A major study in Michigan, for instance, concluded that child

⁸³ Telephone interview with Marlin Seay of Florida Department of Health & Rehabilitative Services (Aug. 15, 1989).

⁸⁴ *Id.*

⁸⁵ Written testimony submitted by Marlin Seay of the Florida Department of Health & Rehabilitative Services to the Gender Bias Study Commission (Jan. 25, 1988). See also *Bowen v. Bowen*, 471 So.2d 1274 (Fla. 1985).

support payment rates dramatically increased upon the occurrence of two factors: (1) automatic enforcement by public officials when nonpayment first occurs, and (2) jailing those held in contempt for noncompliance with support orders.⁸⁶

In a Palm Beach County study, the threat of jail proved to be highly productive. Sixty commitment orders for nonsupport were made over a three-month period. All but two of the fathers who were located--and only six could not be found--chose to pay rather than go to jail.⁸⁷

Another area that generated concern was the absence of child support once a child turns eighteen. The loss of child support at this point discriminates against the custodial parent, who is almost always the mother. The problems for the custodial parent are compounded if the child attends college because:

the courts have no authority to order a father to pay child support over the age of 18, so therefore, if a child is a full-time student in college, that child must be 100 percent self-supporting or the custodial parent⁸⁸ must meet the full obligation for the support of the child.

To alleviate the potential for this problem, expectations regarding support and college costs for children eighteen years of age and older should be incorporated into final support orders.

⁸⁶ Bruch & Wikler, *supra* note 5, at 21 (citing D. Chambers, *Making Fathers Pay: The Enforcement of Child Support* (1979)).

⁸⁷ Material submitted to the Gender Bias Study Commission by the Office of the Clerk, County Court, Palm Beach County (January 1980) (available from Gender Bias Study Commission).

⁸⁸ From the Fort Myers Regional Meeting.

K. Family Law Court or Family Law Divisions

The Bench-Bar Survey found that eighty percent of all circuit court judges responding would rather not be assigned to a family law division. Of this eighty percent, half stated they would "strongly dislike such an assignment."⁸⁹ This negative attitude was evident in all demographic groups of judges irrespective of experience in family law practice, judicial experience or judicial circuit.⁹⁰ Despite the dislike for hearing family law matters, over one-third of the judges--33.7 percent--felt a family law division was needed.⁹¹

Considering these attitudes and the overwhelming evidence of gender-biased application of the law in Florida courts, it is no surprise that most of the organizations studying the issue have recommended either the institution of a family court or a family law division. The Commission thus recommends that the chief judge of each circuit with more than five judges create a family law division staffed with judges who choose to serve on that bench.

⁸⁹ Bench Bar Committee Survey, *supra* note 1, at 13.

⁹⁰ *Id.* at 13.

⁹¹ *Id.* at 13.

L. Findings

1. Economics of Divorce

- a. 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.
- b. 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.
- c. Post-divorce families headed by women are the fastest growing segment of those living in poverty.
- d. 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.

2. Access to Justice

- a. 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.
- b. Many lawyers will not represent women in divorce cases because women generally have fewer economic resources and therefore cannot afford the fees.
- c. 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.
- d. 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 ob-

served or are observed in a manner biased against women.

- e. 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.
- f. 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.

3. Judicial Attitudes

- a. Most of Florida's circuit court judges dislike dealing with family law matters. This attitude can affect the outcome of cases.
- b. 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.
- c. 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.

4. 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.

5. Equitable Distribution and Spousal Support

- a. 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.

- b. In many areas of the state, the courts have virtually abandoned permanent alimony or substituted in its place unrealistic rehabilitative alimony awards.
- c. 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.
- d. 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.
- e. 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.
- f. The major asset of most marriages is the earning capacities of the partners.
- g. 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.
- h. 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.

6. Shared Parental Responsibility

- a. Many men file proceedings to contest custody as a way of forcing an advantageous property settlement. Too many attorneys knowingly participate in this practice.

- b. 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.
- c. Contrary to public perception, men are quite successful in obtaining residential custody of their children when they actually seek it.

7. Visitation

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

8. Child Support and Enforcement

- a. There is little consistency in child support awards, even among cases involving similar facts.
- b. 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.
- c. In many child support decisions, courts do not consider the prosperity of the nonpaying parent.
- d. 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.

M. Recommendations

1. Equitable Distribution and Spousal Support

- a. 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.
- b. There should be a presumption that all marital assets be divided evenly.
- c. 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.
- d. 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.
- e. 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.
- f. The legislature should amend the dissolution of marriage statute to require that:

(1) Each equitable distribution judgment should contain findings of fact, including determination of values of the assets and the reasons for the award; or

(2) In the alternative, if a trial judge does not divide property evenly, the judgment should contain findings of fact justifying the result.

- g. 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.

2. Visitation

- a. Visitation must be encouraged by the courts.
- b. 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.

3. Child Support

- a. 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.
- b. 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 initi-

ated by the Michigan Friends of the Court were in the form of warning letters and telephone calls.⁹²

- c. After notice, delinquent child support payments would be reported to credit bureaus, just as delinquent credit card, auto and mortgage payments are.
- d. 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.

4. 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.

5. 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.

6. 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 legis-

⁹² Everett, *supra* note 58, at 5.

lation regarding marital rights, dissolution, custody, child support and enforcement.

7. 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.

8. Mediation

- a. 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.
- b. 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 THE CRIMINAL JUSTICE SYSTEM

III. GENDER BIAS IN THE CRIMINAL JUSTICE SYSTEM

A. Crime & Incarceration

1. Introduction

Women tend to commit different types of crime than men, and for different reasons. Men are more prone to violent crimes against strangers. Women, on the other hand, tend to commit economic crimes. When women do commit violent crime, it is usually in tandem with a male companion or against a man who has abused her or her children.¹

The use of violence only after a woman or her child has been physically abused may account for the fact that sentences for women generally are less severe for murder, manslaughter and other violent crimes.² This does not, however, indicate an overall leniency toward women. Rather, testimony and special empirical studies³ done for the Commission found that, although women commit less serious offenses, they generally are treated more harshly than similarly situated male offenders.

¹ P. Levine, *Gender and Incarceration: Women in the Jails and Prisons of Florida* 9 (1988) (unpublished) (available from Gender Bias Study Commission) [hereinafter *Gender and Incarceration*]. See also R.J. Simons, *Women and Crime* 109 (1975).

² K. McElrath, T.M. Poulos & T. Blomberg, *Gender and Justice: Offense Patterns and Criminal/Juvenile Justice Decisionmaking* (1988) (unpublished executive summary) (available from Gender Bias Study Commission) [hereinafter *Offense Patterns*].

³ M. George, *Offense Patterns: Issues of Parity for Female Offenders in County Detention Facilities* (1988) (unpublished) (available from Gender Bias Study Commission); *Gender and Incarceration*, *supra* note 1, at 88; P. Levine, *A Qualitative Analysis of Judicial Attitudes* (1988) (unpublished) (report based on interviews with Florida county and circuit court judges) (available from Gender Bias Study Commission).

The report that follows presents the empirical evidence collected by the Commission on women and the criminal justice system during its two-year study. It concludes with the findings and recommendations based on that evidence.

2. Arrest

Less than ten percent of all violent crime is committed by women. Men commit ninety percent of all violent crimes and this figure, despite charges of rising female criminality, has remained constant for the last ten years.⁴ As a criminal defense attorney noted:

What people don't realize is that women don't commit the same types of offenses that men do.

From the Jacksonville Public Hearing

This conclusion was confirmed by the Commission's study of offense patterns in Florida. This study found a substantial decrease in arrests of women in Florida for murder and "vice" offenses such as prostitution since 1971.⁵ Female arrests have remained stable for manslaughter, robbery, assault, arson, narcotics, burglary, larceny, fraud and stolen property. The study also found that arrests for women are increasing for economic crimes such as forgery, counterfeiting, embezzlement and worthless checks. Female arrests for embezzlement more than doubled from 1975 to 1980 and have continued to increase.⁶

⁴ A. Jones, *Women Who Kill* (1980). See also, C.E. Rasche, *Characteristics of Mate-Homicides: A Comparison to Wolfgang*, paper presented at annual meeting of the Academy of Criminal Justice Sciences (San Francisco, April 5, 1988) (based upon statistics from Jacksonville, Fla.) [hereinafter Jacksonville Study].

⁵ *Offense Patterns*, *supra* note 2, at 11-17.

⁶ *Id.*

3. Homicide

Women almost never kill other women.⁷ When women do resort to violence or murder, they almost invariably kill those who have abused them or their children.⁸ A study of women incarcerated in Florida determined that the most common characteristic of women serving sentences for murder was a history of spouse abuse.⁹ Indeed, men kill much more often than women, and the majority of their victims--over sixty-five percent--are other men.¹⁰

4. Prosecution

One of the most crucial stages in the criminal justice process is the state attorney's decision whether to prosecute and, if so, what charges to bring. This decision usually involves consideration of plea bargaining. Indeed, nationwide, the overwhelming majority of felony cases that meet prosecutors' charging standards are settled through plea negotiations. Since these negotiations typically involve charge bargaining as well as sentence bargaining, agreements at this critical stage of processing are likely to have profound implications for the eventual disposition of cases. In particular, they are highly determinative of the

⁷ Wilbanks, *Female Homicide Offenders in the United States*, 6 Int'l J. of Women's Studies 305 (1980) [hereinafter *Female Homicide Offenders*].

⁸ Abuse may come from a spouse, former spouse, or significant other. The common thread is abuse by someone with whom the woman is intimate. *Id.*

⁹ Blount, Vega & Silverman, *Spouse Abuse & Homicide in Florida's Incarcerated Women*, a paper presented at the annual meeting of the Academy of Criminal Justice Sciences, at 7 (San Francisco, Apr. 1988) [hereinafter *Florida's Incarcerated Women*].

¹⁰ *Female Homicide Offenders*, *supra* note 7, at 305.

severity of a sentence. They thus are likely to be a major source of differential treatment between female and male defendants.¹¹

5. Sentencing

A study prepared for the Commission found that sentences usually were "mitigated"--more lenient--for women in the areas of murder, manslaughter and other violent personal crimes.¹² Men's sentences were found to be harsher or "aggravated" two times more often than the sentences of women in these same categories. However, an examination of other offense types dispels any suggestion of unfairness to men. The Commission found that when specific offenses are considered in light of the reasons for mitigation and aggravation, women do not actually experience leniency in sentencing. Rather, the courts in Florida appeared gender neutral in their sentencing patterns. As a reason, one criminal defense attorney testified that Florida's 1982-vintage mandatory sentencing guidelines "have helped equalize the treatment of men and women."¹³

The Florida Sentencing Guidelines Commission in its own studies of sentencing patterns has found that the best predictors of sentencing outcomes are the seriousness of the offense and the defendant's prior record, regardless of sex.¹⁴ Nearly forty percent of the criminal law attorneys responding to the

¹¹ Nearly eighty percent of all felony cases and ninety-five percent of all misdemeanor cases are resolved by negotiated pleas. Bishop & Frazier, *The Effect of Gender on Charge Reduction*, 25 Soc. Q. 385, 385-96 (1984).

¹² Offense Patterns, *supra* note 1.

¹³ E. White, remarks at the Jacksonville Public Hearing of the Gender Bias Study Commission. See Ch. 82-145, 1982 Fla. Laws 407 (codified at Fla. Stat. § 921.001 (1989)) (creating Sentencing Guidelines Commission); Fla. R. Crim. P. §§ 3.701 & 3.988 (containing sentencing guidelines).

¹⁴ Offense Patterns, *supra* note 1.

Gender Bias Commission's survey agreed that courts are sentencing men and women similarly for similar crimes.¹⁵

6. Incarceration

While Florida's courts appear to be gender neutral at sentencings due to the mandatory guidelines, the existing structure of the corrections system in Florida thwarts any gender equality during the incarceration that follows. The Commission found that inequitable treatment is the norm rather than the exception. An expert Florida criminologist testified about the striking disparities in treatment programs and facilities available for men and women inmates:

Consider two hypothetical cases, male and female. Each demonstrating similar backgrounds and prior histories, both with substance abuse as a factor in the instant offense. The judge feels both, in their current addicted state, are a threat to society. A residential drug program is a resource for the male, but not the female. Hence, the male receives probation with drug-related conditions. The female offender is sent to prison.¹⁶

Thus, the gender-neutral sentences mandated by the sentencing guidelines become gender-discriminatory in application. One reason, ironically, is that women tend to commit far less crime than men. At present, Florida's inmate population is almost exclusively male, with men accounting for some ninety-five percent of the total.¹⁷ The Commission found that the overwhelmingly male population combined with the history of an exclusively male orientation in penology

¹⁵ Florida Supreme Court Gender Bias Study Commission, *Gender Bias Study Commission Survey of the Criminal, Family and Trial Law Sections of The Florida Bar* 136 (June, 1988).

¹⁶ Professor Rose Mary Stanford, Department of Criminology, University of South Florida at Ft. Myers, remarks at the Fort Myers Public Hearing of the Gender Bias Study Commission.

¹⁷ *Gender and Incarceration*, *supra* note 1, at 2.

results in inequitable prison facilities and far fewer opportunities for women inmates throughout Florida.

In particular, the male orientation of penology imposes on women inmates a set of correctional theories that were designed for men. It fails to take into account the quite different nature of the crimes women usually commit. In fact, the dramatic 138 percent increase in female inmates between 1976 and 1986 occurred almost exclusively because of a surge in purely economic crimes.¹⁸ Since 1971 female arrests have remained stable for violent crimes such as manslaughter, robbery, assault, arson, narcotics, burglary, larceny, fraud and stolen property.¹⁹ Indeed, the proportion of women incarcerated for economic crimes has dramatically increased over the last twenty-five years. In 1960, one-quarter of all female arrests were for economic crimes; but by 1985 almost half of all female arrests fell into this category.²⁰ The rise in female incarceration thus parallels the feminization of poverty that has occurred during this same period of time.

7. Prison Facilities

These forms of gender bias are exacerbated by the present structure of Florida's state prison system. Despite the critical differences between male and female crimes, women generally are incarcerated under conditions designed for men. Simultaneously, women are denied some of the advantages afforded male inmates. Florida at present has only two state prisons for women. As a result, minimum security offenders must endure conditions designed for maximum security inmates. This usually is not the case with men. Female youthful offenders

¹⁸ J.R. Chapman, *Women in Prison: The American Woman 1988-89, a Status Report* 303 (1988). The number of male inmates increased by ninety-four percent during the same period of time. *Id.*

¹⁹ *Offense Patterns*, *supra* note 2, at 17.

²⁰ *Id.* at 305 (citing J.R. Chapman, *Economic Realities & the Female Offender* (1980)).

also are housed with adult offenders, even though male youthful offenders are kept strictly segregated.

Women incarcerated in Florida are generally serving time for less serious offenses than their male counterparts, but have almost no access to the alternative programs or rehabilitative treatments available to men.²¹ Nationally, the average number of vocational programs offered to men in prisons is ten; for women, only three are available. Statewide, the average number of prison industries for men is 3.2; for women only 1.2 exist.²² Moreover, women's choices generally are limited to cosmetology, clerical training, food services and nurses aides' training.²³ And one commentator stated that the training in women's prisons is "technologically useless" due to antiquated equipment.²⁴

The Commission also found that, although rehabilitation programs are routinely available even for small male populations, those for women are unavailable even where their numbers are greater:

I was a probation officer. . . . And I remember going to Lowell. . . . All the women in the State were sent over there. There was a small unit for men across the street that had something like maybe 150 men compared to probably close to 3,000 women. We went around and we were with the director of education who was showing us his hotel management program, the horticulture program, their cosmetology program. And the women were doing something like 2,000 hours of cosmetology. . . . We said, "What's the sense of having a woman go through a 2,000-hour program if when they get out they can't get a license. You have a beautiful electronics class here," and he said, "well, only the men are allowed in that. . . . Men

²¹ A. Morris, *Women, Crime and Criminal Justice* 208 (1987).

²² *Gender and Incarceration*, *supra* note 1, at 20.

²³ *Id.*

²⁴ R. Glick & V. Neto, *National Study of Women's Correctional Programs* (1977) (available from the Government Printing Office, Washington, D.C.).

are going to have families when they get out and they're going to have to support themselves. They need good jobs."

From the Miami Regional Meeting

8. Jails

In the county jail system, conditions are even worse than those in state prison facilities. Overcrowding and its related problems affect not only those sentenced for minor offenses but many who are merely awaiting trial--those still presumed to be not guilty:

When you are presumed innocent and are being held, a man is held at Metro Community Center. It has a lake. It has air conditioning. It is, very fairly, like summer camp. When a woman is being held, she is held at the Woman's Detention Center. It is a dirt pit.

From the Miami Regional Meeting

Because women comprise only a small fraction of the jail population, they often find themselves housed in an older jail annexed to new facilities built for men. Male prisoners often have air-conditioned and reasonably comfortable modern facilities with decent sanitation and some noise control. Women often are placed in open-bar cells and dormitories with inadequate and often broken sanitary facilities. Their access to open space and fresh air is often severely restricted.²⁵

The most acute levels of overcrowding are found in the male populations of jails. As a consequence, men are released from jail as rapidly as possible. Women, however, have less overcrowding, and the need for early release thus is

²⁵ There are, of course, exceptions. Some men are housed in older and grimmer facilities, such as in the City of Tampa, Monroe County and Orange County. Nonetheless, the overwhelming impression is of women confined to older and less comfortable environments than the larger male population. See *Gender and Incarceration*, *supra* note 1, at 26.

diminished. As a result, women tend to serve longer sentences for relatively minor offenses than men serve for more serious crimes:

Even the drug pushers are being released because of jail sweeps, whereas the women are going to the prison farm for writing a bad check.

From the Jacksonville Regional Meeting

The greater privileges accorded male county jail inmates are not confined to the prospect of an early release:

There is no provision at the prison farm for women to work outside the facility. Men get so many days off per month for working in fields, but there's no provision for women to do that.

From the Jacksonville Regional Meeting

Early release also is affected by county gain time standards, a system by which an inmate's overall sentence is reduced based on "days earned for days served" and good behavior. In particular, jails give special grants of gain time to its "trustee" inmates--those deemed reliable enough to perform services in areas beyond the jail cells. However, in almost every jail women have less access to trusteeships than do male inmates. The reason given to the Commission was that women lack access to those parts of the jail where the jobs are performed, such as the kitchen or laundry.²⁶ This circular reasoning indicates inequitable distribution of reward-gaining opportunities for women inmates.

The Commission also found that work release for women is rarely available. In fact, women recommended for work release by the courts are routinely incarcerated because the programs are either nonexistent or too overcrowded. The lack of work release programs affects women offenders in two ways. First, they do not gain work experience needed for successful reentry into society. Second, they end up spending more time in jail than similarly-situated men:

²⁶ *Id.*

This is especially ironic because work release was a program originally established by women prison reformers eager to serve the rehabilitative ideals of incarceration. Today, an idea pioneered by women is seldom accessible to them.²⁷

The Commission found that men also are favored in experimental and alternative programs around the State. In October 1988, for instance, the Orange County Corrections Department instituted the Genesis Project. This 200-bed experimental facility has four custom dormitories of fifty beds each, housing male inmates enrolled in a variety of therapeutic, drug treatment and other programs. Access to the program is limited to men despite the fact that the female population, by virtue of smaller size, offers an ideal population for conducting alternative treatment models.

Other problems are caused by the location of some women's jails in remote rural areas. This significantly limits access to information, recreation and other amenities. Visitation by friends and family is diminished to the point of nonexistence for many women.²⁸ One female inmate's letter received by the Commission illustrated the differences in facilities available to men and women at one typical jail:

There is no Law Library on our compound. We would like to have access to the Law Library at [the men's compound]. . . . The men have access to video equipment and tapes for their drug program. They also have 3 movies a day shown in their dorms. The women have access to none of this. . . . Local telephones are at [the men's compound]. . . . We cannot call bondsmen, the County Clerk's office, or drug programs[,] only to mention a few. . . . We are not allowed to sit in the shade even though it is within the fenced area we are in. So our recreation con-

²⁷ H.E. Gibbons, *Women's Prisons: Laboratories for Penal Reform*, in *Women, the Courts & Equality* 93-110 (Laura Crites ed. 1988).

²⁸ *Gender and Incarceration*, *supra* note 1, at 22. For example, in Jacksonville the women's prison farm is forty to forty-five minutes away from the courthouse and the jail in which male prisoners are held. From the Jacksonville Public Hearing of the Gender Bias Study Commission.

sists of sitting in the hot sun at a picnic table covered with red ants or standing at a fence on red ant hills, while we look at a full set of Nautilus Gym Equipment under an awning that is situated right outside our front door. But we are not allowed to use it. . . . We have been informed that the equipment is for the men's use only. . . . [T]he men have 3 rec days per week while we have 2 hours per week. . . . The women's canteen has nothing in it of nutritional value other than juices. Everything else for consumption is junk food! The men have Instant Lunches (Beef & Chicken) Tea and Hot Cocoa. They also can buy Stamped Envelopes. The women have to have stamps mailed into them if they want to mail more than 2 letters per week. . . . The men may spend \$50, we may only spend \$30.

The Commission found similar disparities throughout the State. One jurisdiction does not permit visitors under the age of eighteen. In another jurisdiction, female detainees do not have access to free local telephone service, as the men do. The women are required to pay \$2.75 to place any call, even locally.²⁹ Drug and alcohol programs provided by Alcoholics Anonymous and Narcotics Anonymous exist for men at some sites, but not for women. And in one jurisdiction, a twenty-four bed facility is available for men who need mental health counseling or forensic services. Women with similar needs, however, must remain in the general population.³⁰ Law libraries generally are available to men, while some women have no such access or must obtain a court order to acquire it.³¹

²⁹ *Gender and Incarceration*, *supra* note 1, at 29.

³⁰ M. George, *Issues of Parity for Female Offenders in County Detention Facilities* (July 8, 1988) (unpublished) (available from Gender Bias Study Commission).

³¹ *Gender and Incarceration*, *supra* note 1, at 29.

9. *Post-Incarceration*

The inequities suffered by women inmates continue after incarceration. Two crucial factors in preventing recidivism, for instance, are the availability of accommodations and job opportunities. In both, women have fewer opportunities than men. One crucial reason is the lack of adequate work training while in prison, which results in diminished earning capacity. In addition, there are virtually no post-incarceration treatment facilities for women. Few organizations and institutions exist to help women, leaving them potentially more susceptible to recidivism.³²

³² See D.K. Lewis, *Female Ex-Offenders and the Community Programs: Barriers to Service*, 28 *Crime & Delinq.* 1, 40-51 (1982).

10. 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.

11. 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.

B. Domestic Violence

1. Introduction

Domestic violence in its broadest sense encompasses physical and psychological spouse abuse, child abuse and neglect, sexual abuse, and elder abuse occurring within a family or household. In this section of the Report, however, the focus will be on domestic violence between men and women. Other forms of domestic violence certainly are equally disturbing. However, they usually do not involve the extreme gender bias evident in the violence men direct at women, and in society's reaction to it. Thus, as used in this Report, "domestic violence" will mean repeated acts by a man that subject a woman to coercive or forceful physical or psychological behavior within a family or household context.³³

This form of violent male behavior is very widespread. International experts in the field have estimated that at least one battering episode will occur each year in one-half to two-thirds of all marriages.³⁴ The Federal Bureau of

³³ This is in keeping with the definition of "battered women" used by recognized experts in the field. Dr. Lenore Walker, one of the foremost international authorities on domestic violence, has used the following definition:

A battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights. Battered women include wives or women in any form of intimate relationships with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice.

L. Walker, *The Battered Woman* xv (1979).

³⁴ Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self Defense, and Expert Testimony*, 39 Mercer L. Rev. 545, 545 n.4 & accompanying text (1988) (citing L. Walker, *The Battered Woman* ix (1979); Moore, *Editor's Introduction*, in *Battered Women* 7, 14 (D. Moore ed. 1979); and Strauss, *A Sociological Perspective on the Prevention and Treatment of Wifebeating*, in *Battered Women: A Psychological Study of Domestic Violence* 194 (M. Roy ed. 1977)).

Investigation reports that a husband or boyfriend beats a woman every eighteen seconds in the United States.³⁵ Others have contended that between two and six million American women are beaten each year by men with whom they are intimately involved.³⁶ Indeed, the statistics show that, in the United States, women have more to fear from their husbands and boyfriends than from strangers on the street. In 1979, for instance, the FBI reported that forty percent of all female murder victims were killed by spouses or boyfriends.³⁷

The justice system's response to this problem, however, has been extremely deficient. Testimony and empirical research presented to the Commission convincingly show that many members of the criminal justice system are influenced to a significant and unacceptable degree by long-standing and still prevalent beliefs that violence against women is more "acceptable" than other coercive crime.³⁸ Florida's legal system frequently responds to domestic assaults in a way distinctively different than it responds to other assaults. The Commission found that the legal system generally blames both the victims of domestic violence and the perpetrators. This occurs because members of the legal system fail to use their discretionary powers in a way that brands domestic violence as criminal behavior. They rely instead upon traditional bias, stereotypes or misconceptions.

³⁵ *Id.* (citing Moore, *supra* note 34, at 13-14).

³⁶ Waits, *The Criminal Justice System's Response to Battering: Understanding the Problem, Forging the Solutions*, 60 Wash. L. Rev. 267, 273 (1985) (citing "Wife Beating: The Silent Crime," *Time*, Sept. 5, 1983, at 23).

³⁷ Federal Bureau of Investigation, *Uniform Crimes Reports, United States Department of Justice, Crime in the United States 1979*, at 10-11 (1980). *Accord* L. Walker, *The Battered Woman Syndrome* (1984). *See also* Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 Harv. C.R.-C.L. L. Rev. 623, 626 n.14 & accompanying text (1980).

³⁸ *See* Stedman, *Rights of Husband to Chastise Wife*, 3 Va. L. Rev. 241 (1917); United States Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* 5-11 (1982); Davidson, *Wifebeating: A Recurring Phenomenon Throughout History*, in *Battered Women: A Psychological Study of Domestic Violence*, at 2, 4 (M. Roy ed. 1977).

This reluctance to acknowledge the criminality of domestic violence exists at every stage of the process and among all groups involved in the handling of domestic violence. These groups include law enforcement, court clerks, attorneys and the judiciary.

2. *Blaming the Victim*

The female victim of domestic violence is more likely to receive blame or indifference than support and understanding. In far too many cases, society blames the victims; the abusers blame the victims; and the victims blame themselves:

[T]he dynamics between victims and abusers are such that victims have become convinced that they are responsible for their spouse's behavior, that it's their fault that person is violent, and whatever kinds of problems they might have, and so they feel very guilty about asking that the other person be punished³⁹ because they feel responsible for that batterer's behavior.

The legal system often reinforces the tendency to blame the victim for the violence she has suffered:

Police agree that prosecutors too often fail to convict, prosecutors agree that police seldom arrest, judges agree that sentencing alternatives fail to include effective rehabilitation services, and underneath it all⁴⁰ everybody claims that the victims are somehow to blame.

³⁹ From the Tallahassee Public Hearing of the Gender Bias Study Commission.

⁴⁰ E. Pence, E. Miletich, E. Radalovich & B. Galaway, *A Systemic Response to Spouse Abuse*, paper presented to the Fifth International Symposium on Victimology, Zagreb, Yugoslavia 4 (August 1985) This paper was developed and presented by those researchers responsible for the well-respected "Minnesota" Study of Domestic Violence.

Testimony and empirical studies reviewed by the Commission show that the inadequate response of the legal system rests on a pervasive belief that domestic violence is a "family matter" best left alone:

One of the things about domestic violence is that for centuries it's been considered to be a private family problem. It's not been considered a societal problem; it's an individual problem, and it's one to be ashamed of, and people didn't talk about it in public or even in private often.

From the Tallahassee Public Hearing

In many societies, women have had strictly defined roles. They have been confined, isolated or restricted from participation in the public domain and its activities.⁴¹ A woman's role was to marry, bear her husband's children and tend to the household. Any evidence of a will of her own was dealt with harshly. Both the church and the state expected a husband to punish his wife for any transgression of the approved womanly role in society:⁴²

Scold her sharply, bully and terrify her. And if this still doesn't work . . . take up a stick and beat her soundly. . . . [T]hen readily beat her, not in rage, but out of charity and concern for her soul, so that the beating will redound to your merit and her good.⁴³

These views were carried over into the English common law tradition, which developed the infamous "rule of thumb"--the legal principle that a husband could

⁴¹ See, e.g., B.S. Anderson & J.P. Zinsser, *A History of Their Own* (1988) (two volumes).

⁴² U.S. Commission on Civil Rights, *Under the Rule of Thumb: Battered Women and the Administration of Justice* (January 1982) (citing U.S. Commission on Civil Rights, *Battered Women: Issues of Public Policy* 5-6 (1978)).

⁴³ T. Davidson, *Conjugal Crime* (1978) (quoting Friar Cherubino of Sienna's Rules of Marriage, written between 1450-1481). These rules are consistent with the New Testament's admonition to wives to be "subject to your husband, as to the Lord." *Ephesians* 5:22 (King James).

beat his wife provided he used a rod no thicker than his thumb.⁴⁴ Moreover, the "chastisement" of a wife must be "moderate,"⁴⁵ using only the degree of force necessary to control an unruly temper and make the wife "behave."⁴⁶ Provided the husband observed these broad rules,

the law [would] not invade the domestic forum, or go behind the curtain. It prefer[red] to leave the parties to themselves.⁴⁷

In the United States wife beating was legal in many states until the end of the nineteenth century, when several states rescinded the "ancient privilege" either legislatively or judicially:

The privilege, ancient though it may be, to beat her with a stick, to pull her hair, spit in her face or kick her about the floor, or to inflict upon her like indignities, is not now acknowledged by our law.⁴⁸

Even though the "ancient right" was abolished, most states continued to ignore the violence that occurred inside a man's "castle"--the inviolate space into which society would not peer.

3. The Perpetrator and the Victim

What are the characteristics of those men who abuse their spouses and girlfriends? The research and testimony revealed a stark profile. The abuser sincerely believes he is the "natural" head of the family--the final authority.⁴⁹

⁴⁴ Mather, *supra* note 34, at 548 n.16 & accompanying text (citing Blackstone, 1 Commentaries on the Law of England 445-46 (1765)).

⁴⁵ Bradley v. State, 1 Miss. (1 Walker) 156 (1824).

⁴⁶ State v. Black, 60 N.C. 266, 267-68 (1824).

⁴⁷ *Id.*

⁴⁸ Fulgham v. State, 46 Ala. 143, 146-47 (1871).

This assumption leads the abuser to expect obedience and submission from his wife and children. His wife in turn may acquiesce to this claim of authority, thus reinforcing its legitimacy in the eyes of the abuser. When the abuser's partner does not acquiesce, he may view this behavior as abundant support for the need to "discipline" his wife.

In Tallahassee the Commission learned that these beliefs are so entrenched that batterers rarely admit the criminality of their behavior:

The problem with treating batterers is that they very rarely ever seek treatment voluntarily because they don't perceive that they have a problem. It's ⁵⁰her problem. That's why they beat her, to make her behave.

The Commission has determined that our society tacitly provides cultural support for the abuser's violence. The legal system has historically supported this behavior through a policy of noninterference and inadequate enforcement of existing law.⁵¹ The practical effect is to sanction the abuser's criminal conduct, thereby guaranteeing that violence will continue in the future.

4. Statutory Protections

The State of Florida has progressive statutes on domestic violence. Section 741.30, Florida Statutes, creates a cause of action "for an injunction for protection against domestic violence,"⁵² which is defined as any assault, battery or sexual battery against the assailant's spouse,⁵³ an in-law or relative by blood

⁴⁹ See Waits, *supra* note 36, at 286.

⁵⁰ From the Tallahassee Public Hearing of the Gender Bias Study Commission.

⁵¹ Mather, *supra* note 34, at 557-58.

⁵² Fla. Stat. § 741.30(2) (1989).

⁵³ *Id.* § 741.30(1)(a).

or marriage,⁵⁴ or a former spouse.⁵⁵ Florida also provides traditional criminal assault and battery remedies in Chapter 784, Florida Statutes,⁵⁶ including a cause of action for an injunction by a victim of repeat violence.⁵⁷

Under the present statute, violation of an Injunction for Protection is a second-degree misdemeanor if the respondent fails to vacate the premises or returns to the premises.⁵⁸ Violation of the Injunction for Protection is also punishable by civil and criminal contempt.⁵⁹ Police are empowered to arrest the respondent without a warrant whenever there is reason to believe he has violated an Injunction.⁶⁰ The law also authorizes rehabilitation through domestic violence treatment centers.⁶¹

The duties imposed upon police officers by these laws and related policies or regulations are clear. The Florida Health and Rehabilitative Services (HRS) statewide coordinator of domestic violence programs testified that police

are required to advise the victim that there is a domestic violence center nearby and to give information on how that individual may contact the center for help. They are required to advise victims of their rights and the remedies that they have access to through the injunction process. And they are required to make a written report of every alleged incident regardless of whether or not an arrest is made.

From the Tallahassee Public Hearing

⁵⁴ *Id.*

⁵⁵ *Id.* § 741.30(1)(b).

⁵⁶ *Id.* §§ 784.011-.08.

⁵⁷ *Id.* § 784.046.

⁵⁸ *Id.* § 741.31.

⁵⁹ *Id.* § 741.30(9)(a).

⁶⁰ *Id.* § 901.15(6).

⁶¹ *Id.* §§ 415.601-.608 & 941.30(7)(a)5.

Nevertheless, the Commission found that law enforcement throughout Florida, with some notable exceptions, fails to enforce these statutes. The result is that perpetrators of domestic violence suffer no sanction for their criminal conduct. From the Panhandle, for instance, came reports of ineffective enforcement resulting in a denial of access to the courts⁶²:

[Women] don't ever make it to the courtroom. Because the message is given loud and clear, 'because I am a woman, I have no rights' and it's not just given to that particular woman, it goes out to the whole community. Every woman in that community, and every man that's ever thought about beating his wife.

From the Pensacola Public Hearing

The Commission investigated the allegations, heard witnesses and initiated special empirical studies to address these charges. The information brought to the Commission's attention shows that law enforcement too frequently responds indifferently or callously to domestic violence victims. This attitude precludes further legal redress by shielding batterers from the consequences of their criminal behavior.

5. Law Enforcement

Domestic violence calls are the largest single category of calls to which police respond. Some estimates suggest that police may spend one-third of their time handling domestic violence calls.⁶³ In any event, police do not like re-

⁶² The Florida Constitution guarantees access to the courts for all persons. Fla. Const. art. I, § 21.

⁶³ Joan McNeil, director Miami YMCA Women's Center, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

sponding to such calls. Seemingly reliable sources stress the unavoidable dangers in domestic violence situations:

Intervention in domestic disturbance situations is fast becoming the most hazardous duty performed by police officers. One-third of all officer assaults occur on disturbance calls. Nearly one in five officers killed on duty die while answering these calls.⁶⁴

One group of researchers investigating domestic violence also has concluded that "[m]ore police officers die answering family disturbance fatalities than die answering any other single call."⁶⁵ Such reports are often relied upon to explain why law enforcement fails to enforce domestic violence laws.

The Commission found, however, that this information is wrong. Domestic disturbance calls are not the most hazardous duty performed by police officers today. The National Institute of Justice determined in a special study that "the danger [to officers] in these cases has been overstated" and that other assignments such as robbery calls are far more dangerous.⁶⁶ Indeed, earlier research and police investigations of this matter incorrectly assumed that the FBI "disturbance" category is in great part comprised of domestic violence reports. The Justice Department determined that "this assumption is wrong" and concluded that "training materials should be revised to portray more accurately the low level of danger currently associated with this assignment."⁶⁷

However, testimony throughout the state disclosed that law enforcement training materials have not been revised. Of the fifty-four Florida counties responding to the Commission's informal survey, only six reported regular training

⁶⁴ Baca, *Domestic Violence: One Police Department's Solution*, The Police Chief, Aug. 1987, at 40. Sam Baca is chief of police, Albuquerque, New Mexico.

⁶⁵ M.A. Strauss, R.J. Gelles & S.K. Steinmetz, *Behind Closed Doors: Violence in the American Family* (1980).

⁶⁶ National Institute of Justice, *Danger to Police in Domestic Disturbances--A New Look 2* (Nov. 1986).

⁶⁷ *Id.* at 2.

in domestic violence for law enforcement. The survey found that law enforcement agencies place a low priority on educating their officers on domestic violence issues. Generally, the Commission learned that veteran officers don't receive any training except for the "on-the-job" kind.⁶⁸ Partly as a result, police still are reluctant to respond to domestic disturbance calls.

6. *Police Reluctance to Arrest Abusers*

The Commission also has found widespread evidence of reluctance to arrest even when police respond. In Lee County, for instance, the Fort Myers News Press quoted a lieutenant in the sheriff's department as saying that "we can't get involved because they're married. When you're married you become one person."⁶⁹ The director of Hubbard House, the women's shelter in Jacksonville, told the Commission that

it's not unusual at all for the police officer to bring a woman to Hubbard House because he considers the situation volatile, and yet he will not arrest the man. There is no police report written in some cases.

From the Jacksonville Public Hearing

HRS's statewide coordinator of domestic violence programs testified that police often will not make an arrest even when a woman has suffered serious bodily injuries:

[T]hese women would be black and blue and bloody, and somehow that just didn't seem serious enough to make an

⁶⁸ C. Slaughter, *Florida's Response to Domestic Violence 6* (1988) (unpublished) (available from the Gender Bias Study Commission) [hereinafter *Domestic Violence Informal Survey*].

⁶⁹ Fort Myers News-Press, Sept. 17, 1989, at 1A.

arrest, which makes you wonder what it takes for that to be perceived as serious enough.

From the Tallahassee Public Hearing.

The director of Monroe County's domestic abuse shelter also testified that:

[i]t was not unusual for a law enforcement officer to take the woman to emergency or the hospital prior to bringing her to the shelter, but it was unusual for them to make an arrest of the batterer.

From the Miami Public Hearing

The Commission's informal survey⁷⁰ of police conduct indicated that the problems of insensitivity to physical injury and the failure to arrest or report domestic violence exist everywhere in the state. In Alachua County, for example, women have been told "to give him some [sex] and he won't need to beat you."⁷¹ In DeSoto County, some batterers have been advised simply to "take five."⁷² In Pinellas County officers reportedly have spent most of their response time trying to convince the victim not to press charges.⁷³ From Okeechobee County the Commission heard that the police may even arrest the victim rather than the perpetrator:

We received a call [the women's shelter] that a woman was standing in the middle of the road, bleeding and needing help, so we drove to where she was. We got there before [the officers] and she was a mess. She was naked from the waist up and there was blood all over her face and chest. She was standing in the middle of the road, crying. The man who had battered her was standing on the side of the road when the [officer] arrived. The batterer started

⁷⁰ *Domestic Violence Informal Survey*, *supra* note 68.

⁷¹ *Id.* at 1.

⁷² *Id.* at 9.

⁷³ *Id.* at 22.

to harass [the woman]. She became hysterical and tried to attack him. The [officer] then arrested the woman.⁷⁴

Testimony from the director of the Domestic Abuse Council of Volusia County outlined the consequences of the police not arresting the perpetrators of this criminal conduct:

Every police officer who fails to make an arrest when there is probable cause sends a clear message to the abuser. The officer is saying, "This behavior is not to be taken seriously. She's your wife--it's not really a crime." And the message to the victim is equally clear--"the law will not protect you--you're on your own."

From the Gainesville Regional Meeting

This message--that law enforcement will not protect a woman from physical assaults--is understood all too well by the men and women of Florida. Attorneys around the State repeatedly testified that their battered clients feel they have no rights because they are women.

While the failure to arrest lets batterers abuse their wives with impunity, the failure to make reports of every domestic violence incident hinders the woman when she later seeks civil remedies:

The absence of these reports means that later when you have a victim of domestic violence who goes to a judge and asks for an Injunction for Protection, or is going through a divorce proceeding, or child custody, there is no evidence that anything ever happened. It's her word against his. And typically in our system the victims are less credible. They tend to be upset. They tend to be not as coherent as they might be at other times. When there is no

⁷⁴ From the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

evidence, all the suffering and violence . . . doesn't exist officially, and often isn't believed when it's only their word that it has occurred.

From the Tallahassee Public Hearing

7. Remedies

a. Preferred Arrest Policy

The Commission has found that a mandatory arrest policy is the preferable police response to any domestic violence incident that meets the statutory criteria for arrest. The "cool down, take a walk" approach of many of the state's law enforcement agencies is counterproductive. It offers no rehabilitation to the abuser, provides no safety for the wife and children and offers no real hope of preserving the family.⁷⁵

A mandatory arrest policy is fully supported by empirical studies showing that arrest reduces later violence.⁷⁶ Indeed, some studies show that the failure to arrest can result in an increase in the frequency and intensity of domestic violence over time.⁷⁷ Responding to such studies, a substantial number of urban police departments have chosen arrest as the preferred method of dealing with domestic violence calls.⁷⁸ In Monroe County, for example, the State Attorney reports that there is a sixty percent arrest rate pursuant to its 1988-vintage

⁷⁵ See, e.g., Sherman & Berk, *The Specific Deterrent Effects of Arrest for Domestic Assault*, 49 Am. Soc. Rev. 261 (1984).

⁷⁶ *Id.*

⁷⁷ E.g., *id.*; Buel, *Mandatory Arrest for Domestic Violence*, 11 Harv. Women's L.J. 213, 213-26 (1988); National Institute of Justice, *Confronting Domestic Violence, The Role of Criminal Court Judges* (November 1986).

⁷⁸ "More Police Agencies Using Arrest for Domestic Violence," *Criminal Justice Newsletter*, Apr. 1, 1987, at 2-3. See also Bozzi, *Arrest Deters Batterers*, *Psychology Today*, Aug. 1986, at 8; S. Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement* 21 (1982).

mandatory arrest policy, because "60 percent of the cases that our officers go to meet the criteria for arrest."⁷⁹

Mandatory arrest has the positive benefit of taking pressure off law enforcement officers. It forecloses the need to negotiate, mediate and resolve the situation. The appropriate response to domestic violence is clearly set forth and discretion is curtailed. The result is less violence toward the victim and toward the police.⁸⁰

b. Prosecution

The Commission found that prosecution practices in cases involving domestic violence are insensitive and often hostile toward women. Statewide, witnesses and survey respondents complained of problems such as the abuse of prosecutorial discretion to drop cases, callous behavior toward battered women and a general reluctance to view domestic violence as criminal behavior. The Commission heard that some prosecutors were more concerned with win/loss ratios than enforcing the law. In Jacksonville, the director of the Hubbard House shelter told the Commission of the impact of these and other similar practices:

[B]attered women received virtually no support, encouragement, or protection while attempting to pursue legal redress. Consequently, they often requested the State to drop charges out of fear of batterer retribution or frustration with the system. In turn, the criminal justice system used the possibility of the women wanting to drop the

⁷⁹ Kirk Zuelch, state attorney for the Sixteenth Judicial Circuit, remarks at the Jacksonville Public Hearing of the Gender Bias Study Commission. Other areas of Florida are much less likely to intervene when domestic violence occurs. The number of arrests made by the Duval County Police Department, for instance, were well below the data from Monroe County, which is far less populous. See *id.* In another county one agency received 14,500 reports of domestic violence and generated written reports in only 12.5 percent of these cases. Mabel Bexley, director of Hillsborough County Shelter for Victims of Domestic Violence, remarks at the Tampa Public Hearing of the Gender Bias Study Commission.

⁸⁰ See, e.g., Sherman & Berk, *supra* note 75.

charges to justify its reluctance to prosecute offenders in domestic violence cases.⁸¹

Testimony indicated that prosecutors reject most domestic violence cases, refusing to file charges. Over sixty percent of Florida's family law attorneys report that state attorneys often or almost always decline to prosecute domestic violence complaints.⁸² National studies support the statewide testimony.⁸³ In Gainesville an assistant state attorney related how the state attorney would not prosecute even those cases that seemed particularly appropriate:

[T]hen if I said . . . "this is an obvious case of prosecution" and I go take it upstairs and my immediate boss looks back and says "no, no, no, this is not what we want to do." And I say "what do you mean this is not what we want to do" And that's the last I [would] ever hear.

From the Gainesville Public Hearing

A family law attorney provided the Commission with an example the consequences of refusing to prosecute:

The husband had a history of spouse abuse. A restraining order was obtained upon the filing of a dissolution of marriage. The restraining order was subsequently violated when the husband appeared at the wife's place of employment with a hunting knife and field glasses. The husband was arrested, bonded out, and the State subsequently declined to prosecute. The State's failure to prosecute was not the result of the wife dropping charges, because she did not drop them and she was extremely afraid of her husband.

⁸¹ William B.D. Lince, Hubbard House of Jacksonville, report submitted to the Gender Bias Study Commission 3 (May 17, 1988) (available from Gender Bias Study Commission).

⁸² Sapolsky, *The Gender Bias Study Commission Survey of Attorneys* (June 28, 1988).

⁸³ G. Goolkasian, *Confronting Domestic Violence* (U.S. Dep't of Justice, May 1986).

One month later, her husband again appeared at her place of employment, followed his wife and stabbed her to death in front of a local restaurant.

From the Orlando Regional Meeting

Indeed, research has shown conclusively that battering escalates unless there is intervention.⁸⁴ The chair of the Legal Services Domestic Violence Task Force of Greater Miami testified that vigorous and appropriate prosecution was necessary to stop misdemeanor crime from escalating into felonies and homicides, and that vigorous prosecution in initial cases deters escalation.⁸⁵

The Commission also received complaints that when the state does prosecute, it is often on a lesser charge:

As far as prosecutions, we see [a] lot of misdemeanor filings on cases that I would like to see filed as felonies. There are weapons involved. There are permanent injuries.

From the Fort Myers Regional Meeting

In Miami one attorney testified that the State Attorney's Office acted differently in domestic violence cases than in other criminal cases:

In any other type of crime, the State is the only party that initiates the action. If you have a simple battery by a juvenile, and the batteree decides they don't want to testify against their friend, they get subpoenaed to be witnesses and require them to get on the stand and lie. . . . [Battering] is the only type of case where the victim can be coerced into not testifying, and the State will go along with that coercion. . . . [T]he State should absolutely adopt the position of treating this crime the same as all other crimes.⁸⁶

⁸⁴ *Accord* Waits, *supra* note 36, at 308-19.

⁸⁵ Chris Zawisza, remarks at the Miami Public Hearing of the Gender Bias Study Commission. *Accord* Sherman & Berk, *supra* note 75.

⁸⁶ From the Miami Regional Meeting of the Gender Bias Study Commission.

The Commission was also told that the ability to prevail before a jury determined whether a case was filed:

[N]ine out of 10 times, they would say "sorry, we are not going to file this case, there is no way we are going to win. This is one on one" . . . and of course, it affects their win-lose record, which is important if you're in the state attorney's office.

Gainesville Regional Meeting

With policies such as these, prosecutors in many parts of Florida in effect have written the domestic assault statutes off the books by refusing to enforce them. This is based primarily on the same viewpoint endemic in the entire criminal justice system--that domestic assault is somehow a "different" type of crime.⁸⁷ Some defense lawyers also have helped dissuade enforcement of the laws. One former public defender testified that, in domestic violence cases, he found it "very useful" to send his investigators to visit the victims:

I would send an investigator out in every one of these cases . . . with a release form or a drop charge form,⁸⁸ and most of the time they would come back with it signed.

Testimony around the State verified the widespread use of such tactics. Defense attorneys and public defenders routinely contact the battered woman to dissuade her from pursuing prosecution. Some defense attorneys have even offered to assist the victim with filing an affidavit to drop charges.⁸⁹ This behavior is unprofessional and inappropriate.

However, the Commission also heard testimony indicating that no-drop policies are being instituted by prosecutors in a few jurisdictions of the state.

⁸⁷ *Id.*

⁸⁸ From the Pensacola Regional Meeting of the Gender Bias Study Commission.

⁸⁹ Prepared statement of Velma Troy LaPierre, project coordinator, Palm Beach Domestic Assault Program, submitted at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

In Monroe County, the state attorney joined forces with victim advocates and law enforcement to institute a no-drop policy. Law enforcement is required to justify a decision not to arrest, and the state attorney requires batterers to complete an approved batterers' therapy program before any charges are dropped.

At the Miami Regional Meeting an attorney explained how a no-drop policy acts as a deterrent against continued assault:

[A]ll the prosecutor has to do . . . is walk back to the woman and say, "I'm not going to drop it." And that takes the onus off the woman. [If] the defendant knows that the woman has the capability of dropping the charge, he's going to beat her, he's gonna make her eat the restraining order, which I saw lot of, he'll make her crawl on the ground and eat cigarettes and every other kind of abuse you can imagine, as long as she has the potential to drop it, that's going to happen.

From the Miami Regional Meeting

No-drop policies have been successful nationwide.⁹⁰ Accordingly, the Commission recommends the adoption of a statewide no-drop policy in domestic violence cases. The Commission also recommends mandatory continuing education in domestic violence for all state attorney's offices. Prosecutors who are uneducated about the dynamics of domestic violence and the battered woman's syndrome show an increased hesitancy to file charges and to apply for restraining orders, increasing the likelihood of inappropriate sentencing. These educational programs could be produced in part by local members of the batterer's coalition.

In those counties with a large population, a domestic crimes unit should be instituted. In smaller counties where specialization within the state attorney's office is not possible, increased education for all staff should be mandated.

⁹⁰ See Waits, *supra* note 36, at 323-24 & 323 nn.314-19 (discussing no-drop policies).

c. Mediation and Deferred Prosecution

Some Florida counties have a policy of deferring prosecution of domestic assault cases while the victim and perpetrator participate in mediation. Typically this involves asking the couple to meet with a neutral third party to reach an agreement to resolve their disputes. Some studies have concluded that the primary motive underlying such mediation programs originally was to reduce public expenditures by decreasing prosecution caseloads. Mediation often is suggested as a cost-saving alternative to formal adjudication.

Despite its seemingly positive benefits, mediation may be particularly inappropriate in the domestic violence area.⁹¹ It assumes that those coming to the mediation table are on roughly equal footing. The criminal aspects of the assault are brushed aside, implying that the victim had some culpability and should modify future conduct in conjunction with the perpetrator of the assault.⁹² Research also indicates a high failure rate in terms of compliance. In the Fourth Judicial Circuit, for example, the state attorney reported that batterers had failed to abide by their mediation "contract" conditions in seventy-one percent of all cases. Meanwhile, in only two percent of domestic abuse cases was the batterer receiving treatment.⁹³

The Director of Hubbard House in Jacksonville testified about the negative impact mandatory mediation has upon the victims:

It is a program that places the burden of making the system work on the battered women instead of the system itself. . . . I do not think that a woman who has had to use the criminal justice system to protect herself can be assumed to be safe or on equal terms in a room with a man who has used physical force to assert his power and control over that woman. . . . The result of the program is that battered women are not protected, and if a man

⁹¹ Lerman, *Mediation of Wife Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women*, 7 Harv. Women's L.J. 57, 71-97 (1984).

⁹² *Id.*

⁹³ Material compiled by Gender Bias Study Commission staff.

fails to abide by the agreement, no steps are taken to bring that case to trial. Of the hundreds of cases that have failed to show for counseling at the First Step program over the last five years for noncompliance, none has been brought to trial.

From the Jacksonville Public Hearing

Similar complaints were heard in Seminole County. One trained mediator felt that mediation was particularly inappropriate in domestic violence cases:

I have a real problem with women who have been emotionally or physically abused having to participate in mediation. There's a wealth of research that indicates that for mediation to work there has to be an equal balance between the two parties when they come to the bargaining table.

From the Fort Myers Regional Meeting.

The Commission finds that in cases of domestic violence mediation is an inappropriate alternative. Deferred prosecution involving mandatory long-term counseling and treatment of the perpetrator is the alternative most likely to keep a family together and stop the violent conduct. Mediation carrying no sanction for violation is counterproductive and should be stopped in those counties now using it.

8. Judicial Conduct

Upon learning that a husband had poured lighter fluid on his wife and set her afire, one Palm Beach County judge in open court sang, "[y]ou light up my wife" to the tune of the song, "You Light Up My Life."⁹⁴ When the judge in a

⁹⁴ Velma Troy LaPierre, project coordinator for the Palm Beach County Domestic Assault Program, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

recent first-degree murder case learned that the defendant had tried to kill his wife, the judge asked in open court, "Is that a crime in Florida?"⁹⁵

The Commission's inquiry into the judiciary's handling of domestic violence cases revealed that these are only the more visible examples of gender bias. The Commission received numerous complaints that many courts minimized, were indifferent to, or refused to acknowledge the criminality of domestic violence. These attitudes--compounded by a lack of training and reluctance to learn--result in significant gender bias in too many domestic violence cases brought before the courts of Florida. While there certainly were reports of appropriate conduct by particular judges in specific jurisdictions, examples were few and far between. More often the testimony was like that given by an attorney in Orlando:

[M]y experience has been with judges that they don't have information about the very people that they are making decisions about, with sexual assault, domestic violence issues, child abuse issues. I feel they are vastly, grossly ignorant in the area of those particular crimes.

From the Orlando Regional Meeting

The executive director of Jacksonville's Hubbard House explained that this insensitivity was based upon a reluctance to acknowledge the battered woman's plight:

And the thing that impresses me so much about all of that is their ignorance and their unwillingness to understand the issues all the way through about the battered women's experience.

From the Jacksonville Regional Meeting

This insensitivity to what a battering victim endures was illustrated by one court's candid comments:

Giving them the time is very difficult, before trials, during trials, has really created considerable problems with the

⁹⁵ From the Miami Regional Meeting of the Gender Bias Study Commission.

court calendar. And then when they come in and I have already gone on the bench, and they show up an hour late and this sort of thing.

From the Tallahassee Regional Meeting

This sort of insensitivity can result in inappropriate comments, as one attorney related to the Commission:

I guess it's been within the last six months--where the court broke for such a hearing, came back, in front of the jury, and the attorneys and the bailiff and the judge were discussing the domestic violence hearing, laughing about it, making jokes about it. And of course, for these women who come to the courthouse, it's no laughing matter.

From the Orlando Regional Meeting

This judicial insensitivity about the severity of some domestic assaults may even have tragic consequences:

I had a temporary hearing asking for an injunction because of past abuse in a domestic matter, and the judge . . . stated that the woman and I were probably overreacting, and that he would not issue such an injunction. Within 24 hours the man had caught the woman when she was taking out the garbage, tied her up, put her in a room and threatened to kill her, but fortunately she did not die. He killed himself outside the door. This was a judge who looked at this person and said they thought we were overreacting.

From the Orlando Regional Meeting

Perhaps the best illustration of judicial insensitivity to domestic violence cases came from the Sixth Judicial Circuit. There, the court issued the following written order when confronting a couple with an extensive history of domestic violence:

They have two children which indicates that at some time they ceased abusing each other on at least two occasions for the purposes of procreation. Otherwise their relationship appears to have paleolithic trappings. Five cases of domestic violence between one couple constitute an abuse by that couple, not only of each other, but of the judicial

system. The question is: Is there a point of saturation at which the judicial system rears up and cries "enough"?? To what degree must individuals by their own violent propensities be allowed to inflict a degree of abuse upon the judicial system?⁹⁶

The hostility, insensitivity and lack of awareness displayed by such courts can translate into gender-biased rulings. One example is the use of expert testimony on the Battered Woman's Syndrome--evidence that may be needed to show the intense psychological fear and "learned helplessness" that prevents some women from leaving abusive men.⁹⁷ The personal whims of the court rather than uniform policies determine whether this crucial information reaches the jury. In Gainesville an attorney told the Commission about one court that excludes all expert witnesses in cases involving battering, including psychologists.⁹⁸

Another attorney told the Commission that evidence of the Battered Woman's Syndrome was routinely excluded from the defense of women charged with murdering their abusers:

None was allowed to call witnesses about the abuse or to introduce any expert testimony with regards to battered women's syndrome.

From the Gainesville Regional Meeting

Another judge refused to even consider the relevancy of the syndrome in a legal context, stating:

⁹⁶ Case No. 87-3546CA (Pasco County Cir. Ct., Nov. 20, 1987).

⁹⁷ The Battered Woman's Syndrome (BWS) is a post-traumatic stress disorder. Psychiatrists and psychologists isolate and identify the characteristics of BWS by reference to the DSM-III, Diagnostic and Statistical Manual of Mental Disorders (3rd ed. 1980). The DSM III is the standard medical reference for psychiatric and psychological disturbances. See also M.A. Douglas, *The Battered Women Syndrome in Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* 40-41 (D. Sonkin ed. 1986).

⁹⁸ From the Gainesville Regional Meeting of the Gender Bias Study Commission.

[W]e don't have time to deal with that in the courts. That's a psychiatric problem. Let her go to a psychiatrist about it.

From the Gainesville Regional Meeting

Such attitudes at root may be gender-biased. By excluding this evidence, a court excludes relevant information affecting the credibility of the witness; and it increases the potential that a case may be decided upon bias, misinformation or misconception.⁹⁹

Other gender-biased judicial conduct also has a significant impact upon the outcome of cases and availability of redress. For instance, judicial standards and conduct in issuing Injunctions for Protection were criticized. Testimony indicated that some courts punished the women who exercised their right to legal redress. Typically, this judicial conduct took the form of patently unfair dispositions revealing hostile and injudicious attitudes.

There were reports that some members of the judiciary refused to award temporary child support, awarded inadequate support or assumed it was readily available elsewhere. In Tallahassee one attorney testified:

I saw one just the other day where the man was issued an order to leave the house and pay child support and he came back in 30 days, "I can't afford to do this," and the judge says, "All right, no child support." And the women is standing there saying, "I have three children, I'm working part-time, how can I manage this? How are we going to eat . . . ?" ¹⁰⁰ The judge said, "You'll have to work it out, case dismissed."

⁹⁹ For a judicial debate on the admissibility of expert testimony on battered woman's syndrome, compare the majority opinion in *Hawthorne v. State*, 470 So.2d 770, 773-74 (Fla. 1st DCA 1985), with the dissent. *Id.* at 774-88. Indeed, the dissent discusses at length the possibility that Florida's evidence code has made it easier to introduce novel scientific testimony of this type. *Id.* at 785-88.

¹⁰⁰ Jennifer McCormack, coordinator, Center for the Continuing Education of Women of Lake Worth, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

Refusal to remove the perpetrator of the assault from the home was cited repeatedly. In Fort Lauderdale a victim's advocate testified:

As a victim advocate I am not so blinded by the need to protect women that I wish to violate anyone's constitutional rights. I value our system of democratic justice. However, would our courts refuse to evict a family from their home if that home were condemned because it created a physical danger to the couple and their children? I think not. Are not a woman's rights being violated when our laws force a battered women and her children to seek safe shelter, most of which are always too full to accept her? Is it constitutional for children to be uprooted from their home and school to accommodate the violent father's right? I suggest that when a husband batters his wife he loses his constitutional rights to remain in the marital home, at least temporarily.

From the Fort Lauderdale Public Hearing

Improper, unsupervised visitation for abusive fathers was another area of concern throughout the state. In Fort Lauderdale the past president of the board of Women in Distress told of a five-year-old child who had been sexually assaulted by her father, uncle and grandfather in front of her eight-year-old brother:

And it took us 18 months--this happened in the last two years--to stop that man from visitation rights during which time he continued to abuse the child. . . . But the Judge said to me: "Do you as a counselor, do you as a professional, believe that this child [has been abused]"--"yes, absolutely." She said, "okay, thank you," and went ahead and let him visit her alone.

From the Fort Lauderdale Public Hearing

Testimony also indicated that some courts impose unnecessary and unwarranted burdens upon the victims of domestic violence. In Palm Beach County there were reports of judges who required a victim to appear before the court and publicly state the intention to pursue the case at the preliminary hearing.¹⁰¹

¹⁰¹ From the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

Still other courts apparently are imposing lesser penalties upon batterers than those established by Florida's sentencing guidelines. In an attempted first-degree murder case, for instance, the Judge summoned the victim and the prosecutor into chambers to discuss the case, over the prosecutor's objections. After the meeting in Chambers the court deviated below the guidelines' sentence:

He said the reason the court was deviating from the guidelines was because the defendant had a drug problem, when in fact the reason was it was a domestic dispute. . . . I just think this absolutely outrageous.

From the Miami Regional Meeting

In another case the husband had a history of abusing his wife. Then he burned her car, and the Judge ordered probation. Later, the husband violated his probation by threatening his wife with a razor blade and beating her again:

Again, the court deviated from the guidelines, sentenced the defendant to nine years, suspended everything. They gave the defendant 364 days plus probation to follow. Thereafter the defendant was on a work release program to the police department, violated probation by having four cocaine rocks in his possession, and for that he went to prison for seven years.

From the Miami Regional Meeting

The disparity in sentencing for violence against a woman as compared to possession of drugs indicates how deeply entrenched are our biases. It shows that too many members of the justice system refuse to believe that domestic violence is a criminal act.

9. 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 week-end 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.

10. 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 educa-

tion 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.

C. Sexual Battery

1. Introduction

More than three hundred years ago, Lord Chief Justice Matthew Hale set forth the English common law standard by which rape victims would be judged in judicial proceedings for centuries to come. "Rape," he said, "is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused though never so innocent."¹⁰² The result was the routine use of a jury instruction requiring jurors to apply more "rigid[] scrutiny" to the rape victim than any other witness.¹⁰³ This effectively told jurors that, in the eyes of the law, the victim's testimony was inherently suspicious. Florida jurisprudence labored under Lord Hale's dictum for nearly a hundred years, from the first published case approving use of the jury instruction in the late nineteenth century¹⁰⁴ until the practice was overruled in 1986.¹⁰⁵

Yet the ghost of Lord Hale unquestionably lingers on in the attitudes of society, including officers of the justice system. Despite the Florida Supreme Court's direct rejection of Lord Hale's dictum,¹⁰⁶ the Commission learned through public testimony, a review of scholarly works and Florida Department of Law Enforcement (FDLE) statistics that rape remains an accusation very difficult to make; and once made, victims frequently must shoulder the burden of "proving" themselves to be innocent, just as Lord Hale long ago had suggested.

¹⁰² M. Hale, *History of the Pleas of the Crown* (1st American ed. 1847).

¹⁰³ *E.g.*, *Marr v. State*, 484 So.2d 1139, 1140-41 (Fla. 1986) (recounting use of the instruction in Florida).

¹⁰⁴ *Doyle v. Doyle*, 39 Fla. 155, 22 So. 272 (1897).

¹⁰⁵ *Marr v. State*, 494 So.2d 1139, 1142 (Fla. 1986).

¹⁰⁶ *Id.*

The reasons for this attitude rest on prevalent but now discredited views about the nature of rape. While social scientists and other experts have recognized that rape is a crime of violence, society still tends to view rape as a crime of passion--something "caused" by the behavior of the victim.¹⁰⁷ Testimony before the Commission revealed a general belief that there actually are two kinds of rapes--"real" rapes and rapes somehow prompted by the victim. Under this discredited viewpoint, a sexual assault is deemed "understandable" if it falls into the latter category.

There is an entire mythology surrounding the subject. "Real" rapes, for example, are the ones in which the victim is a classically virtuous person assaulted by a stranger. The stranger physically brutalizes as well as sexually assaults the victim, who actively and physically fights back--perhaps until unconscious.¹⁰⁸ Historically, defense lawyers would often invoke Balzac's pronouncement that "[o]ne cannot thread a needle when the needle doesn't stand still."¹⁰⁹ In addition, for a "real" rape to exist, the circumstances must be devoid of any implication that the victim was "negligent" or "looking for it," such as by wearing seductive clothes or by being in the "wrong" place at the "wrong" time.

The author of a needs assessment study on services available to Florida rape victims testified on widespread acceptance of this myth:

In society at large, and possibly in yourself and the persons sitting on your right and left, there is widespread belief that people who are sexually molested--raped, assaulted--somehow precipitate it. Some action, some way of dressing, some place the victim went, something the victim said or did: Something about the victim "caused" the rape. This belief implicitly rests on the assumption that: Something a potential victim does (says, etc.) is so powerful

¹⁰⁷ Ninety-eight percent of all victims of rape are women. Dr. Dorothy Hicks, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

¹⁰⁸ Lerea Goldwaite, remarks at the Tampa Public Hearing of the Gender Bias Study Commission.

¹⁰⁹ Quoted in "Rape: The Sexual Weapon," Time (September 5, 1983).

that it completely overwhelms the will power of the assailant (who in this scenario almost becomes the "victim of the victim"), compelling him to commit sexual assault. Whatever this thing is, it is very potent, so potent that a big, strong man cannot resist it. He is forced to rape because the actions of the victim compel him to. In this very odd scenario, almost anything the victim does is interpreted as compelling the assailant to press forward. If a female says NO, males are taught she means Yes. ¹¹⁰ So even saying No can be (and is) viewed as a precipitator.

Unfortunately but not surprisingly, some Commission witnesses reported that many lawyers, judges and law enforcement personnel still believe these same myths and stereotypes. For example, an assistant attorney general in Tallahassee remarked in his testimony before the Commission:

I had a rape case, occurred right here on the F.S.U. campus. I was arguing the case in Jacksonville. The rape occurred at 11:30 at night. And I was halfway through my argument when one of the judges . . . [said] what in the world was she doing out that late at night walking down the street? And I said, "Well, Your Honor, as a matter of fact, the record reflects that it was a co-ed going to mail a letter home to her mother telling her when she was going to arrive home over the holidays."

From the Tallahassee Public Hearing

The result of these attitudes is obvious. Assuming that the dress or behavior of rape victims causes them to be raped removes responsibility from the offenders. It excuses forceful criminal conduct, sexual abuse and humiliation directed against unwilling partners. Rape comes to be viewed as an "automatic" response by those in the grip of an "understandable" loss of will and judgment; and victims themselves thus are viewed as the underlying cause of the problem.

¹¹⁰ Martin, *Gender Considerations in the Prosecution of Sexual Assault Cases*, paper submitted at the Tallahassee Public Hearing of the Gender Bias Study Commission. See also Martin *et al.*, *Sexual Assault: Services to Rape Victims in Florida, A Needs Assessment Study (1984)* [hereinafter *Sexual Assault*].

Through such reasoning, society looks upon a violent humiliating crime as though it were a "natural" expression of human sexuality.

This mythology is reinforced by other widespread notions about rape. Many in our society, for instance, believe that a person can acquire "entitlement" to sex. In a recent assault awareness survey of 1,700 sixth to ninth graders in Cranston, Rhode Island, the majority of children reported that under certain circumstances sexual abuse was okay. One half of the students indicated that a woman who dresses seductively and walks alone at night is asking to be raped. Sixty-five percent of the boys and forty-seven percent of the girls said forcible sex was acceptable if a man has been dating a woman for more than six months. Among married couples rape is permissible, said eighty-seven percent of the boys and seventy-nine percent of the girls.¹¹¹ In a similar survey of 832 high school students participating in a summer job program, 795 of the young people thought that under certain circumstances it was acceptable for "a guy to hold a girl down and force her to have sexual intercourse."¹¹²

Statistics also indicate that one half of all rapes involve assailants who are known to the victims--often called "acquaintance rape." Yet prosecutors and law enforcement repeatedly testified in Commission hearings that convictions in such cases are virtually impossible to obtain. In many circuits, state attorney offices do not even file acquaintance-rape cases because they feel convictions are unlikely.¹¹³

The net effect of these myths and assumptions is to deny victims of rape equal protection of the laws.

¹¹¹ "Children's Views on Rape Not Surprising," Tallahassee Democrat, May 5, 1988.

¹¹² Goodchilds & Zellman, *Sexual Signaling and Sexual Aggression in Adolescent Relationships*, in *Pornography and Sexual Aggression* (N.M. Malamuth & E. Donnerstein eds. 1984).

¹¹³ Jo Anne Van Meter, remarks at the Tallahassee Public Hearing of the Florida Gender Bias Study Commission; John Jolly, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

2. Rape in Florida

Over ninety percent of all sexually battered victims are female, and one in nine females is likely to be raped during her lifetime. Nationwide, it is believed that only ten to fifty percent of rapes are reported.¹¹⁴ Despite this pervasive underreporting, Florida still has the third-highest index of reported rapes in the nation.¹¹⁵ In 1988 there were 6,524 cases of forcible sexual battery, or one forcible sex offense every eighty-one minutes.¹¹⁶ Yet the FDLE estimates that its figures contain only seventy to seventy-five percent of crimes actually reported to local officials. If this is true and if only ten to fifty percent of rapes are ever reported, then forced sex offenses--both those reported and those not reported--occur as frequently as once every six to thirty minutes in Florida.

When arrest and conviction rates are considered, the statistics paint an even grimmer picture. Of all the forcible sex offenses reported, only about a third result in arrests.¹¹⁷ Although no statistics are available for conviction rates, testimony revealed that only a small minority of arrests resulted in convictions.¹¹⁸

¹¹⁴ See The President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* 21 (1967); Federal Bureau of Investigation, *Uniform Crime Reports: 1970* 14 (1971); Dowd, "Rape: The Sexual Weapon," *Time*, Sept. 5, 1983.

¹¹⁵ Sexual Assault, *supra* note 110, at iii.

¹¹⁶ Florida Department of Law Enforcement, *Crime in Florida: 1988 Annual Report* (1988) (available from Florida Department of Law Enforcement) [hereinafter *Crime in Florida*]. Included in the FDLE statistics for forcible sex offenses are forcible rape, forcible sodomy and forcible fondling/indecent liberties/child molestation. Statutory rape is not included in the statistics as no force is used. *Id.* at 42.

¹¹⁷ *Id.*

¹¹⁸ Jo Anne Van Meter, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission. Another witness, John Jolly, reported that when he worked as an assistant state attorney, his sexual battery unit actively filed

FDLE profiles show that approximately ninety percent of all forcible sex crime victims are female. The most frequent victim of rape is a white female between the ages of eleven and seventeen. However, victims range from infants to persons over fifty-five years of age. The overwhelming majority of victims of forcible sodomy and fondling are children under the age of ten.¹¹⁹ The FDLE's profile for forcible sex crimes discloses that 61.2 percent of those arrested are white males, most frequently between the ages of twenty-five and thirty-four.¹²⁰

Data collected in 1982 and 1983 from Dade and Leon counties indicated that assailants are known to their rape victims in about half of the cases.¹²¹ Yet the Commission heard testimony throughout the State that the system is often unresponsive to acquaintance rape and that convictions are extremely rare. Witnesses testified that in some areas convictions are impossible to obtain.¹²² As noted earlier, some state attorney offices are not filing date or acquaintance rape cases at all. In other areas, cases are filed and pleas are arranged in order to get an adjudication, even if only for lesser offenses. Often, the assailant receives no more serious punishment than probation.¹²³

The picture of rape in Florida thus is clear. Victims of sexual battery are overwhelmingly female. Their assailants are overwhelmingly male and, in at least fifty percent of the cases, they are known to their victims. Yet because

stranger and date or acquaintance rape cases. Of the cases brought to his unit he estimated the filing rate was only about two-thirds. John Jolly, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

¹¹⁹ *Crime in Florida, supra* note 116, at 42.

¹²⁰ *Id.* at 42.

¹²¹ Sexual Assault, *supra* note 110, at 35.

¹²² Jo Anne Van Meter, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission.

¹²³ Kate Kearney, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission; Jean Becker-Powell, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission.

of the mythology that surrounds rape, the chances of successful prosecution of anything but a "real" rape are minimal. This remains the unfortunate reality in Florida despite extensive statutory reforms and the advent of victim assistance programs.

3. Sexual Battery Statutes

During the 1970s, Florida reformed its rape statutes to encourage reporting by victims, to improve case processing and to facilitate prosecutions. Florida's statutory scheme now outlaws behavior not limited to the "traditional" concept of rape--nonconsensual sexual activity by male perpetrators against female victims. Now the statutes also encompass nonconsensual sexual activity by a person against any other person, male or female.¹²⁴ At least one Florida intermediate appellate court also has recognized that spousal sexual battery can constitute a crime.¹²⁵

The current statute defines sexual battery as:

oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. . . .¹²⁶

Florida law prohibits sexual battery without "intelligent, knowing, and voluntary consent," which does not include "coerced submission."¹²⁷ No resistance or corroboration by the victim is required.¹²⁸

¹²⁴ See Fla. Stat. § 794.011 (1989).

¹²⁵ State v. Rider, 449 So.2d 903 (Fla. 3d DCA), review denied, 458 So.2d 273 (Fla. 1984), appeal dismissed, 470 U.S. 1075, 105 S.Ct. 1830, 85 L.Ed.2d 132 (1985).

¹²⁶ Fla. Stat. § 794.011(1)(h) (1989).

¹²⁷ Id. § 794.011(1)(a).

¹²⁸ See id. § 794.011.

In 1984, the Florida legislature provided enhanced penalties for sexual battery committed by more than one perpetrator.¹²⁹ Although the legislature rarely attaches findings to criminal statutes, it did so in this instance--explicitly stating that any act of sexual battery "when committed by more than one person, presents a great danger to the public and is extremely offensive to civilized society."¹³⁰ The legislature then provided that sexual battery sentences are raised to the next crime level when committed by more than one person.¹³¹

Finally, Florida's "rape shield law" prohibits evidence of prior consensual sexual activity of the victim and anyone other than the accused.¹³² Evidence of prior sexual activity may be admissible only after an in camera determination by the judge that the evidence would tend to prove that the defendant was not in fact the perpetrator.¹³³ This evidence also may be admissible if it tends to establish a pattern of conduct or behavior by the victim that is "so similar to the conduct or behavior in the case that it is relevant to the issue of consent."¹³⁴

The rape shield law is perceived as the most significant statutory reform preventing improper treatment of victims.¹³⁵ A study conducted by the

¹²⁹ Ch. 84-86, § 4, 1984 Fla. Laws 260, 264 (codified at Fla. Stat. § 794.023 (1989)).

¹³⁰ Fla. Stat. § 794.023(1) (1989).

¹³¹ *Id.* § 794.023(2).

¹³² *Id.* § 794.022.

¹³³ *Id.* § 794.022(2).

¹³⁴ *Id.*

¹³⁵ Chapman, Largen & Smith, *Sexual Assault Legislation: An Assessment from the Field* (Center for Women Policy Studies 1986) [hereinafter *Sexual Assault Legislation*]. A study to assess reform in sexual assault legislation was sponsored by the National Institute of Justice of the United States Department of Justice. The study included surveys of professional personnel in the criminal justice system, an analysis of statutory reform objectives and their basis, a review of case studies of law modifications and a review of state statutory and case law relating to the criminal justice treatment of rape. States studied were Florida, Georgia and Michigan. *Id.* See also Kate Kearney, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

Center for Women Policy Studies analyzed rape laws of Minnesota, Florida and Georgia.¹³⁶ A survey of persons involved in the criminal justice system indicated that Florida respondents believed the rape shield law to be fair, effective and needed. On the whole, respondents believed the shield law improved the treatment of victims during trial, increased victims' willingness to cooperate with both the police and prosecutors, increased prosecutors' willingness to accept cases, and improved the likelihood of conviction. The study also found that the repeal of corroboration requirements encouraged victims to cooperate with state attorneys and increased the likelihood of cases being filed, because of the greater potential for conviction.¹³⁷

The changes in sexual battery statutes are credited largely to the women's movement and media attention to rape law reform. However, repeatedly the Commission heard that these changes have not significantly altered jurors' attitudes, which continue to be swayed by traditional myths and stereotypes.¹³⁸ Thus, although Florida's sexual battery statute is considered one of the best in the nation, the difficulty in obtaining successful prosecutions arises largely from societal acceptance of violence toward women. This attitude thwarts the state's willingness and ability to address this major crime category.

While Florida has just begun expanded reporting and analysis of forcible sexual battery crimes, there are no statistics available on the disposition of cases after arrest. The Commission recommends that state attorney offices as well as the state court administrator collect and maintain data on all cases brought by law enforcement and their disposition. In addition attention needs to be paid to adherence and deviation from sentencing guidelines. If significant numbers of offenders are receiving probation or some form of community control in lieu of guideline requirements, steps should be taken to amend the guidelines or to require mandatory minimum sentences.

¹³⁶ *Sexual Assault Legislation*, *supra* note 135, at 43.

¹³⁷ *Id.*

¹³⁸ *Id.*

4. The Victim and the System

a. Statutory Framework

The Commission heard testimony from around the state that, at least in the treatment and handling of sexual battery victims,¹³⁹ Florida has taken significant steps away from the medieval views of Lord Hale. That does not signify, however, that we have reached an age of enlightenment. There are at least twenty-five recognized victim advocate programs around the state that assist rape victims through the investigative and prosecutorial process. However, many Florida counties still lack specialized rape victim services.¹⁴⁰

The Florida legislature has conferred substantial rights and entitlements on victims of crime.¹⁴¹ The entire criminal justice system, including law enforcement, the Department of Legal Affairs, state attorneys, the Department of Corrections and the Parole Commission circuit court administrators, are charged with developing guidelines to provide victims and witnesses a variety of services and support through the criminal justice system.

Victims are to be provided information regarding services. This includes the availability of crime victim compensation when applicable, the existence of community-based victim treatment programs, and the role a victim will play in the system. Specifically, victims are to be given information about protection from intimidation. Further, victims are to be notified of scheduling and scheduling changes regarding court appearances.¹⁴²

State attorney offices are required to confer with victims before plea negotiations and to keep them informed throughout prosecution and the appeal

¹³⁹ *Id.*; Jo Anne Van Meter, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission.

¹⁴⁰ Sexual Assault, *supra* note 110, at 45.

¹⁴¹ Fla. Stat. §§ 775.089, 921.143 & 960.001-.28 (1989).

¹⁴² *Id.* § 960.001.

process.¹⁴³ However, the legislature has not adequately funded the state attorney offices and other agencies delivering victim services. As a result, Florida's victims often go without services that have been mandated. Testimony from a member of the Attorney General's staff reported on the paucity of victim services to the Commission:

We had one and a half victim people in the Second Judicial Circuit for all of the six counties. . . . Two people served the needs of victims who are our wives, our neighbors, our children--it's an outrage.¹⁴⁴

The Chief of the Bureau of Crimes Compensation and Victim Witness Services testified that the entire program was severely underfunded:

[The] Rape Awareness Program certainly needs a lot more money than a quarter of a million dollars. . . . We have over 200 victims' services agencies in this State and we're only funding 50 of those programs with [a total of] \$1.5 million.¹⁴⁵

Only \$1.5 million is appropriated statewide to funding all of the victim services programs. Of that amount, only \$750,000 is allocated to cover all of the following statewide programs, including domestic violence, child abuse, and rape crisis intervention.

Victims of crimes may apply for compensation for lost wages and medical treatment. This can include psychological treatment to the extent of actual need, when not covered by insurance or other sources.¹⁴⁶ The maximum award allowed per victim is \$10,000 and the average paid is approximately \$4,000.¹⁴⁷ However, in order to qualify for compensation the victim must report the crime

¹⁴³ *Id.* § 960.001(d).

¹⁴⁴ From the Tallahassee Public Hearing of the Gender Bias Study Commission.

¹⁴⁵ From the Pensacola Public Hearing of the Gender Bias Study Commission.

¹⁴⁶ See Fla. Stat. § 960.13 (1989).

¹⁴⁷ From the Pensacola Public Hearing of the Gender Bias Study Commission.

within seventy-two hours, unless good cause can be shown for the delay. In addition, the victim must cooperate with law enforcement in the prosecution of the offender.¹⁴⁸

The Commission found that victims are often not informed of the availability of compensation for lost wages and treatment. The Commission recommends that law enforcement and state attorney offices ensure that rape victims are fully informed of the availability of funds from the Crimes Compensation Fund.

Additional attention also is urgently needed to provide the funding and develop programs focusing on the prevention of rape and sexual battery. Authorization for such funding and programs currently is provided for in the Crimes Compensation Fund legislation. The shocking results of the Rhode Island survey of teenage attitudes about rape demonstrate the desperate need for educational programs to dispel rape myths and stereotypes. Our young people must be taught that everyone is entitled to dress as desired, travel and enjoy recreational and leisure activities without being sexually molested.

The Commission heard testimony from victim advocates and rape crisis counselors. As previously stated there are at least twenty-five rape service programs around the state to help victims recover from their trauma as well as to aid the process through the criminal justice system. Many law enforcement departments and state attorney offices have witness or victim advocates on staff. Generally, these programs have been helpful in guiding and protecting victims through the process.

Some victim advocates report good relations with the courts and their local state attorney offices. Others have reported being barred from the courtroom. Still others have told how counselors and victim advocates suffer gender bias, just as their clients do. The director of the Rape Crisis Center in Manatee County reported gender bias toward both himself and his female cofounder, which hindered the handling of cases:

¹⁴⁸ *Id.* § 960.13(1)(b).

I have experienced the general bias--gender bias of being a male who is the director of a rape crisis program. It's given me an interesting prospective. The woman who helped me start this program would always find herself coming up against closed doors within law enforcement, within state attorneys' offices, within all the supporting agencies that are necessary to assist the courts in rendering an honest and a just verdict; and, yet, I could go in and find doors opened up to me. Are there any great skills that I have that my colleague didn't, or was it just the fact that I was a male and could relate to the males who predominately investigate these cases, prosecute these cases--

COMMISSIONER: Which do you think[?]

My opinion is that it is because I am a male it opened up those doors, that I had credibility that was given to me because of my gender, not because of my abilities. . . . I also experienced being involved with statewide victims service agencies seeing a great number of females who are in the victim services business, and, again, if that attitude persists, I think there are many victims who are not getting the attention that they deserve because of the bias that might be attributed to women. And I've heard many women who are victim advocates meet with my rape crisis program, or other victim advocacy programs that are considered--because they are interested in advocating for victims' needs--and are labeled as feminists, as rebellious, as just do-gooder housewives--those comments I've heard from professionals within my community. And I think it affects the system that--that I think you-all feel very strongly, and I sure do, of wanting to get a just verdict.¹⁴⁹

b. Case in Point

On October 3, 1989 a Broward County jury acquitted a man charged with rape and kidnapping because the victim "asked for" the sexual attack with her provocative dress--a lace miniskirt and a green tank top. The defense argued that the woman had agreed to have sex with the defendant in exchange for

¹⁴⁹ From the Tampa Public Hearing of the Gender Bias Study Commission.

\$100 and cocaine but later changed her mind.¹⁵⁰ In effect, defense counsel admitted that a forcible rape had occurred. Yet it was the victim's "enticing dress and cool demeanor on the witness stand which influenced the jury to acquit the defendant."¹⁵¹

After the jury verdict, the woman reported that she felt more victimized by the system than her assailant, who was a convicted felon previously charged with similar sex crimes in Georgia. Indeed, after his acquittal, he remained in jail pending extradition to stand trial for those charges. The victim claimed that "police badgered her, interrogating her like a criminal and that the prosecutors had displayed indifference toward her."¹⁵² When she had second thoughts about the prosecution and did not appear for her deposition, the trial judge ordered her picked up and incarcerated, where she remained in jail for six days, without a court appearance or access to counsel.

The victim never received any rape counseling services although these theoretically are available in Broward County. She did not receive any type of pretrial preparation. The assistant state attorney claimed she had been unavailable for either.¹⁵³

The Miami Herald reported that, once the trial began, the defense attorney had free reign to attack the victim's character, painting her as a prostitute. Yet there was no evidence that she was a prostitute and she did not have any criminal record.¹⁵⁴ The judge was reported to have said that he allowed the freewheeling defense because the state attorney did not bother to ob-

¹⁵⁰ "Tactics, verdict in rape case stir outrage," The Miami Herald, Oct. 6, 1989, at 3B.

¹⁵¹ *Id.*

¹⁵² "Experts deny mishandling of rape case," The Miami Herald, Oct. 8, 1989, at 3B.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

ject. The judge further claimed that he did sustain objections regarding the girl's character.¹⁵⁵

When asked about the jury's attitude after the trial, the prosecutor claimed he was legally prohibited from questioning jurors about their attitudes toward provocative dress and drugs as related to rape. He also claimed that he could not foresee the problems that arose during the trial.

This case-in-point presents an amalgam of all the horror stories the Commission heard in testimony and survey responses: insensitive law enforcement, indifferent or untrained state attorneys and callous judges who permit the victims rather than the defendants to be tried. The Commission heard about inadequate availability of witness advocates to help the victim and to assure that the system operated smoothly. The Commission heard about the undeniable value of expert witness testimony in familiarizing the judge and the jury about the types of behavior that are exhibited by sexually assaulted women. The Commission heard about the need to have specially trained assistant state attorneys and special sexual assault teams in the larger state attorney offices.

One witness who had worked as a victim's advocate outlined the negative reactions on the part of the state attorneys to the vigorous prosecution of rape cases:

Generally, if an attorney was assigned a rape case, before they knew the facts, they had made up their minds that it was garbage and they didn't want to try it. . . . There are many attorneys who flat out refuse to file charges on acquaintance rape cases. . . . Generally the reasons they would give me was that it was his word against her, she had been drinking--that was the big one. If there had been any way to blame the victim, they would try to find a back door to not file charges on it. . . . Sometimes the reasons were, well, she had gotten in the car with him, therefore it was her fault--she used bad judgment. Another comment was she was stupid enough to put herself in that situation, and in essence she got what she deserved. I've still had police officers and other court personnel ask the

¹⁵⁵ *Id.*

victims if they enjoyed it. And this is 1988, they were talking about, not 10 or 20 years ago.

From the Fort Lauderdale Public Hearing

Another witness explained why there is such a low priority within law enforcement and prosecution offices for sexual assault cases:

Only homicide cases should out-prioritize rape cases in either investigating or prosecuting phase. Unfortunately, as long as superior ranking enforcement officers make comments like "women, like Kotex, should be used once and thrown away," there will be little department priority placed on such crimes against people instead of crimes against property, gender bias remains.

From the Pensacola Public Hearing

A callous attitude by law enforcement and individual prosecuting attorneys can have substantial impact on the investigation and handling of a rape case from beginning to jury verdict; yet this is only one aspect of a greater problem. Testimony indicated that "only 10 percent [of victims] are courageous to come forward and report the crime to law enforcement."¹⁵⁶ Without greater support from law enforcement and prosecutors, cases like those in Broward County may convince victims that coming forward is the wrong action to take.

Since rape is a humiliating experience often accompanied by terror, threats and sometimes even torture, it requires tremendous sensitivity from all the participants in the system. The victim generally suffers a prolonged disabling emotional response that has been documented and recognized by the American Psychiatric Association as a post-traumatic stress disorder.¹⁵⁷ Under the current procedures in Florida the victim is required to tell and retell her story of humiliation, embarrassment and violation over and over to strangers she does not know. For the victim, research indicates that active and sensitive

¹⁵⁶ From the Pensacola Public Hearing of the Gender Bias Study Commission.

¹⁵⁷ Douglas, *The Battered Women Syndrome*, in *Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence* 40-41 (D. Sonkin ed. 1986).

prosecution helps the healing process, and helps to exonerate the guilt and self-blame that historical stereotypes heap upon the victims--feelings that usually are internalized.¹⁵⁸

¹⁵⁸ Sexual Assault, *supra* note 110, at 189.

5. 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 mon-

ey 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.

6. 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.

D. Prostitution

1. Introduction

The justice system's present response to prostitution exhibits some of the most egregious gender bias to be found anywhere. Indeed, the Commission was disturbed to learn of the prevalence and uniformity of prostitution throughout a state as diverse as Florida. More disturbing still was the inability of law enforcement to deter prostitution or the human misery it creates. From everywhere--whether a small town, rural county or major city--came grim stories of violence, coercion, murder, rape, hunger, pain, disease and desperation. The voices of those in the criminal justice system also echoed around the state. Everywhere the same complaints were heard: high recidivism, the "revolving door," connections with narcotics and the tendency to punish women not men.

Some argued that prostitution is a victimless crime and should be decriminalized. But the Commission found that these advocates of decriminalization are wrong. Prostitution is not a victimless crime. Its victims are the girls who run away from abusive and incestuous relationships at home and are treated by the legal system, first as errant children, and then as hardened criminals. The Commission found that the dimensions of the problem are staggering and by comparison, the legal system's efforts to combat prostitution have been futile at best and counterproductive at worst.

Just as with domestic violence and rape, an array of irrational and discredited cultural myths help to keep this ineffective system in place. As one writer has noted:

There has been a deliberate attempt to validate men's perceived need, and self-proclaimed right, to buy and sell women's bodies for sexual use. This has been accomplished, in part, by euphemizing prostitution as an occupation. Men have promoted the cultural myth that women actively seek out prostitution [as] a pleasurable economic alternative to low-paying, low-skilled, monotonous labor, conveniently ignoring the conditions that insure women's inequality and the preconditions which make women vulnerable to prostitution. Men have been so successful in reinforcing this myth by

controlling the culture that their central role in the commercial sexual exploitation of women has become invisible. The myth is so pervasive that when women come forward and expose the conditions they've endured, the injuries they've sustained through systems of prostitution, they are most often disbelieved¹⁵⁹ or considered to be the exception rather than the rule.

2. *The Prostitution Study*

At its first public hearing, the Commission heard persuasive testimony indicting the legal system for its failure to recognize the gender bias inherent in society's response to prostitution.¹⁶⁰ Upon further inquiry, the Commission determined that no other gender bias task force in the nation had studied prostitution in the context of gender bias in the legal system.

The prostitution study ("Study") initiated by the Commission included interviews with law enforcement personnel, correctional officers, prosecutors, defense attorneys, private attorneys, juvenile, circuit and county judges, rehabilitation and drug counselors, social workers, medical personnel, women who engage in prostitution, and clients and pimps in nine Florida cities and rural areas around the state. The Study was distinctive in that the author¹⁶¹ worked along with police during the research phase and participated in decoy operations aimed at apprehending "street" prostitutes and their clientele.¹⁶² Her observations in con-

¹⁵⁹ S. Wynter, *Whisper: Women Hurt in Systems of Prostitution Engaged in Revolt*, in *Sex Work* 266 (1987) [hereinafter *Whisper*].

¹⁶⁰ Professor Margaret Baldwin, assistant professor of law, Florida State University College of Law, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission.

¹⁶¹ Dr. Philippa Levine. Dr. Levine is author of *The Amateur and the Professional* (1986) and *Victorian Feminism* (1987).

¹⁶² The term "street prostitution" is used here to distinguish the subject of the Commission's Study from other less visible types of prostitution, such as call-girl operations. Because these other prostitutes are less visible, they have less risk of apprehension by police and are less accessible to researchers.

junction with additional empirical research and public testimony form the basis for the findings and recommendations made in this section.¹⁶³

3. Juvenile Prostitution

Women who have become prostitutes overwhelmingly share a common trait: As children, they ran away from sexual and physical abuse at home.¹⁶⁴ One study found that eighty-five percent of juvenile prostitutes were victims of incest.¹⁶⁵ Other researchers found the same statistical correlation between incest and prostitution activities and explained the connection in these terms:

[A]n incestuous father or father-figure, when accompanied by a child's perception that no one will listen to her confused fears--or worse, will¹⁶⁶ accuse her of lying--lays the foundation for prostitution.

¹⁶³ The full Study, entitled *Prostitution in Florida, a Report to the Gender Bias Commission of the Supreme Court of Florida*, can be obtained for the cost of copying and mailing from Target Copy, 635 West Tennessee Street, Tallahassee, Florida 32304 [hereinafter *Prostitution in Florida*]. Other research provided to the Commission included M.A. Baldwin, *Pornography and the Traffic in Women*, 90 *Yale J. of L. & Feminism* 473 (1989) [hereinafter *Pornography and the Traffic in Women*].

¹⁶⁴ Margaret Baldwin, remarks at the Tallahassee Public Hearing of the Gender Bias Study Commission. See also Canadian Child Welfare Association, *Proceeding of the National Consultation on Adolescent Prostitution* (1989); *Prostitution in Florida*, supra note 163, at 189.

¹⁶⁵ L.J. Smith & S.A.B. Mitchell, *Juveniles in Prostitution, Facts Versus Fiction* 13 (1984). Smith and Mitchell's data showed ninety-five percent to be victims of violent physical abuse, with ninety percent as victims of sexual abuse and eighty-five percent victims of incest. Seven out of every eight incest victims are female. *Id.* at 23-24.

¹⁶⁶ Silbert & Pines, *Occupational Hazards of Street Prostitutes*, 8 *Crim. Just. & Behav.* 395 (1981).

Not all incest victims become prostitutes but almost all prostitutes are the victims of incest. Although sexual abuse in the home is not the cause of prostitution, it is a precondition that lays the foundation for a life of prostitution.

Society's response to this problem usually only exacerbates the problem. For instance, the juvenile justice system inappropriately treats girls who run away from incest and sexual abuse in their homes as simple runaways. Juvenile authorities seem unaware of the direct link between sexual abuse in the home, runaway teenagers and prostitution:

Many girls are arrested when they are little, when they are young teenagers, and they are classified as runaways. These kids are not just runaways, they are victims of assault very often, and it is the having to run away from being physically hurt that sets them up to be out there on the street getting protection from somebody else who really is using them.¹⁶⁷

The primary case investigator of Alternative Life Management for Streetwalkers (ALMS) program in Miami during the early 1980s testified about the impact of these practices:

The 13- and 12-year-old begin on the street, but . . . what really happens to them is when they run away . . . they were picked up on the street by police, and the police know exactly what they are doing, the police know that they are prostituting, but they are under the age of 18, they go to juvenile court. And how does our juvenile court deal with them? Juvenile court labels them as runaways, as incorrigibles, or as delinquent. If they are labeled as runaways or incorrigibles, they are returned to the family. Hey, that's where they just came from. That's where they are being abused and neglected. They are returned to the family. And I have sat in courts and watched judges say to these kids, "now your parents have the right to do anything they want to do to you to discipline you, and if you don't obey your parents, and if you run away again, I will declare you a delinquent." Now, we come back to juvenile court, and here we have the 14 or 15-year-old now labeled

¹⁶⁷ Dr. Ray Armstrong, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

delinquent. And, what happens to the delinquent the first or second time? The delinquent is given some sort of probation or supervision, or something like that. And, guess what? Where do they go? They go back to their family because we are going to have one big happy family no matter what the facts are. And what are the facts? The facts are that these kids on the whole are abused, long-term abuse and neglect victims. That's really the reality. No assessment [is made]. . . . And so what happens is they go back to their families, they run away again, and pretty soon they are gone. They are out on the street.¹⁶⁸

By age eighteen, a runaway may have been in and out of court repeatedly and may already have been adjudicated a delinquent. Upon turning eighteen, however, she leaves the juvenile system and enters the adult criminal justice system, categorized as a "hardened prostitute." Testimony and research consistently indicated that judicial education was the key to successfully treating these children as the abuse victims they really are:

There must be something done to train judges about the subject of child sexual abuse and child abuse and neglect in general. I have seen many, many judges who seriously want help in understanding the dynamics of what they are seeing in this family situation in front of them, but really don't have a foundation of knowledge about child abuse and neglect.¹⁶⁹

4. Coercion

Prostitutes are the victims of coercion and all who become prostitutes were coerced. While some forms of coercion may not appear as such, the coercion is clearly revealed when prostitution is stripped of its apologetic mythology. There are different forms. For some women, the coercion perhaps is economic in origin; for others it is psychological. More likely, it is a combination of the

¹⁶⁸ Dr. Doris Stiles, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

¹⁶⁹ *Id.*

two. Whatever its form, it is coercion nonetheless. The societal myth that women choose a life of prostitution rests upon the premise that choice is possible and that an affirmative decision has been made. This firmly entrenched belief allows society to blame the prostitute for the abusive treatment that inevitably comes from the life "they have chosen." But the realities are different. As runaways, these girls are led into prostitution by males offering the love and approval they have been looking for all their lives. Usually a victim of incest, a prostitute finds violence familiar and her submission results in male approval, care, a sandwich and a place to sleep:

The pimp-prostitute relationship parallels in many respects the dynamic between rejection, guilt and pain which is the psychological experience of abused children, fearing that noncompliance will lead to rejection, failing to understand why what is happening to them is happening, and experiencing pain both physically and psychologically.¹⁷⁰

Pimps control over ninety percent of street prostitutes, no matter what their age.¹⁷¹ The pimp exerts control by offering the runaway the protection of isolation and anonymity from her past, her family and friends. She is given a new name, her thought processes are modified, and her will is broken.¹⁷² Pornography is often the pimp's preferred route of introducing a "new girl" to prostitution:

Pornography is routinely "introduced" to girls as a means of effecting a "transition" to prostitution. The pornography is intended to normalize the practices depicted in sex with the pimp and ultimately with customers. . . . Forcing women to perform in pornography is one of the methods used by pimps to achieve control of the women they prostitute. The pornography is used to threaten blackmail, inspire terror, and to break a woman's resistance to prostitu-

¹⁷⁰ *Prostitution in Florida*, supra note 163, at 190.

¹⁷¹ K. Barry, *Female Sexual Slavery* 6 (1979).

¹⁷² *Id.* at 79. See K. Barry, *Social Etiology of Crimes Against Women* 167 (1985).

tion within a relationship promising "protection." Alone, friendless, and broke, a woman may be used in pornography by a pimp who otherwise appears harmless to her, and the only person who cares for her welfare.¹⁷³

Because society does not understand, nor acknowledge the process of coercion that underlies prostitution, it often erroneously is presumed that women who prostitute are willing participants in pornography. In reality, these women are more fairly analogized to prisoners of war. However, the public's reaction to girls coerced into performing pornography is quite dissimilar to the public's reaction to coerced performances made by captive hostages:

It was clear to me that in the years I was in prostitution that all of the women I met were systematically coerced into prostitution and pornography the same way a prisoner of war is systematically imprisoned, tortured and starved into compliance by his captors. The difference is that prisoners of war are not held responsible for coerced statements and acts but when a girl or woman is coerced in this very manner into prostitution and for use in pornography, she is held responsible.¹⁷⁴

5. Adult Prostitution

Adult prostitutes are "grown-up" juvenile prostitutes. While the legal system may treat them as distinct and different from juvenile prostitutes, they are merely in a different position on the same continuum. Adult prostitutes may have different problems than juvenile prostitutes, but the legal fiction that they are self-determining adults because of their age is counterproductive in eliminating prostitution. The entire continuum of prostitution practices must be dealt with in a coordinated campaign.

¹⁷³ *Pornography and the Traffic in Women*, *supra* note 163, at 16.

¹⁷⁴ *Id.* at 25 (citing to U.S. Department of Justice, *Attorney General's Commission on Pornography: Final Report* 809-10 (1986)).

On their face, Florida's prostitution statutes¹⁷⁵ are gender-neutral. The definition of prostitution as "the giving or receiving of the body for sexual activity for hire"¹⁷⁶ makes both the man and the woman subject to arrest. Other statutes outlaw coercing¹⁷⁷ or offering¹⁷⁸ another to commit prostitution.¹⁷⁹ The Commission found that statewide enforcement practices primarily target women.¹⁸⁰ Thus, despite the seeming neutrality of Florida's statute, women primarily are held culpable for prostitution.¹⁸¹

Given the gender-biased enforcement of the laws, decriminalization has gained advocates internationally. Decriminalization can occur in several forms. "Wholesale decriminalization" permits all prostitution activities but allows local municipalities to regulate the practice through licensing and zoning.¹⁸² The result most often is a two-tiered system: legal activities that are regulated, and

¹⁷⁵ Fla. Stat. §§ 796.01-.08 (1989).

¹⁷⁶ *Id.* § 796.07(1)(a).

¹⁷⁷ *Id.* § 796.04.

¹⁷⁸ *Id.* § 796.07(2)(b).

¹⁷⁹ In this respect, the Florida statute is superior to the 1961 Model Penal Code, which finds acceptable the need for a "professional outlet for male sexuality," and differentiates the relative guilt of the parties. Under the Model Penal Code, the male client is deemed less culpable and therefore is treated with leniency. The prostitute, almost always a female, is not. See *Prostitution in Florida*, *supra* note 163, at 3.

¹⁸⁰ Nationally, as well, the overwhelming majority of those prosecuted for prostitution are women. Prosecutions against male clients are close to nonexistent. In 1983, for example, 126,500 arrests were made for prostitution in the United States. Of these, seventy-three percent were females and only ten percent were males. The remainder of the arrests were of transvestites or transsexuals. U.S. Department of Justice, *Sourcebook on Criminal Justice Statistics* 179 (1985).

¹⁸¹ Letter from Professor Margaret Baldwin, Florida State University College of Law, to the Gender Bias Study Commission (Aug. 23, 1988).

¹⁸² An example is the decriminalization of prostitution in West Germany, Austria, Denmark and the Netherlands.

illegal activities that are not. Another method is decriminalization for women only. Male customers and coercive agents such as "pimps" remain criminally liable, but women are not. This type of decriminalization focuses its attention on the male procurer and user, rather than the prostitute.¹⁸³

6. *The Client*

The standard profile of the man who pays for the services of the prostitute is white, middle class and married.¹⁸⁴ According to Florida police officers, the men they apprehended were likely to be "substantial citizens" such as lawyers and judges, politicians, priests and deacons, law enforcement officers and high-ranking military personnel. They are the ordinary and often successful people of modern society, not misfits and psychopaths.

Despite engaging in criminal activity, these men are not regarded as criminals. The attorneys, judges and the police interviewed by the Commission justified this perception by explaining that these were "frequently men who had much to lose by public exposure."¹⁸⁵ They were "upstanding citizens" whose family and fortunes would suffer if too punitive an action were invoked.¹⁸⁶ Law enforcement officials reported that one of two things would happen upon the arrest of a prominent man: Either the state attorney would quietly drop the charge or, if the man were a celebrity, the case would become headline news.¹⁸⁷ This reluctance to vigorously prosecute the criminal conduct of male

¹⁸³ See *Whisper*, *supra* note 159, at 266.

¹⁸⁴ *Prostitution in Florida*, *supra* note 163, at 78.

¹⁸⁵ *Id.* at 77.

¹⁸⁶ Protection of the man's family is often cited as the justification for the more lenient treatment of these men. Interestingly, however, no one considers protecting the prostitute from prostitution or the prostitute's family. Nor does anyone consider protecting the client's wife from exposure to disease.

¹⁸⁷ *Prostitution in Florida*, *supra* note 163, at 137.

customers encourages the coercion of young girls into prostitution, while shielding the motivating force of that coercion. Indeed,

[a]ny man picking up a 12- or 13-year-old . . . can hardly fail to notice that he is dealing with a pubescent child. [The children] looked their age despite the trappings of adulthood behind which they were often attempting to hide.¹⁸⁸

This demand for young girls is the foundation of all prostitution activity. This demand for sexual experience with young girls does not occur only on the street, but starts in the home. The dynamic is the same, only the locale is different. Without demand from customers, there would be no prostitution. Yet our system currently gives clients the greatest legal and social protections of all even though they are the *raison d'etre* of the entire institution. This means that prostitution will continue to flourish. It also strongly supports an inference that this gender-biased application of the law has the blessing, however tacit, of the state.

a. Arrests

Prostitution is one of the leading reasons for arresting women in Florida.¹⁸⁹ Women constitute the overwhelming majority of prostitution arrests in Florida.¹⁹⁰ Police uniformly focus on apprehending prostitutes rather than customers.¹⁹¹ On those occasions when customers actually are targeted, however, the number of arrests made are far greater and the burden on law enforcement

¹⁸⁸ *Id.* at 77.

¹⁸⁹ McElrath, Poulos & Blomberg, *Gender and Justice: Offense Patterns and Criminal/Juvenile Justice Decisionmaking* (1988) (unpublished) (available from the Gender Bias Study Commission). Since 1975, prostitution has either ranked third or fourth after larceny, worthless checks or possession of drugs. *Id.*

¹⁹⁰ Florida Department of Law Enforcement, *Crime in Florida* (1971-86); *Prostitution in Florida*, *supra* note 163, at 110-20.

¹⁹¹ *Id.* at 100.

resources is less.¹⁹² Even though the reverse decoy may be the most successful method of enforcing the prostitution laws, it is used only once a month at best, or only once every three months at worst, by most law enforcement agencies except the Florida Highway Patrol (FHP). FHP uses the reverse decoy operation with great success at rest stops throughout the state. These arrest operations, combined with prosecutions by local state attorneys' offices have demonstrated substantial decreases in prostitution activities where they have been initiated.¹⁹³

b. *Prosecutorial Policies*

Testimony and research indicated that many state attorneys' offices offer customers an opportunity to turn state's witness against the prostitute. As the Commission's Study concluded:

[I]n every case the predominantly female prostitution population is receiving more severe treatment, both in the courtroom and with regard to bail or jail, than their more numerous but less beleaguered clientele.¹⁹⁴

There are several apparent justifications for this unfair practice. The prostitute's testimony is considered unreliable¹⁹⁵ and her crime more severe. This is be-

¹⁹² The relatively recent use of the reverse-decoy operation has been successful in netting substantial numbers of men despite infrequent use. It may account for the fact that arrests of prostitutes constituted 78.1 percent of all prostitution arrests in 1971 but only 60.8 percent in 1986. Compare Florida Department of Law Enforcement, *Crime in Florida* (1971) with Florida Department of Law Enforcement, *Crime in Florida* (1986). See *Prostitution in Florida*, *supra* note 163, at 110-20.

¹⁹³ *Prostitution in Florida*, *supra* note 163, at 102.

¹⁹⁴ *Id.* at 121.

¹⁹⁵ This practice actually constitutes a catch-22. The "unreliability" argument seems facially persuasive only because prostitutes have criminal records that their clients lack. If clients were arrested and prosecuted, this would not be the case.

cause only the prostitute is thought to have deviated from the societal gender norms that the legal system protects and promotes. Whatever the rationale or rationalization, the practice allows customers to avoid arrest and prosecution. It affords them a degree of secrecy and lets them avoid being labeled as repeat offenders.

7. Sentencing Practices

The disparity in treatment of the men and women continues at the sentencing stage. Consistently the client is treated in a more lenient fashion. The common practice is to jail the woman and allow the client his freedom in exchange for an agreement to testify against the woman in court. In Orange County, for example, state attorney policy requires that clients be given the opportunity to turn state's witness against the prostitute. There were no reports of offering a similar opportunity to the prostitute.¹⁹⁶ Other jurisdictions adhere to such policies as well. For example in Jacksonville women on the average spend over twenty days in jail for every six that customers do. In 1987, adjudication was withheld for 212 male customers but only fourteen female prostitutes.¹⁹⁷

Recidivism was the most common argument given to justify the discrepancy in treatment. After all, criminal records usually disclose that prostitutes are repeat offenders while clients are not. Indeed, most women convicted of prostitution are repeat offenders.¹⁹⁸ But as research and testimony indicated

¹⁹⁶ *Prostitution in Florida*, supra note 163, at 123.

¹⁹⁷ Jacksonville Sheriff's Office, *Statistics Concerning Sentences for Prostitution*, (1987) (available from Jacksonville Sheriff's Office).

¹⁹⁸ *Prostitution in Florida*, supra note 163, at 126. If on no other charge, the prostitute is often found guilty of "loitering for prostitution" in violation of a municipal, county or city ordinance empowering the police to arrest her without proof of a crime. *Id.*

the apparent low rate of recidivism among clients engaging street prostitutes is illusory:

They know where to look for the women and men who hire their bodies. They know the language employed, the euphemisms, and the colloquialisms. They know the prices their potential consorts can command. They know the procedure, the preliminary conversational gambit and word game, the routine designed to find out if their target is an undercover detective. For the most part, I would conclude that men seeking the services of a prostitute are on familiar territory.¹⁹⁹

Judicial practices regarding the withholding of adjudications contribute to the illusion that male customers are not repeat offenders. Generally the first-time offense of a customer yields a withholding of adjudication whereas the first offense of a prostitute commonly yields more punitive treatment. In Duval County, for example, clients are issued a notice to appear while the prostitutes are jailed upon arrest. The clients receive a withholding of adjudication but the prostitutes usually enter a plea of nolo contendere at first appearance so they can receive a sentence of time served.²⁰⁰

In Dade County the standard practice and prosecutorial policy is to recommend a fifteen-day sentence for the women, with no plea bargain even for a first offense; men, however, receive only a fine.²⁰¹ In Fort Lauderdale, on first offense women go to jail with a recommended sentence of ten days, while the men are fined an average of \$300 with adjudication withheld.²⁰² The Hillsborough County state attorney's office routinely recommends adjudication even on first offense for prostitutes though not for customers. The most common practice for men charged as customers is to withhold adjudication and impose a fine of around \$300. Jail time is rarely used against this category of defen-

199 *Id.*

200 *Id.* at 130.

201 *Id.*

202 *Id.* at 130-31.

dants.²⁰³ In Volusia County clients customarily receive a withheld adjudication and a fine of about \$250; prostitutes, on the other hand, receive ten to sixty days in jail.²⁰⁴ The policy of the State Attorney's Office in Orange County is to drop charges against out-of-state men arrested for prostitution.²⁰⁵

Withholding adjudication is rare for rest-stop arrests in Alachua County for either of the accused parties; and bonds run as high as \$5,000. In addition, the driver's licenses of the arrested men are subject to revocation pursuant to section 322.26(7), Florida Statutes.²⁰⁶ Male rest-stop customers are issued a trespass warning that forbids them to reenter the rest stop where they were arrested. Moreover, they pay a towing fee and a fine of \$500, and spend five days in jail. As a condition of release, they must provide verification of their employment or residence.²⁰⁷

²⁰³ *Id.* at 131.

²⁰⁴ *Id.* at 132.

²⁰⁵ *Id.* at 133.

²⁰⁶ Fla. Stat. § 322.26 (1989). The statute provides in pertinent part:

The [Department of Highway Safety & Motor Vehicles] shall forthwith revoke the license or driving privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction of any of the following offenses:

. . . .
(7) Any violation of the law against lewdness, assignation, and prostitution where such violation has been effected through the use of a motor vehicle.

Id. § 322.26(1)(7).

²⁰⁷ *Id.*

8. Successful Models of Treatment and Rehabilitation

At present, the criminal justice system is wasting enormous amounts of state funds on sanctions that fail to appreciably deter prostitution. During the Commission's study, no one interviewed within the criminal justice system felt that existing practices or options were effective. However, there are alternatives.

One successful model program, The Miami Alternative Life Management for Streetwalkers (ALMS) project, found that prostitutes exhibited clear indications of psychological distress and were in urgent need of therapeutic treatment. The fifty women--ages eighteen to forty-four--who entered the two-year rehabilitation program were all victims of physical or sexual abuse as children,²⁰⁸ a phenomenon reported in similar findings nationwide.²⁰⁹ At least seventy-five percent of them had some form of drug habit. All the women had been arrested at least four times. The estimated cost of each arrest and overnight incarceration was \$1,000, or some \$4,000 per prostitute, while the cost of the ALMS project ran to only \$2,000 per women per year.²¹⁰ The director of the program testified that arrest and jail were inappropriate sanctions:

Arresting prostitutes and placing them in jail is treating serious psychological problems inappropriately. Society continues to treat prostitution as an inevitability, the ultimate statement of a sexist society in which the victimized girl child becomes the self-victimized female through her prostitute activity, and then is further victimized by the criminal

²⁰⁸ Dr. Ray Armstrong, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

²⁰⁹ Silbert & Pines, *Occupational Hazards of Street Prostitutes*, 8 Crim. J. & Behav. 395 (1981).

²¹⁰ Dr. Ray Armstrong, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

justice system. She²¹¹ rather than the pimp, and very often the john, is arrested.

The social and psychological profile developed during the project indicated that these women typically had inappropriate parental models. They were runaways who, out of a misguided effort to find protection, often found somebody--a pimp--who promised to help them.²¹²

One successful treatment method used by the Miami ALMS project was a standardized legal protocol for arrested prostitutes: one courtroom with one judge, one public defender and one state attorney. Counselors were present at all proceedings. Placement in a treatment program could result in having adjudication withheld for a first offense, or a suspended sentence. First offenders had access to a pretrial counseling program. Special mitigating circumstances were considered by the sentencing court. The project organizers discovered that by using the legal system to encourage women to participate in counseling and rehabilitation programs, women were able to escape from the pull of the pimp's "protection" and better take care of themselves.

There are other successful models. Covenant House in Fort Lauderdale is one of the busiest units in a chain of a nationwide juvenile treatment facilities, second only to its counterpart in New York City. Covenant House has been highly successful in serving the distressed and exploited juvenile population.

The Miami ALMS program and Covenant House share some distinctive features. Both attempt to prevent crises by having workers actively reach out to troubled persons in their communities. The outreach program provides practical aid such as child care and housing facilities, job training and placement services, help with medical problems, encouragement and advice in dealing with bureaucracies, and support at court proceedings. Through these services, a greater cost benefit is achieved than is possible under the current system of arresting prostitutes. Such was the testimony of the Director of the Miami Project:

211 *Id.*

212 *Id.*

[T]he cost benefit [is] so clear, if you study the numbers-- you know, that if you would take these kids who are already prostituting at age 13 and 14, seeing them as abused and neglected, putting them in an appropriate group home and rehabilitating them for four years, the cost benefit to society later just in terms of their later arrests, to say nothing for the potential for the spread of AIDS and other things like that, is so clear.²¹³

²¹³ Dr. Doris Stiles, remarks at the Miami Public Hearing of the Gender Bias Study Commission.

9. 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.

10. 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.

E. Juvenile Justice

1. Introduction

Juvenile misconduct and adult crime share at least one striking similarity: females and males generally do not commit the same types of offenses.²¹⁴ Indeed, juvenile girls are overrepresented in the juvenile category known as "status offenders"²¹⁵ because they tend to commit noncriminal offenses, such as running away from home. Boys, however, tend to be incarcerated for criminal behavior.²¹⁶

Despite these differences, the Commission found that Florida's juvenile justice system is designed almost exclusively to treat particular forms of male misconduct. In fact, treatment programs and facilities are more readily available for boys than girls throughout the state. Girls thus have less opportunity for rehabilitative therapy.

²¹⁴ This conclusion is the result of studies initiated by or presented to the Commission. One of these studied juvenile arrests since 1971 and case processing for 1985. McElrath, Poulas & Blomberg, *Gender and Justice: Offense Patterns and Criminal/Juvenile Justice Decisionmaking* (June 30, 1988) (unpublished report available from Gender Bias Study Commission) [hereinafter *Gender and Justice*]. In another, sociologist Ruth Horowitz and criminologist Anne Pottieger from the University of Delaware studied the criminal behavior of serious delinquents in Miami. Horowitz & Pottieger, *Gender Bias in Juvenile Justice Handling of Seriously Crime Involved Youths* (Nov. 1988) (unpublished report available from the Gender Bias Study Commission) [hereinafter *Serious Crime*]. Criminologists at the University of Florida examined gender bias and Florida's participation in the Juvenile Justice and Delinquency Act of 1974, 42 U.S.C. §§ 5601-5778 (1987). Frazier & Bishop, *Gender Bias in the Official Processing of Delinquents and Status Offenders: A Decade after the Passage of the JJDP Act* (working papers available from the Gender Bias Study Commission) [hereinafter *Gender Bias and JJDP Act*].

²¹⁵ See Fla. Stat. §§ 39.42-.447 (1989) (dealing with "children in need of services," more often called "status offenders").

²¹⁶ *Serious Crime*, *supra* note 214, at 16.

Moreover, when the system does intervene, the tendency to treat girls using models designed for boys fails to adequately address the differences between male and female delinquency.²¹⁷ The overall effect in many instances is profoundly harmful both to girls and society as a whole. Indeed, present practices may actually encourage runaway girls to enter a life of prostitution--a tragic result society surely does not intend.

2. Juvenile Justice Processing

The reason for this particularly harmful form of gender bias rests partly with the procedures required in juvenile cases. When a child is taken into custody, the statute governing juveniles²¹⁸ requires a precise sequence of events. First, officials of HRS recommend whether the state attorney should file a delinquency petition. The state attorney then determines whether a court referral is warranted.

If the case is filed, a court hearing will determine the all-important "status" of the offender. Under the juvenile justice statute,²¹⁹ there are only three categories. First is the status offender²²⁰--the so-called "child in need of services"--consisting of ungovernable children, truants and runaways.²²¹ Second are dependent²²² children, or those who are abandoned, abused or neglected.²²³

²¹⁷ Researchers in criminology now acknowledge that virtually all models of juvenile criminality, especially those focusing on delinquency, are based on disadvantaged males in public settings. M. Chesney-Lind, *Girl's Crime & Women's Place: Toward a Feminist Model of Female Delinquency*, 35 *Crime & Delinq.* 5-29 (1989) [hereinafter *Girl's Crime*].

²¹⁸ Fla. Stat. §§ 39.001-.516 (1989).

²¹⁹ *Id.*

²²⁰ *See id.* §§ 39.42-.447 (dealing with children in need of services).

²²¹ *See id.* § 39.01(8) (defining "child in need of services").

²²² *See id.* §§ 39.40-.418.

²²³ *See id.* § 39.01(10) (defining "child who is found to be dependent").

Last are delinquent children²²⁴--those who have committed any criminal offense.²²⁵

By separating children into each of these categories, the court profoundly influences all that is still to come. This is so because distinctly different procedures and practices exist for each category. And because girls disproportionately are categorized as status offenders, they thus are treated differently than boys.

3. Operation of the System

The long-term effect of this practice was one of the most disturbing discoveries made by this Commission. Across the state, the Commission uncovered strong evidence of the direct causal link between current juvenile justice practices and juvenile prostitution. This evidence is all the more tragic in light of the evidence, discussed earlier in this Report,²²⁶ that adult prostitutes usually begin their careers on the street when still juveniles.

Florida's juvenile justice system contributes to juvenile prostitution in part because of its tendency to treat girls as status offenders. A large percentage of status offenders are runaways, and many of these--eighty percent in one national study--have run away from sexual and physical abuse in the home.²²⁷ In one 1987 study in Florida, runaway children accounted for thirty-five percent of all status offenders.²²⁸ Ungovernable children²²⁹ accounted for

²²⁴ See *id.* §§ 39.02-.337.

²²⁵ See *id.* § 39.01(9) (defining "child who has committed a delinquent act").

²²⁶ See *supra* Chapter III, § D.

²²⁷ Faber, Kinast, McCoard & Falkner, *Violence in Families of Adolescent Runaways*, 8 *Child Abuse & Neglect* 296 (1984).

²²⁸ Morris, Walters & Keyser, *An Analysis of Florida's Juvenile Justice System* 5 (July 1987) (Policy Studies Clinic, Florida State University College of Law [hereinafter *Florida's Juvenile Justice System*]).

²²⁹ See Fla. Stat. § 39.01(8)(c) (1989).

another forty-one percent and truants, the remaining twenty-four percent.²³⁰ According to HRS data, from the age of sixteen on, a majority--fifty-seven percent--of status offenders are runaways.²³¹ Nationally, status offenses account for some seventy-five percent of all female juvenile arrests.²³²

One fact clearly established by these statistics and other evidence presented to the Commission is that a substantial number of female status offenders run away from abusive home environments. They then invariably commit criminal acts in order to survive. Either as the victim or the perpetrator, they become involved most often in prostitution, pornography, shoplifting and panhandling.²³³ One study showed that, while 45.5 percent of all male juvenile arrests were for drug offenses, a nearly equal percentage of female juveniles--41.8 percent--were arrested for prostitution; and virtually no arrests for juvenile male prostitution occurred.²³⁴

Until quite recently, young girls who complained of sexual and physical abuse at home usually were ignored or silenced in a variety of ways. When these juveniles came into contact with the legal system their survival attempts oftentimes were treated as criminal acts:

[S]tatutes that were originally placed in law to 'protect' young people have, in the case of girls' delinquency criminalized their survival strategies. . . . If they persist-

²³⁰ *Florida's Juvenile Justice System, supra note 228, at 5.*

²³¹ Florida Department of Health & Rehabilitative Services, *Children, Youth & Families: Outcome Evaluation Report* 184 (Dec. 31, 1988) [hereinafter *HRS Outcome Evaluation Report*]. See also "An Endless Parade of Runaway Kids," U.S. News & World Report, Jan. 17, 1983, at 64.

²³² *Girls' Crime, supra note 217, at 7-10.*

²³³ *Florida's Juvenile Justice System, supra note 228, at 6.*

²³⁴ *Serious Crime, supra note 214, at 9-13.*

ed in their refusal to stay at that home, however intolerable, they were incarcerated. . . .

Unable to enroll in school or take a job to support themselves because they fear detection, young female runaways are forced onto the streets . . . [and] may actually be forced by present laws into petty criminal activity, prostitution and drug use. . . .

American society has defined as desirable, youthful, physically perfect women. This means that girls on the street, who have little else of value to trade, are encouraged to utilize this 'resource.' It also means that the criminal subculture views them from this perspective.²³⁵

This causal connection between the juvenile justice system's treatment of runaway girls and their eventual entry into prostitution activities cannot be ignored or minimized.²³⁶ The founding director of an organization called "PACE," a highly successful juvenile program for girls in Jacksonville, gave one example of how this process occurs:

[A]nd the judge said to her, "Why did you run away," and her mother and father are sitting across the table from her, obviously she is not going to say then and there, "I'm being sexually abused." So, the judge ... [said] "Obey your parents, go to school, do not run away." So, she returned home that night. She was sexually abused again. She left again. She was picked up again. The only alternative the judge had was the detention center. . . .²³⁷

Similar scenes undoubtedly are repeated across Florida constantly. HRS has reported, for instance, that the vast majority of runaways are returned to their homes. For boys, the figure is seventy-two percent, with a sixty-nine percent return rate reported for girls. HRS also reports

²³⁵ *Girls' Crime*, *supra* note 217, at 24. See also D.S. Campagna & D. Poffenberger, *The Sexual Trafficking in Children* (1988); E. Miller, *Street Women* (1986).

²³⁶ See, e.g., the Commission's study of adult prostitution. *Supra* Chapter III, § D.

²³⁷ Vicki Burke, remarks at the Jacksonville Public Hearing of the Gender Bias Study Commission.

similar figures for the other two status offense categories--truants and ungovernables.²³⁸

The Commission has found still other instances of counterproductive or gender-biased practices in the juvenile justice system. Girl status offenders in Florida are incarcerated in a secure detention facility more often than boy status offenders.²³⁹ This practice may reflect national trends. National studies indicate, for example, that the majority of girls are incarcerated for status offenses, while most boys are incarcerated for criminal offenses.²⁴⁰ One study found that at least seventy percent of incarcerated girls were status offenders.²⁴¹

Florida also has one of the highest rates of juvenile detentions in the country.²⁴² According to HRS data for fiscal year 1987-88, 39,498 juveniles were released from secure detention facilities.²⁴³ These juveniles are incarcerated in overcrowded, inadequate and inappropriate facilities. Yet the incarceration of juveniles is the least desirable of all possible alternatives in the juvenile system. Nevertheless, in Florida there are few alternatives to incarceration, and it thus is routinely used throughout the system.

4. Dispositions

If a child comes before a juvenile court the outcome can range from a reprimand to incarceration. Fines, community service and probation are options that allow for continued supervision of the youth. Testimony and empirical data

²³⁸ *HRS Outcome Evaluation Report*, *supra* note 231, at 196.

²³⁹ *Florida's Juvenile Justice System*, *supra* note 228, at 18.

²⁴⁰ *Serious Crime*, *supra* note 214, at 16.

²⁴¹ *Id.*

²⁴² *Florida's Juvenile Justice System*, *supra* note 228, at v.

²⁴³ *HRS Outcome Evaluation Report*, *supra* note 231, at 372.

indicate that the primary and most acute problem in the juvenile justice system is a systemic lack of resources and alternatives to incarceration for girls. In some locales no such alternatives exist, regardless of the girls' categorization as status offenders or delinquents.

In Jacksonville the director of PACE testified that, before her program started, the juvenile courts in Duval County had no alternative but incarceration for girls--euphemistically called "residential" programs. Her testimony indicated that HRS funds alternative programs around the state for boys but not for girls:

HRS still continues not to fund programs for girls, residential or non-residential. . . . [T]here are many, many more programs for boys than there are for girls. . . .

That's what bothers me is that at least the boys have something, where the girls have truly nothing. There was a program down in Broward County[;] it was a program for girls--and HRS wanted to close it down and reopen it for boys, and thank goodness, the juvenile judges down there, and some of the other community leaders called Tallahassee and wouldn't let them close it.

From the Jacksonville Public Hearing

A review of programs around the state supports this testimony. For delinquent girls there are only three programs in the state. One is a secure facility for delinquents in Broward County, and the other is a residential, community-based program called Specialized Treatment Alternatives for Youth (STAY). During the two years in which the Commission conducted hearings and study, HRS also opened a wilderness camp for girls.

Delinquent boys, however, have a multitude of program alternatives. These range from wilderness camps and outward bound programs to the Biscayne Bay Marine Institute, Florida Environmental Institute and the San Antonio Boys Village. While the female juvenile population that is incarcerated annually is small compared to the male juvenile population,²⁴⁴ the Commission found that

²⁴⁴ Of 120,841 juveniles who went through HRS intake in 1987-88, a total of 2,036 were incarcerated after court adjudication. Of these, 1,802 were male and 234 female. There also were 40,816 juveniles in secure detention awaiting court hearing or awaiting placement after court disposition. Of these, twenty-two per-

many of the male programs were designed for small groups--but were exclusively limited to male juveniles.²⁴⁵

Judges²⁴⁶ reported that the severe inadequacy of programs and facilities for status offenders--the majority of which are girls--results in unnecessary incarcerations:

[S]tatus offenders frequently end up in "temporary" detention along with juvenile delinquents, pending openings in appropriate facilities.

[Some] status offenders . . . have to sleep on the floor in the detention centers, officers walking over and around them, because there are no shelter homes for them.²⁴⁷

The Federal Juvenile Justice Delinquency Prevention Act²⁴⁸ prohibits status offenders from being held in detention facilities meant for delinquents. Despite state government pronouncements of compliance with the federal mandate, the Commission was informed that status offenders--especially girls--continue to be subject to this sort of treatment.²⁴⁹ Judges on many occasions may be acting out of the best of motives--a desire to remove the girl from an abu-

cent--7,592--were girls and seventy-eight percent--33,224--were boys. *HRS Outcome Evaluation Report*, *supra* note 231, at 198.

²⁴⁵ The Florida Environmental Institute served only twenty-seven males, San Antonio served ninety-five and Biscayne Bay Marine Institute served 101. *Id.*, at 197.

²⁴⁶ Those interviewed were Judges William Gladstone, Victor Cawthon, William Frye III, Jack Page, James Carlisle, Dennis Mahoney, John Miller and Thomas Kirk. *Florida's Juvenile Justice Study*, *supra* note 228, at 126-36.

²⁴⁷ *Id.* at 128-29.

²⁴⁸ 42 U.S.C. §§ 5601-5778 (Supp. 1989).

²⁴⁹ A recent study undertaken by the University of Florida Center for Studies in Criminology and the Law and the Florida Center for Children and Youth's Juvenile Justice Delinquency Prevention Act Compliance Project found that status offenders are oftentimes held in detention facilities despite the federal mandate. Interview with Donna Bishop, University of Florida Center for Studies in Criminology & the Law (June 26, 1989).

sive home environment, if only temporarily. One method by which this can be done is by placing status offenders in detention for disobeying certain types of court orders.²⁵⁰ For example, a judge might order a child not to run away, and then hold the child in contempt for violating this order. However, this practice almost certainly violates the spirit, although perhaps not the letter, of the federal Act.

In any event, the wisdom of this practice is questionable. A court may feel it is "protecting" the juvenile by removing her from an abusive home. Yet protective detention at best may only postpone the problem and at worst may have an opposite effect from that intended. Indeed, the girls may experience detention as a punitive sanction.²⁵¹ Moreover, protective confinement without any attempt at rehabilitation or therapy results generally in harsher treatment for girls. In similar circumstances, many boys are treated in one of the many residential or rehabilitative programs around the state.

Similar opportunities for placement in residential and other treatment facilities must be made available to girls. The Florida Department of Health and Rehabilitative Services and the entire juvenile justice process in Florida have been subject to intense scrutiny by the public, press, concerned citizens groups and the federal government. Models of acceptable and adequate services to juveniles already have been recommended and should be implemented.²⁵²

²⁵⁰ R.M.P. v. Jones, 419 So.2d 618 (Fla. 1982) (contempt is permissible for status offender who disobeys valid court order not entered pursuant to chapter 39, Florida Statutes). Cf. A.O. v. State, 456 So.2d 1173 (Fla. 1984) (contempt not permissible when arising from delinquency adjudication pursuant to chapter 39, Florida Statutes).

²⁵¹ Interview with Donna Bishop, University of Florida Center for Studies in Criminology & the Law (June 26, 1989).

²⁵² See, e.g., Dade County State Attorney's Office, *Juvenile Justice System Project: Model Juvenile Justice Program* (1987) (available from Gender Bias Study Commission); Samuel M. Streit, Assistant Secretary for the Florida Department of Health and Rehabilitative Services' (HRS) Children, Youth and Family Services, remarks to the Florida Senate Health & Rehabilitative Services Committee (February 8, 1989) (reproduced in Florida Department of Health & Rehabilitative Services, *Florida's Crises and Florida's Future* (1989)); Glynn, *Precious Time: Working with Courts to Get Children Safely Home*, (May 1988) (sponsored by League of Women Voters of Dade County Education Fund, Inc.).

5. 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.

6. 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

IV. GENDER BIAS IN THE LEGAL PROFESSION

A. Introduction

Although the legal profession now admits women, it has not fully accepted them. Bias against women lawyers--sometimes subtle, sometimes flagrant--is evident everywhere. Today, women are a sizable percentage of the profession as a whole, but they are not represented proportionately in law firm partnerships, judgeships or tenured law faculty positions. Disproportionate numbers of women work in government and legal services. Yet even within these specialities they are not found in policy-making positions.¹

Nationally almost half of the male attorneys graduating after 1968 have become law firm partners; but only thirteen percent of the women have done so.² The numbers of women in law firm partnerships have risen only one percent since 1982, and only eight percent of the largest firms have women partners.³ Most disturbing is the fact that women typically are paid less than males holding similar jobs, and are not represented at all in the highest salary brackets.⁴

The most recent Florida Bar attorneys' survey of salaries reports that seventy-five percent of the male attorneys in practice five years or less earn

¹ The Florida Bar Survey of Attorneys shows that women are twice as likely as men to be in government positions. The Florida Bar, *Report on the Florida Bar Survey of Attorneys* (June 28, 1988) [hereinafter *The Florida Bar Attorneys' Survey*].

² "Still a Long Way to Go for Women and Minorities," *National Law Journal*, Feb. 1, 1988, at 1.

³ *Id.*

⁴ "Women in the Law," *Barrister*, Spring 1989 [hereinafter *Women in the Law*].

more than \$25,000 while fewer than half of women do.⁵ Male attorneys continue to outearn women at every stage in their careers.⁶ The Florida Bar's 1986 economic survey found not a single category in which women received remuneration comparable to men.⁷ A separate study done for the Commission also found a marked disparity in salaries. Among assistant state attorneys, for example, men on average earn around \$3,600 per year more than women. Similarly, for assistant public defenders, men earn around \$3,000 more a year than women.⁸ Even in the predominantly female Paralegal Specialist II classification, there is a salary advantage for men.⁹ In each category analyzed by the Commission, the men earn more than the women.¹⁰

B. Credibility

Are men always more credible than women? In the legal profession, there are many who think so. And even when they do not publicly subscribe to this view, many others nevertheless act as though they do. Through such prejudiced views and actions, one of the more subtle but far-reaching forms of gender bias is created. After all, to be credible is to be worthy of confidence--to be believable. A lack of credibility means a loss of trust and good faith. For an attorney, credibility is crucial. Any behavior--whether explicit, implicit, ver-

⁵ The Florida Bar, *Survey Results of Attorneys' Average Salaries by Hours Employed and Years of Membership in The Florida Bar* (1988).

⁶ Women in the Law, *supra* note 4.

⁷ The Florida Bar, *1986 Economic Survey: Breakdown by Gender* (1986).

⁸ E.W. Terrie, Analysis of Gender-Based Salary Differentials using Justice Administration Commission Data (June 1988) (Center for the Study of Population, Florida State University).

⁹ *Id.* The category consists of fifty-three women and fourteen men. *Id.*

¹⁰ *Id.*

bal, or non-verbal--that casts doubt upon a woman attorney's credibility simply because she is a woman is unprofessional.

Testimony and responses to The Florida Bar Attorneys' Survey provide insight into the types of conduct that adversely affect a female attorney's credibility:

I think it's a very subtle form of just not taking you seriously. Or your presence is just not as significant as it might be if you were a white male.

From the Jacksonville Regional Meeting

Others described it as "certain gestures, certain sighs, certain things that lead you to believe that you are not being taken as seriously as your male counterparts."¹¹

The Commission heard repeated complaints about male lawyers or judges impugning the credibility of their female colleagues. Some women reported that it adversely affected their ability to be zealous advocates of their clients' interests. Others testified that, after seeing the reaction of male attorneys, the clients themselves began to question the ability of the woman to be an advocate. As one attorney stated:

My client was there from Minnesota. . . . [H]e came back to my office with me, and said it was obvious that the judge was being condescending. . . . [I]t did hurt my position with my client, and my client after that asked that I not go to court on his behalf, asked that one of my partners, who is a male, do so.

From the Orlando Regional Meeting

Many other examples of similar biased judicial behavior were supplied to the Commission. One attorney told the Commission:

If you think about sitting in a judge's chambers and discussing a very complex matter with your client by your

¹¹ From the Jacksonville Public Hearing of the Gender Bias Study Commission.

side and someone refers to you as "Sweetheart," "little lady," and so forth, think about how your client feels.

From the Jacksonville Public Hearing

Another reported that a judge first praised her opponent as "the best attorney in the county" and then warned her that "[y]ou're not going to win this case by being cute, young lady."¹² Still another told of a judge who released a client into her custody with the admonition, "But this doesn't mean you should sleep with him."¹³ In Orlando the Commission received testimony of a judge who said to a defendant, "Are you satisfied with the representation that you had at trial, even though she was a woman?"¹⁴ One county court judge asked a female lawyer in open court, with the jury seated, whether he could "break" her and get her to cry in his courtroom.¹⁵

There is no question: Judicial behavior of this type is inappropriate in any setting. But it is especially unethical and prejudicial when occurring in front of clients and juries. Both the impartiality of the judge and the jurors is subject to legitimate doubt in the face of such actions and statements. A fair trial in a truly adversarial setting may become impossible when one of the attorneys is reduced to a laughingstock by a judge. In this way, justice is defeated. Clients, confronted with such bias, are given a none too subtle message: Get a male lawyer or lose your case. This is gender bias of the worst order.

¹² *The Florida Bar Attorneys' Survey, supra note 1.*

¹³ *Id.*

¹⁴ From the Orlando Public Hearing of the Gender Bias Study Commission.

¹⁵ *The Florida Bar Attorneys' Survey, supra note 1.*

C. The Courthouse Environment

Examples such as these only show that gender bias is rife in the courthouse environment. Women throughout Florida told the Commission of many differing kinds of actions that undermine them personally and professionally solely because of their sex. For example, women lawyers reported they frequently were ignored in the courtroom. In some instances, the snub was direct and obvious:

I have been in situations where I walk in the courtroom and there may be 60 male lawyers and three women lawyers waiting on calendar call; four or five of those male lawyers--maybe my co-counsel in the case or my opponent--and I would go up to them and talk to them only to have their backs turned on me while they discussed the case. Common practice.

From the Miami Public Hearing

In other instances, although backs were not always literally turned, they might as well have been:

[Q]uite often the warm-up conversation that occurs, the conversations about football, fishing and hunting--I don't do any of the three, and neither do most females--the problem, of course, is that we cannot participate in those discussions. Again it's not an overt gender bias, but it has to be that because you can't participate in that warm-up with the judge. You can't actually talk with him before you start presenting your evidence, and what that does is subtly, perhaps, predispose the court in the other direction towards opposing counsel.

From the Jacksonville Public Hearing

Sometimes women are not merely ignored; they are singled out for "special attention":

I was the only individual to be asked if I was an attorney; with whom did I practice; who were they; and did I have a

business card? Men who had appeared before the judge on that morning who also had never appeared before him were not asked the same questions.

From the Miami Regional Meeting

Some of the bias encountered by women attorneys in the courtroom arises from the behavior of other attorneys. At times, this form of gender bias is blatant:

In the middle of the argument, opposing counsel stands up and says, "Who is this girl? I mean where is your card. Let me see your business card." It was the most amazing experience. Not only that, but then the prosecutor asked for one and then the judge said, "Gee, can I have one of your cards?"

From the Miami Public Hearing

On still other occasions, the animus of male lawyers toward a female adversary is more subtle, though equally as unprofessional:

It has been my experience that male attorneys will interrupt me and raise their voices to drown me out during hearings and depositions with alarming frequency requiring me to stop talking until they have finished and then inquire if I may be heard.¹⁶

In fact, over a third of all attorneys responding to The Florida Bar Survey of Attorneys indicated that male attorneys interrupted the presentation of female attorneys more often than the presentation of male attorneys.¹⁷

In not a few instances, bias creeps into judicial proceedings because men do not accord women the same status that men themselves claim. This type of bias arises in part from long-standing beliefs about "proper" behavior for women--expectations that place women attorneys in a catch-22. The Commission found, for instance, that assertive advocacy by women frequently is frowned upon by

¹⁶ *The Florida Bar Attorneys' Survey, supra* note 1.

¹⁷ *Id.*

men. This occurs even though the Rules of Professional Conduct plainly state that, as an advocate, a lawyer's role is to "zealously assert[] the client's position under the rules of the adversary system."¹⁸ Too many male lawyers act as though this norm should not apply to women. As one person stated:

When a female attorney argues a point vigorously, male judges believe she is getting unreasonable, upset, whereas when a male attorney argues similarly the male judge gives more credence to that attorney's argument.¹⁹

Or, as a veteran assistant state attorney in Tallahassee commented:

If I'm not aggressive, then you say I'm too timid. If I'm aggressive, you say I'm a bitch.

From the Tallahassee Public Hearing

Although the Commission uncovered substantial evidence of unprofessional comments by male attorneys, the bulk of the complaints were about inappropriate language used by judges. One woman lawyer told the Commission:

The judge refused to accept any pleas we set in front of him because, he said, "I want to see the blondes go at it."

From the Orlando Regional Meeting

In other instances, the belief that women should not engage in assertive advocacy has been voiced by judges and court personnel in open court. As one attorney testified:

Debate got fairly heated, and the circuit judge said there was nothing worse than two women arguing. It gets better because then the bailiff commented, "Meow."

From the Orlando Regional Meeting

¹⁸ Rules Regulating the Florida Bar ch. 4 (preamble).

¹⁹ *The Florida Bar Attorney's Survey*, *supra* note 1.

Some of the comments not only have been professionally demeaning, but also have carried highly inappropriate sexual overtones:

One of the co-counsels is my partner, who happens to also be my husband, and the judge came up to us and said, "You know, with all this security here I got to tell you, Mister, I sure would like to body search your wife."

From the Miami Public Hearing

In still other instances, judges have treated women attorneys as though they were inferior to male colleagues:

I was co-counsel on the case (murder trial), moved for a mistrial, and before I started to make my argument in the trial--the judge said [to the male co-counsel] "Are you gonna let her argue the mistrial?"

From Miami Public Hearing

Sometimes judicial comments have given the impression that women are an oddity in court:

When the judge sat down his first remarks in front of a packed court were, "What was this world coming to with a Madam State Attorney and a Madam Public Defender" before him.²⁰

Most often, however, the testimony of female attorneys told of a form of gender bias never expressed in words. Repeatedly, the women testified that this silent form of bias was the most insidious and prejudicial they experienced:

[S]omething that you just know because prejudice has become nowadays very insidious. It is not the type of people who call you nigger or call you a spick; it's a lot more insidious than that and a lot more damaging than that because it is not expressed outwardly in so many words, but you, the recipient of this action, know what is going on. And it is so hard to convey to other people who are not

²⁰ *The Florida Bar Attorney's Survey, supra* note 1.

going through this what it is like to stand there and have somebody who is either chauvinistic or bigoted treat you in this very subtle way in a prejudicial fashion that you are at times so frustrated because you cannot convey the thought and you cannot change the behavior because it appears to be just plain behavior. It comes in asking for a continuance and being denied. Telling the judge that you are involved in another case and having the judge tell you, "Well, then drop your client."

From the Miami Public Hearing

Testimony also indicated that unacceptable conduct toward women occurs elsewhere in the courthouse. One attorney stated:

Outside of chambers, waiting for a hearing, bailiffs frequently address female attorneys as if they were in a singles bar instead of in court.²¹

Even female support staff have engaged in biased conduct:

All too often, uncountable times, when I, a female attorney, am at the desk of the judge's secretary, for whatever--having copies conformed, arranging for an appointment with the judge, fixing calendar times--if a male attorney approaches, I am asked to wait while she finishes his business.²²

On some occasions, the support staff treats female lawyers with incredulity:

The bailiff approached me and said--I identified myself and why I was there, and the bailiff's comment was, "Are you a real attorney?"

From the Orlando Regional Meeting

Bias is by no means limited to the trial courts and their support staff. Gender bias and other unacceptable professional conduct can be found at every

²¹ *The Florida Bar Attorneys' Survey, supra note 1.*

²² *Id.*

level. Appellate judges, for example, sometimes unprofessionally call attention to female attorneys' private lives and looks:

An appellate court judge routinely asks all female attorneys present before him whether they would like to be called "Miss, Mrs., or Ms." He then refuses to address you as Ms. if you risk telling him that is your preference. I once responded by telling him that I wasn't a "Miss" since I had been previously married and that with a southern accent I could detect little difference between "Mrs." and "Ms." What I would really like to tell him is that my marital status is none of his damn business!²³

Similar comments have come even from this state's highest tribunal:

During an oral argument at the Florida Supreme Court, a judge used a hypothetical about a "pretty assistant attorney general wearing a red blouse" which was exactly what I was wearing.²⁴

National experts have commented about the ill effects this variety of conduct can have upon a female attorney's credibility and thus on her success as a professional:

Given the fact of a woman's lesser credibility in society, judges need to understand how little it takes to undermine a woman's authority and status in the courtroom. Even apparently trivial matters, such as calling a woman by her first name or using her marital rather than her professional title, do have consequences for her creditability.²⁵

While the statements and behavior described above may not have been intended to demean, they nevertheless reinforce the historical stereotype of women as

²³ Florida Supreme Court Gender Bias Study Commission, *Survey of the Criminal, Family & Trial Law Sections of the Florida Bar* (June 1988).

²⁴ *The Florida Bar Attorneys' Survey*, *supra* note 1.

²⁵ L.H. Schafran, *Eve, Mary, Superwoman: How Stereotypes About Women Influence Judges*, *Judges Journal*, Winter 1985 [hereinafter *Eve, Mary, Superwoman*].

mere ornaments. They ignore the woman's professional status and focus instead on her sexuality:

"Comments about appearance may seem innocent or flattering, but no one would think so if a judge complimented a male attorney²⁶ for the cut of his suit or his broad shoulders"

During the public hearings, commissioners routinely inquired whether witnesses had reported these instances of unprofessional judicial conduct to the Judicial Qualifications Commission. One attorney testified that her complaint had been made public and, as a result, she had been ostracized by the legal community. Nearly forty percent of the respondents to a commission survey²⁷ reported that they wanted to file a complaint; however, all but one refused to do so because of the fear of ostracism or the belief that no action would be taken. The one person who reported filing a complaint felt that it was poorly handled and that she had suffered long-term repercussions.

Further inquiry is warranted into the manner in which these matters are handled. Special grievance procedures regarding gender-biased judicial conduct should be initiated in the appropriate professional forum.

D. Witnesses and Litigants

Witnesses and litigants suffer the effects of gender bias in the courts of Florida. This occurs not just in the way they are treated or mistreated by the courts, but in the ominous way this treatment affects the outcome of cases. As one assistant state attorney told the Commission:

²⁶ Blodgett, *Gender Bias in the Court System*, A.B.A.J., Dec. 1986, at 48, 52 (quoting Louise LaMothe).

²⁷ Florida Supreme Court Gender Bias Study Commission, *Florida Association for Women Lawyers Survey No. 2* (Oct. 1988).

We still have some judges who suffer from an antebellum mentality. Every woman who walks into their courtroom is a Melanie Wilkes.

From Gender Bias Hearing Transcripts

The view that women are different and must be treated differently can be found in the classic text, *Some Hints on the Trial of a Lawsuit*.²⁸ In this book, male attorneys are advised on the proper trial techniques for dealing with female witnesses:

The average female witness is the most subtle, clever enigma that was ever offered for analysis. . . . A female witness is evasive in her answers by nature. . . . The advocate who is to cross-examine the female witness is confronted with a grave and intricate situation, for no man has yet lived who could fathom the depths of a woman's mind.²⁹

Today, the profession may be more subtle in its written evaluations of female demeanor, but the Commission found that the overall attitudes remain intact. From every part of the state came reports of demeaning conduct toward women litigants and witnesses. Some of the examples disclosed incredible judicial crassness:

There was another judge, though, who was incredibly rude to women and would not stop until the woman cried. If the woman was the defendant, she was going to cry. If she was only the mother of the defendant, she was still going to cry. And it didn't matter how long it took. It would just continue until she cried, and then shortly the sentence would be imposed and things would settle back down.

From the Pensacola Regional Meeting

²⁸ R.R. Logenbecker, *Some Hints on the Trial of a Lawsuit* (1927).

²⁹ *Id.* at 107-12.

Other forms of gender-biased behavior were less extreme, but perhaps equally as prejudicial in effect. Some attorneys, for instance, spoke of subtle behavior by judges that might influence the opinions of jurors:

The judge didn't take notes during my client's, who was a woman, testimony.

From the Pensacola Regional Meeting

One survey response noted that "women litigants tend to have their memory, credibility and legal standing called into question much more often than males."³⁰ This survey response is supported by the findings of the gender bias task force reports from other states. The New York task force concluded that

"The most invidious manifestation of gender bias against women--one that pervades every issue respecting the status of women litigants--is the tendency . . . to accord less credibility to the claims of women because they are women."³¹

One mid-state Florida attorney gave an example of how this lack of credibility affects the outcome of cases:

I have noticed this particular judge when he has a well-educated female party witness and she tries to explain what she wants to say in court and she goes just a little bit beyond what the question was on direct examination, the judge will cut her off. It's only women I have seen him do it to. Now, I've never seen the judge do that to a male party witness.³²

³⁰ Florida Supreme Court Gender Bias Study Commission, *Survey of Florida Association of Women Lawyers* (Feb. 1988).

³¹ Blodgett, *supra* note 26, at 53 (quoting *Report of the New York Task Force on Women in the Courts*).

³² *Id.*

Another example of women's diminished credibility is their virtual absence as expert witnesses. As one Florida Bar section chair noted, "I can't think of a female expert that we have used in our firm on a regular basis."³³

E. Fees

Gender bias also affects women attorneys in terms of financial rewards. Testimony indicated that women attorneys are not being appointed to significant fee-generating cases to the same degree as their male counterparts. And when they are appointed, the fees paid usually were lower than those given to male attorneys. One attorney testified:

A male judge who refused to assign me any compensable criminal cases because my office was too far from the jail, called me and requested that I take an uncompensated domestic relations case because the woman was in jail and unrepresented. I was "the first one [he] thought of."³⁴

But the loss of appointments to fee-generating cases is not the only problem. Still other women attorneys report that, even when they have completed a fee-generating case, the courts refuse to award them their customary rates:

The order on attorney's fees granted the male attorney his full hourly rate and awarded fees for every hour he spent on the case. My hourly rate was discounted by \$50 and the total hours I had in the file of twenty-four and six-tenths was reduced to ten hours.³⁵

³³ From the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

³⁴ Florida Supreme Court Gender Bias Study Commission, *Survey of the Criminal, Family & Trial Sections of the Florida Bar* (June 1988).

³⁵ *Id.* at 9.

One survey conducted by the Commission indicated that judges typically award lower fees to women attorneys than male attorneys. This is true even when both have similar experience and qualifications. In addition, more than a third of the criminal and family lawyers observed that male judges rarely or never appoint women attorneys to important fee-generating cases on an equal basis with male attorneys.³⁶ One woman attorney aptly summed up the true nature of the bias inherent in disparate fee awards:

I don't care if they call me honey, I don't care what they call me as long as they give me an equal fee award. And that's where I think the real gender bias is because they don't give us an equal fee award for equal work for equal representation. And they can call me whatever they want, just pay me equally. Because when they pay me equally, then I will be on their ball game, on their stratum, their plane, whatever, I can deal with them in the same way, because I have the same monetary income.

From the Tampa Regional Meeting

The Commission found there is currently no standardized or centralized record-keeping or reporting systems for judicial appointments to fee-generating cases. The documentation available to the Commission did show that significantly more men than women were appointed to fee-generating cases in the counties that had records showing the names of the attorneys. Further, it was evident that a significant number of male attorneys were earning substantial amounts as court-appointed counsel.

F. Judicial Nominating Commissions

Special problems exist for women who aspire to the judiciary. There are two ways to become a judge in Florida--by election or by appointment of the governor. Elections pose special gender-related problems peculiar to the political process. For women, raising funds and garnering the support of the politically

³⁶ *Id.*

influential can be especially difficult. Appointments to judicial office thus are particularly important to women because they can offer what elections sometimes lack--a neutral forum for impartial decision-making based on merit.

Nevertheless, women are underrepresented in the Florida judiciary. Ten percent of the state's judges are women, yet these are concentrated disproportionately in two urban areas. Fifty percent of all women circuit court judges are in three South Florida counties--Dade, Broward and Palm Beach. Another twenty-five percent are located in the Tampa Bay area.³⁷ But even within these metropolitan areas women account for only thirteen percent of the circuit court bench. Women are slightly better represented in county courts, but only slightly. And again, South Florida accounts for fifty percent of the total.³⁸

Some areas of the state are virtually without any female representation on the bench. In the sixteen counties of the Third, Fifth and Nineteenth Judicial Circuits, there are no women trial judges at all. In the First Circuit there is one woman trial judge, two in the Fourteenth and one in the Second Judicial Circuit. This means there are only four women judges in Florida's sixteen northwestern counties.³⁹ Most of the rest of Florida fits this general profile. Indeed, there are only fourteen women trial judges in the entire state outside of the South Florida and Tampa Bay judicial circuits.

Testimony and survey responses received by the Commission focused almost exclusively on defects in the appointment process, specifically the Judicial Nominating Commissions. Standards for women applicants--the way their outside activities and professional achievements are weighed--prompted much concern and dismay around the state. Witnesses at Public Hearings across the state and survey respondents consistently indicated that women have to meet a higher stan-

³⁷ Interview with Mary Huff, Florida State Court Administrator's Personnel Office (Oct. 1989).

³⁸ *Id.*

³⁹ *Id.*

dard than men to gain approval from the Judicial Nominating Commissions. One Judicial Nominating Commission member elaborated:

I currently sit on a judicial nominating commission, and am the only woman. My fellow commissioners are outwardly extremely open to women candidates but quite subtly impose much higher standards on female candidates as to qualifications, professional demeanor, and personal appearance. I am certain that they do not realize the degree to which they have subtly discriminated against these female candidates. We have forwarded the names of a number of women to the Governor for consideration, but I strongly feel that these women were in many instances ⁴⁰ more qualified than the men whose names were forwarded.

Many witnesses and survey respondents believed that differing standards were applied to male and female applicants because of the disproportionate representation of men on the Judicial Nominating Commissions. Many appointments to fill these positions are made through The Florida Bar, which claims that they do not receive applications from women attorneys and therefore cannot appoint them. However, one male attorney who responded to a Commission survey stated that he was appointed even though he did not apply. Of three men who applied to serve on a Judicial Nominating Commission, two were appointed by The Florida Bar. The one not appointed reported that he had been told the competition was "fierce."⁴¹

Other witnesses and survey respondents identified another form of bias. They indicated that the Judicial Nominating Commission gave greater weight to areas of practice perceived as traditionally "male":

Some types of law practice carry greater weight than others. For example, a commercial law background is advantageous but generally represents an area of law more likely to have been practiced by men than by women. Commis-

⁴⁰ Florida Supreme Court Gender Bias Study Commission, *Survey of the Criminal, Family and Trial Law Sections of The Florida Bar* (June 1988).

⁴¹ Florida Supreme Court Gender Bias Study Commission, *Florida Association for Women Lawyers Survey No. 2* (Oct. 1988).

sions do not sufficiently emphasize an applicant's family history with regard to divorce and support matters, areas with which a trial judge may deal if selected.⁴²

A separate bias in favor of attorneys at private law firms also may contribute to this problem:

I believe that one of the problems of the nominating committee is that they have a private practice bias. And many of the female lawyers who have applied come out of the governmental agencies and do not have a history of involvement in large firms. . . . [T]hey do not give equal weight to people who come out of the Public Defender's Office, the State Attorney's Office, [or] working as counsel for HRS.

From the Pensacola Regional Meeting

Still another form of bias may be a tacit disparagement of areas of specialization perceived as being more "female":

What concerns me is that a lot of women practice in the area of family law and the purpose or reason is because they have been drummed out of other areas . . . and the JNCs have told me that if you don't have trial experience, despite the fact that the circuit court judges have to sit for family law anyway, don't bother to apply. And I think it discriminates against women who are practicing more and more in non-jury areas that are not getting that experience and therefore are not getting the appointments.

From the Miami Regional Hearing

Many comments to the Commission concerned the perception that the Judicial Nominating Commissions gave inadequate consideration to women candidates' successful management of a job, children and a spouse. In fact, these accomplishments can take on negative connotations when the Judicial Nominating

⁴² *The Florida Bar Attorneys' Survey, supra* note 1.

Commissions focus almost exclusively on Bar activities. One Nominating Commission member stated:

What they don't understand is that when you are a parent, especially the mother . . . you don't have a lot of extra time available to you . . . or [the] physical resources available for these activities. But somehow I find in the nomination process, it becomes very important to these people. . . . [I]t's how much extracurricular activities you do for the voluntary bar association that's really important.

From the Miami Regional Meeting

One attorney interviewed by the Judicial Nominating Commission was critical of unnecessarily repetitious questioning about her ability to handle complex issues:

The Judicial Nominating Committee asked whether you could handle complex issues. I got from that women could not handle complex issues or that, you know, when it became complex we would cry and throw up our hands or something like that. That was the tone I received from the question because it came one time and then it came a few minutes later. So it came around about two or three times, can you handle complex issues?

From the Jacksonville Regional Meeting

Objections also were made repeatedly about the Judicial Nominating Commission's narrow focus on the family aspects of a woman's life:

I sat for four years on the Judicial Nominating Commission here. And I have lots of stories to tell, all of which embarrass me . . . [E]very time they happened women would come into the room and would be asked how they planned to take care of their children. . . .

From the Miami Regional Meeting

Even in the judicial circuits that have the greatest concentrations of women judges, there were significant complaints about barriers in the appointment process for women attorneys who had families.:

A woman on a judicial nominating commission said that after the JNC public interviews were over and the doors were closed, a woman who graduated with honors from a well-known law school, and with a large firm, who was a candidate was--her name was brought up as a potential judge; and one of the older men lawyers on the Commission remarked how, since she had a child under the age of one year old, he didn't know whether she would be a full-time mother and a part-time judge.

From the Tampa Public Hearing

Almost two-thirds of female judges appointed to the bench reported that, during their interviews with the Judicial Nominating Commissions, questions were more related to their gender than their qualifications.⁴³ There was a significant divergence of opinion on the propriety and desirability of questioning a candidate about family life, and specifically about child care. While some responses indicated that questions about children might disclose whether the candidate would stay on the bench, other responses indicated that there was no guarantee that anyone would stay on the bench. A man, for instance, could leave simply because he did not like the work or the pay.

Still others felt strongly that women should be accepted as professionals even though they have children.⁴⁴ One response analogized the "child" questions to ones asked of men, such as "Can you afford to be a judge?" However, even this seemingly innocuous question has gender ramifications. By only asking this question of men, interviewers assume that women have spouses to support them. This assumption is definitely at odds with reality, since most American families today consist of dual wage earners.

Another discovery made by the Commission was that the Judicial Nominating Commissions have no standardized procedures or uniform policies. The procedural variations among the various Judicial Nominating Commissions has been

⁴³ Florida Supreme Court Gender Bias Study Commission, *Report on the Gender Bias Study Commission Survey of Florida Judges* (January 1989).

⁴⁴ The Survey of Judges by the Gender Bias Study Commission also found that female judges are twice as likely to remain single as male judges. *Id.* (Table 73)

challenged in the courts but not changed.⁴⁵ The Florida Supreme Court concluded that "[t]here is nothing in the constitutional mandate creating these commissions that requires uniformity of procedure among the various commissions."⁴⁶

G. Professional Opportunity

The Commission found that gender bias pervades the work environment of lawyers. Such bias impugns their credibility, diminishes their earning capacity and seriously impacts the professional opportunities available to them. Women now make up nearly forty-one percent of all law students in Florida. But despite this near equality, women and men show noticeably different employment patterns after graduation. It is true that women gain entry into law firms and other legal work environments. However, attitudinal barriers block their progress. It is as if "women must prove their competence while men must prove their incompetence."⁴⁷

All of this seems somewhat surprising considering female law student performance. Grades and other indicia of excellence show both sexes are evenly matched during law school. Women typically are more successful in the highly competitive area of judicial clerkships.⁴⁸ But after law school, women are relegated to a second tier in the legal profession. They are underrepresented in the nation's largest law firms and overrepresented in government, city agencies, hospitals and universities.⁴⁹ The prominent law firms remain entrenched within a

⁴⁵ *In re* Advisory Opinion to the Governor, 276 So.2d 25, 30 (Fla. 1973).

⁴⁶ *Id.*

⁴⁷ American Bar Association, *Report of the Commission on Women in the Profession: Part I*, reprinted in *The Business Lawyer Update*, Sept.-Oct. 1988, at 6.

⁴⁸ "The Gender Gap: Employment and Pay Differences," *The National Law Journal*, March 27, 1989, at 22.

⁴⁹ *Id.*

male-oriented culture; and those women who join these firms thus must adopt that culture, oftentimes having to choose between a family or power and wealth.

Even in those settings where women are most accepted, there is evidence of deeply entrenched biases against full acceptance. One assistant state attorney in charge of hiring testified:

I had a young girl, she filed an application for employment with me. I looked, and she was a law clerk with a federal judge, she was magna cum laude, Law Review, and all these things. She came in and had an interview. It was a perfect interview. I had everything. All her little files were in the right place, she asked the right questions. Thank you very much. She was very impressive. A young man comes in, I look at his file, it has nothing--not anything stellar or outstanding. He had graduated from law school. That's about all he had. And I sat, and I concentrated on which one to offer the job to for three days. . . So I hired the girl. And then it dawned on me. I should have hired her. It shouldn't have even taken me two minutes. I just had an internal visceral reaction that a lawyer--a man lawyer is going to be better than a female lawyer.

From the Tallahassee Public Hearing

Once hired, a woman experiences bias in the form of what kind of work she is expected to do, and what type of work she is not expected to do. Many women found they had been the victim of "assignment discrimination":

We have a floater system, where the capital cases are the high press coverage cases, and the floaters try to go in and get those. And they generally get them. And the floaters are male; they're all male.

From the Pensacola Regional Meeting

Some testified that women routinely are assigned drudge work:

I got to be the person who put on all the motions that weren't going to fly. That's what the women, the girl gets to do. You get to put on the motion that he's going to deny.

From the Miami Regional Meeting

And even men acknowledge assignment discrimination:

The more real form of discrimination, as against women attorneys is within law firms. . . . I believe that many of the "good old boys" deliberately assign women to less significant and meaningless cases, and instead try to assign the more meaningful cases to male employees, often who have less experience.⁵⁰

One attorney put it this way: "There seems to exist a stronger gender bias tending toward the view that female attorneys are better researchers and organizers than they are trial attorneys." Men and women across the state repeatedly testified that "a lot of women are steered out of areas that involve a lot of litigation." Examples of the insidious nature of the biases within law firms were abundant. Women disclosed that non-billable work is given to them; and then complaints are made that they are not putting in their share of billable hours.

Yet pointing out such problems can have negative consequences for female attorneys. What may have been considered good "assertive" behavior for a male attorney would garner an opposite reaction for women. Once again, assertive female behavior clashes with deeply entrenched cultural bias:

When I questioned why I was given less money as a raise--it was a couple hundred dollars less than somebody who came in at the same time I did--I asked if there was any problem with my work, and the answer was no. I said, 'Well, then, what's the problem?' And this is an exact quote: 'The perception is that you have a chip on your shoulder because you're a woman,' because I had complained--I'm a vocal person--about some of the practices that were going on.

From the Orlando Regional Meeting

⁵⁰ Florida Supreme Court Gender Bias Study Commission, *Survey of the Criminal, Family & Trial Law Sections of the Florida Bar* (June 1988).

These biases against full acceptance of women into the legal profession are sometimes painfully apparent:

One woman related an incident to me where her firm had the habit of giving an award--the attorney award--every month to the person who brought in the most business. When she made the most business one month for the first time . . . all of a sudden instead of having the best lawyer for the month, they had the best woman lawyer for that month and they gave the best man lawyer award to the firm across the Bay because after all he has made almost as much as she had.

From the Tampa Public Hearing

H. Fee-Generating Opportunities

The most significant effect of a woman attorney's less than full acceptance by the male legal culture is the substantial restriction it places upon her basic opportunities. One glaring example is the near total exclusion of women from fee-generating opportunities. In private law firms the prestige, power and wealth go to those who bring in clients. Yet cultural attitudes and biases restrict women in this regard:

It is much more difficult for women attorneys to acquire substantial clients than it is for men. It is still unacceptable or suspect in our society for a woman attorney to socialize with,⁵¹ or to wine and dine male clients or potential male clients.

The Commission repeatedly heard compelling testimony from those who had been isolated and excluded by the traditional and still prevalent male-oriented legal culture:

They announced to everybody "clerk's night out." It was to be a really special night. Later they came back to me

⁵¹ *The Florida Bar Attorneys' Survey, supra note 1.*

and said, "Sorry, we cannot invite you because you are a woman and this is going to be at the Citrus Club."

From the Orlando Public Hearing

Women also are being excluded from fee-generating opportunities:

They would, one night a month, they have a cocktail party and whatever Tuesday or Wednesday would parade out to go smoke cigars. They would play golf on Friday afternoon. Some of the better transactions to work which were out of town would be given to male associates, and then later the associate and the partner would play golf or just have a good time together. And I don't know what you can do about that. But it's frustrating for a woman to see this parade go past her time and time again.

From the Miami Regional Meeting

Many attorneys expressed the frustration of being excluded from all male clubs that judges frequented.⁵² One commissioner asked the reason why women were prohibited from going to a particular club:

Q: Why couldn't you go to the University Club?

A: It doesn't have women [and] it doesn't have more than women. It doesn't have blacks, it doesn't have Jews and it doesn't have women.

One attorney thought it incredulous that these practices, which seemed so obvious to her, were so ingrained in the culture of the legal profession that they go almost unnoticed:

I am horrified that judges would not see a problem with going to a club like that and getting on a friendly, first-name basis with all the people who are there, and then

⁵² A detailed account of similar incidents is given by Professor Marina Angel. Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 Temp. L. Rev. 799, 812 & 817 (1988).

they don't know us at all, us being the ones that aren't allowed to go there.

Clubs frequented by judges and attorneys that excluded women were continually criticized:

[T]hey got to go over there and see lawyers from other leading firms, judges, and get to have a certain degree of camaraderie with lawyers and potential clients that women are denied.

From the Orlando Regional Meeting

Another woman attorney testified:

[T]he guys would come to my office and say, "Do you want to go to lunch?" Partners with a couple of associates, and sometimes I'd say yes and sometimes no. Inevitably when I said no, they'd say, "Oh, good, we can go to the University Club now."

From the Orlando Regional Meeting

Still another stated:

We recessed for lunch and the opposing counsel, who by the way now holds a public office, turned to me and said, "you know well, we're gonna break for lunch and I'm real sorry but I belong to this club, and, you know, you can't come." . . . Aside from being gender biased, I thought it as just plain rude, but you know, it's--you cannot--you cannot dismiss it.

From the Miami Public Hearing

This sense of exclusion and isolation was not restricted to female attorneys but was also experienced by female judges:

Whilst women [judges] interviewed in mixed groups praised the changes they had witnessed occurring in their profession, women interviewed by themselves spoke far more of

their sense of exclusion, an exclusion that embraced both their personal and their professional lives.⁵³

Finally, women spoke of a sense of betrayal by judges who were called upon to mete out justice on the bench but practiced discrimination off the bench:

You see the Middle District Judges go to lunch at the University Club every single day. Not only are women not allowed as members, but women are forbidden to eat lunch there, or to otherwise be on the premises until after 4 p.m. I find such public displays of inequality to be a true endorsement of gender bias.⁵⁴

Reforms are needed to correct these problems. The Supreme Court can prohibit the entire profession, including the judiciary, from membership in clubs that discriminate invidiously. The American Bar Association currently is circulating a draft of a revised ABA Code of Judicial Conduct, which makes judicial membership in discriminatory organizations a violation:

C. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

Note: New Section 2C was added to make clear that a judge's membership in any organization practicing invidious discrimination violates the code.⁵⁵

A similar rule applicable to attorneys and judges alike should be adopted in Florida. In addition, concerned private citizens and organizations could also

⁵³ P. Levine, *Judges' Attitudes to Gender: A Qualitative Analysis* (1989).

⁵⁴ Florida Supreme Court Gender Bias Study Commission, *Survey of the Criminal, Family & Trial Law Sections of the Florida Bar* (June 1988).

⁵⁵ American Bar Association, *Model Code of Judicial Conduct*.

alert the media whenever a member of the judiciary or prominent law firm attends a discriminatory club:

If tabs were kept on the social activities of prominent bar members and judicial aspirants, the makeup of the judiciary and business clients of the large firms might change. At the very least one would know that a judge who appears to be neutral in fact ordered his private life in a discriminatory manner.⁵⁶

I. Other Limitations

Raising the next generation has fallen disproportionately upon women's shoulders.⁵⁷ The Commission determined that female attorneys curtail their legal practices to accommodate the responsibilities of child rearing, or else opt not to have children at all.⁵⁸ As one commentator has noted,

The big time belongs to the⁵⁹ single, the childless, or the women with a 24-hour nanny.

The American Bar Association reports that nationwide women lawyers aged thirty-five to forty-four are more than twice as likely as male lawyers to be childless.⁶⁰ Similar statistics have been gathered in Florida. The Florida Bar Survey of Attorneys revealed that female attorneys remain unmarried much more frequently than their male counterparts. Indeed, almost half are single, while only

⁵⁶ L.H. Schafran, *Women as Litigators*, *Trial*, Aug. 1983.

⁵⁷ Surveys of law students also disclose that both sexes expect childcare to be primarily a woman's responsibility. Student Project, *Law Firms & Lawyers with Children: An Empirical Analysis of Family/Work Conflict*, 34 *Stan. L. Rev.* 1145, 1145 (1987).

⁵⁸ Other studies have reached the same conclusion. *E.g.*, Angel, *supra* note 52, at 837; Handler, "Diapers and Depositions," *A.B.A.J.*, Apr. 1985, at 66, 68-69.

⁵⁹ *The New York Times*, March 13, 1989, at 22.

⁶⁰ "Progress for Women? Yes, But . . .," *A.B.A.J.*, Apr. 1988, at 18, 18.

twenty percent of the men are unmarried. And when women do marry, they are more than likely to remain childless while male attorneys are more than likely to have a family. Two-thirds of the married women have no children, compared to only one-third of married men.⁶¹

Nationally, statistics indicate that women leave the practice of law or are limiting themselves to practices that offer flexibility, but not partnership, power or wealth.⁶² It is not difficult to understand why this happens:

They look around them and find that their female colleagues are single or childless. Over nine out of 10 males in upper level corporate positions have children and a⁶³ non-working spouse. Most female executives have neither.

Testimony from women attorneys illustrated the frustration of trying to balance a career and a family within the legal profession's current culture:

I graduated at the top of my class and had a federal clerkship. My husband was an average student. After my clerkship I became pregnant and everything stopped, I was thrown off the track. He proceeded down it and has become much more successful than I. I was offered permanent research positions but was never considered for partnership. The unspoken but not unknown sentiments in my firm were that I was not a committed lawyer. I had my priorities all wrong.⁶⁴

The same complaint is heard over and over from women forced to choose between family responsibilities and their careers.⁶⁵

⁶¹ *The Florida Bar Attorneys Survey, supra* note 1.

⁶² Angel, *supra* note 52, at 837.

⁶³ National Law Journal, Dec. 12, 1988, at 13-14.

⁶⁴ *The Florida Bar Attorneys' Survey, supra* note 1.

⁶⁵ *Id.*

Women not only disproportionately assume these family-related responsibilities; many acknowledge that they do so willingly. But are the sacrifices equitable between the genders? Consider an analogous situation: A long-term member of a prominent law firm decides to run for the presidency of the state bar. These activities will certainly restrict his ability to spend as much time at his firm for a limited but defined period of time. Informal interviews reveal that the common practice is to allow the attorney to share on a pro-rata basis in the profits of the firm, or some other arrangement is made, depending on the firm's exigencies, but no one questions his commitment to the firm or to his profession.

At heart, this is a human issue, not a "woman's concern." The limitations and inflexibility of the traditional male-oriented legal culture have prejudiced men as well, who as a result have little choice about their professional lives and few opportunities to enjoy a family life. Both men and women suffer from this type of gender bias.

J. Professional Opportunity: The Florida Bar

The lack of professional acceptance does not occur only within law firms. Complaints were made repeatedly about The Florida Bar itself. The Board of Governors, the governing body for The Florida Bar, has only four women members out of forty-five. Of those four, only two are attorneys and these two are from South Florida. Of the two lay members, one is from Miami, the other from Tampa Bay. This means the remainder of the state has no female attorney or lay representation on The Florida Bar Board of Governors. As of April, 1989, women made up over seventeen percent of The Florida Bar but are virtually absent from Bar leadership positions. Bar leaders questioned about this defended the bar and said women "were in the pipeline." However, one local bar president disagreed, stating that the "bar leadership is definitely at fault in failing to appoint women to committee leadership."

If women are "in the pipeline," testimony indicated that they are not progressing through it. One commissioner asked about access to committee appointments. The witness replied, "Oh, no. You can get appointed, but you are

just ignored. You might as well not be a member of them." She was not alone in her experience. The Bar leadership insists that this form of bias does not exist. But one attorney disagreed, noting that "[s]ome of the most prejudiced are the ones who are running the show."

*K. Legal Education:
Setting the Stage for Gender Bias in the Profession*

Gender bias also exists in the law schools. Evidence gathered by the Commission reveals there are few women on the faculties. Partly as a result, women often confront an unfriendly climate in the classrooms.⁶⁶ As one University of Florida law professor told the Commission,

The attitudes developed and the values promoted in the law schools set the stage for the intransigence of gender bias in the profession. As in other areas of the profession there is ". . . a failure to value women's experience as legitimate and important where it differs from male experience."

From the Jacksonville Public Hearing

Recent national surveys and reports have found an underrepresentation of women in the ranks of tenured law faculty.⁶⁷ Part of this underrepresentation can be traced to the traditionally accepted profile of a member of a law faculty, a profile difficult for women to fit:

We want someone with topnotch grades from a topnotch law school who went into a topnotch job or topnotch clerk-

⁶⁶ Angel, *supra* note 52, at 836-37; Weiss & Melling, *The Legal Education of Twenty Women*, 40 Stan. L. Rev. 1299 (1988).

⁶⁷ "Gender Bias," A.B.A.J., Oct. 1988, at 144, 144. See also "Women Face Hurdles As Professors," National Law Journal, Oct. 24, 1988, at 1.

ship and then in three years is ready to come teach. I think it is harder for women to reach that point than it is for me.

From the Jacksonville Public Hearing

But why should it be harder for women "to reach that point"? Could it be because the "traditional" model for being considered a viable candidate for a tenure track law faculty position excludes the alternative paths that women may have followed into law. A woman may have already had children before she enters law school. She is not twenty-five when she graduates, but thirty-five or forty. Temporary employment, such as a judicial clerkship, may not be so enticing, especially if she has to uproot her family to accept the position. For the woman who enters law school directly after college there may be still other barriers. She will graduate and be ready for that clerkship, but if she is also married, her choices may be restricted by her husband's opportunities.

If hired as a tenure track faculty member, testimony indicated that there remain formidable barriers to gaining tenure. Some of these tenure battles have been widely publicized.⁶⁸ One reported problem is that issues of concern to women are undervalued and trivialized by senior faculty members most influential in tenure decisions. As a result, women do not progress:

The pattern that emerges through my experiences and through the study of relevant statistics is that women faculty members disappear at a substantially higher rate than men faculty members, and that women are consistently closed out of the higher ranks of legal education.⁶⁹

The highest rank in legal education is a full professorship. At the University of Florida, men occupied ninety-eight percent of the full professorships in 1980-81. Six years later, in 1987-88 men occupied ninety-four percent of the

⁶⁸ Angel, *supra* note 52, at 830-34. See also Carter, "Women Face Hurdles as Professors," *National Law Journal*, Oct. 24, 1988, at 1.

⁶⁹ Angel, *supra* note 52, at 801.

full professorships.⁷⁰ Testimony from Florida law school faculty members revealed that whatever gains women have made are in nontenured positions, not the tenured professorships:

[T]he only significant increase of women within the law school working group are at the level of instructors, non-tenure track women and support staff . . . [W]omen are being hired in positions that do not lead to tenure.

From the Jacksonville Public Hearing

Other testimony indicated that Florida law schools, just as law schools around the country have a "chilly climate"⁷¹ for women. There are many elements to this "chilly climate." Among them are the inadequate representation of women on law faculties, the absence of course materials on women's issues, and the failure to discuss legal concepts relevant to women. A survey of all criminal casebooks currently in use at American law schools documented that some do not cover rape at all; and those that do, cover it "only briefly, as an afterthought."⁷² Another study found that texts routinely portrayed men as contractors, city managers, property owners, businessmen, and sheriffs; women, however, were depicted as housewives, nurses and dress designers. One legal scholar concluded that

criminal casebooks teach people to be very good defense attorneys for male defendants. They are terrible in discussing defenses that can be used for female defendants.⁷³

⁷⁰ University of Florida Association for Women Faculty, *Number and Percentage by Rank of Male and Female Faculty at the University of Florida*.

⁷¹ Professor Mary Coombs, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

⁷² M. Coombs, *Crime in the Stacks, or a Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. of Legal Educ. 117, 117-35 (1988).

⁷³ D.C. Moss, "Would This Happen to a Man?," A.B.A.J., June 1, 1988, at 53.

The absence of materials of particular concern to women is not limited to criminal casebooks:

[I]t's very hard for me as a professor to find materials that aren't biased, and this is true even though I teach civil procedure.

From the Jacksonville Public Hearing

Bias also exists elsewhere on the campuses. Survey results indicate that male students themselves show an appreciable degree of bias towards their women classmates, and to women generally.⁷⁴ Other responses revealed that as elsewhere in the legal profession, women experience bias and men do not believe it exists.⁷⁵ A male first-year law student who responded with written comments to the survey indicated that it was gender bias to have three women judges on a moot court panel. He also stated that when this panel chose a female competitor as the winner, gender bias had occurred. Yet, if a female first-year student had questioned the impartiality of an all-male panel, she would have been ridiculed for even raising the issue. Most likely she would have been reminded that justice and fairness had nothing to do with gender.

Other survey responses regarding recruitment interviews noted that interviewers routinely ask whether female students have "permission" from a spouse to be in such a demanding field. Many reported being asked about their reproductive plans and their ability to be a wife, mother and lawyer simultaneously. None of the men surveyed indicated that any interviewer had seemed concerned about his ability to be a father, husband and lawyer simultaneously. None was asked about his reproductive plans or whether his spouse had given him "permission" to be a lawyer.

One female graduate reported being told that women were only hired for non-court work because "men were better in the courtrooms and women were

⁷⁴ Angel, *supra* note 52 at 807-18 & 836-37.

⁷⁵ Florida Supreme Court Gender Bias Study Commission, *Survey of Law School Students* (Apr. 1988).

better left in the library." Another graduate was asked if she minded menial tasks. None of the men reported interview questions of this type.

Exclusion of firms from campus recruitment is warranted if in their interviews or advertisements they indicate gender bias of this type. Such a policy would emphasize that this behavior is unethical and will not be tolerated.

L. Gender Bias in the Law: Language

The gender bias found in the language of the law is not a recent phenomena. The colonial legal system inherited the traditional language of statutes, cases and documents from Eighteenth and Nineteenth Century England. These documents were an accurate reflection of the male status within the public domain at that time. However, even though times have changed and women are now very much a part of the public domain, the language of the law does not as yet reflect this reality. Language has powerful effects upon people. Testimony, survey responses and empirical research abundantly substantiated the detrimental results of male-oriented language.

The impact of gender-biased language on people's lives is not merely a question of semantics. One law professor has provided a telling example of the life-or-death consequences gender-biased language previously has had when elevated to the status of law:

In criminal law, the notion of the reasonable man has done incalculable harm to women. One example should suffice:] the doctrine of equal force in self-defense. If attacked by someone without a weapon, the victim must respond without a weapon. When the attacker is a large male and the person being attacked is a smaller female not trained in self-defense, this rule is absurd.⁷⁶

⁷⁶ Angel, *supra* note 52, at 837 (footnotes omitted).

By focusing entirely on male issues and male qualities, the law thus ignores the ways in which women differ. And by failing to take these differences into account, women are made to suffer.⁷⁷

Gender-specific language like the "reasonable man" standard occurs throughout Florida law. In the Florida Rules of Criminal Procedure, for instance, only men are criminals. All juvenile delinquents are referred to as "he." In the Code of Ethics contained in the Florida Statutes⁷⁸ only men are officeholders and public employees.⁷⁹ Other examples of similar gender-biased language can be found in Florida's standard jury instructions and Code of Judicial Conduct, both of which assume that all judges are men. The latter, for instance, states:

A judge should not allow his personal relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others. . . .⁸⁰

Testimony indicated that gender-biased use of language can have serious economic ramifications. One member of the Sex Discrimination Task Force that revised the federal Code testified that the agricultural extension service had

two classifications of agents, one being the Cooperative Extension Agent and another dealing with Homemaker Services. They were paid different amounts, and their jobs were exactly the same.⁸¹

⁷⁷ This issue is discussed in the context of self defense in Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self Defense, and Expert Testimony*, 39 Mercer L. Rev. 545, 564-65 (1988).

⁷⁸ Fla. Stat. §§ 112.311-.326 (1989).

⁷⁹ *E.g.*, *id.* § 112.313(7) (using male pronouns).

⁸⁰ Fla. Code of Judicial Conduct, canon 2(b) (1989).

⁸¹ Allan Terl, remarks at the Fort Lauderdale Public Hearing of the Gender Bias Study Commission.

This witness gave another example of language bias having a direct economic impact. The Farmer's Home Administration, he testified, had created two kinds of mortgage applicants--farmers and farmers' wives. The farmers' wives were bound on the mortgage but if the farmer died the mortgage was automatically called in. However, when a farmer's wife died, there was no calling in of the mortgage.⁸² Woe to the wife who single-handedly ran the farm while her husband was ill. Her reward when he died was to lose her livelihood as well as her spouse. One attorney analogized gender-biased language to race bias:

I think we learned much in race relations, how the use of words may not have been intended to mean something, but the very use of those words is charged and people react to them in a fashion that we need to be aware of.

From the Fort Myers Regional Meeting

The Commission also found that prior "solutions" to the problem of gender-biased language have done nothing but perpetuate language bias. The one-sentence disclaimer found at the beginning of legal texts and documents--that the masculine is presumed to include the feminine--is blatantly gender-biased because it perpetuates an exclusively male world view. In the awkward "he/she" construction, the "he" is always first. The use of the word "person" has taken on a negative connotation after its ubiquitous use in too many incorrect contexts:

[A] faculty member mentioned the product Walkman, . . . and then paused and said, "Oh, excuse me, I mean Walkperson." And then the whole class chuckled. This behavior sends a direct message which is: "Don't take the use of gender-neutral language seriously." This behavior on the part of some faculty may also explain why many students resist the use of gender-neutral language.

From the Tallahassee Public Hearing

⁸² *Id.*

Successful conversions of gender-biased legal language are already underway. Gender-neutral language in statutes and codes has been adopted by other states,⁸³ and testimony established that this is not the onerous task it might initially appear to be:

The creation of gender-free language is not a mystical function. It is a grammatical process of dropping sex-indicator words and rearranging the sentence and/or the verb structure. For instance, this gender biased statement--"The facility shall be installed by the owner at his expense"--in a gender-free version is: "Installation of the facility shall be at the owner's expense."

From the Tampa Public Hearing

Gender bias in legal language cannot be ignored or trivialized. It must be eradicated through a three-pronged effort. The legislature first should require gender-free language in the drafting of any new statutes and should begin editing the statutes currently on the books. Second, a special task force should be created to examine the laws for all forms of gender bias and make recommendations on the elimination of gender-biased language. Third, other agencies responsible for promulgating official documents--such as the Florida judiciary--should adopt a policy of using gender-neutral language on all occasions.

⁸³ In many states sex-neutral language has become part of the job of legislative drafting. Minnesota and Maryland have completely revised their laws. Hawaii and Iowa have made changes during the editing process, and Ohio and Alaska have made changes both in drafting and editing. Simply Stated: The Newsletter of the Document Design Center, American Institutes for Research, No. 75, Sept.-Oct. 1987.

M. 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 com-

missions 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.

N. Recommendations

1. 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.

2. 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.

3. 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.

APPENDICES

The Florida Bar Survey of Attorneys

**The Gender Bias Study Commission Survey of Criminal, Family and Trial Law
Sections of The Florida Bar**

The Gender Bias Study Commission Survey of Florida Judges

The Gender Bias Study Commission Survey of Judicial Polls

**The Gender Bias Study Commission Surveys of the Florida Association for
Women Lawyers**

**The Gender Bias Study Commission Informal Survey of Domestic Violence
Services and Providers**

Speakers at Public Hearings

**An Empirical Examination of Gender Bias in Florida Dissolution of Marriage
Cases and the District Courts' of Appeal Odds of Reversal by Issue, Gender of
Appellant and Gender Mix of Appellate Court**

Public Correctional Policy on Female Offender Services

1988 GENDER BIAS SURVEY OF ATTORNEYS

This survey contains a total of 8 sections. Not all sections may apply to you. As you read through the questionnaire, you will be directed to those sections relevant to you. All questionnaires are confidential; please do not sign your name.

I. COURTROOM BEHAVIOR

Based on your experiences, please answer the following questions regarding the words and actions of judges and attorneys in professional settings, the courtroom and chambers. For each statement, please indicate how often male and female JUDGES and male and female ATTORNEYS exhibit such behaviors. CIRCLE your response:

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N

If you do not know how often it occurs, circle DON'T KNOW = DK

Circle ONE answer in each line

- | | | | | | | | | |
|----|---|------------------------------|---|---|---|---|---|----|
| 1. | In professional settings males are assumed to be attorneys whereas females are not. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 2. | Two or more attorneys are referred to as "gentlemen" when at least one of them is female. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 3. | The presentation of female attorneys is interrupted more often than the presentation of male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 4. | Male attorneys are listened to more attentively than female attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 5. | Female attorneys are addressed by their first name or by terms of endearment but male attorneys are referred to in a more formal manner. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 6. | Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 7. | Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants/witnesses. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 8. | Jokes or demeaning remarks are made about women. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |

- 9. Women litigants or witnesses are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 10. Women litigants or witnesses are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 11. Women attorneys are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 12. Women attorneys are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 13. Women attorneys with similar experiences and qualifications are awarded lower fees than male attorneys for similar work. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK
- 14. Women attorneys are appointed to important fee-generating cases on an equal basis with male attorneys. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle one response:

- 15. Case outcome is affected by the gender of the attorneys..... A O S R N DK
- 16. In addition to gender, case outcome is affected by race when the female attorney is black or Hispanic..... A O S R N DK
- 17. Case outcome is affected by the gender of the litigants/witnesses..... A O S R N DK
- 18. In addition to gender, case outcome is affected by race when the female witness or litigant is black or Hispanic..... A O S R N DK

For the next two statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 19. In dealing with male judges and male attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD
- 20. In dealing with female judges and female attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD

II. MARITAL AND FAMILY LAW

- 1. What percentage of your practice is spent in litigating marital and family law issues such as equitable distribution, alimony, child custody and child support? (Check only ONE)

____ LESS THAN 30% ____ 30 - 50% ____ 51 - 75% ____ OVER 75%

EQUITABLE DISTRIBUTION/ALIMONY.

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle your response. If a particular situation does not apply to you, please circle DK.

A = ALMOST ALWAYS O = OFTEN S = SOME OF THE TIME R = RARELY N = NEVER DK = DON'T KNOW

- 2. In dissolution of marriage cases you have declined representation of women due to the likelihood that you will not receive adequate fees and costs..... A O S R N DK
- 3. In dissolution of marriage proceedings in which you have represented the wife, judges have not awarded sufficient interim fees and costs to warrant your continuation in the case..... A O S R N DK
- 4. In cases where you have represented the wife, you have compromised and settled when you could have proceeded to a more advantageous result, due to the likelihood that fees and costs would not be recovered..... A O S R N DK
- 5. Female homemakers are awarded only rehabilitative alimony after long term marriages..... A O S R N DK
- 6. When judges divide the marital property, the larger share goes to the husband when he has been the income producer and the wife has been the homemaker..... A O S R N DK
- 7. The courts effectively enforce alimony awards. (Please check only ONE)

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

CHILD CUSTODY/VISITATION

- 8. Change of primary residence is granted to fathers when the single mothers are working outside of the home and there is a "live-at-home" stepmother..... A O S R N DK

For the next three statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 9. Primary residence is based on an assumption that children belong with their mothers rather than on independent facts..... SA A U D SD
- 10. Judges give fair and serious consideration to fathers who seek primary residence of their children..... SA A U D SD
- 11. In general, visitation is sufficient for meaningful participation in children's lives by nonresidential fathers..... SA A U D SD

CHILD SUPPORT

- 12. Judges are following the child support guidelines enacted by the legislature effective July 1, 1987..... A O S R N DK

- 13. Child support awards accurately reflect the costs of rearing the individual child. (Please check only ONE)

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

CHILD SUPPORT ENFORCEMENT

- 14. You have been unable to provide legal assistance to women because they cannot afford attorneys' fees and costs in their pursuit of child support enforcement.. A O S R N DK
- 15. Repeated adjournments are granted to noncustodial parents in child support enforcement proceedings..... A O S R N DK
- 16. Enforcement of child support is denied because the custodial parent limits or denies visitation..... A O S R N DK
- 17. Effective sanctions including contempt are imposed for failure to pay child support..... A O S R N DK
- 18. Judges accept, without much further inquiry, respondents' testimony that they cannot afford to pay child support in arrears..... A O S R N DK
- 19. Wage assignment orders are granted when child support is in arrears..... A O S R N DK
- 20. Judges view attempts at child support enforcement as vindictiveness against the noncustodial parent. (Please check only ONE)

STRONGLY AGREE
 AGREE
 UNSURE
 DISAGREE
 STRONGLY DISAGREE

III. DOMESTIC VIOLENCE

- 1. In the past two years, have you represented a petitioner or a respondent in a proceeding involving domestic violence?

YES
 NO --- SKIP TO SECTION IV ON PAGE 5

The following statements reflect various actions that are possible in domestic violence cases. After you read each statement, please indicate how often you believe the situation occurs.

- 2. Respondents are ordered to pay spousal and/or child support when they are living apart from their families under injunctions for protection..... A O S R N DK
- 3. "Injunctions for protection" directing respondents to move out of the marital home are granted ex parte..... A O S R N DK
- 4. In addition to the respondent, judges issue a restraining order against the petitioner even though there has been no allegation or proof of domestic violence by the petitioner..... A O S R N DK
- 5. Ex parte injunctions are granted when a threat of domestic violence exists but no violence has as yet occurred..... A O S R N DK
- 6. State attorneys decline to prosecute domestic violence complaints in criminal courts..... A O S R N DK

The next five items describe remarks judges might make in the presence of a female petitioner in a domestic violence case.

- 7. A judge asks a female petitioner why she has no visible injuries..... A O S R N DK

- 8. The severity of the petitioner's circumstance is diminished by a judge who treats the situation lightly or condones lawyers who do so..... A O S R N DK
- 9. A judge implies that the victim may have deserved or provoked the violence..... A O S R N DK
- 10. A judge suggests that a petitioner who did not come forward after earlier incidents of domestic violence ought not to be heard to complain now..... A O S R N DK
- 11. A judge plays down the incidence of abuse as a one-time occurrence..... A O S R N DK

IV. CRIMINAL JUSTICE

1. What percentage of your practice is spent in litigating criminal law issues?
- LESS THAN 30% 30 - 50% 51 - 75% OVER 75%

SKIP TO SECTION V ON PAGE 6

CONTINUE BELOW

RAPE

- 2. Sentences in rape cases are shorter when parties know one another than in cases when parties are strangers..... A O S R N DK
- 3. Judges invoke the rape shield law, sua sponte, when the cross examination of a witness violates that law..... A O S R N DK
- 4. Sentences given for sexual battery are mitigated more often than sentences for other crimes of violence..... A O S R N DK

ADULT SENTENCING

- 5. In sentencing, judges consider a female offender's status as a wife and mother but do not consider a male offender's status as a husband and father..... A O S R N DK
- 6. Judges are less willing to impose a jail or prison sentence on females because of the poor living conditions in Florida's jails and prisons..... A O S R N DK

For the next two statements, please indicate the level of your agreement or disagreement:

- 7. Judges should give more lenient sentences to women than to men, for similar offenses, because women are less a danger to society and are less likely to be repeat offenders..... SA A U D SD
- 8. Female offenders have a greater potential for rehabilitation than do males and they should receive more lenient treatment than males charged with a similar offense..... SA A U D SD

JUVENILE JUSTICE

- 9. Female juveniles charged with delinquency offenses are treated more severely than male juveniles throughout the adjudication process..... A O S R N DK
- 10. The courts view promiscuity as a more serious matter for female juveniles than for male juveniles..... A O S R N DK

11. Giving stiff sentences to females arrested for running away will discourage them from turning later to prostitution and other crimes.

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

V. CIVIL LITIGATION: NEGLIGENCE

1. What percentage of your practice is tort litigation? (Please check only ONE)

___ LESS THAN 30% ___ 30 - 50% ___ 51 - 75% ___ OVER 75%

SKIP TO SECTION VI BELOW

CONTINUE WITH QUESTION #2

From your experience, how often do the following results occur in negligence cases?

- 2. Men receive higher awards than women for pain and suffering..... A O S R N DK
- 3. Husbands receive higher awards than wives for loss of consortium..... A O S R N DK
- 4. Women receive higher awards than men for disfigurement..... A O S R N DK
- 5. Female homemakers receive awards that reflect the loss of value of the services they provide for the family..... A O S R N DK

VI. GENERAL ATTITUDES

Below are series of statements regarding men's and women's roles in society. After your read each statement, please indicate your level of agreement or disagreement by circling your response.

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 1. No matter what, a wife should move out of the house if her husband hits her..... SA A U D SD
- 2. Working women have an independent source of income, so ex-husbands shouldn't be required to make child support payments..... SA A U D SD
- 3. Men and women should be similarly compensated for doing similar jobs..... SA A U D SD
- 4. A woman should not expect to have quite the same freedom of action as a man..... SA A U D SD
- 5. Men should take the same amount of responsibility as women in caring for home and children..... SA A U D SD
- 6. Women are less capable of making important decisions than are men..... SA A U D SD
- 7. Male attorneys are better suited than female attorneys to handle criminal law cases..... SA A U D SD
- 8. In the legal profession, women are appraised more on the basis of appearance and sex appeal than on competence and skill..... SA A U D SD
- 9. It is acceptable for a woman to have a career, but marriage and family should come first..... SA A U D SD

- 10. Female attorneys are better suited than male attorneys to handle marital and domestic law cases..... SA A U D SD
- 11. Any healthy woman can successfully resist a rapist if she really wants to..... SA A U D SD
- 12. When women go around braless or wearing short skirts and tight tops, or go hitchhiking, they are just asking for trouble..... SA A U D SD
- 13. If a woman engages in necking or petting and she lets things get out of hand, it is her fault if her partner forces sex on her..... SA A U D SD
- 14. Many women falsely report rapes to get back at a man, to protect their reputation after a pregnancy, or simply to gain some attention..... SA A U D SD
- 15. When a woman claims she has been raped by an ex-boyfriend or estranged spouse, our legal system gives too little credence to her claim..... SA A U D SD
- 16. Which of the following best characterizes the nature of bias against women in the profession and in judicial decision making?

a. Bias against women..... (Check only ONE)

IS MORE SUBTLE NOW THAN IT USED TO BE

IS AS OVERT NOW AS IT EVER WAS

OTHER: (Please describe) _____

b. Bias against women..... (Check only ONE)

NO LONGER EXISTS

HAS REMAINED AT ABOUT THE SAME LEVEL

HAS DECREASED

HAS INCREASED

VII. YOUR BACKGROUND

The remaining set of questions request information about your personal background. Please remember, this survey will be treated with strict confidentiality and all results will be reported as group data.

1. What is your gender? MALE FEMALE

2. What is your race or ethnic background?

HISPANIC BLACK WHITE ASIAN-AMERICAN OTHER: _____

3. In what year were you born? 19 _____

4. What is your present marital status?

SINGLE

SEPARATED BUT NOT DIVORCED

MARRIED (AND NEVER PREVIOUSLY DIVORCED)

DIVORCED

MARRIED (BUT PREVIOUSLY DIVORCED)

WIDOWED

5. How many male and female children do you have? (Please write the number. If none, write zero (0).)

MALE CHILDREN

FEMALE CHILDREN

6. How many years have you been practicing law in Florida? _____ YEARS

7. In which Florida county do you practice law? _____
8. Which of the following best describes your legal practice? (Check only ONE)
- SOLE PRACTITIONER LARGE FIRM (31 OR MORE ATTORNEYS) OTHER
- SMALL-SIZED FIRM (2 - 10 ATTORNEYS) GOVERNMENT
- MODERATE-SIZED FIRM (11 - 30 ATTORNEYS) RETIRED
9. In which of the following courts is the largest share of your practice? (Check only ONE)
- COUNTY CIRCUIT STATE APPELLATE FEDERAL
10. Are the majority of your clients males or females?
- MALES FEMALES ABOUT EQUAL NUMBER OF EACH
11. How many hours per week do you devote to the practice of law?
- UNDER 20 HOURS 30 - 39 HOURS 50 - 59 HOURS
- 20 - 29 HOURS 40 - 49 HOURS 60 OR MORE HOURS
12. To which of the following Florida Bar Sections do you currently belong? (Check ALL that apply)
- CRIMINAL LAW FAMILY LAW TRIAL PRACTICE OTHER SECTION(S) NONE
13. To which of the following Bar-related organizations do you currently belong? (check ALL that apply)
- FLORIDA BAR COMMITTEE AMERICAN BAR ASSN. LOCAL BAR OTHER STATE BAR(S)
14. Have you ever been a victim of domestic violence?
- YES NO
15. Have you ever been personally involved in a contested dissolution, custody or support matter?
- YES NO

VIII. COMMENTS

Have you personally experienced or witnessed incidents of gender bias in the courtroom or other professional settings that you can share? Please do NOT provide names in your description of the situation(s). Please attach on a separate page these and any additional comments you have in regard to earlier questions (such as practice before male and female judges, bias against minority women attorneys, failure of judges to follow child support guidelines, etc.).

If you have TRANSCRIPTS to share, please contact the Supreme Court Gender Bias Study Commission's staff director, Virginia Daire, at (904) 488-6997. She can tell you how to preserve the confidentiality of the parties, attorneys and judges before sending the transcripts to the Commission.

THANK YOU FOR YOUR ASSISTANCE. PLEASE RETURN THIS QUESTIONNAIRE IN THE ENCLOSED POSTAGE-PAID RETURN ENVELOPE AS SOON AS POSSIBLE TO:

Communication Consultants, Inc. -- Sapolsky Research, Inc.
c/o The Florida Bar
Tallahassee, FL 32301-8226 Tallahassee, FL

Gender Bias: Study Commission Survey of The Florida Bar Criminal Law Section

This survey contains a total of 6 sections. Not all sections may apply to you. As you read through the questionnaire, you will be directed to those sections relevant to you. All questionnaires are confidential; please do not sign your name.

I. COURTROOM BEHAVIOR

Based on your experiences, please answer the following questions regarding the words and actions of judges and attorneys in professional settings, the courtroom or chambers. For each statement, please indicate how often male and female JUDGES and male and female ATTORNEYS exhibit such behaviors. CIRCLE your response:

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N

If you do not know how often it occurs, circle DON'T KNOW = DK

Circle ONE answer in each line

- | | | | | | | | | |
|----|---|------------------------------|---|---|---|---|---|----|
| 1. | In professional settings, males are assumed to be attorneys whereas females are not. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 2. | Two or more attorneys are referred to as "gentlemen" when at least one of them is female. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 3. | The presentation of female attorneys is interrupted more often than the presentation of male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 4. | Male attorneys are listened to more attentively than female attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 5. | Female attorneys are addressed by their first name or by terms of endearment but male attorneys are referred to in a more formal manner. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 6. | Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 7. | Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants/witnesses. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| | | | | | | | | |
| 8. | Jokes or demeaning remarks are made about women. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |

- 9. Women litigants or witnesses are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 10. Women litigants or witnesses are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 11. Women attorneys are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 12. Women attorneys are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 13. Women attorneys with similar experiences and qualifications are awarded lower fees than male attorneys for similar work. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK
- 14. Women attorneys are appointed to important fee-generating cases on an equal basis with male attorneys. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle one response:

- 15. Case outcome is affected by the gender of the attorneys..... A O S R N DK
- 16. In addition to gender, case outcome is affected by race when the female attorney is black or Hispanic..... A O S R N DK
- 17. Case outcome is affected by the gender of the litigants/witnesses..... A O S R N DK
- 18. In addition to gender, case outcome is affected by race when the female witness or litigant is black or Hispanic..... A O S R N DK

For the next two statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 19. In dealing with male judges and male attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD
- 20. In dealing with female judges and female attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD

II. DOMESTIC VIOLENCE

- 1. In the past two years, have you represented a petitioner or a respondent in a proceeding involving domestic violence?

___ YES --- CONTINUE ON TOP OF PAGE 3 ___ NO --- SKIP TO SECTION III ON PAGE 3



The following statements reflect various actions that are possible in domestic violence cases. After you read each statement, please indicate how often you believe the situation occurs.

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N DON'T KNOW = DK

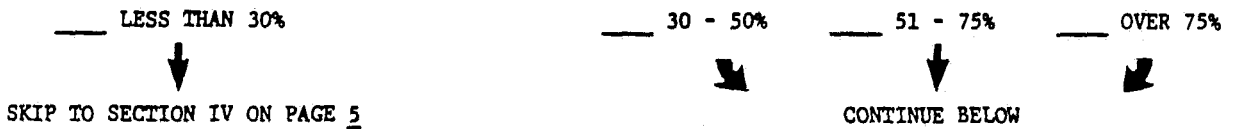
- 2. Respondents are ordered to pay spousal and/or child support when they are living apart from their families under injunctions for protection..... A O S R N DK
- 3. "Injunctions for protection" directing respondents to move out of the marital home are granted ex parte..... A O S R N DK
- 4. In addition to the respondent, judges issue a restraining order against the petitioner even though there has been no allegation or proof of domestic violence by the petitioner..... A O S R N DK
- 5. Ex parte injunctions are granted when a threat of domestic violence exists but no violence has as yet occurred..... A O S R N DK
- 6. State attorneys decline to prosecute domestic violence complaints in criminal courts..... A O S R N DK
- 7. In general, orders for protection are served upon respondents within 24 hours of their issuance..... A O S R N DK

The next five items describe remarks judges might make in the presence of a female petitioner in a domestic violence case.

- 8. A judge asks a female petitioner why she has no visible injuries..... A O S R N DK
- 9. The severity of the petitioner's circumstance is diminished by a judge who treats the situation lightly or condones lawyers who do so..... A O S R N DK
- 10. A judge implies that the victim may have deserved or provoked the violence..... A O S R N DK
- 11. A judge suggests that a petitioner who did not come forward after earlier incidents of domestic violence ought not to be heard to complain now..... A O S R N DK
- 12. A judge plays down the incidence of abuse as a one-time occurrence..... A O S R N DK

III. CRIMINAL JUSTICE

- 1. What percentage of your practice is spent in litigating criminal law issues?



RAPE

- 2. Judges still give the "rigid scrutiny" instruction to juries..... A O S R N DK
- 3. Judges invoke the rape shield law, sua sponte, when the cross examination of a witness violates that law..... A O S R N DK
- 4. Sentences given for sexual battery are mitigated more often than sentences for other crimes of violence..... A O S R N DK
- 5. Prosecutors are filing sexual battery charges in acquaintance or date rape situations..... A O S R N DK

- 6. Acquaintance or date rape cases are being brought to trial..... A O S R N DK
- 7. Husbands are not prosecuted for marital rape unless the wife receives serious physical injuries..... A O S R N DK
- 8. Female sexual battery victims are verbally abused during pretrial proceedings... A O S R N DK

For the next series of statements please indicate the level of your agreement or disagreement:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 9. Prosecutors do not file charges against a suspect rapist unless they feel they can win the case..... SA A U D SD
- 10. Police and the courts treat female victims of rape as "suspects" more than female victims of other violent crimes..... SA A U D SD

PROSTITUTION

- 11. Prostitutes cannot be victims of rape..... SA A U D SD
- 12. The legal system treats streetwalkers more harshly than patrons or pimps..... SA A U D SD
- 13. It is easier to defend a male charged with solicitation than to defend a female charged with prostitution..... SA A U D SD

ADULT SENTENCING

- 14. In sentencing, judges consider a female offender's status as a wife and mother but do not consider a male offender's status as a husband and father..... A O S R N DK
- 15. Judges are less willing to impose a jail or prison sentence on females because of the poor living conditions in Florida's jails and prisons..... A O S R N DK
- 16. The guidelines have resulted in men and women receiving similar sentences for similar crimes..... A O S R N DK
- 17. Women are more likely than men to be sentenced to home confinement..... A O S R N DK

For the next four statements, please indicate the level of your agreement or disagreement:

- 18. Judges should give more lenient sentences to women than to men, for similar offenses, because women are less a danger to society and are less likely to be repeat offenders..... SA A U D SD
- 19. Female offenders have a greater potential for rehabilitation than do males and they should receive more lenient treatment than males charged with a similar offense..... SA A U D SD
- 20. Under the guidelines, too lenient a sentence is given to a convicted rapist who has no prior record..... SA A U D SD

JUVENILE JUSTICE

21. Runaway girls are treated more severely than runaway boys by the juvenile justice system..... A O S R N DK
22. Sexually abused boys are neglected or ignored by the legal system..... A O S R N DK
23. The courts view promiscuity as a more serious matter for girls than for boys.... A O S R N DK
24. The juvenile justice system punishes delinquent boys more harshly than delinquent girls..... A O S R N DK
25. Giving stiff sentences to runaway girls will discourage them from turning later to prostitution and other crimes.

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

IV. GENERAL ATTITUDES

Below are series of statements regarding men's and women's roles in society. After you read each statement, please indicate your level of agreement or disagreement by circling your response.

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

1. No matter what, a wife should move out of the house if her husband hits her..... SA A U D SD
2. Men and women should be similarly compensated for doing similar jobs..... SA A U D SD
3. A woman should not expect to have quite the same freedom of action as a man..... SA A U D SD
4. Men should take the same amount of responsibility as women in caring for home and children..... SA A U D SD
5. Women are less capable of making important decisions than are men..... SA A U D SD
6. Male attorneys are better suited than female attorneys to handle criminal law cases..... SA A U D SD
7. In the legal profession, women are appraised more on the basis of appearance and sex appeal than on competence and skill..... SA A U D SD
8. It is acceptable for a woman to have a career, but marriage and family should come first..... SA A U D SD
9. Female attorneys are better suited than male attorneys to handle marital and domestic law cases..... SA A U D SD
10. Any healthy woman can successfully resist a rapist if she really wants to..... SA A U D SD
11. When women go around braless or wearing short skirts and tight tops, or go hitchhiking, they are just asking for trouble..... SA A U D SD
12. If a woman engages in necking or petting and she lets things get out of hand, it is her fault if her partner forces sex on her..... SA A U D SD
13. Many women falsely report rapes to get back at a man, to protect their reputation after a pregnancy, or simply to gain some attention..... SA A U D SD

- 14. When a woman claims she has been raped by an ex-boyfriend or estranged spouse, our legal system gives too little credence to her claim..... SA A U D SD
- 15. Sexual assault and rape will only stop when men let other men know that any form of sexual violence is unacceptable..... SA A U D SD
- 16. Rape is a crime of opportunity and violence, not of sex..... SA A U D SD
- 17. Which of the following best characterizes the nature of bias against women in the profession and in judicial decision making?

a. Bias against women..... (Check only ONE)

IS MORE SUBTLE NOW THAN IT USED TO BE

IS AS OVERT NOW AS IT EVER WAS

OTHER: (Please describe) _____

b. Bias against women..... (Check only ONE)

NO LONGER EXISTS

HAS REMAINED AT ABOUT THE SAME LEVEL

HAS DECREASED

HAS INCREASED

V. YOUR BACKGROUND

The remaining set of questions request information about your personal background. Please remember, this survey will be treated with strict confidentiality and all results will be reported as group data.

1. What is your gender? MALE FEMALE

2. What is your race or ethnic background?

HISPANIC BLACK WHITE ASIAN-AMERICAN OTHER: _____

3. In what year were you born? 19 _____

4. What is your present marital status?

SINGLE

SEPARATED BUT NOT DIVORCED

MARRIED (AND NEVER PREVIOUSLY DIVORCED)

DIVORCED

MARRIED (BUT PREVIOUSLY DIVORCED)

WIDOWED

5. How many male and female children do you have? (Please write the number. If none, write zero (0).)

MALE CHILDREN

FEMALE CHILDREN

6. How many years have you been practicing law in Florida? _____ YEARS

7. In which Florida county do you practice law? _____

8. Which of the following best describes your legal practice? (Check only ONE)

SOLE PRACTITIONER

LARGE FIRM (31 OR MORE ATTORNEYS)

OTHER

SMALL-SIZED FIRM (2 - 10 ATTORNEYS)

GOVERNMENT

MODERATE-SIZED FIRM (11 - 30 ATTORNEYS)

RETIRED

9. In which of the following courts is the largest share of your practice? (Check only ONE)
- COUNTY CIRCUIT STATE APPELLATE FEDERAL
10. Are the majority of your clients males or females?
- MALES FEMALES ABOUT EQUAL NUMBER OF EACH
11. How many hours per week do you devote to the practice of law?
- UNDER 20 HOURS 30 - 39 HOURS 50 - 59 HOURS
- 20 - 29 HOURS 40 - 49 HOURS 60 OR MORE HOURS
12. Have you ever applied to serve on the Judicial Nominating Commission?
- YES, AND I WAS APPOINTED YES, BUT I WAS NOT APPOINTED NO
13. Have you ever applied for a Judicial Appointment?
- YES NO (Skip to Q. #15)
14. If YES, were any questions posed to you during your interview with the Judicial Nominating Commission that you considered to be related more to your gender than to your qualifications?
- YES NO ALTHOUGH I APPLIED FOR A JUDGESHIP, I WAS NEVER INTERVIEWED
15. To which of the following Florida Bar Sections do you currently belong? (Check ALL that apply)
- FAMILY LAW TRIAL LAWYERS CRIMINAL LAW OTHER SECTION(S) NONE
16. To which of the following Bar-related organizations do you currently belong? (check ALL that apply)
- FLORIDA BAR COMMITTEE AMERICAN BAR ASSN. LOCAL BAR OTHER STATE BAR(S)
17. Have you ever been a victim of domestic violence?
- YES NO
18. Have you ever been personally involved in a contested dissolution, custody or support matter?
- YES NO

VI. COMMENTS

Have you personally experienced or witnessed incidents of gender bias in the courtroom or other professional settings that you can share? Please do NOT provide names in your description of the situation(s). Please attach on a separate page these and any additional comments you have in regard to earlier questions (such as practice before male and female judges, bias against minority women attorneys, failure of judges to follow child support guidelines, the Judicial Nominating Commission, etc.).

If you have TRANSCRIPTS to share, please contact the Supreme Court Gender Bias Study Commission's staff director, Virginia Daire, at (904) 488-6997. She can tell you how to preserve the confidentiality of the parties, attorneys and judges before sending the transcripts to the Commission.

THANK YOU FOR YOUR ASSISTANCE. PLEASE RETURN THIS QUESTIONNAIRE IN THE ENCLOSED POSTAGE-PAID RETURN ENVELOPE AS SOON AS POSSIBLE TO: Sapolsky Research, Inc., P.O. Box 1047, Tallahassee, FL 32302-9953

Gender Bias: Study Commission Survey of The Florida Bar Family Law Section

This survey contains a total of 6 sections. Not all sections may apply to you. As you read through the questionnaire, you will be directed to those sections relevant to you. All questionnaires are confidential; please do not sign your name.

I. COURTROOM BEHAVIOR

Based on your experiences, please answer the following questions regarding the words and actions of judges and attorneys in professional settings, the courtroom or chambers. For each statement, please indicate how often male and female JUDGES and male and female ATTORNEYS exhibit such behaviors. CIRCLE your response:

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N

If you do not know how often it occurs, circle DON'T KNOW = DK

Circle ONE answer in each line

- | | | | | | | | |
|--|------------------------------|---|---|---|---|---|----|
| 1. In professional settings, males are assumed to be attorneys whereas females are not. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 2. Two or more attorneys are referred to as "gentlemen" when at least one of them is female. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 3. The presentation of female attorneys is interrupted more often than the presentation of male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 4. Male attorneys are listened to more attentively than female attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 5. Female attorneys are addressed by their first name or by terms of endearment but male attorneys are referred to in a more formal manner. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 6. Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 7. Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants/witnesses. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 8. Jokes or demeaning remarks are made about women. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |

- 9. Women litigants or witnesses are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 10. Women litigants or witnesses are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 11. Women attorneys are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 12. Women attorneys are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 13. Women attorneys with similar experiences and qualifications are awarded lower fees than male attorneys for similar work. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK
- 14. Women attorneys are appointed to important fee-generating cases on an equal basis with male attorneys. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle one response:

- 15. Case outcome is affected by the gender of the attorneys..... A O S R N DK
- 16. In addition to gender, case outcome is affected by race when the female attorney is black or Hispanic..... A O S R N DK
- 17. Case outcome is affected by the gender of the litigants/witnesses..... A O S R N DK
- 18. In addition to gender, case outcome is affected by race when the female witness or litigant is black or Hispanic..... A O S R N DK

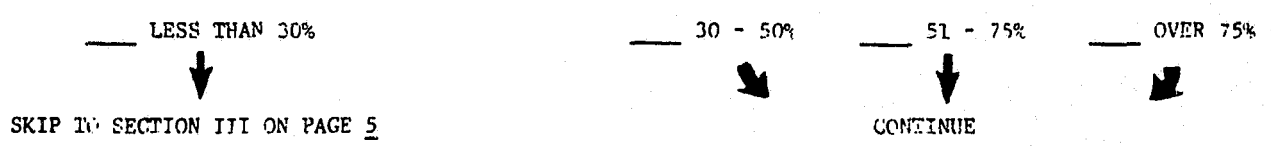
For the next two statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 19. In dealing with male judges and male attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD
- 20. In dealing with female judges and female attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD

II. MARITAL AND FAMILY LAW

1. What percentage of your practice is spent in litigating marital and family law issues such as equitable distribution, alimony, child custody and child support? (Check only ONE)



2. Which spouse do you represent most often in marital law cases? (Check only ONE)

___ THE WIFE ___ THE HUSBAND ___ BOTH SPOUSES ABOUT EQUALLY ___ NOT APPLICABLE

3. In your circuit, what is the "rule of thumb" regarding division of marital property? (Please write in the percentages or note if your circuit has no "rule of thumb")

___ % TO THE WIFE AND ___ % TO THE HUSBAND
___ THERE IS NO "RULE OF THUMB" IN MY COUNTY

4. You have been unable to accept or continue representation of women in family law cases due to the likelihood that you would not receive adequate fees and costs..... A O S R N DK

5. Attorneys are taking mortgages on homesteads to finance representation of women in dissolution of marriage cases..... A O S R N DK

6. Judges who have been divorced are more sympathetic to litigants of the same sex in dissolution of marriage cases. (Please check only ONE)

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

EQUITABLE DISTRIBUTION/ALIMONY

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle your response. If a particular situation does not apply to you, please circle DK.

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N DK = DON'T KNOW

7. Judges make comments which indicate that the amount of alimony awarded is based on the likelihood of the wife's remarriage..... A O S R N DK

8. Female homemakers are awarded only rehabilitative alimony after long-term marriages..... A O S R N DK

9. When judges divide the marital property, the larger share goes to the husband when he has been the income producer and the wife has been the homemaker..... A O S R N DK

10. When the marital estate contains complex assets, the less affluent spouse receives financial help, when needed, for retaining "experts" to appraise the assets..... A O S R N DK

For the next three statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

11. Equitable distribution or alimony awards reflect an attitude that a wife's share is based on how much the husband can give her without substantially diminishing his current lifestyle..... SA A U D SD

12. Equitable distribution or alimony awards reflect appreciation for the economic value of the unpaid spouse's work..... SA A U D SD

13. The courts effectively enforce alimony awards..... SA A U D SD

CHILD CUSTODY/VISITATION

- 14. When the primary caretaker is in the weaker financial position, primary residence of children is awarded to the parent in the stronger financial position rather than ordering that parent to pay child support..... A O S R N DK
- 15. Mothers are denied primary residence because of their employment outside of the home..... A O S R N DK
- 16. Primary residence awards to mothers are conditioned on limitations on their social life and personal relationships..... A O S R N DK
- 17. Mothers are knowingly alleging false sexual abuse of their children by fathers as a means of gaining an advantage in controversies concerning custody or primary residence..... A O S R N DK
- 18. Fathers are denied primary residence because of their employment outside of the home..... A O S R N DK
- 19. Primary residence awards to fathers are conditioned on limitations on their social life and personal relationships..... A O S R N DK
- 20. Change of primary residence is granted to fathers when the single mothers are working outside of the home and there is a "live-at-home" stepmother..... A O S R N DK
- 21. Fathers are seeking custody or primary residence of their children for leverage in negotiating alimony and/or child support..... A O S R N DK
- 22. When requested to do so, judges enforce visitation awards..... A O S R N DK

For the next two statements, please indicate the level of your agreement or disagreement.

- 23. Primary residence is based on an assumption that children belong with their mothers rather than on independent facts..... SA A U D SD
- 24. Judges give fair and serious consideration to fathers who seek primary residence of their children..... SA A U D SD

CHILD SUPPORT

- 25. Judges are following the child support guidelines enacted by the legislature effective July 1, 1987..... A O S R N DK

26. Child support awards accurately reflect the costs of rearing the individual child. (Please check only ONE)

STRONGLY AGREE
 AGREE
 UNSURE
 DISAGREE
 STRONGLY DISAGREE

CHILD SUPPORT ENFORCEMENT



- 27. Repeated adjournments are granted to noncustodial parents in child support enforcement proceedings..... A O S R N DK
- 28. Enforcement of child support is denied because the custodial parent limits or denies visitation..... A O S R N DK
- 29. Courts reduce future child support payments in response to support enforcement motions..... A O S R N DK

- 30. Effective sanctions including contempt are imposed for failure to pay child support..... A O S R N DK
- 31. When mothers reside out-of-state, judges accept, without much further inquiry, respondents' testimony that they cannot afford to pay child support arrearages.. A O S R N DK
- 32. When mothers are present in the courtroom, judges accept, without much further inquiry, respondents' testimony that they cannot afford to pay child support arrearages..... A O S R N DK
- 33. Child support arrearages are reduced to judgment at the time arrears are established..... A O S R N DK
- 34. Courts reduce or forgive arrearages in child support enforcement proceedings.... A O S R N DK
- 35. Wage assignment orders are granted when child support is in arrears..... A O S R N DK
- 36. Judges view attempts at child support enforcement as vindictiveness against the noncustodial parent. (Please check only ONE)

STRONGLY AGREE AGREE UNSURE DISAGREE STRONGLY DISAGREE

III. DOMESTIC VIOLENCE

- 1. In the past two years, have you represented a petitioner or a respondent in a proceeding involving domestic violence?

 YES NO --- SKIP TO SECTION IV ON PAGE 6 

The following statements reflect various actions that are possible in domestic violence cases. After you read each statement, please indicate how often you believe the situation occurs.

- 2. Respondents are ordered to pay spousal and/or child support when they are living apart from their families under injunctions for protection..... A O S R N DK
- 3. "Injunctions for protection" directing respondents to move out of the marital home are granted ex parte..... A O S R N DK
- 4. In addition to the respondent, judges issue a restraining order against the petitioner even though there has been no allegation or proof of domestic violence by the petitioner..... A O S R N DK
- 5. Ex parte injunctions are granted when a threat of domestic violence exists but no violence has as yet occurred..... A O S R N DK
- 6. State attorneys decline to prosecute domestic violence complaints in criminal courts..... A O S R N DK
- 7. Judges impose sanctions, including civil commitment, when injunctions for protection are violated..... A O S R N DK
- 8. Petitioners' requests for supervised child visitation are refused or ignored when the respondent has been abusive toward the petitioner..... A O S R N DK
- 9. In general, orders for protection are served upon respondents within 24 hours of their issuance..... A O S R N DK

The next five items describe remarks judges might make in the presence of a female petitioner in a domestic violence case.

10. A judge asks a female petitioner why she has no visible injuries..... A O S R N DK
11. The severity of the petitioner's circumstance is diminished by a judge who treats the situation lightly or condones lawyers who do so..... A O S R N DK
12. A judge implies that the victim may have deserved or provoked the violence..... A O S R N DK
13. A judge suggests that a petitioner who did not come forward after earlier incidents of domestic violence ought not to be heard to complain now..... A O S R N DK
14. A judge plays down the incidence of abuse as a one-time occurrence..... A O S R N DK

IV. GENERAL ATTITUDES

Below are series of statements regarding men's and women's roles in society. After you read each statement, please circle one: SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

1. No matter what, a wife should move out of the house if her husband hits her..... SA A U D SD
2. Working women have an independent source of income, so ex-husbands shouldn't be required to make child support payments..... SA A U D SD
3. Men and women should be similarly compensated for doing similar jobs..... SA A U D SD
4. By and large, female attorneys lack the legal experience and competence of their male colleagues..... SA A U D SD
5. A woman should not expect to have quite the same freedom of action as a man..... SA A U D SD
6. Men should take the same amount of responsibility as women in caring for home and children..... SA A U D SD
7. Women are less capable of making important decisions than are men..... SA A U D SD
8. Neither the law nor judges should favor the husband over the wife in the disposal of family property or income..... SA A U D SD
9. Male attorneys are better suited than female attorneys to handle criminal law cases..... SA A U D SD
10. In the legal profession, women are appraised more on the basis of appearance and sex appeal than on competence and skill..... SA A U D SD
11. A factor in determining alimony should be the degree to which either party was deprived, by conditions of the marriage, of opportunities to develop skills and experiences which improve earning capacity..... SA A U D SD
12. It is acceptable for a woman to have a career, but marriage and family should come first..... SA A U D SD
13. Children belong with their mothers, so fathers should be dissuaded from seeking primary residence..... SA A U D SD
14. Female attorneys are better suited than male attorneys to handle marital and domestic law cases..... SA A U D SD

15. Which of the following best characterizes the nature of bias against women in the profession and in judicial decision making?

a. Bias against women..... (Check only ONE)

___ IS MORE SUBTLE NOW THAN IT USED TO BE

___ IS AS OVERT NOW AS IT EVER WAS

___ OTHER: (Please describe) _____

b. Bias against women..... (Check only ONE)

___ NO LONGER EXISTS

___ HAS REMAINED AT ABOUT THE SAME LEVEL

___ HAS DECREASED

___ HAS INCREASED

V. YOUR BACKGROUND

The remaining set of questions request information about your personal background. Please remember, this survey will be treated with strict confidentiality and all results will be reported as group data.

1. What is your gender? ___ MALE ___ FEMALE

2. What is your race or ethnic background?

___ HISPANIC ___ BLACK ___ WHITE ___ ASIAN-AMERICAN ___ OTHER: _____

3. In what year were you born? 19 ___

4. What is your present marital status?

___ SINGLE

___ SEPARATED BUT NOT DIVORCED

___ MARRIED (AND NEVER PREVIOUSLY DIVORCED)

___ DIVORCED

___ MARRIED (BUT PREVIOUSLY DIVORCED)

___ WIDOWED

5. How many male and female children do you have? (Please write the number. If none, write zero (0).)

___ MALE CHILDREN ___ FEMALE CHILDREN

6. How many years have you been practicing law in Florida? ___ YEARS

7. In which Florida county do you practice law? _____

8. Which of the following best describes your legal practice? (Check only ONE)

___ SOLE PRACTITIONER

___ LARGE FIRM (31 OR MORE ATTORNEYS)

___ OTHER

___ SMALL-SIZED FIRM (2 - 10 ATTORNEYS)

___ GOVERNMENT

___ MODERATE-SIZED FIRM (11 - 30 ATTORNEYS)

___ RETIRED

9. In which of the following courts is the largest share of your practice? (Check only ONE)

___ COUNTY

___ CIRCUIT

___ STATE APPELLATE

___ FEDERAL

10. Are the majority of your clients males or females?

___ MALES

___ FEMALES

___ ABOUT EQUAL NUMBER OF EACH

11. How many hours per week do you devote to the practice of law?

UNDER 20 HOURS 30 - 39 HOURS 50 - 59 HOURS
 20 - 29 HOURS 40 - 49 HOURS 60 OR MORE HOURS

12. Have you ever applied to serve on the Judicial Nominating Commission?

YES, AND I WAS APPOINTED YES, BUT I WAS NOT APPOINTED NO

13. Have you ever applied for a Judicial Appointment?

YES NO (Skip to Q. #15)

14. If YES, were any questions posed to you during your interview with the Judicial Nominating Commission that you considered to be related more to your gender than to your qualifications?

YES NO ALTHOUGH I APPLIED FOR A JUDGESHIP, I WAS NEVER INTERVIEWED

15. To which of the following Florida Bar Sections do you currently belong? (Check ALL that apply)

FAMILY LAW TRIAL LAWYERS CRIMINAL LAW OTHER SECTION(S) NONE

16. To which of the following Bar-related organizations do you currently belong? (check ALL that apply)

FLORIDA BAR COMMITTEE AMERICAN BAR ASSN. LOCAL BAR OTHER STATE BAR(S)

17. Have you ever been a victim of domestic violence?

YES NO

18. Have you ever been personally involved in a contested dissolution, custody or support matter?

YES NO

VI. COMMENTS

Have you personally experienced or witnessed incidents of gender bias in the courtroom or other professional settings that you can share? Please do NOT provide names in your description of the situation(s). Please attach on a separate page these and any additional comments you have in regard to earlier questions (such as practice before male and female judges, bias against minority women attorneys, failure of judges to follow child support guidelines, the Judicial Nominating Commission, etc.).

If you have TRANSCRIPTS to share, please contact the Supreme Court Gender Bias Study Commission's staff director, Virginia Daire, at (904) 488-6997. She can tell you how to preserve the confidentiality of the parties, attorneys and judges before sending the transcripts to the Commission.

THANK YOU FOR YOUR ASSISTANCE. PLEASE RETURN THIS QUESTIONNAIRE IN THE ENCLOSED POSTAGE-PAID RETURN ENVELOPE AS SOON AS POSSIBLE TO:

Sapolsky Research, Inc.
P.O. Box 1047
Tallahassee, FL 32307-0953

Gender Bias: Study Commission Survey of The Florida Bar Trial Lawyers Section

This survey contains a total of 8 sections. Not all sections may apply to you. As you read through the questionnaire, you will be directed to those sections relevant to you. All questionnaires are confidential; please do not sign your name.

I. COURTROOM BEHAVIOR

Based on your experiences, please answer the following questions regarding the words and actions of judges and attorneys in professional settings, the courtroom and chambers. For each statement, please indicate how often male and female JUDGES and male and female ATTORNEYS exhibit such behaviors. CIRCLE your response:

ALMOST ALWAYS = A OFTEN = O SOME OF THE TIME = S RARELY = R NEVER = N

If you do not know how often it occurs, circle DON'T KNOW = DK

Circle ONE answer in each line

- | | | | | | | | | |
|----|---|------------------------------|---|---|---|---|---|----|
| 1. | In professional settings males are assumed to be attorneys whereas females are not. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 2. | Two or more attorneys are referred to as "gentlemen" when at least one of them is female. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 3. | The presentation of female attorneys is interrupted more often than the presentation of male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 4. | Male attorneys are listened to more attentively than female attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 5. | Female attorneys are addressed by their first name or by terms of endearment but male attorneys are referred to in a more formal manner. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 6. | Comments are made about the personal appearance of female attorneys when no such comments are made about male attorneys. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 7. | Comments are made about the personal appearance of female litigants or witnesses when no such comments are made about male litigants/witnesses. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |
| 8. | Jokes or demeaning remarks are made about women. | MALE JUDGES do this..... | A | O | S | R | N | DK |
| | | FEMALE JUDGES do this..... | A | O | S | R | N | DK |
| | | MALE ATTORNEYS do this..... | A | O | S | R | N | DK |
| | | FEMALE ATTORNEYS do this.... | A | O | S | R | N | DK |

- 9. Women litigants or witnesses are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
MALE ATTORNEYS do this..... A O S R N DK
- 10. Women litigants or witnesses are subjected to physical sexual advances. MALE JUDGES do this..... A O S R N DK
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- 11. Women attorneys are subjected to verbal sexual advances. MALE JUDGES do this..... A O S R N DK
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- 13. Women attorneys with similar experiences and qualifications are awarded lower fees than male attorneys for similar work. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK
- 14. Women attorneys are appointed to important fee-generating cases on an equal basis with male attorneys. MALE JUDGES do this..... A O S R N DK
FEMALE JUDGES do this..... A O S R N DK

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle one response:

- 15. Case outcome is affected by the gender of the attorneys..... A O S R N DK
- 16. In addition to gender, case outcome is affected by race when the female attorney is black or Hispanic..... A O S R N DK
- 17. Case outcome is affected by the gender of the litigants/witnesses..... A O S R N DK
- 18. In addition to gender, case outcome is affected by race when the female witness or litigant is black or Hispanic..... A O S R N DK

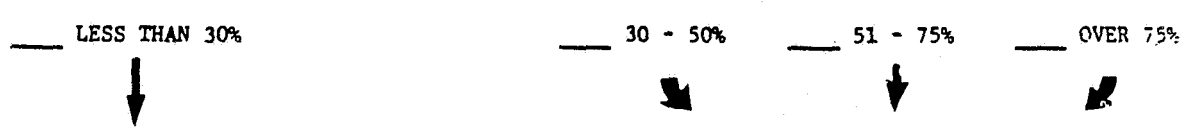
For the next two statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 19. In dealing with male judges and male attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD
- 20. In dealing with female judges and female attorneys, you feel that your gender is more important than your competence and training..... SA A U D SD

II. MARITAL AND FAMILY LAW

1. What percentage of your practice is spent in litigating marital and family law issues such as equitable distribution, alimony, child custody and child support? (Check only ONE)



SKIP TO SECTION III ON PAGE 4

CONTINUE ON THE TOP OF THE NEXT PAGE

For the following statements, please indicate how often you believe the situation occurs, based upon your experience. Circle your response. If a particular situation does not apply to you, please circle DK.

A = ALMOST ALWAYS O = OFTEN S = SOME OF THE TIME R = RARELY N = NEVER DK = DON'T KNOW

- 2. You have been unable to accept or continue representation of women in family law cases due to the likelihood that you would not receive adequate fees and costs..... A O S R N DK
- 3. Female homemakers are awarded only rehabilitative alimony after long term marriages..... A O S R N DK
- 4. When judges divide the marital property, the larger share goes to the husband when he has been the income producer and the wife has been the homemaker..... A O S R N DK

For the next three statements, please indicate the level of your agreement or disagreement. Circle your response:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

- 5. Primary residence is based on an assumption that children belong with their mothers rather than on independent facts..... SA A U D SD
- 6. Judges give fair and serious consideration to fathers who seek primary residence of their children..... SA A U D SD

How often you believe the following situations occur? Please circle your response:

A = ALMOST ALWAYS O = OFTEN S = SOME OF THE TIME R = RARELY N = NEVER DK = DON'T KNOW

- 7. Judges are following the child support guidelines enacted by the legislature effective July 1, 1987..... A O S R N DK
- 8. Repeated adjournments are granted to noncustodial parents in child support enforcement proceedings..... A O S R N DK
- 9. Enforcement of child support is denied because the custodial parent limits or denies visitation..... A O S R N DK
- 10. Effective sanctions including contempt are imposed for failure to pay child support..... A O S R N DK
- 11. When mothers reside out-of-state, judges accept, without much further inquiry, respondents' testimony that they cannot afford to pay child support arrearages.. A O S R N DK
- 12. When mothers are present in the courtroom, judges accept, without much further inquiry, respondents' testimony that they cannot afford to pay child support arrearages..... A O S R N DK
- 13. Wage assignment orders are granted when child support is in arrears..... A O S R N DK
- 14. When requested to do so, judges enforce visitation awards..... A O S R N DK
- 15. Mothers are knowingly alleging false sexual abuse of their children by fathers as a means of gaining an advantage in controversies concerning custody or primary residence..... A O S R N DK
- 16. Fathers are seeking custody or primary residence of their children for leverage in negotiating alimony and/or child support..... A O S R N DK

17. Judges view attempts at child support enforcement as vindictiveness against the noncustodial parent. (Please check only ONE)

___ STRONGLY AGREE ___ AGREE ___ UNSURE ___ DISAGREE ___ STRONGLY DISAGREE

III. DOMESTIC VIOLENCE

1. In the past two years, have you represented a petitioner or a respondent in a proceeding involving domestic violence?

___ YES ___ NO --- SKIP TO SECTION IV BELOW

The following statements reflect various actions that are possible in domestic violence cases. After you read each statement, please indicate how often you believe the situation occurs.

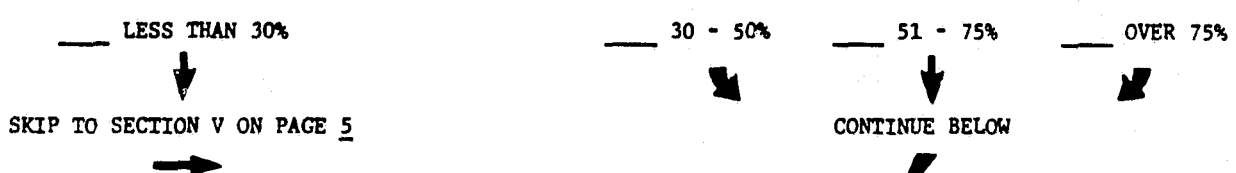
- 2. Respondents are ordered to pay spousal and/or child support when they are living apart from their families under injunctions for protection..... A O S R N DK
3. In addition to the respondent, judges issue a restraining order against the petitioner even though there has been no allegation or proof of domestic violence by the petitioner..... A O S R N DK
4. State attorneys decline to prosecute domestic violence complaints in criminal courts..... A O S R N DK

The next three items describe remarks judges might make in the presence of a female petitioner in a domestic violence case.

- 5. The severity of the petitioner's circumstance is diminished by a judge who treats the situation lightly or condones lawyers who do so..... A O S R N DK
6. A judge implies that the victim may have deserved or provoked the violence..... A O S R N DK
7. A judge plays down the incidence of abuse as a one-time occurrence..... A O S R N DK

IV. CRIMINAL JUSTICE

1. What percentage of your practice is spent in litigating criminal law issues?



RAPE

- 2. Sentences given for sexual battery are mitigated more often than sentences for other crimes of violence..... A O S R N DK
3. Prosecutors are filing sexual battery charges in acquaintance or date rape situations..... A O S R N DK
4. Acquaintance or date rape cases are being brought to trial..... A O S R N DK

PROSTITUTION

- 5. Prostitutes cannot be victims of rape..... SA A U D SD
- 6. The legal system treats streetwalkers more harshly than patrons or pimps..... SA A U D SD

ADULT SENTENCING

- 7. In sentencing, judges consider a female offender's status as a wife and mother but do not consider a male offender's status as a husband and father..... A O S R N DK
- 8. Judges are less willing to impose a jail or prison sentence on females because of the poor living conditions in Florida's jails and prisons..... A O S R N DK

For the next three statements, please indicate the level of your agreement or disagreement:

- 9. Female offenders have a greater potential for rehabilitation than do males and they should receive more lenient treatment than males charged with a similar offense..... SA A U D SD
- 10. Under the guidelines, too lenient a sentence is given to a convicted rapist who has no prior record..... SA A U D SD

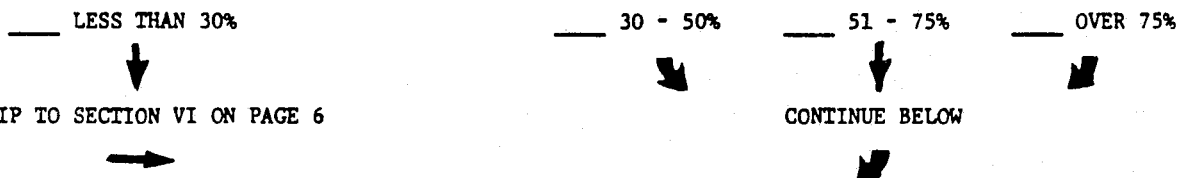
JUVENILE JUSTICE

- 11. Runaway girls are treated more severely than runaway boys by the juvenile justice system..... A O S R N DK
- 12. Sexually abused boys are neglected or ignored by the legal system..... A O S R N DK
- 13. Giving stiff sentences to runaway girls will discourage them from turning later to prostitution and other crimes.

STRONGLY AGREE
 AGREE
 UNSURE
 DISAGREE
 STRONGLY DISAGREE

V. CIVIL LITIGATION: NEGLIGENCE

1. What percentage of your practice is tort litigation? (Please check only ONE)



From your experience, how often do the following results occur in negligence cases?

- 2. For disfiguring injuries, juries award higher amounts to women who are younger than to women who are older..... A O S R N DK
- 3. For disfiguring injuries, juries award higher amounts to men who are younger than to men who are older..... A O S R N DK

4. For disfiguring injuries, juries award higher amounts to women than to men..... A O S R N DK
5. For pain and suffering, juries award higher amounts to men than to women..... A O S R N DK
6. For lost wages and future income, juries award higher amounts to men than to women..... A O S R N DK
7. For loss of consortium, juries award higher amounts to husbands than to wives... A O S R N DK
8. Where evidence is presented, juries compensate homemakers for the lost value of the services they provide for their families..... A O S R N DK

VI. GENERAL ATTITUDES

Below are series of statements regarding men's and women's roles in society. After you read each statement, please circle one:

SA = STRONGLY AGREE, A = AGREE, U = UNSURE, D = DISAGREE, SD = STRONGLY DISAGREE

1. No matter what, a wife should move out of the house if her husband hits her..... SA A U D SD
2. Working women have an independent source of income, so ex-husbands shouldn't be required to make child support payments..... SA A U D SD
3. Men and women should be similarly compensated for doing similar jobs..... SA A U D SD
4. A woman should not expect to have quite the same freedom of action as a man..... SA A U D SD
5. Men should take the same amount of responsibility as women in caring for home and children..... SA A U D SD
6. Women are less capable of making important decisions than are men..... SA A U D SD
7. Male attorneys are better suited than female attorneys to handle criminal law cases..... SA A U D SD
8. In the legal profession, women are appraised more on the basis of appearance and sex appeal than on competence and skill..... SA A U D SD
9. It is acceptable for a woman to have a career, but marriage and family should come first..... SA A U D SD
10. Female attorneys are better suited than male attorneys to handle marital and domestic law cases..... SA A U D SD
11. Any healthy woman can successfully resist a rapist if she really wants to..... SA A U D SD
12. When women go around braless or wearing short skirts and tight tops, or go hitchhiking, they are just asking for trouble..... SA A U D SD
13. Many women falsely report rapes to get back at a man, to protect their reputation after a pregnancy, or simply to gain some attention..... SA A U D SD
14. When a woman claims she has been raped by an ex-boyfriend or estranged spouse, our legal system gives too little credence to her claim..... SA A U D SD

15. Which of the following best characterizes the nature of bias against women in the profession and in judicial decision making?

a. Bias against women..... (Check only ONE)

___ IS MORE SUBTLE NOW THAN IT USED TO BE

___ IS AS OVERT NOW AS IT EVER WAS

___ OTHER: (Please describe) _____

b. Bias against women..... (Check only ONE)

___ NO LONGER EXISTS

___ HAS REMAINED AT ABOUT THE SAME LEVEL

___ HAS DECREASED

___ HAS INCREASED

VII. YOUR BACKGROUND

The remaining set of questions request information about your personal background. Please remember, this survey will be treated with strict confidentiality and all results will be reported as group data.

1. What is your gender? ___ MALE ___ FEMALE

2. What is your race or ethnic background?

___ HISPANIC ___ BLACK ___ WHITE ___ ASIAN-AMERICAN ___ OTHER: _____

3. In what year were you born? 19 ___

4. What is your present marital status?

___ SINGLE

___ SEPARATED BUT NOT DIVORCED

___ MARRIED (AND NEVER PREVIOUSLY DIVORCED)

___ DIVORCED

___ MARRIED (BUT PREVIOUSLY DIVORCED)

___ WIDOWED

5. How many male and female children do you have? (Please write the number. If none, write zero (0).)

___ MALE CHILDREN

___ FEMALE CHILDREN

6. How many years have you been practicing law in Florida? ___ YEARS

7. In which Florida county do you practice law? _____

8. Which of the following best describes your legal practice? (Check only ONE)

___ SOLE PRACTITIONER

___ LARGE FIRM (31 OR MORE ATTORNEYS)

___ OTHER

___ SMALL-SIZED FIRM (2 - 10 ATTORNEYS)

___ GOVERNMENT

___ MODERATE-SIZED FIRM (11 - 30 ATTORNEYS)

___ RETIRED

9. In which of the following courts is the largest share of your practice? (Check only ONE)

___ COUNTY

___ CIRCUIT

___ STATE APPELLATE

___ FEDERAL

10. Are the majority of your clients males or females?

___ MALES

___ FEMALES

___ ABOUT EQUAL NUMBER OF EACH

11. How many hours per week do you devote to the practice of law?

UNDER 20 HOURS 30 - 39 HOURS 50 - 59 HOURS
 20 - 29 HOURS 40 - 49 HOURS 60 OR MORE HOURS

12. Have you ever applied to serve on the Judicial Nominating Commission?

YES, AND I WAS APPOINTED YES, BUT I WAS NOT APPOINTED NO

13. Have you ever applied for a Judicial Appointment?

YES NO (Skip to Q. #15)

14. If YES, were any questions posed to you during your interview with the Judicial Nominating Commission that you considered to be related more to your gender than to your qualifications?

YES NO ALTHOUGH I APPLIED FOR A JUDGESHIP, I WAS NEVER INTERVIEWED

15. To which of the following Florida Bar Sections do you currently belong? (Check ALL that apply)

FAMILY LAW TRIAL LAWYERS CRIMINAL LAW OTHER SECTION(S) NONE

16. To which of the following Bar-related organizations do you currently belong? (check ALL that apply)

FLORIDA BAR COMMITTEE AMERICAN BAR ASSN. LOCAL BAR OTHER STATE BAR(S)

17. Have you ever been a victim of domestic violence?

YES NO

18. Have you ever been personally involved in a contested dissolution, custody or support matter?

YES NO

VIII. COMMENTS

Have you personally experienced or witnessed incidents of gender bias in the courtroom or other professional settings that you can share? Please do NOT provide names in your description of the situation(s). Please attach on a separate page these and any additional comments you have in regard to earlier questions (such as practice before male and female judges, bias against minority women attorneys, failure of judges to follow child support guidelines, the Judicial Nominating Commission, etc.).

If you have TRANSCRIPTS to share, please contact the Supreme Court Gender Bias Study Commission's staff director, Virginia Daire, at (904) 488-6997. She can tell you how to preserve the confidentiality of the parties, attorneys and judges before sending the transcripts to the Commission.

THANK YOU FOR YOUR ASSISTANCE. PLEASE RETURN THIS QUESTIONNAIRE IN THE ENCLOSED POSTAGE-PAID RETURN ENVELOPE AS SOON AS POSSIBLE TO:

Sapolsky Research, Inc.
P.O. Box 1047
Tallahassee, FL 32302-9953

GENDER BIAS STUDY COMMISSION SURVEY OF FLORIDA JUDGES

Please complete all portions of this questionnaire. Your responses will be kept strictly confidential. Please do not sign your name. For most of the questions simply circle the letter associated with your answer. For the following items dealing with substantive legal issues, please circle one of the following answers:

Strongly Agree = SA Agree = A Unsure = U Disagree = D Strongly Disagree = SD

DISSOLUTION OF MARRIAGE

- 1. The less affluent spouse should receive financial assistance to afford equal representation and retain "experts" to appraise complex assets in dissolution of marriage cases..... SA A U D SD
- 2. When judges divide the marital property, the larger share should go to the husband when he has been the income producer and the wife has been the homemaker... SA A U D SD
- 3. A wife should not expect to share in her husband's business and pension upon the dissolution of their marriage..... SA A U D SD
- 4. Attractive wives should receive less property distribution or alimony because they will remarry soon..... SA A U D SD
- 5. In this day and age of women's equality, long-term homemakers ought not expect to receive permanent alimony..... SA A U D SD
- 6. A child under the age of twelve belongs with the mother, assuming that she is fit..... SA A U D SD
- 7. A mother who has a live-in lover is not fit to have custody of a child..... SA A U D SD
- 8. A father who works outside the home is at a disadvantage in becoming the primary residential parent when the mother does not work outside the home..... SA A U D SD
- 9. A father who has a live-in lover is not fit to have custody of a child..... SA A U D SD
- 10. The fact of spouse abuse is not relevant to the issue of which parent should be awarded custody..... SA A U D SD
- 11. The fact of spouse abuse is not relevant to the issue of whether visitation with children should be supervised..... SA A U D SD
- 12. When working women have an independent source of income, ex-husbands should not be required to make child support payments..... SA A U D SD
- 13. Having "the present ability to pay" means that an obligor has, on his person at the time of the hearing, sufficient funds to purge the child support arrearages..... SA A U D SD

DOMESTIC VIOLENCE

- 1. A single incident of domestic violence is not serious..... SA A U D SD
- 2. Domestic violence is not serious unless the victim's injuries are visible..... SA A U D SD

4. Most of the victims of domestic violence provoke the violence..... SA A U D SD
5. The problem with domestic violence is that law enforcement does not take it seriously enough..... SA A U D SD
6. The problem with domestic violence is that the state attorney's office does not take it seriously enough..... SA A U D SD
7. The problem with domestic violence is that the victim keeps returning to the perpetrator..... SA A U D SD
8. There are specific isolated instances where slapping, kicking, pushing or shoving are acceptable in domestic situations..... SA A U D SD

CRIMINAL LAW - RAPE

1. Acquaintance or date rape cases are being brought to trial..... SA A U D SD
2. Husbands are not prosecuted for marital rape unless the wife receives serious physical injuries..... SA A U D SD
3. The alleged victim's sexual history with persons other than the defendant is relevant to the issue of her consent even if it is not admissible..... SA A U D SD
4. Evidence of rape trauma syndrome from a qualified expert should be admitted to explain an alleged victim's behavior following an alleged rape..... SA A U D SD
5. A prostitute cannot be raped..... SA A U D SD
6. Any healthy woman can successfully resist a rapist if she really wants to..... SA A U D SD
7. When women go around braless or wearing short skirts and tight tops, or go hitchhiking, they are just asking for trouble..... SA A U D SD
8. Many women falsely report rapes to get back at a man, to protect their reputation after a pregnancy, or simply to gain some attention..... SA A U D SD
9. If a woman engages in necking or petting and she lets things get out of hand, it is her fault if her partner forces sex on her..... SA A U D SD

CRIMINAL LAW - ADULT SENTENCING

11. In sentencing, a female offender's status as a wife and mother is more important than a male offender's status as a husband and father..... SA A U D SD
12. Women receive more lenient sentences than similarly situated men because of the poor living conditions in Florida's jails and prison facilities for women..... SA A U D SD
13. Women receive more lenient sentences than similarly situated men because, by and large, they are the sole support of their children..... SA A U D SD
14. Women receive more lenient sentences than similarly situated men because there are too few facilities for female offenders..... SA A U D SD

JUVENILE JUSTICE

- 1. Sexually abused boys are neglected or ignored by the legal system..... SA A U D SD
- 2. Promiscuity is a matter to be taken more seriously if the juvenile is a girl..... SA A U D SD
- 3. Girls engaged in prostitution are often labelled as runaways by the juvenile justice system..... SA A U D SD
- 4. The facilities and programs for girls are fewer and less adequate than the facilities and programs for boys in our juvenile justice system..... SA A U D SD

TORT LITIGATION

- 1. For disfiguring injuries, juries award higher amounts to women than to men..... SA A U D SD
- 2. For pain and suffering, juries award higher amounts to men than to women..... SA A U D SD
- 3. For loss of consortium, juries award higher amounts to husbands than to wives.... SA A U D SD

COURTROOM BEHAVIOR AND DECISIONS

Based on your experiences, please answer the following questions regarding the words and actions of attorneys and judges, including yourself, in professional settings, the courtroom, and chambers. Circle your response:

Almost Always = A Often = O Sometimes = S Rarely = R Never = N

If you do not know how often it occurs, circle DON'T KNOW=DK.

- 1. Primary residence is based on an assumption that children belong with their mothers.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK
- 2. Fair and serious consideration is given to fathers who seek primary residence of their children.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK
- 3. Child support guidelines are being followed.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK
- 4. Repeated adjournments are granted to noncustodial parents in child support enforcement proceedings.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK
- 5. Future child support payments are reduced in response to support enforcement motions.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK
- 6. Respondent's testimony that he cannot afford to pay child support arrearages is accepted without much further inquiry.
 - I do this..... A O S R N DK
 - Male judges do this..... A O S R N DK
 - Female judges do this..... A O S R N DK

7. In domestic violence cases, mutual restraining orders are issued even though there has been no allegation or proof of domestic violence by the petitioner.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
8. Petitioners' requests for supervised child visitation are refused or ignored when the respondent has been abusive toward the petitioner.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
9. Child support is awarded at the hearing for a temporary injunction for protection.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
10. Child support is awarded at the hearing for a permanent injunction for protection.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
11. In professional settings, men are assumed to be attorneys whereas women are not.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
12. Female attorneys are addressed by their first name or by terms of endearment but male attorneys are addressed in a more formal manner.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
13. Comments are made about the personal appearance of female attorneys, witnesses and litigants when no such comments are made about male attorneys, witnesses and litigants.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
14. Jokes or demeaning remarks are made about women.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
15. Female attorneys are subjected to verbal sexual advances.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
16. Female attorneys are subjected to physical sexual advances.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK
	Male attorneys do this.....	A	0	S	R	N	DK
	Female attorneys do this	A	0	S	R	N	DK
17. Female attorneys are appointed to important fee-generating cases on an equal basis with male attorneys.	I do this.....	A	0	S	R	N	DK
	Male judges do this.....	A	0	S	R	N	DK
	Female judges do this.....	A	0	S	R	N	DK

4. On what court are you currently sitting?

_____ County _____ Circuit/Civil _____ Circuit/Criminal
_____ Circuit/Family _____ Appellate

5. On what other courts have you served (not including your current position)?

_____ County _____ Circuit/Civil _____ Circuit/Criminal
_____ Circuit/Family _____ Appellate

6. How long have you been a judge? _____ years

7. Have you ever been personally involved in a contested dissolution, custody or support matter?

_____ Yes _____ No

8. Initially, were you elected or appointed to the bench?

_____ Elected _____ Appointed

9. If appointed, were any questions posed to you during your interview with the Judicial Nominating Commission that you considered to be related more to your gender than to your qualifications?

_____ Yes _____ No

COMMENTS

Have you personally experienced or witnessed incidents of gender bias in the courtroom or other professional settings that you can share? If so, please attach on a separate page these and any additional comments you have in regard to this questionnaire. Please do NOT provide names in your description of the situation(s).

THANK YOU FOR YOUR ASSISTANCE. PLEASE RETURN THIS QUESTIONNAIRE IN THE ENCLOSED POSTAGE-PAID ENVELOPE AS SOON AS POSSIBLE TO:

Sapolsky Research, Inc. P.O. Box 1047 Tallahassee, FL 32302-9953

AN ANALYSIS OF JUDICIAL POOLS

Judicial surveys conducted in 1987 and 1988 in eleven Florida counties were utilized as the basis for an analysis of whether or not a judge's gender influences his or her perceived ability in office. The results, detailed below, indicate that there is a small (two percent) margin of opinion in favor of male judges; however, the fact that the ratio of male judges to female judges in Florida is greater than six to one indicates that the sample we are working with is quite uneven. That fact in itself appears to reflect a pervasive gender bias within the legal system.

In some cases, polls contained questions which were not common to all. For example, one survey asked, "Should Judge _____ be retained in office?" with a "Yes" or "No" response given. Others were divided into categories of "Judicial Ability" and "Judicial Temperament," with responses of "Not Qualified," "Qualified," and "Extremely Qualified" given. In an effort to create a basis of evaluation consistent to all, the following simplifications were made.

The common thread in all pools was the question of whether a particular judge is considered qualified for his/her position. On this basis, polls asking whether a judge should be retained in office were viewed as effectively asking whether a respondent considered that judge to be qualified.

Many of the surveys contained separate categories for "Judicial Ability" and "Judicial Temperament," whereas others did not contain such a breakdown of categories. These areas were combined to create one category for analytical purposes. In a similar vein, some polls had separate categories for those of whom they had "Considerable Knowledge" and for those of whom they had "Limited Knowledge." As these distinctions are not consistent for all polls, the categories were combined for analysis. Furthermore, some polls had respon-

ses of "Qualified" and "Extremely Qualified," in addition to "Not Qualified," while others merely asked for a "Yes" or "No" response. Responses of "Qualified" and "Extremely Qualified" were combined, thus creating a format consistent with others.

The "No Opinion" category is based on polls asking for various responses, e.g., "Insufficient Information," "No Knowledge," and "No Opinion." One survey did not provide such a category, so that the total responses for each candidate were subtracted from the total number of survey respondents to obtain this figure.

I. Combined Results -- All Counties

<u>Gender of Judge</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total*</u>
Males (270)	291 44%	71.9 11%	285 43%	648
Females (42)	281.3 42%	68.1 10%	307.8 46%	657

II. Results from Individual Counties

A. Broward County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (55)	559.1 46%	99.1 8%	547.8 45%	1206
Females (14)	516.3 42%	131.3 10%	558.4 46%	1206

* Figures represent the average number of responses in each county.

B. Dade County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (57)	965.2 39%	210.5 8%	1292.3 52%	2468
Females (10)	753.3 30%	262.6 10%	1452.1 58%	2468

C. Eighth Judicial Circuit

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (16)	126.5 62%	14.8 7%	60.7 30%	202
Females (3)	163.6 80%	8 3%	30.4 15%	202

D. Hillsborough County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (50)	239 46%	29 5%	244.5 47%	513
Females (5)	210.8 41%	33.8 6%	268.4 52%	513

E. Monroe County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (5)	37.6 53%	19.2 27%	13 18%	70
Females (1)	36 51%	19 27%	15 21%	70

F. Orange County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (2)	191 37%	171 33%	146 28%	508

G. Palm Beach County

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (8)	162.4 31%	82.6 15%	276 52%	521

H. St. Petersburg

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (17)	332.3 53%	44 7%	249.5 39%	626
Females (3)	129 20%	71.3 11%	225.13 35%	626

I. Sarasota, Manatee, De Soto

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (20)	269.7 59%	52.4 11%	134.9 29%	457
Females (4)	256 56%	60 13%	141 30%	457

J. Tallahassee

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (13)	165.4 53%	53.9 17%	89.7 29%	309
Females (1)	251 81%	19 6%	39 12%	309

K. Volusia

<u>Gender</u>	<u>Qualified</u>	<u>Not Qualified</u>	<u>No Opinion</u>	<u>Total</u>
Males (27)	153.5 57%	15.25 5%	81 30%	265
Females (1)	216 81%	8 3%	41 15%	265

Prepared by Gender Bias Study Commission
staff, November 1988

FLORIDA ASSOCIATION FOR WOMEN LAWYERS

GENDER BIAS STUDY COMMISSION

QUESTIONNAIRE

SURVEY #1

Thank you for taking the time to complete and return this confidential questionnaire. Your doing so will help the Commission learn more about your experience as a professional and as an advocate for your clients.

1. On a personal level, do you experience any conflict between your role as an attorney and any role as either a marriage partner or parent? Yes _____. No _____. If yes, would you please elaborate on a separate sheet of paper and, if possible, indicate what changes you believe could occur within the profession that would alleviate the conflict you have identified? Thank you.
2. As a professional, have you experienced any bias against or for you based on your gender? Yes _____. No _____. What about your race or ethnic background? Have you experienced any bias against or for you based on your race or ethnic background? Yes _____. No _____. If the answer to either of these questions is yes, please elaborate on a separate sheet of paper. Some female attorneys who are black have indicated that it is difficult for them to ascertain whether the bias is against their race or against their gender. If this is true for you, please let us know in your answer to this question. Thank you.
3. As a lawyer, have you witnessed bias against or for any of your clients on account of your client's gender? Yes _____. No _____. If so, please elaborate on a separate sheet of paper and, if the issue was compounded because of the race or ethnic background or poverty of your client, please indicate as much in your elaboration. Thank you.
4. Have you ever applied to serve on the Judicial Nominating Commission? Yes _____. No _____. If so, were you appointed? Yes _____. No _____.
5. If you ever served on a Judicial Nominating Commission, did you ever observe instances where a candidate's gender or "gender role" became an issue in the appointment process, either in the questions posed to the candidate or in deliberations? Yes _____. No _____. If so, please elaborate on a separate sheet of paper. In doing so, please be sure to indicate whether the candidate was a man or a woman. Thank you.
6. Have you ever applied for a judicial appointment? Yes _____. No _____. If so, were you appointed? Yes _____. No _____.
7. If you were ever interviewed for a judicial nomination, did you perceive any bias operating against or for you because of either your gender or your race? Yes _____. No _____. If so, please elaborate on a separate sheet of paper. Thank you.

(CONTINUED ON REVERSE SIDE)

DEMOGRAPHICS

1. What is your gender? Male____. Female____.
2. What is your ethnic background? White____. Black____. Hispanic____. Asian-American____. Other____.
3. In what year were you born? 19____.
4. In what year were you admitted to The Florida Bar? 19____.
5. In what Florida county do you practice law? _____.
6. In what areas of law do you practice? (Please indicate percentage of time devoted to each area.)

Administrative	_____	% of the time
Corporation, Banking & Business	_____	% of the time
Criminal	_____	% of the time
Environmental & Land Use	_____	% of the time
Family	_____	% of the time
General Practice	_____	% of the time
International	_____	% of the time
Labor & Employment	_____	% of the time
Real Property, Probate & Trust	_____	% of the time
Tax	_____	% of the time
Trial	_____	% of the time
Workers' Compensation	_____	% of the time

7. Which of the following best describes your legal practice?

Sole practitioner	_____	Large-sized firm (31+)	_____
Small-sized firm (2-11)	_____	Retired	_____
Moderate-sized firm (11-30)	_____	Government	_____
Other _____	-(Please specify) _____		

A return of this questionnaire on or before February 15 would be appreciated. Please send completed questionnaire to the Gender Bias Study Commission, 835-A East Park Avenue, Tallahassee, Florida 32301. Thank you.

GENDER BIAS STUDY COMMISSION FAWL SURVEY #2
835-A East Park Avenue, Tallahassee FL 32301

Please indicate whether you are: Female___ Male___

JUDICIAL NOMINATING COMMISSION (JNC) Yes___ No___

1. Have you ever applied to serve on a JNC?
2. If not, why not? _____

3. If you have applied, with whom did you apply?
The Florida Bar___ The Governor's Office___
4. Were you appointed? Yes___ No___
5. By whom?
The Florida Bar___ The Governor's Office___
6. If you applied but were not appointed, were you given any reason for not being appointed? Yes___ No___
7. What reasons were you given? _____

JUDICIAL APPOINTMENTS

1. Have you ever applied for a judicial appointment? Yes___ No___
2. If you have been interested in applying, but have not applied, please tell us why you have not applied.

3. If you did apply, were you interviewed by a JNC? Yes___ No___
4. If you were not interviewed, were you given any reasons for not having been interviewed? Yes___ No___
5. What reasons were you given? _____

6. If you were interviewed, were any questions asked of you which, in your opinion, related more to your gender or a gender-role than to your qualifications? Yes___ No___

GENDER BIAS STUDY COMMISSION FAWL SURVEY #2

7. What were those questions: _____

8. Was your name sent to the Governor? Yes___ No___
9. Were you appointed? Yes___ No___

JUDICIAL QUALIFICATIONS COMMISSION

1. Have you ever wanted to file a complaint against a
because s/he engaged in conduct which, in your
opinion, displayed gender bias (i.e., in decision-
making or in conduct toward attorneys, litigants,
witnesses, or court personnel)? Yes___ No___
2. Did you ever file that complaint with the JQC? Yes___ No___
3. If not, why not? _____
4. If you did file the complaint, how was it handled
by the JQC and were there any repercussions for
you? In answering, please be specific about what
transpired or what the repercussions were.
- _____

VICTIMS'
INTERVIEW FORM

Please complete one form for each interview. Please attach separate sheets of paper as necessary to respond to requests for elaboration.

1. County in which incident of abuse occurred: _____

2. Approximate date of incident (Month/Year): _____

3. Was law enforcement called? Yes _____ No _____

Who responded: Sheriff? _____ Police? _____ No One _____

If law enforcement was not called, why not? _____

If law enforcement responded to the call, were they willing to make an arrest? Yes _____ No _____

If not, why not and what did they do instead? _____

Please use another sheet of paper to elaborate on how the situation and the victim were treated by law enforcement.

4. Did the victim seek help in securing an injunction for protection from the office of the clerk of court? Yes _____ No _____

If so, how was the victim treated by the office of the clerk of court? Please use another sheet of paper to answer this question.

5. Did the victim have any encounters with the state attorney's office in an effort to prosecute? Yes _____ No _____

If so, was the office of the state attorney willing to prosecute? Yes _____ No _____

If the office of the state attorney was not willing to prosecute, what reason was given?

How did the office of the state attorney treat the victim? Please elaborate on a separate sheet of paper.

6. Did the victim appear before a judge in relation to this incident? Yes ____ No ____

Was the judge: Male ____ Female ____

How was the victim treated by the judge? Please respond on a separate sheet of paper.

7. Victim's gender: M ____ F ____ Age: ____ Occupation: _____

8. Perpetrator's gender: M ____ F ____ Age: ____ Occupation: _____

9. Relationship between the victim and the perpetrator at the time of the incident:

- Married and living together _____
- Married but not living together _____
- Divorced but living together _____
- Divorced and living apart _____
- Unmarried and living together _____
- Unmarried and living apart _____
- Other _____

COMMUNITY RESPONSE TO DOMESTIC VIOLENCE

This is an anonymous survey about community response to adult domestic violence. It is four pages long. At times it asks you to elaborate on your answers by attaching a separate sheet of paper.

Please use a separate survey form for each county on which you are reporting.

1. Which county are you reporting on in this survey form?
(Remember: only one county per form) _____

2. Approximately how many incidents of domestic violence in this county came to your attention in 1987? (Count each incident once regardless of whether the parties were the same in more than one incident and regardless of whether anyone else may be reporting on that particular incident) _____

3. Approximately what percentage of those incidents involved married couples? _____ percent

4. Approximately what percentage of those incidents involved adult unmarried unrelated cohabitants? _____ percent

5. Approximately what percentage of the incidents involved a female victim and a male perpetrator? _____ percent

Unless otherwise indicated please circle your answers:

A-Always O-Often S-Sometimes R-Rarely N-Never DK-Don't know

LAW ENFORCEMENT

6. In this county, domestic violence situations result in an arrest of the perpetrator:

without an injunction for protection
having been issued A O S R N DK

where an injunction for protection
has been issued A O S R N DK

7. When, at the scene of domestic violence, an officer in this county is presented with a mutual restraining order (as opposed to a restraining order directed against the perpetrator only), the officer responds by:

arresting both parties A O S R N DK
arresting only the man A O S R N DK
arresting only the woman A O S R N DK
arresting neither party A O S R N DK
mutual restraining orders are not issued in this county _____
other (please specify) _____

(Continued on reverse side)

8. Law enforcement in this county:

demonstrates knowledge of victim's rights (ie the right to be protected, the right to be safe, the right to secure legal redress, etc.)

the sheriff's office does this A O S R N DK
the police department does this A O S R N DK

demonstrates knowledge of the psychological dynamics of domestic violence (ie battered spouse syndrome, the deterrent effect of arrest)

the sheriff's office does this A O S R N DK
the police department does this A O S R N DK

demonstrates concern for the victim

the sheriff's office does this A O S R N DK
the police department does this A O S R N DK

completes a written report of the incident as required by law

the sheriff's office does this A O S R N DK
the police department does this A O S R N DK

hands out the legally required packet of information to the victims of domestic violence

the sheriff's office does this A O S R N DK
the police department does this A O S R N DK

9. On a separate sheet of paper, please state what factors influence law enforcement's actions if you answered S to any of question #8. Also, please provide specific examples to support any R or N answers to question #8.

CLERK OF COURT

10. In this county, the staff of the clerk of court are helpful in the process of securing an injunction for protection for the victims of domestic violence. A O S R N DK

11. On a separate sheet of paper, please elaborate on an S answer or provide specific examples to support any R or N answer to question #10.

OFFICE OF THE STATE ATTORNEY

12. In this circuit, the office of the state attorney is willing to prosecute complaints of domestic violence

filed by victims A O S R N DK
filed by law enforcement A O S R N DK

21. Judges in this county:

treat the victims of domestic violence with respect or
sensitivity A O S R N DK

demonstrate knowledge of the victim's rights to legal redress
A O S R N DK

22. On a separate sheet of paper, please elaborate on any S answer or provide specific examples to support any R or N answers to question #21.

ATTORNEYS

23. Attorneys in this county are willing to represent the victims of domestic violence. A O S R N DK

24. Attorneys in this county are willing to represent the perpetrators of domestic violence. A O S R N DK

*

25. If there are problems or programs that are unique to your county (ie transportation or child care to facilitate victim's attendance at meetings and hearings, diversion programs, mediation programs), please elaborate on those problems or programs here. Use an additional sheet of paper if necessary.

26. Have you ever been affiliated with an advocacy group for victims of domestic violence? Yes _____ No _____

27. Have you ever been affiliated with either law enforcement or a state attorney's office? Yes _____ No _____

28. If your answer to both of these questions is no, then please state your interest in and knowledge of this community's response to domestic violence.

Thank you for having taken the time and interest to complete this questionnaire. Please return it to:

THE GENDER BIAS STUDY COMMISSION
835-A EAST PARK AVENUE TALLAHASSEE FL 32301
Informal Survey of Florida's Domestic Violence Services
and Providers, prepared and conducted by Windmill Consultants,
Candice Slaughter, New Port Richey, FL, 1988.

SPEAKERS AT PUBLIC HEARINGS

Tallahassee Public Hearing January 25, 1988

Margaret A. Baldwin, professor, Florida State University College of Law

Rosemary Barkett, Florida Supreme Court Justice; chair, child Support Enforcement Commission

Meg Bates, director, Office of Crime Victims Rights, Office of the Attorney General, Department of Legal Affairs; victim/witness advocate

Jean Becker-Powell, coordinator, Florida Department of Labor and Employment Services Victim Assistance Office

Talbot "Sandy" D'Alemberte, dean, Florida State University College of Law

Marva Davis, Esq., Concerns of Minority Women

Joyce Ducas, M.D., psychologist, child custody issues

Janet Ferris, general counsel, Florida Department of Law Enforcement

Tann Hunt, Esq., child custody issues

Marion McDaniel

Karen McElrath, professor, Florida State University School of Criminology

Ray Markey, assistant state attorney, Second Judicial Circuit

Patricia Martin, Ph.D., professor, Florida State University Department of Sociology

Sharon Maxwell, Ph.D., professor, Florida A & M University Department of Sociology

Marilyn Morris, Esq.; author, An Analysis of the Florida Juvenile Justice System

Jerome Novey, Esq.; Florida Bar Certified Marital and Family Law Practitioner

Philip Padavano, Esq.; author, Florida Appellate Practice

Martin Seay, bureau chief, Florida Department of Health and Rehabilitative Services Child Support Enforcement Field Operations Office

Sandi Smith, director, Creative Employment Foundation for Displaced Homemakers

Joanne Snair, former director, Refuge House, domestic violence victims' shelter

Edward Stafman, Esq., civil rights

Gayle Smith Swedmark, Esq., Women in the Profession 1968-1988

Tallahassee Public Hearing, January 25, 1988

Tallahassee Women Lawyers Representative

Marc Taps, Esq., North Florida Legal Services

Steven Uhlfelder, The Florida Bar Board of Governors

Jo Anne Van Meter, lieutenant, Tallahassee Police Department, former sergeant in charge of sex crimes unit

Paula Walborsky, Esq., alimony and economic support issues

Tampa Public Hearing, February 23, 1988

Emmy Acton, Esq., president, Florida Association for Women Lawyers, Hillsborough County Chapter

Diana Allen, Esq., Stiles, Allen & Taylor

Ruth Backman, discrimination of older women in the judicial system

Evelyn Bailey, director, EXPOSE, (Ex-Partners of Service Men and Service Women for Equality), former husbands and wives of military personnel

Mable Bexley, director, The Spring, Hillsborough County Shelter for Victims of Domestic Violence

Nancy Blount, chief legal counsel, Florida Department of Health and Rehabilitative Services Office of Child Support Enforcement, Hillsborough County

Richard Briscoe, Ph.D., professor, University of South Florida Department of Crime Delinquency

Mary Clark, director, Pinellas County Spouse Abuse Center

Marsha Cohen, Esq., employment discrimination law

Fran Cuchiara, counselor, FACE Learning Center, displaced homemakers center, Clearwater

Nancy Farage, Esq., Freedman & Farage

Paul Freeman, director, Rape Crisis Center of Manatee County

Lerea Goldwaite, director, Center for Women, displaced homemakers center, Hillsborough County

Kathleen Graver, counselor, FACE Learning Center, displaced homemakers center, Pinellas County

Fraser Himes, Esq., family law

James Hoglund

Tampa Public Hearing, February 23, 1988

Kim Jaudin, Florida Department of Health and Rehabilitative Services Office of Child Support Enforcement

Hank Lavandera, assistant state attorney, State Attorney's Office, Thirteenth Judicial Circuit

Jack Levine, director, Florida Center for Children and Youth

Trudy McFadden, director, Center for Women, displaced homemakers center, Hillsborough County

Prince McIntosh, Esq., Bay Area Legal Services

Alice Nelson, Esq., civil rights

Ken Pangborn, president, Men International, Inc.

Bill Radcliff, child custody

Fran Schattenberg, owner, The Right Word

Chesterfield Smith, Esq., Holland & Knight

Rose Mary Stanford, Ph.D., professor, University of South Florida; criminologist, The Forgotten Offender: Women in the Criminal Justice System

Jim Tomlinson

Leon Whitehurst, Esq.

Diane Wilkerson, president, Florida National Organization for Women

Mark D. Zimmerman, child custody

Ft. Lauderdale, February 25, 1988

Mary Coombs, Ph.D., professor, University of Miami School of Law

Mary Ann Douglas, Ph.D., Nova University

Bonnie M. Flynn, executive director, Women in Distress of Broward County, Inc.

Sandor F. Genet, Esq.

Mildred George, director, Comprehensive Alternatives of the Public Defender's Office, Fifteenth Judicial Circuit, social worker

Susan Hensen, treatment director, Chemical Dependency In-House Rehab, former battered woman

Ft. Lauderdale Public Hearing, February 25, 1988

Dorothy Hicks, Ph.D., professor, University of Miami School of Medicine Obstetrics and Gynecology; director, Rape Treatment Center in Miami

"Jenny," legal secretary/word processor operator

John W. Jolly, Esq.; former assistant state attorney, sex crimes/child abuse unit, Fifteenth Judicial Circuit

Kate Kearney, assistant state attorney, sex crimes/child abuse unit, Fifteenth Judicial Circuit

Mr. Langbien, Esq., cohabitation regarding post-dissolution of marriage (for Mr. Paul Louis)

Velma Troy LaPierre, M.S., victim advocate; project coordinator, Palm Beach County Domestic Assault Program

Jennifer McCormack, Palm Beach Junior College-Florida Department of Health and Rehabilitative Services Displaced Homemakers Program

John Scarola, chairman, Individual Rights and Responsibilities Committee, The Florida Bar

Nancy Stone, clinical supervisor, Women in Distress of Broward County, Inc.; former victim advocate

Carol Taylor, Esq., criminal law

Allen Terl, Florida assistant attorney general, consumer litigation section

Edward J. Winter Jr., assistant director, Fathers for Equal Rights

Miami Public Hearing, March 31, 1988

Brenda Abrams, Esq., Abrams & Abrams, Florida Bar certified family law practitioner

Ray Armstrong, Ph.D., psychologist, prostitution issues

Elizabeth Baker, Esq., Florida Bar certified family law practitioner

Fran Bohsack-Lee, president, Miami chapter, National Organization for Women

Ana Maria Carnesoltas, Esq., Hispanic women attorneys' issues

Pete Cuccaro, lieutenant, Metro-Dade Police Department


Julia Dawson, Esq., state legislative director, Florida National Organization for Women

Ruth Donovan, director, Displaced Homemakers Program

Gwendolyn Duncan, domestic violence victim

Miami Public Hearing, March 31, 1988

Risa Edwards, Ph.D., post-dissolution of marriage issues

Marsha Elser, Esq., Florida Bar certified family law practitioner

Melvyn Frumkes, Esq., Frumkes & Greene, Florida Bar certified family law practitioner

William Gladstone, Judge, Eleventh Judicial Circuit, Family/Juvenile Division

Helen Elaine Gordon, representative, Florida House, 102nd District

William Greenberg, president, United Fathers

Cynthia Greene, Esq., Frumkes & Greene, Florida Bar certified family law practitioner

Ondina Hernandez, Esq., Tigera, Hernandez & Fernandez

Joel Hirschhorn, Esq., observations of gender bias in the courtroom

George Klaus

Robert Liebler, Ph.D., former president, United Fathers

Cheryl Little, Esq., Haitian Refugee Center

Bill Masters

Joan McNeil, director, Miami YMCA Women's Center

Trula Motta, president, Refuge Information Network; director, Domestic Abuse Shelter, Monroe
County

Cora Hernandez Murrell, Miami Dade Community College, a community perspective

Donald M. Papy, Esq., civil rights

Dorothy Ponholtz

Janet Reno, state attorney, Eleventh Judicial Circuit

Janice Burton Sharpstein, Esq., experiences of a civil law/criminal law litigator

Diane Smith, Esq., president, National Bar Association, Florida Chapter

Doris Stiles, Ph.D., psychologist, primary investigator, Miami Alternative Life Management for
Streetwalkers (ALMS)

William Wilbanks, Ph.D., criminal justice professor, Florida International University

Miami Public Hearing, March 31, 1988

Chris Zawisza, Esq., president, Domestic Violence Taskforce; Legal Services of Greater Miami

Orlando Public Hearing, April 21, 1988

Margaret Anglin, director, Spouse Abuse, Inc.

Jeff Ashton, assistant state attorney, Ninth Judicial Circuit, "Date Rape/Consent Defense," and "DNA Evidence: An Explanation"

Seymour Benson, Esq., Florida Bar certified family law practitioner

Tim Berry, assistant state attorney, Ninth judicial circuit, "DNA Evidence and Its Use in Two Sexual Assault Cases, and "Children as Victim Witnesses"

Joan Bickerstaff, Esq., Child Support Enforcement Commission

Merdith Cohen, Esq., Florida Bar certified family law practitioner, "Access to Justice"

Daniel Dawson, assistant state attorney, Ninth Judicial Circuit, chief, judicial division

Chuck Edelstein, Esq., "Jury Study in Rape Cases" and "Court Administration

Claude Edwards, retired circuit court judge, Ninth Judicial Circuit, "Custody Issues"

Sal Lomonaco, lieutenant, Orlando Police Department, "Pro-arrest Policy in Domestic Violence situations"

Barbara Mara, Ph.D., "Rape Trauma Syndrome"

Elaine Murphy, Children Against Deadbeat Dads (CADD)

Midge Mycoff, coordinator, Single Parent Displaced Homemaker Program

Belvin Perry, assistant state attorney, Ninth Judicial Circuit, "Statistics on Sexual Assault and Spouse Abuse and How These Cases are Handled by the State Attorney's Office"

Tanya Plaut, Esq.

Nancy Rainey-Palmer, Esq., "Child Custody" and "Mediation"

Maura Smith, Esq., president, Florida Association for Women Lawyers

Virginia Stuart, director, Valencia Community College Displaced Homemakers Program

Jeannine Walsh, chair, Steering Committee, RESPOND Sexual Assault Program

Ma Belle Williams, former victim of domestic violence

Jacksonville Public Hearing, May 17, 1988

Vicki Burke, director, PACE Center for Girls

Karen Burson, Displaced Homemakers Program, Daytona Beach Community College

John Chiafair, M.D., child custody, visitation

Catherine Coppotelli, M.D., "A Historical Overview of Child Custody Matters

John Delaney, chief assistant state attorney, Fourth Judicial Circuit

Rita DeYoung, staff, Hubbard House

Jerry Flakkus, chief, Victim Services Division, City of Jacksonville

Joel Goldman, Esq., family law issues

Francine Gordon, director, Domestic Abuse Council of Volusia County

Marilyn Gwenell, student, University of Florida School of Law

T. Stuart Johnston, child custody, visitation

Harry Krop, M.D., director, Child Abuse Treatment Program, Duval and Clay counties, child custody matters

Bill Lince, director, Hubbard House

Linda Marsh, Children Against Deadbeat Dads (CADD)

Christine Rasche, Ph.D., director, Criminal Justice Program; associate professor, criminal justice and sociology, University of North Florida

Deborah Schroth, Esq., Jacksonville Area Legal Aid

Sharon Tanner, county judge, fourth Judicial Circuit

Deniese Allen Thompson, Esq., managing attorney, Jacksonville Area Legal Aid

Mary Twitchell, graduate and professor, University of Florida School of Law

University of Florida Women Law Students Association representative

Bill White, chief assistant public defender, Fourth Judicial Circuit

Elizabeth White, Esq., prostitution

Peter Webster, judge, Fourth Judicial Circuit , juvenile justice

Pensacola Public Hearing, July 8, 1988

D. Reed Ammons, Esq., staff attorney, Northwest Florida Legal Services, Inc.

Tina Beissinger, Ph.D., psychologist and certified mediator, Children (and Other Realities) of Divorce

Kim Brown, sexual abuse of children

Virginia Clemons, dissolution of long-term marriages

Kathleen Gainsley, Esq., Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell; family law matters

Bob Graham, assistant state attorney, First Judicial Circuit, juvenile matters

Jeanne Halpern, director, Lakeview Rape Crisis Center and Trauma Recovery Center; M.S., mental health counselor

Sue Hand, director, Favor House, domestic violence shelter serving Escambia, Okaloosa, Santa Rosa and Walton counties

Pam Hellet, criminal investigator, Bay County Sheriff's Department

Karen Lessard, Esq.; member, EXPOSE (Ex-Partners of Service Men and Service Women for Equality)

David Levin, Esq., Florida Bar certified family law practitioner

Charles McClure, judge, Second Judicial Circuit

Pete Peterson, bureau chief, Bureau of Crimes Compensation and Victim/Witness Services

Bonnie Quick, former director, Pensacola YWCA Center for Displaced Homemakers

John Susko, Esq., family law

Wallis Vandergriff, dissolution of long-term marriages

AN EMPIRICAL EXAMINATION OF GENDER BIAS
IN FLORIDA DISSOLUTION OF MARRIAGE CASES

INTRODUCTION

The purpose of this study is to investigate the degree to which gender has an effect, intended or unintended, on judicial decisions in contested divorce cases in Florida. The primary focus is on whether the decisions made at the trial court level appear to have a relationship to gender of the judges, at both the trial and appellate court levels, and its effect on judicial decision making.

This study involved reading and extracting selected information from 886 Florida divorce cases for which an appeal was filed during the years 1983 to 1988 and for which a decision had been reached by the time of this investigation which was conducted during late 1988 and early 1989. The cases were fairly evenly distributed over the six years with the exception of 1988 from which only eight percent of the cases were drawn. As each case was read key information was coded in a form suitable for subsequent analysis including jurisdiction, name and gender of the trial judge, names and genders of the appellate judges, gender of the appellant, the issues on appeal and the appellate decisions with respect to each issue on appeal. The specific issues on appeal coded were equitable distribution of property, child support, child custody, child visitation, periodic alimony payments, lump sum alimony, rehabilitative alimony and attorneys fees. A ninth catchall category of other issues was also coded. The incidence of each of these specific issues on appeal was as follows:

ISSUE	# OF CASES	% OF CASES
Other issues	378	42.7
Periodic alimony	222	25.1
Property distribution	210	23.7
Child support	188	21.2
Attorney's fees	175	19.8
Lump-sum alimony	139	15.7
Child custody	117	13.2
Rehabilitative alimony	117	13.2
Child visitation	<u>35</u>	4.0
Total issues	1581	

Of these issues, 865 or 54.7% were reversed by the appellate court. On average, each of the 886 cases reviewed contained 1.8 issues in dispute with the actual number of issues ranging from 1 to 6. Fifty-two percent of the cases involved only one issue, 27% involved two issues and the remainder

three or more. Sixty-one or 6.9% of the cases were heard by a female judge at the trial court level and 253 (28.6%) had one or more female judges on the appellate panel. Six hundred and forty four of the cases (72.7%) of the cases were reviewed by an all male appellate court, while 231 (26.1%) had one female on the panel and 11 (1.2%) contained two female appellate judges. Husbands and wives were about equally likely to have filed the appeal with 442 cases (49.9%) filed by husbands, 433 (49.0%) filed by wives and the remaining 10 cases filed by other parties. The analysis section of this paper will be limited to the 855 cases which were filed by either the husband or the wife and involves 1564 issues total of which 855 were reversed on appeal and 709 were affirmed. Wives were the appellant in 771 (49.3%) of these issues while men contested the remaining 793 total issues.

METHOD

The logic which underlies this analysis is as follows. When an appellant files an appeal the object or purpose of that appeal is to seek a reversal with respect to each issue on appeal. The appellant feels that one or more "errors" have been committed by the trial court which have adversely affected the outcome with respect to this issue. In other words, the appellant does not believe that he or she has been treated "fairly" or "equitably" by the trial court. A reversal of an issue on appeal by an appellate court is a vindication or "victory" for the appellant and indicates that indeed an error may have been made. While errors will be made at the trial court level, these errors and their associated reversals should not be related to the sex of the appellant in a systematic way with respect to the issues on appeal. In other words, the odds (the ration of reversed to affirmed decisions) of a reversal should be the same for female and male appellants across all issues and should also be independent of the gender composition of the appellate panel. A commonly used approach for evaluating outcomes with respect to categorical explanatory variables such as gender is the odds ratio (O/R), which is the ratio of the odds of specific event for one group compared to those same odds in another group. For instance, in this study 855 of the 1564 issues were reversed on appeal while the remaining 709 were affirmed. In other words, the odds of a reversal were 855:709 or 1.21. When gender of the appellant is controlled for, the odds of a reversal when the wife appeals are 459:312 or 1.47 but when the husband appeals the odds of a reversal are vent at 396:397. The ratio of these

two odds is 1.47 which means that women were 1.47 times more likely than men to win reversal of an issue on appeal.

RESULTS

Table 1 presents a concise summary of the results of this study. The lower half of the table shows the odds of reversal for each of the nine issues under consideration without regard to the gender of the appellant and also breaks these odds down by gender composition of the appellate panel. The upper half of the table presents this same information separately by gender of the appellant.

As may be seen, there is a better than even chance of success on appeal overall, with the odds of gaining reversal equal to 1.21. These odds vary according to the specific issue on appeal and range from a high of 2.78 for child visitation to a low of 0.74 for lump-sum alimony. Other issues for which there was a high likelihood of success (reversal) on appeal included child custody (1.58), child support (1.43) and rehabilitative alimony (1.44).

Table 1 also shows the effect of controlling for the gender composition of the appellate court. This composition variable was operationally defined as "all male panel" which was 72.7% of the cases and "mixed gender panel." Interestingly, mixed gender panels were less likely to reverse issues on appeal (odds = 1.03) than all male panels (odds = 1.28) though this did vary by specific issue. The O/R column shows the odds ratios for each issue. Overall, all male panels were 1.25 times as likely as mixed panels to grant a reversal. This ranged from a high of 1.6 for rehabilitative alimony and property distribution to a low of 0.5 for visitation.

The upper half of Table 1 presents these results separately by gender of the appellant and shows how the odds of a reversal on each issue vary by sex of the appellant. The odds of a wife gaining reversal on appeal were 1.47 overall and ranged from a high of 2.33 for visitation to 0.76 for attorney fees. Women also had excellent odds of a reversal for child support and alimony issues. When men were the appellants, the odds of reversal were even (396:397) overall but varied widely according to the issue ranging from 3.67 for visitation, 2.24 for custody to a low of 0.71 for periodic alimony and 0.51 lump-sum alimony.

In order to understand the effect of gender on the probability of reversal the ratio of these odds must be examined. The "O/R" column shows these odds ratios from highest to lowest. These ratios vary systematically and significantly across the nine issues. Women filing an appeal with respect to periodic alimony payments are 2.69 times as likely as men to win a reversal on appeal. They are 2.33 times as likely to obtain reversal on lump-sum alimony, 2.1 for rehabilitative alimony, 1.88 for child support, 1.48 for property distribution, 1.21 for other issues, 0.81 for attorney fees, 0.64 for visitation and are only one-half (0.53) times as likely as a man to gain a reversal for child custody. Thus trial courts are reversed much more often on economic issues (alimony, support and property distribution) when women are appealing while reversals are much more likely to be granted to male appellants on issues involving visitation and custody of children. The gender specific odds of reversal are much closer to equality for attorney fees (0.81) and "other" issues (1.21).

The next question to be considered is whether this gender specific pattern of reversals across issues is affected by the gender composition of the court hearing the appeal. Eleven hundred and thirty-nine out of the 1564 issues reviewed (72.8%) were considered by all male appellate panels. The odds ratios of women compared to men appellants were similar to those described above. The mixed gender panels, on the other hand show odds ratios which are quite different from the all male panels across the nine issues. These panels were much more likely to grant women a reversal on periodic alimony, property distribution, custody and "other" issues and were less likely to reverse in favor of wives on lump-sum alimony, rehabilitative alimony and attorney fees. This may be seen in Table 1 by examining the column labeled "OM/OH" which is the ratio of the odds ratio mixed panels to all male panels. Thus, it would appear that the presence of at least one woman on the appellate panel does have an effect on the odds of gaining reversal with respect to these nine issues. Overall, having at least one women as an appellate judge improves a female appellant's chance of reversal by a factor of 1.27.

Gender of the trial court judge would also appear to be related to the outcome of appellate decision as may be seen in the following table:

ODDS OF REVERSAL BY ISSUE AND GENDER OF TRIAL JUDGE

All Cases

Issue	Male Judge			Female Judge			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	113	95	1.19	7	7	1.00	1.19
Lump Alim	55	74	0.74	4	6	0.67	1.11
Reh Alimon	64	44	1.45	5	4	1.25	1.16
Support	103	68	1.51	6	8	0.75	2.02
Prop Dist	109	88	1.24	6	7	0.86	1.45
Other	192	151	1.27	15	10	1.50	0.85
Att Fees	74	87	0.85	6	6	1.00	0.85
Visitation	24	9	2.67	1	0	--	--
Custody	<u>67</u>	<u>44</u>	<u>1.52</u>	<u>4</u>	<u>1</u>	<u>4.00</u>	<u>0.38</u>
All Issues	801	660	1.21	54	49	1.00	1.10

Overall, male trial judges are slightly more likely than women jurists to be overturned in divorce cases on appeal. The odds of a male being overturned were 1.21 compared to 1.1 for females or in other words about 10% more likely. With respect to specific issues, they were much more likely (2.02) to be reversed on child support and distribution of property (1.45) than women. Men were less likely to be overturned on attorney fees (0.85) and "other" issues (0.85) and much less likely to be reversed on child custody (0.38). However, due to the small number of issues that were initially heard by female judges, considerable caution is necessary when drawing conclusions from these data. For the same reason, no additional analysis of the effect of trial court judge gender have been performed. A particularly interesting research question would have been the relationship between gender of appellant and gender of trial judge on the outcome of each issue.

CONCLUSION

This study has provided evidence that gender is a factor, either intentionally or unintentionally, in decisions made at the trial court level in divorce cases in Florida. Specifically these data show that more trial court errors that adversely affect women are committed with respect to the economic issues such as equitable property distribution, alimony and child support. While on the other hand, men appear to receive less favorable consideration from trial courts with respect to

non-economic issues such as child visitation and custody. On the other issues examined, men and women appeared to received more nearly equal treatment.

With respect to the gender composition of appellate panels and its effect on appellate outcomes, these data suggest that the presence of a woman on the appellate court changes somewhat the relative odds of a woman litigant's obtaining a reversal of the trial court decision. Women appellants were twice as likely as men to prevail on "other" issues when the panel was of mixed gender. They were also more likely to prevail with respect to property distribution and periodic alimony payments. However, with respect to lump sum and rehabilitative alimony they were less likely to win reversal from a mixed appellate panel. With child custody at issue, women litigants' chances were improved almost four times when their appeal was heard by a panel containing at least one female judge.

Overall, very little difference was found in the odds of a female trial court judge's being reversed on appeal as compared to male judges. On the issues of child support and property distribution, male judges were more likely to be reversed on appeal than females. However, men were much less likely to be overturned on child custody and to a lesser extent on attorney fees and "other" issues.

While these data are suggestive of a role played by gender in dissolution cases, the study cannot be considered definitive. It would appear that women have relatively equal access to the appellate courts since about half of all appeals were filed by wives. This appearance of equal access is superficial, however. All we can definitively say about the equal access issue is that, among people with the economic resources to file an appeal, men and women file appeals in roughly equal numbers. It must be kept in mind, too, that we have no way of knowing what percentage PCA appeals were filed by women or men. Trial court errors seem to be committed with somewhat greater frequency adversely affecting women with respect to economic issues and men with respect to non-economic issues. When controls for gender of appellant, composition of appellate panel and specific issue on appeal are considered jointly, caution in drawing conclusions from these data should be exercised. Some of the odds underlying this analysis are based on a very small number of cases and are therefore subject to instability.

STATE

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
PPA	75	39	1.92	45	63	0.71	2.69	52	27	1.93	34	43	0.79	2.44	23	12	1.92	11	20	0.55	3.48	1.43
Lump Alim	32	27	1.19	27	53	0.51	2.33	25	21	1.19	18	39	0.46	2.58	7	6	1.17	9	14	0.64	1.81	0.70
Reh Alimon	48	25	1.92	21	23	0.91	2.10	40	17	2.35	16	18	0.89	2.65	8	8	1.00	5	5	1.00	1.00	0.38
Support	57	28	2.04	52	48	1.08	1.88	37	18	2.06	36	34	1.06	1.94	20	10	2.00	16	14	1.14	1.75	0.90
Prop Dist	68	47	1.45	47	48	0.98	1.48	51	33	1.55	37	31	1.19	1.29	17	14	1.21	10	17	0.59	2.06	1.59
Other	100	70	1.43	107	91	1.18	1.21	73	51	1.43	87	61	1.43	1.00	27	19	1.42	20	30	0.67	2.13	2.12
Att Fees	32	42	0.76	48	51	0.94	0.81	27	29	0.93	35	37	0.95	0.98	5	13	0.38	13	14	0.93	0.41	0.42
Visitation	14	6	2.33	11	3	3.67	0.64	11	6	1.83	9	2	4.50	0.41	3	0	---	2	1	2.00	---	---
Custody	33	28	1.18	38	17	2.24	0.53	23	23	1.00	28	10	2.80	0.36	10	5	2.00	10	7	1.43	1.40	3.92
All Issues	459	312	1.47	396	397	1.00	1.47	339	225	1.51	300	275	1.09	1.38	120	87	1.38	96	122	0.79	1.75	1.27

All Appellants Combined

Issue	All Cases			All Male Panel			Mixed Panel			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	120	102	1.18	86	70	1.23	34	32	1.06	1.16
Lump Alim	59	80	0.74	43	60	0.72	16	20	0.80	0.90
Reh Alimon	69	48	1.44	56	35	1.60	13	13	1.00	1.60
Support	109	76	1.43	73	52	1.40	36	24	1.50	0.94
Prop Dist	115	95	1.21	88	64	1.38	27	31	0.87	1.58
Other	207	161	1.29	160	112	1.43	47	49	0.96	1.49
Att Fees	80	93	0.86	62	66	0.94	18	27	0.67	1.41
Visitation	25	9	2.78	20	8	2.50	5	1	5.00	0.50
Custody	71	45	1.58	51	33	1.55	20	12	1.67	0.93
All Issues	855	709	1.21	639	500	1.28	216	209	1.03	1.24

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
Economic	280	166	1.69	192	235	0.82	2.06	205	116	1.77	141	165	0.85	2.07	75	50	1.50	51	70	0.73	2.06	1.00
Social	47	34	1.38	49	20	2.45	0.56	34	29	1.17	37	12	3.08	0.38	13	5	2.60	12	8	1.50	1.73	4.56
All issues	327	200	1.64	241	255	0.95	1.73	239	145	1.65	178	177	1.01	1.64	88	55	1.60	63	78	0.81	1.98	1.21

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	
PPA	24	4	6.00	14	15	0.93	6.43	13	2	6.50	8	9	0.89	7.31	11	2	5.50	6	6	1.00	5.50	0.75
Lump Alim	7	3	2.33	2	11	0.18	12.83	4	2	2.00	0	8	0.00	---	3	1	3.00	2	3	0.67	4.50	---
Reh Alimon	16	3	5.33	4	7	0.57	9.33	10	1	10.00	3	3	1.00	10.00	6	2	3.00	1	4	0.25	12.00	1.20
Support	10	5	2.00	14	11	1.27	1.57	3	2	1.50	12	6	2.00	0.75	7	3	2.33	2	5	0.40	5.83	7.78
Prop Dist	17	7	2.43	10	10	1.00	2.43	10	5	2.00	6	7	0.86	2.33	7	2	3.50	4	3	1.33	2.63	1.13
Other	20	14	1.43	23	17	1.35	1.06	10	7	1.43	18	10	1.80	0.79	10	7	1.43	5	7	0.71	2.00	2.52
Att Fees	2	10	0.20	10	13	0.77	0.26	1	5	0.20	7	8	0.88	0.23	1	5	0.20	3	5	0.60	0.33	1.46
Visitation	2	1	2.00	2	0	---	---	1	1	1.00	2	0	---	---	1	0	---	0	0	---	---	---
Custody	15	9	1.67	7	8	0.88	1.90	8	5	1.60	4	3	1.33	1.20	7	4	1.75	3	5	0.60	2.92	2.43
All Issues	113	56	2.02	86	92	0.93	2.16	60	30	2.00	60	54	1.11	1.80	53	26	2.04	26	38	0.68	2.98	1.66

All Appellants Combined

Issue	All Cases			All Male Panel			Mixed Panel			O/R
	Rev'd	Afmd	Odds	Rev'd	Afmd	Odds	Rev'd	Afmd	Odds	
PPA	38	19	2.00	21	11	1.91	17	8	2.13	0.90
Lump Alim	9	14	0.64	4	10	0.40	5	4	1.25	0.32
Reh Alimon	20	10	2.00	13	4	3.25	7	6	1.17	2.79
Support	24	16	1.50	15	8	1.88	9	8	1.13	1.67
Prop Dist	27	17	1.59	16	12	1.33	11	5	2.20	0.61
Other	43	31	1.39	28	17	1.65	15	14	1.07	1.54
Att Fees	12	23	0.52	8	13	0.62	4	10	0.40	1.54
Visitation	4	1	4.00	3	1	3.00	1	0	---	---
Custody	22	17	1.29	12	8	1.50	10	9	1.11	1.35
All Issues	199	148	1.34	120	84	1.43	79	64	1.23	1.16

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	Wife Rev'd	Appealed Afmd	Odds	Husb Rev'd	Appealed Afmd	Odds	O/R	
Economic	74	22	3.36	44	54	0.81	4.13	40	12	3.33	29	33	0.88	3.79	34	10	3.40	15	21	0.71	4.76	1.25
Social	17	10	1.70	9	8	1.13	1.51	9	6	1.50	6	3	2.00	0.75	8	4	2.00	3	5	0.60	3.33	4.44
All issues	91	32	2.84	53	62	0.85	3.33	49	18	2.72	35	36	0.97	2.80	42	14	3.00	18	26	0.69	4.33	1.55

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Appealed			Husb Appealed				Wife Appealed			Husb Appealed				Wife Appealed			Husb Appealed				
	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	
PPA	10	9	1.11	8	14	0.57	1.94	10	9	1.11	8	14	0.57	1.94	0	0	---	0	0	---	---	---
Lump Alim	7	7	1.00	5	6	0.83	1.20	7	7	1.00	5	6	0.83	1.20	0	0	---	0	0	---	---	---
Reh Alimon	10	5	2.00	3	3	1.00	2.00	10	5	2.00	3	3	1.00	2.00	0	0	---	0	0	---	---	---
Support	16	5	3.20	9	10	0.90	3.56	16	5	3.20	9	10	0.90	3.56	0	0	---	0	0	---	---	---
Prop Dist	15	4	3.75	8	9	0.89	4.22	15	4	3.75	8	9	0.89	4.22	0	0	---	0	0	---	---	---
Other	17	11	1.55	25	11	2.27	0.68	17	11	1.55	25	11	2.27	0.68	0	0	---	0	0	---	---	---
Att Fees	5	11	0.45	6	6	1.00	0.45	5	11	0.45	6	6	1.00	0.45	0	0	---	0	0	---	---	---
Visitation	6	0	---	2	0	---	---	6	0	---	2	0	---	---	0	0	---	0	0	---	---	---
Custody	7	5	1.40	10	2	5.00	0.28	7	5	1.40	10	2	5.00	0.28	0	0	---	0	0	---	---	---
All Issues	93	57	1.63	76	61	1.25	1.31	93	57	1.63	76	61	1.25	1.31	0	0	---	0	0	---	---	---

All Appellants Combined

	All Cases			All Male Panel			Mixed Panel			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	18	23	0.78	18	23	0.78	0	0	---	---
Lump Alim	12	13	0.92	12	13	0.92	0	0	---	---
Reh Alimon	13	8	1.63	13	8	1.63	0	0	---	---
Support	25	15	1.67	25	15	1.67	0	0	---	---
Prop Dist	23	13	1.77	23	13	1.77	0	0	---	---
Other	42	22	1.91	42	22	1.91	0	0	---	---
Att Fees	11	17	0.65	11	17	0.65	0	0	---	---
Visitation	8	0	---	8	0	---	0	0	---	---
Custody	17	7	2.43	17	7	2.43	0	0	---	---
All Issues	169	118	1.43	169	118	1.43	0	0	---	---

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Appealed			Husb Appealed				Wife Appealed			Husb Appealed				Wife Appealed			Husb Appealed				
	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	Revd	Afmd	Odds	O/R	
Economic	58	30	1.93	33	42	0.79	2.46	58	30	1.93	33	42	0.79	2.46	0	0	---	0	0	---	---	---
Social	13	5	2.60	12	2	6.00	0.43	13	5	2.60	12	2	6.00	0.43	0	0	---	0	0	---	---	---
All issues	71	35	2.03	45	44	1.02	1.98	71	35	2.03	45	44	1.02	1.98	0	0	---	0	0	---	---	---

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
PPA	12	10	1.20	5	12	0.42	2.88	7	6	1.17	4	7	0.57	2.04	5	4	1.25	1	5	0.20	6.25	3.06
Lump Alim	7	7	1.00	4	13	0.31	3.25	5	4	1.25	1	8	0.13	10.00	2	3	0.67	3	5	0.60	1.11	0.11
Reh Alimon	4	8	0.50	1	5	0.20	2.50	2	4	0.50	0	4	0.00	---	2	4	0.50	1	1	1.00	0.50	---
Support	12	9	1.33	9	10	0.90	1.48	6	5	1.20	3	8	0.38	3.20	6	4	1.50	6	2	3.00	0.50	0.16
Prop Dist	8	15	0.53	13	7	1.86	0.29	5	10	0.50	7	5	1.40	0.36	3	5	0.60	6	2	3.00	0.20	0.56
Other	19	19	1.00	16	23	0.70	1.44	12	12	1.00	10	11	0.91	1.10	7	7	1.00	6	12	0.50	2.00	1.82
Att Fees	6	12	0.50	8	11	0.73	0.69	4	5	0.80	5	8	0.63	1.28	2	7	0.29	3	3	1.00	0.29	0.22
Visitation	1	1	1.00	2	0	---	---	1	1	1.00	0	0	---	---	0	0	---	2	0	---	---	---
Custody	4	1	4.00	8	3	2.67	1.50	3	1	3.00	5	2	2.50	1.20	1	0	---	3	1	3.00	---	---
All Issues	73	82	0.89	66	84	0.79	1.13	45	48	0.94	35	53	0.66	1.42	28	34	0.82	31	31	1.00	0.82	0.58

All Appellants Combined

Issue	All Cases			All Male Panel			Mixed Panel			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	17	22	0.77	11	13	0.85	6	9	0.67	1.27
Lump Alim	11	20	0.55	6	12	0.50	5	8	0.63	0.80
Reh Alimon	5	13	0.38	2	8	0.25	3	5	0.60	0.42
Support	21	19	1.11	9	13	0.69	12	6	2.00	0.35
Prop Dist	21	22	0.95	12	15	0.80	9	7	1.29	0.62
Other	35	42	0.83	22	23	0.96	13	19	0.68	1.40
Att Fees	14	23	0.61	9	13	0.69	5	10	0.50	1.38
Visitation	3	1	3.00	1	1	1.00	2	0	---	---
Custody	12	4	3.00	8	3	2.67	4	1	4.00	0.67
All Issues	139	166	0.84	80	101	0.79	59	65	0.91	0.87

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
Economic	43	49	0.88	32	47	0.68	1.29	25	29	0.86	15	32	0.47	1.84	18	20	0.90	17	15	1.13	0.79	0.43
Social	5	2	2.50	10	3	3.33	0.75	4	2	2.00	5	2	2.50	0.80	1	0	---	5	1	5.00	---	---
All issues	48	51	0.94	42	50	0.84	1.12	29	31	0.94	20	34	0.59	1.59	19	20	0.95	22	16	1.38	0.69	0.43

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
PPA	19	8	2.38	9	10	0.90	2.64	17	8	2.13	7	9	0.78	2.73	2	0	---	2	1	2.00	---	---
Lump Alim	8	6	1.33	9	14	0.64	2.07	7	6	1.17	6	12	0.50	2.33	1	0	---	3	2	1.50	---	---
Reh Alimon	14	7	2.00	7	6	1.17	1.71	14	7	2.00	6	6	1.00	2.00	0	0	---	1	0	ERR	---	---
Support	10	3	3.33	9	9	1.00	3.33	9	3	3.00	6	7	0.86	3.50	1	0	---	3	2	1.50	---	---
Prop Dist	18	13	1.38	12	7	1.71	0.81	17	12	1.42	11	5	2.20	0.64	1	1	1.00	1	2	0.50	2.00	3.11
Other	29	19	1.53	20	23	0.87	1.76	27	18	1.50	18	20	0.90	1.67	2	1	2.00	2	3	0.67	3.00	1.80
Att Fees	16	8	2.00	10	14	0.71	2.80	16	8	2.00	9	12	0.75	2.67	0	0	---	1	2	0.50	---	---
Visitation	1	3	0.33	3	1	3.00	0.11	1	3	0.33	3	1	3.00	0.11	0	0	---	0	0	ERR	---	---
Custody	4	10	0.40	6	4	1.50	0.27	2	9	0.22	6	3	2.00	0.11	2	1	2.00	0	1	0.00	---	---
All Issues	119	77	1.55	85	88	0.97	1.60	110	74	1.49	72	75	0.96	1.55	9	3	3.00	13	13	1.00	3.00	1.94

All Appellants Combined

Issue	All Cases			All Male Panel			Mixed Panel			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	28	18	1.56	24	17	1.41	4	1	4.00	0.35
Lump Alim	17	20	0.85	13	18	0.72	4	2	2.00	0.36
Reh Alimon	21	13	1.62	20	13	1.54	1	0	---	---
Support	19	12	1.58	15	10	1.50	4	2	2.00	0.75
Prop Dist	30	20	1.50	28	17	1.65	2	3	0.67	2.47
Other	49	42	1.17	45	38	1.18	4	4	1.00	1.18
Att Fees	26	22	1.18	25	20	1.25	1	2	0.50	2.50
Visitation	4	4	1.00	4	4	1.00	0	0	---	---
Custody	10	14	0.71	8	12	0.67	2	2	1.00	0.67
All Issues	204	165	1.24	182	149	1.22	22	16	1.38	0.89

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases							All Male Panel							Mixed Panel							OM/OH
	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	Wife Revd	Wife Afmd	Wife Odds	Husb Revd	Husb Afmd	Husb Odds	O/R	
Economic	69	37	1.86	46	46	1.00	1.86	64	36	1.78	36	39	0.92	1.93	5	1	5.00	10	7	1.43	3.50	1.82
Social	5	13	0.38	9	5	1.80	0.21	3	12	0.25	9	4	2.25	0.11	2	1	2.00	0	1	0.00	---	---
All issues	74	50	1.48	55	51	1.08	1.37	67	48	1.40	45	43	1.05	1.33	7	2	3.50	10	8	1.25	2.80	2.10

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases								All Male Panel								Mixed Panel								
	Wife Appealed				Husb Appealed				Wife Appealed				Husb Appealed				Wife Appealed				Husb Appealed				
	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	OM/OH
PPA	7	7	1.00		9	12	0.75	1.33	3	1	3.00		7	4	1.75	1.71	4	6	0.67		2	8	0.25	2.67	1.56
Lump Alim	2	3	0.67		7	9	0.78	0.86	1	1	1.00		6	5	1.20	0.83	1	2	0.50		1	4	0.25	2.00	2.40
Reh Alimon	4	2	2.00		4	2	2.00	1.00	4	0	---		2	2	1.00	---	0	2	0.00		2	0	---	---	---
Support	8	5	1.60		11	7	1.57	1.02	3	2	1.50		6	3	2.00	0.75	5	3	1.67		5	4	1.25	1.33	1.78
Prop Dist	7	6	1.17		8	11	0.73	1.60	3	0	---		5	5	1.00	---	4	6	0.67		3	6	0.50	1.33	---
Other	13	6	2.17		21	16	1.31	1.65	6	2	3.00		14	8	1.75	1.71	7	4	1.75		7	8	0.88	2.00	1.17
Att Fees	3	1	3.00		14	7	2.00	1.50	1	0	---		8	3	2.67	---	2	1	2.00		6	4	1.50	1.33	---
Visitation	4	1	4.00		2	2	1.00	4.00	2	1	2.00		2	1	2.00	1.00	2	0	---		0	1	0.00	---	---
Custody	3	3	1.00		6	0	---	---	3	3	1.00		2	0	---	---	0	0	---		4	0	---	---	---
All Issues	51	34	1.50		82	66	1.24	1.21	26	10	2.60		52	31	1.68	1.55	25	24	1.04		30	35	0.86	1.22	0.78

All Appellants Combined

Issue	All Cases			All Male Panel			Mixed Panel			O/R
	Revd	Afmd	Odds	Revd	Afmd	Odds	Revd	Afmd	Odds	
PPA	16	19	0.84	10	5	2.00	6	14	0.43	4.67
Lump Alim	9	12	0.75	7	6	1.17	2	6	0.33	3.50
Reh Alimon	8	4	2.00	6	2	3.00	2	2	1.00	3.00
Support	19	12	1.58	9	5	1.80	10	7	1.43	1.26
Prop Dist	15	17	0.88	8	5	1.60	7	12	0.58	2.74
Other	34	22	1.55	20	10	2.00	14	12	1.17	1.71
Att Fees	17	8	2.13	9	3	3.00	8	5	1.60	1.88
Visitation	6	3	2.00	4	2	2.00	2	1	2.00	1.00
Custody	9	3	3.00	5	3	1.67	4	0	---	---
All Issues	133	100	1.33	78	41	1.90	55	59	0.93	2.04

ODDS OF REVERSAL BY ISSUE, GENDER OF APPELLANT AND GENDER MIX OF APPELLATE COURT

Separate by Gender of Appellant

Issue	All Cases								All Male Panel								Mixed Panel								
	Wife Appealed				Husb Appealed				Wife Appealed				Husb Appealed				Wife Appealed				Husb Appealed				
	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	Revd	Afmd	Odds	O/R	OM/OH
Economic	28	23	1.22		39	41	0.95	1.28	14	4	3.50		26	19	1.37	2.56	14	19	0.74		13	22	0.59	1.25	0.49
Social	7	4	1.75		8	2	4.00	0.44	5	4	1.25		4	1	4.00	0.31	2	0	---		4	1	4.00	---	---
All issues	35	27	1.30		47	43	1.09	1.19	19	8	2.38		30	20	1.50	1.58	16	19	0.84		17	23	0.74	1.14	0.72

Public Correctional Policy

on Female Offender Services

Introduction: Correctional systems must develop service delivery systems for accused and adjudicated female offenders that are comparable to those provided to males. Additional services must also be provided to meet the unique needs of the female offender population.

Statement: Correctional systems must be guided by the principle of parity. Female offenders must receive the equivalent range of services available to other offenders, including opportunities for individualized programming and services that recognize the unique needs of this population. The services should:

- A. Assure access to a range of alternatives to incarceration, including pretrial and post-trial diversion, probation, restitution, treatment for substance abuse, halfway houses, and parole services;
- B. Provide acceptable conditions of confinement, including appropriately trained staff and sound operating procedures that address this population's needs in such areas as clothing, personal property, hygiene, exercise, recreation, and visitation with children and family;
- C. Provide access to a full range of work and programs designed to expand economic and social roles of women, with emphasis on education; career counseling and exploration of non-traditional as well as traditional vocational training; relevant life skills, including parenting and social and economic assertiveness; and pre-release and work/education release programs;
- D. Facilitate the maintenance and strengthening of family ties, particularly those between parent and child;
- E. Deliver appropriate programs and services, including medical, dental, and mental health programs, services to pregnant women, substance abuse programs, child and family services, and provide access to legal services; and
- F. Provide access to release programs that include aid in establishing homes, economic stability, and sound family relationships.

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