2004

The Lack Of Diversity On The Bench In Florida's State Courts

Verlinda Wells
University of Central Florida

THE LACK OF DIVERSITY ON THE BENCH IN FLORIDA'S STATE COURTS

by

VERLINDA D. WELLS
B.A. University of Central Florida, 1999
B.A. University of Central Florida, 2001

A thesis submitted in partial fulfillment of the requirements
for the degree of Master of Arts
in the Department of Political Science
in the College of Arts and Sciences
at the University of Central Florida
Orlando, Florida

Fall Term
2004

ABSTRACT

Diversity in the judiciary is essential to ensure impartiality, public confidence, and the perception that all members of society are represented on the bench. Minorities and women are significantly underrepresented as judges in Florida in proportion to their numbers in the general population.

Because we live in an increasingly global world, diversity is best described when people of different races, colors, ethnicity and genders work to develop a mutual respect for each other. It was important to use diversity in this research because it required recognition, understanding, and acceptance of the special contribution that each member of a group can make.

The documentation review method was used to measure the data collected in this research. The advantages for using this method were first, to obtain comprehensive and historical information that already exists and secondly, to obtain data which demonstrates few biases about the information.

I used correlation as a non-experimental, description method because the variables are not directly manipulated, as they would be if used in an experimental method. This method of research is really more of a mathematical technique for summarizing data. This study was designed to determine the degree and direction of relationship between two or more variables or measures of behavior.

Diversity in 2004 judicial appointments is a high priority in Florida's present administration. Their goal is to have a judicial system composed of judges who reflect the

people they serve. Since judges have so much influence over the lives of people of the state, it is important that all Floridians perceive the judiciary legitimate. Having a diverse judiciary serves the goal.

The Bush/Jennings team appointed; 1) the first African American woman, Judge Peggy Quince to the Florida Supreme Court (with the agreement of Governor Lawton Chiles); 2) minorities to 53 judicial positions including the first Hispanic Supreme Court Justice Raoul Cantero to the Supreme Court; 3) 26 African American, 26 Hispanics, 1 other); 4) women to 66 judicial position; and, 5) the first Haitian-American judge, Judge Fred Seraphin to the Miami Dade County Court.

The judicial system has an obligation to provide equal opportunity to the extent that females, minorities, and people of color have the temperament, the legal educational background, the skills, and the abilities necessary to sit on Florida's bench. The legal profession also has an obligation to encourage more minorities and women to consider a career in law. The governor's most recent selections indicate that he is serious about improving diversity on the Florida bench.

TABLE OF CONTENTS

LIST OF ACRONYMS/ABBREVIATIONS

ABA	American Bar Association
JNC	Judicial Nominating Commission
LEAP	Law Education Assistance Program
MPLE	Minority Participation in Legal Education Program

CHAPTER ONE: INTRODUCTION

Professor Sherrilyn Ifill contends that diversity in the judiciary is essential to ensure impartiality, public confidence, and the perception that all members of society are represented on the bench and has offered two distinct rationales for racial diversity among judges. Minorities and women are significantly underrepresented as judges in Florida in proportion to their numbers in the general population, comprising only 10.7% of the 798 judges in the state, 5.6% are African American, 4.9% are Hispanic and 0.1% are of another minority group (Office of the State Courts Administrator, August 1999). Minority females, at 3.5% of all judges, are particularly scarce on Florida's bench (ref. see above). Minorities are virtually absent from the higher courts, serving primarily 7.7% on the circuit courts (ref. see above).

Because we live in an increasingly global world, diversity is best described when people of different races, colors, ethnicity and genders work to develop a mutual respect for each other. It was important to use diversity in this research because it required recognition, understanding, and acceptance of the special contribution that each member of a group can make.

First Ifill argues that the creation of a racially diverse bench can introduce traditionally excluded perspectives and values into judicial decision-making. She further states that the interplay of diverse views and perspectives can enrich judicial decision-making. Secondly, she argued that racial diversity on the bench also encourages judicial

impartiality, by ensuring that a single set of values or views do not dominate judicial decision-making. (Ifill).

Given the wide range of legal and political scholarship on judicial recruitment and selection, serious gaps still persist in our understanding of the persistent lack of diversity on most of Florida's courts. Before political scientists, legal scholars and practitioners can seek solutions to the possibility that there is a lack of racial, gender and ethnic diversity on the bench, there must be a reexamination of the nature and extent to which persons who are already sitting on these courts reflect the racial, gender and ethnic diversity of Florida. But, is there data which supports the theory of the lack of diversity? This research will attempt to answer the following questions:

1. What is diversity and is there a lack of diversity on Florida's courts?
2. What viable remedies can be fashioned to address the problem of under representation of minorities and females?
3. How do we go about identifying the appropriate "pool" of potential females and judges of color with respect to judicial recruitment?

In the 1970s and 1980s, women and minorities began entering the legal profession in increasing numbers. Although still scarce, African American, Hispanic, and female lawyers were no longer novelties in Florida. These pioneers were a catalyst in compelling the legal profession – indeed, the entire justice system – to reflect on fairness within the legal profession and the justice system those professionals serve. At the same time, claims of racial and ethnic bias in the justice system were increasing, even after decades

of laws and affirmative action designed to end discrimination. In late 1989, the Florida Supreme Court began an unprecedented examination of racial and ethnic bias in the justice system. That study culminated with the issuance of final reports and recommendations in 1990 and 1991. Following the study, leaders in all three branches of government came together to work on eradicating racial and ethnic bias from our courts and legal system. The Florida Legislature responded with a major bill in the spring of 1991, one described at the time by then-Governor Lawton Chiles as "packed with revisions that make a difference." Those legislative revisions and other changes in all three branches of government over the past ten years have resulted in:

- Appointment of unprecedented numbers of minorities to Florida's bench by both Governor Jeb Bush and former Governor Lawton Chiles.
- Judicial elections or appointment: The election of judges and the resulting impact on the diversity of Florida’s bench.
- Improve the judicial nominating/appointment process as it impacts on the diversity of the bench and require that minorities be placed on the Judicial Nominating Commissions.
- Creation and funding of a minority law student scholarship program for the purpose of recruiting more minorities into the legal profession.

Appointment of Unprecedented Numbers of Minorities to Florida's Bench by both Governor Jeb Bush and former Governor Lawton Chiles

Minority judicial appointments increased significantly under the gubernatorial

terms of former Governor Chiles. Likewise, Governor Bush has made several minority appointments and continues to call for a more diverse judiciary. In March of 2000, Bush told Bar members that his efforts to appoint minority judges have been hindered by the lack of diversity in the pools of applicants and in the recommendation lists he has received from the JNCs. Bush said minority applicants "have not received a fair shot in the past and I do not think they will receive one now." The Florida Bar, through the decisions of its Board of Governors and the efforts of its Judicial Nominating Procedures Committee, should expressly establish, as a top priority, the increase of minority representation among the Bar's appointees to the judicial nominating commissions.

There has been a significant improvement in the diversity of Florida's judges. Both Governor Jeb Bush and former Governor Lawton Chiles are to be commended for appointing unprecedented numbers of minorities to Florida's bench. Minority judges at the trial court level have increased from 5.8% in 1990 to 11.4% in 2000, minority judges at the district court of appeal level have increased from only 3.5% in 1990 to 14.7% in 2000, and minority judges at the Supreme Court level have increased from 14.2% in 1990 to 28.5% in 2000. Despite these advances, the judiciary as a whole still does not accurately reflect the rich cultural diversity of our state. Additionally, racial disparities are more pronounced in various geographical areas. Until the Florida courts fully reflect the diversity of our citizens, leaders in all three branches of government should reiterate their aspirations for diversity among both judicial nominating commission membership and judicial appointees.

Judicial elections or appointment: The Election of Judges and the Resulting Impact on the Diversity of Florida's Bench

The Florida Legislature should, in connection with its preparation for the session on reapportionment, fund and conduct computer-assisted analyses of the feasibility of devising judicial election subdistricts which would tend to increase minority representation while avoiding fragmentation and parochialism. Once concrete examples of the configuration of subdistricts are devised, the state will be in a better position to determine whether a change to single-member districts or subdistricts should be implemented through an amendment to the State Constitution.

This recommendation appears to have been rendered moot by intervening events of the past decade, including the adoption in 1998 by Florida voters of a constitutional amendment allowing counties to opt into a system of merit selection and retention for trial court judges. Over the past decade, there has been considerable discussion and debate over the method by which more racial and ethnic minorities reach the Florida bench: election or appointment. The election of judges and the resulting impact on the diversity of Florida's bench should be monitored.

The Judicial Nominating/Appointment Process

The original recommendations and implementation status demonstrated that the Florida Legislature should mandate representative minority attorney and citizen

membership on each judicial nominating commission. Although this procedure was implemented, it was later overturned.

The legislature enacted this recommendation in the spring of 1991. Though ruled unconstitutional in the mid-1990's, the law had time in the intervening years to bring about change and improvement. In the first round of judicial nominating commission (JNC) appointments made by Governor Chiles following release of the report, 23 out of 26 individuals appointed were racial or ethnic minorities. In the following year, Chiles appointed 19 minorities out of 26 seats, to the JNCs. The diversification achieved was unprecedented and widely hailed as historic. Legislation was considered in the spring of 2000 that would have encouraged (rather than mandated) minority representation on the JNCs, but for unrelated reasons the bill did not pass.

The Florida Supreme Court should instruct each judicial nominating commission to provide explicitly, by rule, that racial and ethnic diversity of Florida's bench is a desirable objective and, as such, an element which shall be considered by all judicial nominating commissions when making recommendations on appointments to the bench.

Please note that the Florida Supreme Court has no authority over the actions of the judicial nominating commissions. Each judicial nominating commission should, by rule, establish a model plan for recruiting qualified minority candidates for judicial appointment, updating the plan as appropriate to account for experience gained in the recruitment process. Particular attention should be paid to the recruitment of minority females for judicial appointment. Judicial nominating commissions should be required to

provide to the Governor a statement certifying compliance with the commission's minority recruitment plan when submitting recommendations for judicial appointments.

In addition, the Florida Supreme Court should require the Judicial Nominating Procedures Committee of The Florida Bar and each judicial nominating commission to submit an annual report detailing each commission's record of increasing the number of minorities recommended for appointment to Florida's bench. This was implemented in part, but in late 1999, Governor Bush chastised the JNCs for sending him 65 names, of which only 10 were women and 5 were African American. Bush urged the JNCs to "eliminate any informal barriers that may affect the diversity of the lists I receive." On March 30, 2000, the JNCs amended their rules to require that new members receive diversity training, racial information be collected from applicants on a voluntary basis, and all judicial openings be advertised with minority bar associations. Please note that the Florida Supreme Court has no authority over the actions of the judicial nominating commissions. The Governor should establish, as a top priority, the increase of minorities among his appointments to Florida's bench. Although implemented, the progress is continuing.

In 1991, Florida Bar President Benjamin Hill vigorously encouraged Bar members to nominate minorities and placed ads in legal publications encouraging minorities to apply for JNC seats. In its first round of appointments after the Commission’s report, the Bar appointed five minorities, out of 26 seats, in what Hill

described then as a "dramatic" improvement in the Bar's record. The number of subsequent minority Bar appointees is unknown.

The ability of the judicial nominating commissions to influence who is appointed to the bench cannot be overstated. The public needs assurances that JNC actions are explainable and accountable. Furthermore, The Florida Bar should account for the diversity of their JNC appointments, especially if they are advocating the adoption of a merit selection and retention process for trial judges. The Florida Bar should develop a mechanism to report on the diversity and composition of the judicial nominating commissions, on an annual basis.

Creation and Funding of a Minority Law Student Scholarship Program for the purpose of recruiting more Minorities into the Legal Profession

To achieve true diversity in the legal profession, Florida must encourage an increase in the number of racial and ethnic minority lawyers and foster their professional development. During the 2000 session, the Florida Legislature approved the establishment of two new public law schools, with the goal of increasing diversity among Florida's legal profession. The Florida Bar Foundation had to discontinue its minority scholarship program, due to funding problems; however, legislatively-funded and ABA-funded minority scholarships are available and must continue. Also, undergraduate preparation for law school should continue to be an important area of focus in order to increase diversity among students and to provide racial and ethnic minority students with the support they need to successfully complete law school.

CHAPTER TWO: LITERATURE REVIEW

The History of Florida Judicial Selection and the Silent De Facto Conspiracy

The history of selection methods and term lengths for Florida judges are prescribed in the state's constitution. However, if any changes occur, it must be accomplished through constitutional amendment. Constitutional amendments are proposed by joint resolution agreed to by three fifths of the members of each house of the legislature, or by initiative petition signed by a number of electors in each of one half of the state's congressional districts, and of the state as a whole, equal to 8% of the votes cast in each district and in the state as a whole in the most recent presidential election. Formal changes made since its inception of the selection method have been made accordingly.

In 1845 circuit court judges, who also served on the Supreme Court, were elected by the legislature. Judges served initial five-year terms, followed by life tenure if reelected. In 1848, terms of circuit court judges reduced to eight years and three years later, the Legislature provided for the supreme court to have its own justices, who were elected by the people to six-year terms. In 1861, the supreme court justices were appointed by the governor with senate consent to six-year terms and circuit court judges were elected by the people to six-year terms. In 1868, judges were appointed by the governor with senate consent. Supreme court justices appointed for life; circuit court judges appointed to eight-year terms. By 1875, terms of circuit court judges reduced to

six years and the 1885 supreme court justices were elected by the people to six-year terms.

The constitutional amendment in 1942 reinstated elections for circuit court judges and fifteen years later, the district courts of appeal were created. In 1971, the Legislature established nonpartisan judicial elections. Governor Askew took the first step toward merit selection with an executive order calling for the use of nominating commissions to fill judicial vacancies. The 1972 voters approved a constitutional amendment calling for the use of nominating commissions to fill vacancies at all levels of the judiciary and by 1976 the voters approved a constitutional amendment calling for merit selection and retention of appellate judges. The reform effort was spearheaded by Governor Askew, Chief Justice Overton, and State Representative D'Alemberte. The 1998 voters approved a constitutional amendment allowing circuits and counties to opt for merit selection and retention of trial judges.

Historically, Florida state courts were the non-controversial servant of the state's dominant political forces.[1] That posture is typical of state courts throughout the United States. Since state courts are intimately tied to the political structure of the state, they tend to be creatures of local government infused with local values and mores.[2] The Florida Supreme Court's position of ideological congruence with the dominant political culture, however, began to unravel in the 1960s.

---

[1]In fact, on of the authors of this article entitled his review of Florida courts accordingly, *See* Handberg & Lawhorn, *supra* note 4.

Before conflicts began to occur, several changes were made in the judicial selection process in an effort by the dominant conservative political forces to maintain control over the courts. Although nominally Democratic in party affiliation until the late 1960s, these forces controlled the Florida Bar, a so-called integrated bar, in which membership is mandatory for all practicing attorneys in the state.[3] Traditional political practice in the 1960s was that incumbent judges would resign their office a year or so prior to retirement. The governor would then fill that vacancy based on recommendations from the Bar and other political associates. The appointee would thereby be able to stand for re-election as an incumbent. In a partisan election, there was an extremely high probability of reelection. If the judge served a full term, in contrast, the electorate would directly choose the successor in partisan elections without the imprimatur of gubernatorial approval.[4]

The "silent de facto conspiracy that existed among the judiciary, the Florida Bar, and the various governors"[5], has straightforward structural foundations. Practicing attorneys are reticent to run against sitting judges for fear that they may lose, earning the ire and enmity of the judges who will decide their cases. The bar association itself tends to support the incumbent candidate, making it even more difficult for challengers to

---

[2]*See* Neubauer, *supra* note 3, at 174.

[3]Neubauer, *supra* note 3, at 131-32.

[4]Atkins, *supra* note 29, at 153-154; *see also* Handberg & Lawhorn, *supra* note 4, at 156-157.

[5]Handberg & Lawhorn, *supra* note 4, at 157.

gather support.[6] Moreover, judicial elections are bland and non-controversial due, in large part, to canons of ethics that prevent judicial candidates from staking out issue positions during the campaign.[7] This dynamic makes it difficult for voters to evaluate and distinguish candidates for judicial office. In fact, those sitting judges who are not re-elected usually fail in their bid due to personal scandal.[8] "For example, one [Florida] judge was found to be printing pornography on his office computer. Local attorneys and other judges had been aware of the drinking problem of another judge for years, but no effective action was taken until he hit a parked police car after a liquid lunch."[9] Accordingly, partisan changes in the composition of the bench occurred with much less frequency and at a much slower pace than in the other two branches.[10]

The historical Democratic Party dominated the state of Florida. The election of Claude Kirk as governor first demonstrated the effect of potential Republican voters in

---

[6]*Id.; see also* Neubauer, *supra* note 3, at 170.

[7]*E.g.*, Anthony Champagne & Greg Thieleman, *Awareness of Trial Court Judges*, 76 Judicature 271-77 (1991); Marie Hojnacki and Lawrence Baum, *Choosing Judicial Candidates*

.

[8]Handberg & Lawhorn, *supra* note 4, at 157.

[9]*Id.*

[10]Also, because are elected, they must campaign and raise funds to pay for the expense of that effort. This process inevitably raises questions of impropriety and the legitimacy of judges who seek contributions from the lawyers who may later appear in their courts. *See, e.g.*, Neubauer, *supra* note 3, at 170; *see also* Burton Atkins, *Judges' Perspective on Judicial Selection,* 49 St. Gov't 182 (1976).

the state. This changed the partisan dynamic of the selection process since Republican candidates now had a fighting chance to first attain office and later to shape the judiciary through appointments. Indeed, Governor Kirk's appointees to the bench furthered this transformation appointments. On a statewide basis, however, Governor Kirk's Republican Supreme Court appointees fell to Democratic challengers in the subsequent general elections.[11] This trend reflected the Democratic dominance of state politics despite Kirk's election in 1966, and a split in the Democratic ranks eventually developed. His opponent, Robert King High (the mayor of Miami), was perceived as too liberal, so critical financial support went to Kirk. This, coupled with the usual decline in turnout of less educated Democratic voters in the off-year election of 1966, proved insurmountable for King, especially given the animosity against the Democratic National Party in North Florida after the 1964 presidential election during which North Florida voters overwhelmingly supported Republican candidate Barry Goldwater.

Regardless, the harbingers of change were clear, leading to several changes in judicial election procedures. Although these changes were intended to retain Democratic judges, their general effect was to improve Republican candidates' chances of attaining

[11]This trend reflected the Democratic dominance of state politics despite Kirk's election in 1966, and a split in the Democratic ranks eventually developed. His opponent, Robert King High (the mayor of Miami), was perceived as too liberal, so critical financial support went to Kirk. This coupled with the usual decline in turnout of less educated Democratic voters in the off-year election of 1966, proved insurmountable for King, especially given the animosity against the Democratic National Party in North Florida after the1964 presidential election during which North Florida voters overwhelmingly supported Republican candidate Barry Goldwater.

office by moving major statewide races to an off-year election cycle.[12] By the 1980s, the Republican party was clearly on the rise, capturing more legislative seats with each election.[13] The House first came under Republican control in 1994, and the Senate followed in 1996.[14] For the first time since Reconstruction, the Republicans were in the majority.[15] During the same time period, in 1994, Republican gubernatorial candidate John Ellis "Jeb" Bush lost to Democrat Lawton Chiles, a former U.S. Senator.[16] This defeat largely nullified Republican legislative gains within the judiciary since it preserved the order, Democratic elements in control of access to the bench. Bush, however, ultimately prevailed and won the post in 1998, defeating former Democratic Lieutenant Governor Buddy McKay.[17] Hence, beginning in 1998, the Republicans held control of both the governorship and the legislature, two key elements for influence over the judiciary.[18]

---

[12]Fla. Stat. Chapter 100.041(2001).

[13]*See generally* Michael Barone & Richard E. Cohen, the Almanac of American Politics 2003, at 360-63(2001).

[14]*Id.* at 362.

[15]Wayne L. Francis & Elizabeth G. Williams, *The Legislature and the legislative Process in Government and Politics in Florida* 124-46, 127 (Robert J. Huckshorn ed., 2d ed. 1998).

[16]*Id.* at 364.

[17]*Id.* at 365.

[18]*Id.*

Changes in the Judicial Selection Processes Over Time: From Partisanship to the Merit System

Largely because Governor Kirk's judicial appointees were considered to be partisan, Florida voters made the selection process[19] for all levels of courts nonpartisan.[20] Thus, in 1972, Article V of the Florida Constitution was amended to replace partisan selection methods with nonpartisan judicial elections. This change from partisan to nonpartisan elections coincided with the state becoming a more competitive, two-party system and the decline of the Florida Democratic party's historical hegemony.[21] Moreover, in 1972 an amendment was passed instituting and appointment process to fill interim vacancies. This enhanced the governor's power over the judiciary because appointed judges had rarely encountered even minimal opposition and even more rarely were defeated due to the difficulties of opposing an incumbent.[22]

---

[19]The Emphasis on elections to select members of the judiciary arose during the Jacksonian era, which emphasized the democratization of the political process and sought to diminish the elitism of the judiciary. Most states from 1832 to 1933 adopted such judicial election. E.g., Atkins, supra note 29, at 152.

[20]There are four levels of courts within the Florida judicial hierarchy: the Florida Supreme Court, the district courts of appeal (5 in number), the circuit courts (20 in number), and the county courts (67 in number, one of each county). Handberg & Lawhorn, supra note 4, at 151-52. Circuit courts and county courts have primarily original jurisdiction to try cases. Id.

[21]Indeed, this correlation has been observed in other states as well. Atkins, supra note 29, at 153. See generally Burnham, supra note 31; Lamis, Southern Politics, supra note 31; Lamis, Two-party South, supra note 31; Beck, supra note 31; Bullock, supra note 31; Carmines, supra note 31; Knuckey, Explaining Republican Success, supra note 31; Knuckey, Ideological Realignment, supra note 31.

[22]Atkins notes that of the forty-six Republican judges who responded to his mailed survey, about one-half.

The larger effect of this change from partisan to nonpartisan elections was to diminish gradually the link between the courts and the partisan dynamics of the state. This created a lag between changes in public opinion, quickly felt by the executive and the legislative branches, and the composition and decision-making of the Florida judiciary. Although the Republican Party was on the rise in Florida, that change was not mirrored in the courts over which traditional political forces, like the Florida Bar, still held sway. Democrats also retained control of the legislature while Republican governors, J. Claude Kirk[23] and Bob Martinez,[24] were elected for only single terms. The Republican Party's ability to impact the judiciary was therefore limited.[25]

The system of nonpartisan election of judges continued unabated until a series of incidents in the mid-1970s involving four of the Florida Supreme Court's seven justices. Two of the justices were accused of attempting to influence separate decisions in lower courts. The allegations were so serious that the legislature invoked the rarely used impeachment process. Both justices resigned before the formal removal process was consummated, but they were later disbarred. One later died as a fugitive from drug-

[23]Not only did the Democrats control the legislature, but they also controlled the cabinet with which Kirk had a running feud. It was rumored that Kirk spend more time out of Tallahassee than in it because of this. Michael Gannon, A History of Florida to 1990, in Government and Politics in Florida 50 (Robert J. Huckshorn ed, 1991).

[24]Martinez was only Florida's second Republican governor since Reconstruction. Id. at 56.

[25]Democrats Reuben Askew (1971-79) and Robert "Bob' Graham (1979-1986) intervened between Kirk's and Martinez's tenures. Thereafter, Lawton Chiles served two terms until Jeb Bush was elected in 1998. Id. at 52-56.

smuggling charges.[26] At about the same time, it became publicly known that the supreme court's chief justice suffered from alcoholism to the point of impairing his work. The Judicial Qualifications Commission[27] notified him that if he did not seek assistance with his dependency, he would be removed from office. A fourth justice was involuntarily committed "to Shands Hospital in Gainesville for a formal psychiatric evaluation because of his erratic behavior under stress."[28] He ultimately was able to return to work and served as the tribunal's chief justice until the mandatory retirement age of seventy.[29] Because of the lack of justices during this period, lower court judges had to be appointed to form a quorum so the court could meet its responsibilities.[30]

The cumulative effect of these events damaged the legitimacy of the Florida court system in general and the Supreme Court in particular. Many of the state's legal and political elites grew uneasy because they believed that he apolitical image of the judiciary was being eroded.[31] A movement that the League of Women Voters and the Florida Bar led arose to change the selection process for the supreme court and the district courts of appeal to a more indirect, presumably less partisan method.[32] Consequently, Florida'

---

[26]Handberg & Lawhorn, supra note 4, at 158.

[27]*Id.*
[28]*Id.*
[29]*Id.*
[30]*Id.*
[31]*Id.*

[32]Id. Reformers advocate the adoption of the merit system because it circumvents the structural problems with candidate recruitment and the voters' lack of information. E.g., Neubauer, supra note 3, at 171-72.

judges were selected differently depending upon their level within the hierarchy.[33] A 1976 referendum changed the method of selection for appellate court judges from one governed by nonpartisan elections to a merit selection system.[34] While the trial courts formally retain the nonpartisan election mode, their judges continued the long-standing, informal practice of resigning prior to their terms' end allowing the governor to appoint a successor to reap the benefits of incumbency. The state legislature recognized this reality and enacted a modified merit selection system to diminish, although not eliminate, gubernatorial influence on local judge selection. Under the revised system, the governor would choose an interim successor from a list of potential nominees compiled by court specified judicial nominating commissions.[35] This system was much like the one in place

[33]See Bast, supra note 12, at 58; Lanier, supra note 23, at 10.

[34]Fla. Const. art., V, § 11. Under this system, a Judicial Nominating Commission composes a list of three to six potential nominees, from which the governor makes the ultimate selection. After a period of approximately one year, the selected judge stands unopposed in a retention election in which voters in his district decides whether to continue him in office. If successful, the judge serves a six-year term. If not, then the governor chooses another candidate and the process begins anew. Fla. Const. art V, § 10. See generally Lyle Warrick, Judicial Selection in the United States: A Compendium of Provisions passim (2d ed. 1993); Anthony Champagne, The Selection and Retention of Judges in Texas, 40 Sw. L.J. 53-117 (1986) (discussing the merit selection system); Mark S. Hurwitz & Drew Noble Lanier, Women and Minorities on State and Federal Appellate Benches: A Cross-Time Comparison, 1985 to 1999, 85 Judicature 84-92 (2001)(discussing the link between judicial selection method and the incidence of women and minorities becoming appellate judges).

[35]There are currently twenty-six judicial nominating commissions, one for the supreme court, one for each of the five district courts of appeal, and one for each of the twenty judicial circuits, the latter having jurisdiction over appointments to the circuit and county courts throughout the state. Fla. Const. art. V, § 11.

for the state's appellate courts.[36] Once the interim term expires, the sitting judge then stands in a competitive election (unlike members of the appellate bench who stand unopposed) and, if elected, serves a full, six-year term.

Efforts to extend the merit election system for all trial bench appointments – not simply interim one – began immediately after the 1976 vote. The opponents of such efforts perceived merit selection as the Bar's attempt to disenfranchise them just as their turn at judicial power came in the political roulette wheel. In North Florida, primarily Jacksonville, local African-American leaders resisted such changes because they believed that the adoption of this reform would leave the courts hostage to the lawyers, especially the defense bar, whom they believed held contrary policy views.[37] In South Florida, Hispanic voters, particularly members of the Cuban-American community, raised similar objections. Despite this resistance, or perhaps because of it, the now Republican controlled Florida legislature passed two referenda items authorizing constitutional amendments. The legislature did this thinking that only narrow groups opposed the extension of the merit system beyond the appellate bench. The legislature did this thinking that only narrow groups opposed the extension of the merit system beyond the appellate bench. The first referenda was whether to adopt a local option permitting voters residing in specific counties and within the state's judicial circuits to choose to adopt the merit system for all judges in their political subdivision. The referendum was put to a

[36] Fla. Const. art. V, § 11.

[37]See Dye, supra note 17, at 6-7 (discussing the partisan allegiance of voters in North Florida and Jacksonville).

vote in November 1998 and the voters choose to create such an option for both county and circuit subdivisions by a margin of about fourteen percent.[38]

Judicial Nominating Commissions

Because the composition of judicial nominating commissions may affect who the nominees will ultimately be, three major studies have explored the gender and racial diversity of these commissions. In 1973, Allan Ashman and James Alfini surveyed members of nominating commissions in thirteen states. Beth Henschen, Robert Moog, and Steven Davis conducted a similar survey of nominating commissioners in thirty-four states in 1989. The most recent study of the racial and gender makeup of nominating commissions was conducted by Kevin Esterling and Seth Andersen, who gathered demographic information on nominating commissioners in eight states in the 1990s.

In the first major study, Ashman and Alfini found that nominating commissioners were overwhelmingly white and male. More specifically, nominating commissioners were 97.8 percent white and 89.6 percent male. This study also compared the characteristics of lawyer and non-lawyer commissioners. Only two of 194 lawyer members were non-white, and only one was a woman. Of the 153 lay members, 3.3 percent were non-white, and 22.3 percent were women.

[38]The full text of the ballot measure and the vote data can be obtained at the Secretary of State's homepage at http://election.dos.state.fl.us. The corresponding amendment can be found in article V, section 10(b)(1)-(3) of the state constitution. Fla. Const. art. V, § 10(b)(1)-(3).

Sixteen years later, Henschen, Moog and Davis reported notable gains in the representation of women on judicial nominating commissions. Twenty-five percent of commissioner respondents were women, and the percentage of women among attorney commissioners had increased to 10 percent. This study showed only slight increases in the proportion of minority commissioners, with 7 percent of commissioners being non-white. As in the Ashman and Alfini study, there were fewer minorities among lawyer members, 5 percent, than lay members, 14 percent. The Henschen study also reported significant variation in the racial and gender composition of nominating commissions across states. This variation was later confirmed in the data collected by Esterling and Andersen. States with a significant proportion of Hispanic commissioners included New Mexico, at 30.9 percent, and Arizona, at 25.8 percent, while states with substantial African-American representation were Tennessee, at 20 percent, and Florida, at 18.1 percent. The extent of gender diversity on these commissions ranged from 22 percent in Alabama to nearly 47 percent in Tennessee.

Esterling and Andersen examined the effects of gender and racial diversity within nominating commissions on the gender and racial diversity of applicants and nominees. In the five states for which data was available, there was some evidence that diverse commissions attracted more diverse applicants and selected more diverse nominees.

The Florida judiciary is composed of the Supreme Court, the district courts of appeal, the circuit courts, and the county courts. Appellate judges are chosen through a merit selection and retention process, and trial judges are chosen in nonpartisan elections.

However, vacancies on the trial courts are filled by the governor from candidates recommended by a judicial nominating commission.

There are twenty-six judicial nominating commissions that screen applicants for vacancies on Florida courts and recommend qualified candidates to the governor: the statewide nominating commission for the supreme court, a commission for each of the five district courts of appeal, and a commission for each of the twenty judicial circuits. For all vacancies on the supreme court and district courts of appeal and for mid-term vacancies on the circuit and county courts, the appropriate nominating commission submits a list of three to six nominees. The governor must appoint one of the commission's nominees.

Each nominating commission consists of nine members appointed by the governor. Four members are lawyers appointed from lists of nominees submitted by the Florida Bar. Of the remaining five members, at least two must be lawyers. Members must be residents of the jurisdiction the commission serves. In making the appointments, the governor is to ensure that, to the extent possible, the membership of each commission reflects the racial, ethnic, and gender diversity and geographic distribution of the relevant jurisdiction. Members serve four-year terms.

The question was put to voters in the 2000 election and by 2001, the Legislature revised the statute relating to the appointment of members of the state's judicial nominating commissions. Prior to the change, three lawyer members were appointed by the Florida Bar, three members were appointed by the governor and could be either

lawyers or non-lawyers, and three non-lawyer members were selected by the other six commission members. Under the revision, the governor appoints all nine members of each commission. Four of the lawyer members must be appointed from lists of nominees submitted by the Florida Bar. The law also requires the governor to consider racial, ethnic, and gender diversity, as well as geographic distribution, when making appointments to the commission.

In 1991, the Florida legislature altered the composition of the state's judicial nominating commissions to provide that one third of all members be women or members of a racial or ethnic minority group. A white male who applied for a commission vacancy was rejected because the position was reserved for a woman or minority, and he filed a suit challenging the constitutionality of the diversity provision. The federal district court found that the provision violated the equal protection clause of the Fourteenth Amendment. Mallory v. Harkness, 895 F.Supp. 1556 (S.D. Fla. 1995). The decision was affirmed by the court of appeals without reported opinion in 1997.

Minorities in the Legal Profession

Issue

Studies have documented and many have observed that minorities are significantly underrepresented at all levels of the legal profession as compared to their numbers in the general population. Recognizing that the legal profession must not only reflect the diversity of the society it serves, but also embrace the belief that fair representation and equal access are essential to ensure a system of justice that is

unbiased, many bar organizations on the national, state and local levels have taken significant measures to promote equal opportunity for minority lawyers.

Background

In February 1984, the American Bar Association (ABA) created the Task Force on Minorities in the Legal Profession. The Task Force was charged to investigate and report on the problems facing minority lawyers and to submit recommendations designed to promote the full integration of minority attorneys into the profession. In January 1986, it issued its Task Force on Minorities in the Legal Profession: Report With Recommendations. The task force concluded "the legal profession has remained a largely segregated institution in which racial and ethnic minorities lacked equality of opportunity." The report made nine recommendations which were adopted by the ABA: "To promote full and equal participation in the profession by minorities and women." The report also recommended the creation of a Commission on Opportunities for Minorities in the Profession that would be charged with the responsibility of implementing a program to achieve that goal.

In November 1989, The Florida Bar appointed the Commission on Equal Opportunities in the Profession for a two-year term to address the low representation of minority lawyers in Florida's legal community; the lack of minority participation within the Bar; and means by which to improve opportunities in Florida for minority lawyers.

The Commission as one of its goals sought to increase hiring and advancement opportunities for minority lawyers through its implementation of the Outside Counsel

Program. This program was modeled after the ABA's successful Minority Outside Counsel Demonstration Program, the purpose of which is to create opportunities for minority attorneys to become outside counsel to corporations and governmental agencies.

In October 1990, the Commission sought to ascertain the level of participation of minorities in the legal profession and determine any impediments or barriers of participation by surveying the Bar membership to measure the attitudes and perceptions of attorneys regarding equal opportunities for minorities in Florida's legal community. In January 1992, the Membership Attitude Survey Report and Recommendations was issued. The report made 14 recommendations one of which was to have The Florida Bar formally adopt the ABA's goal of promoting full and equal participation in the profession by minorities and women.

In May 1991, The Florida Bar Board of Governors voted to give the commission a permanent presence in the Bar by appointing it as a standing committee. This attainment has allowed the Committee on Equal Opportunities in the Profession to pursue and accomplish its goals: to identify and seek to resolve discrimination within Florida's legal community by increasing hiring and advancement opportunities for minorities and women; improve the passage rate of minority law students; and serve as a clearinghouse for opportunities and concerns of minorities and women who practice law in Florida.

The Supreme Court of Florida also made efforts to address the dearth of minority lawyers at all levels of the legal profession. Then Chief Justice Raymond Ehrlich issued an administrative order creating the Racial and Ethnic Bias Study Commission

(December 1989). This two-year commission's primary charge was to determine "whether race or ethnicity affects the dispensation of justice in Florida." In December 1990 and 1991 respectively, the Commission issued its report and recommendations covering an array of issues which included diversity in the judicial system, reexamination of the adult and juvenile justice systems, law enforcement interaction with minorities, and the unique experiences of minority attorneys in Florida.

The Minority Participation in Legal Education program awards scholarships to blacks, Hispanics and American Indians in an effort to encourage minority participation in the legal profession. But in 1996, only 70 of the 292 students who applied for the scholarships received them. These statistics opened the debate for starting a new law school. Rep. Al Lawson D-Tallahassee lobbied for the re-establishment of the Florida A&M law school. Florida International University also put in its bid to be the site of Florida's next law school.

Bills were introduced in the 1993 and 1999 Legislatures to create a third public law school leading to a controversy among legislators as to whether that law school would be associated with state's historically black university (Florida A&M) or the only university with a near majority of Hispanic students (Florida International University).

On May 2, 2000, the Florida Senate voted unanimously to create two new law schools in Florida one in South Florida at Florida International University and one for Florida A&M University in Central Florida. The House also passed the bill and the governor signed it into law soon after.

In August 2002, the Florida A & M University College of Law and the Florida International University College of Law opened their doors. These schools were created to encourage minority students to pursue law.

The Florida Bar's Position

In July 1993, The Florida Bar became one of a handful of state bars to adopt specific language proscribing discriminatory practices by lawyers. In its Rules of Professional Conduct (Chapter 4), the Bar amended Rule 4-8.4(d) Misconduct, to include the following language: A lawyer shall not:

> (d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristics; . . .

The Board of Governors, at the recommendation of the Bar's Special Committee for Gender Equality in the Profession and with endorsement of the Committee on Equal Opportunities in the Profession, adopted a new aspirational policy calling for fair representation of women and minorities in Bar groups -- "It is the policy of The Florida Bar to ensure that all members, including women and minorities, have equal

opportunities to be appointed to committee membership, committee leadership, and other positions." At present, The Florida Bar has no legislative positions in this area.

The Florida Bar's Involvement

With the establishment of the Committee on Equal Opportunities in the Profession and the support of the Board of Governors, the Bar has taken significant steps to increase the level of participation by minority lawyers in Bar activities as well as the number of minorities entering the legal profession. The implementation and continued development of the Committee's Business Development Conference has created and expanded opportunities for minority attorneys to serve as outside counsel to governmental agencies and private companies in Florida. In April 1993, the Board of Governors approved the implementation of the Law Education Assistance Program (LEAP). Funded by a grant from The Florida Bar Foundation, the program provided stipends to African American law graduates to take The Florida Bar exam with participating review course providers offering a one-for-one scholarship match. Matching scholarships were available to all other minorities. The first seven scholarships were awarded in December 1993, followed by 36 scholarships for July 1994 Florida Bar exam applicants, 16 scholarships for February 1995 applicants and 44 for July 1995 Florida Bar exam applicants. Due to depletion of grant funds, the program was discontinued, following the July 1995 exam cycle.

The Young Lawyers Division commissioned a study by the National Center for Higher Education Management Systems based in Tallahassee regarding how best to

increase minority members studying to be lawyers. Although the analysts found that minorities are seriously underrepresented in the legal profession, they recommended additional scholarships and expanded part-time opportunities for student enrollment.

In June 2004, The Florida Bar Board of Governors held a diversity symposium where they approved funding for two surveys proposed to get a more accurate picture of the Bar's ethnic makeup and to survey minority bar associations as to why more minorities are not participating in Bar activities. Incoming Bar President Kelly Johnson is also setting up a Membership Outreach Committee to encourage minority participation. Despite the fact that considerable scholarly attention has been given to questions of judicial recruitment, selection and representation of the American judiciary by political scientists since the 1960s, I argue that important substantive and empirical questions remain unaddressed about racial, gender and ethical composition of the courts. In this section, she said, “I plan to critique the extant research on diversity in Florida's courts.” One brief explanation she argues for this gap in literature is grounded in the structural nature of the American judiciary; meaning that a disproportionate amount of attention has been placed on judicial recruitment and selection politics of federal judges. Accordingly, the disparate dissimilar methods of selecting judges are often among appellate and trial courts. Some studies of selection literature tend to indicate that upper court bias exist in judicial recruitment and it focuses more on the appellate courts and argue that inadequate attentions is being given to the trial courts. I explored the consequences of these research trends which limited our understanding of diversity on the Florida bench.

Why is diversification so important? Those who advocate diversity within government frequently argue that overwhelmingly white and male political institutions do not adequately represent the diverse interests of the mass public. This notion of the courts as representative institutions is, of course not new. Seats have been set aside for particular regions or religions, though such regional and religious considerations are less relevant today (Sciligiano, 1971). The foundation of many arguments for increased gender diversity is the belief that, whether because of biological, psychological, or sociological differences, women bring a different set of attitudes and beliefs, and different areas of experience and expertise to policy making (Darcy, Welch, and Clark, 1994: Sapiro, 1981). Likewise, the experience of Blacks differs noticeably from the experience of other citizens. Yet, at the same time, an ongoing debate has taken place about how to balance merit considerations and diversification. Some individual argue that regardless of political ideology that eventually color nor gender will not have any effect on judicial appointments.

However, history has demonstrated in the last two decades before Ronald Regan's appointment of Sandra Day O'Connor to the U.S. Supreme Court, a great deal of political discussions have been placed on the lack of diversity within the court system. Even during the administration of George H.W. Bush, he claims that "race" did not have an influence on his decision to maintain racial diversity on the U.S. Supreme Court after Thurgood Marshall resigned in 1991, even though Justice Marshall acknowledged that race would certainly be a factor in the choice (Wines, Michael, 1991). In the presidential

debate of 1992, Bill Clinton stated that "I think I owe the American people a White House staff, a Cabinet and appointments that look like America but that meet high standards of excellence, and that's what I'll do." (Goldman, Sheldon, 2000). Clinton followed up this statement throughout his presidency by appointing women and minorities to the courts.

According to the Board of Bar Examiners there has been substantial improvement in minority representation in the legal profession but no statistical information has been maintained. However, since the implementation of the Minority Participation in Legal Education Program (MPLE) by the Florida Legislature in 1994, law schools have reported the program has had a significant impact as law school recruiters can go out with a scholarship in hand and recruit the brightest minority candidates. (Board of Bar Examiners, July 1997).

In a 1999 joint poll, Race and the Law, by the American Bar Association and the National Bar Association, 52% of black lawyers answered that there is "very much" racial bias in the current justice system. Nearly 30% of white lawyers answered there is "very little." Also, nearly 67% of black lawyers said they had witnessed an example of racial bias in the justice system within the past three years. But more than 82% of white lawyers said they had not witnessed an instance of racial bias.[39]

[39]Prepared by the Public Information and Bar Services Department with assistance from the Public Service Programs Department The Florida Bar June 2004.

CHAPTER THREE: METHODOLOGY

The documentation review method was used to measure the data collected in this research. The advantages for using this method were first, to obtain comprehensive and historical information that already exists and secondly, to obtain data which demonstrates few biases about the information.

I used correlation as a non-experimental, description method because the variables are not directly manipulated, as they would be if used in an experimental method. This method of research is really more of a mathematical technique for summarizing data. This study was designed to determine the degree and direction of relationship between two or more variables or measures of behavior. For example, as the number of female and minority appointments increase on the JNC it is more likely that qualified female or minority judicial candidates will advance through committee.

Race data collection is about accountability. It will allow us to look at racial disparities in the aggregate so we can address the specific—by moving us from anecdotes to empirical evidence and from empirical evidence to action. Beyond initiatives to collect race data, Florida's judiciary has undertaken additional efforts to change the policies and practices that often lead to gender and racial disparities. These findings are discussed under the facts and statistics listed below.

CHAPTER FOUR: FINDINGS

Facts and Statistics

Diversity in 2004 judicial appointments is a high priority in Florida's present administration. Their goal is to have a judicial system composed of judges who reflect the people they serve. Since judges have so much influence over the lives of people of the state, it is important that all Floridians perceive the judiciary legitimate. Having a diverse judiciary serves the goal. Consistent with its policies in other areas, Florida's administration believes that a diverse judiciary can and should be achieved without the use of quotas. Instead, they have pursued the goal of diversity through outreach and by giving careful consideration to every applicant.

- The Bush/Jennings team appointed the first African American woman, Judge Peggy Quince to the Florida Supreme Court (with the agreement of Governor Lawton Chiles)
- The Bush/Jennings team appointed minorities to 53 judicial positions including the first Hispanic Supreme Court Justice Raoul Cantero to the Supreme Court (26 African American, 26 Hispanics, 1 other)
- The Bush/Jennings team appointed women to 66 judicial position
- The Bush/Jennings team appointed the first Haitian-American judge, Judge Fred Seraphin to the Miami Dade County Court.

In 1990 less than 5.6% and 3.6% of the membership of the judicial nominating commissions were, respectively, African American and Hispanic. Almost half the commissions had no minority members at all in 1990. As of January 1994, Hispanics account for 11.2% of the judicial nominating commission members and African Americans make up 24.7% of the members. All of the commissions have minority members (The Florida Bar, January 1994).

Minorities are significantly underrepresented in Florida's large law firms, particularly those not located in the Miami area. African American attorneys represent less than 1.6% of attorneys in large firms both inside and outside the Miami area. Hispanics account for only 1.7% of attorneys employed by large firms outside Miami. (Florida Supreme Court Racial and Ethnic Bias Study Commission, 1991).

A stark disparity exists in the passage rate of white and black candidates on the Florida Bar exam. Specifically for the February 1991 administration, 74% of the White candidates passed the Florida and multistate portions of the exam, while only 39% of the black candidates passed the exam. For the July administration, 76% of the whites passed, while only 46% of the blacks passed. (ref. see above).

Nationally, applications are down to ABA-accredited law schools from about 100,000 in 1990-91 to less than 70,000 a year. In Florida, there were 4,925 applicants in 1991-92, the peak year. In 1999 there were 3,675, or a 25 percent decline. (The Florida Bar News, April 30, 1999).

During the same time, African-American applications have risen 22 percent to

468 while Hispanic applications have declined eight percent. (ref. see above).

U.S. Census EEO files for 1990 for lawyers and judges in Florida show participation rates of 7.4% for Hispanics and 2.6% for African Americans, yielding a total minority participation rate of 10% (National Center for Higher Education Management Systems, 1993).

The respective proportions of Hispanic and African American persons in the Florida population by the 1990 Census was 12.2% and 13.6% respectively in Florida (ref. see above).

Minority participation in other professions is greater, at least for Hispanics. Minorities comprised over 20% of the population of physicians (17.7% Hispanic, 2.4% African American and 12% dentists (10.6% Hispanic and 1.7% African American) (ref. see above).

No single minority group in the United States accounts for more than 4% of the lawyers in the U.S. (Law School Admissions Council, August 2000).

According to the 1990 Census, a total of 56.7% of the minority population of Florida reside in the seven counties surrounding Miami; this includes 74.3% of the state's Hispanic population and 42% of the African Americans (ref. see above).

Over four fifths of all lawyers who responded to the Bar survey believe that a third Florida public law school should not be created. (1993 Membership Attitude Survey).

The number of law school applicants is on the downswing. According to a report

from the Law School Admission Council, applicants for 1993 were down 5.9 percent nationally, and the number of applications decreased 5.6 percent. Applications to Florida schools were down 7.8 percent for fall 1993. Only one law school reported an increase in fall applications -- Florida State University, at 4.4 percent. Stetson reported the worst decline in applications at 15.7 percent. University of Florida applications were down 7 percent; University of Miami's down 9.2 percent; St. Thomas University's down 5.9 percent; and Nova's down 11.2 percent (Florida Bar News, November 1, 1993). According to the 1994 Florida Bar dues statement of 31,481 respondents 28,803 are White, 1,834 are Hispanic, 666 are African American, 120 are Asian or Pacific Islander and 58 are American Indian or Alaskan.

The 1994 Economics and Law Office Management Survey indicate that approximately 94 percent of Bar members are White, 4 percent are Hispanic and 2 percent are African American.

The 1996 Economics and Law Office Management Survey indicate that approximately 93 percent of Bar members are White, 5 percent are Hispanic, and 2 percent are African American.

The 1998 Economics and Law Office Management Survey indicates that approximately 91 percent of Bar members are White, 6 percent are Hispanic, 2 percent are African-American, and 2 percent are of another minority.

CHAPTER FIVE: CONCLUSION

In closing, I realize that our courts cannot be sensitive to issues of ethnic, race and gender diversity and how they impact females, minorities, and people of color unless the makeup of the court reflects the communities we serve. You may ask, why does race matter? After all, parties are not entitled to have a jury with a particular gender or racial makeup or a judge of their choice. Indeed, at least in theory, if judges are truly impartial, it should not matter what race they are. While that is a valid point, I think it misses something important.

First, a vital part of the richness of what the judiciary does is the varied background and experience of those who serve as judges. Those differences in background and experience make us all better. Second, and more important, if people are to have trust and confidence in the people who serve in the judiciary, they should see some people who look like them when they come into contact with the judicial system, people who may have shared some of the same experiences they have shared and, thus, someone with an understanding of and sensitivity to the life experiences they have had. How can you have confidence in the judicial system if the judges in that system cannot relate to who you are? The judicial system has an obligation to provide equal opportunity to the extent that females, minorities, and people of color have the temperament, the legal educational background, the skills, and the abilities necessary to sit on Florida's bench.

In 2001, the Legislature revised the statute relating to the appointment of members of the state's judicial nominating commissions. Prior to the change, three lawyer

members were appointed by the Florida Bar, three members were appointed by the governor and could be either lawyers or non-lawyers, and three non-lawyer members were selected by the other six commission members. Under the revision, the governor appoints all nine members of each commission. Four of the lawyer members must be appointed from lists of nominees submitted by the Florida Bar. The law also requires the governor to consider racial, ethnic, and gender diversity, as well as geographic distribution, when making appointments to the commission.

Finally, when people go to court and see a judge who looks like them, they are more likely to have confidence that they will be treated fairly and a more diverse group of judges brings a broader set of life experiences that can enrich the decision-making process. Some minority and women judges will not be appointed unless more women and minority lawyers with solid records and a willingness to serve step forward and seek judicial nominations. The legal profession also has an obligation to encourage more minorities and women to consider a career in law. The governor's most recent selections indicate that he is serious about improving diversity on the Florida bench.

LIST OF REFERENCES

Ashman, Allan and Alfini, James, *Standards on State Judicial Selection*, (http://www.abanet.org/judind/publ/reformat.pdf).

Aspin, Larry, "Trends in Judicial Retention Elections, 1964-1998," Judicature, September/October 1999, p. 79-81.

Aspin, Larry, "Campaigns in Judicial Retention Elections: Do They Make a Difference?,"*Justice System Journal* 1998, p. 1-15.

Barone, Michael& Cohen, Richard E., the Almanac of American Politics 2003, at 360-63(2001).

Berkman, Harvey, "Politics, Judges Don't Mix: So Say Most U.S. Citizens, According to Harris Poll," The National Law Journal, August 12, 1996, v.18, n.50, p.A6, col. 2.

Brummer, Rep., Republican Party of Florida home page. "*Making Our Judicial Selection Process More Accountable to the People*." (http://www.rpof.org/rcs/rpof/pub).

Champagne, Anthony & Thieleman, Greg *Awareness of Trial Court Judges*, 76 Judicature 271-77 (1991); Hojnacki, Marie and Baum, Lawrence, *Choosing Judicial Candidates.*

Dudley, Robert L., "Turnover and Tenure on State High Courts: Does the Method of Selection Make a Difference?" Justice System Journal, 1997, p. 1-16.

Easterling, Kevin M., "Judicial Elections the Right Way: Official Performance Evaluations Help the Electorate as Well as the Bench," Judicature, March/April 1999, p. 206-215.

Esterling, Kevin; Andersen, Seth; Henschen, Beth; Moog, Robert; and Davis, Steven, *(Merit Selection Diversity and the Judiciary*).

Florida Bar News, November 1, 1993.

Florida Supreme Court Racial and Ethnic Bias Study Commission, 1991.

Francis, Wayne L. & Williams, Elizabeth G., *The Legislature and the legislative Process in Government and Politics in Florida* 124-46, 127 (Robert J. Huckshorn ed., 2d ed. 1998).

Gibeaut, John, "Bench Battle: Trial Judges Often Keep Their Seats Without Facing Election," ABA Journal, August 2000, p. 42-50 and p. 111.

Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, and Gary Zuk. 2000. "Clinton's Judges: Summing Up the Legacy." *Judicature* 84: 228-254.

Handberg, Roger and Lawhorn, Mark, *The Courts: Powerful but Obscure, in* Government and Politics in Florida 148-68 (Robert J. Huckshorn ed., 2d ed. 1998).

Hurwitz and Lanier, *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts*, 3 ST. POL. & POL'Y Q. 329-52 (2003).

Ifill, Sherrilyn A., *Judging the Judges: Racial Diversity Impartiality and Representation on State Trial Courts*, 39 B.C.L. Rev. 95 (1997).

Judicial Nominating Commissioners Handbook, Section V., *Standards and Qualifications*: *Criteria*, 2001; p.9.

Orlando Sentential, "*Diversity the bench",* (Monday, January 17, 2000).

Pitkin, Hannah, 1967. *The Concept of Representation.* Berkeley: University of California Press.

Public Information and Bar Services Department with assistance from the Public Service Programs Department, *The Florida Bar*, June 2004.

Reddick, Malia, Ph.D., Director of Research, American Judicature Society.

Reid, Traciel V., "The Politicization of Retention Elections: Lessons from Defeat of Justices Lanphier and White" *Judicature*, September/October 1999, p. 68-77.

Reid, Traciel V., "*PAC Participation in North Carolina Supreme Court,*" Judicature, 1996, p. 311-317.Sciligiano, 1971. *The Supreme Court and the Presidency.* New York: Free Press. Baum, Lawrence. 1998. *American Courts: Process and policy.* Boston: Houghton Mifflin. 4th edition.

Sheldon, Charles H., et al., "Voter Knowledge, Behavior, and Attitudes in Primary and General Judicial Elections," *Judicature*, March/April, 1999, p. 216-220.

Turner, John E., "*Voter Have the Rights to Elect their Judges,*" The Gazette, April 17, 1996, p. 39.

Uelman, Gerald F., "The Fattest Crocodile: Why Elected Judges Can't Ignore Public Opinion," Criminal Justice, Spring 1998, p. 5.

"*The Walsh Commission's Final Report,*" Washington State Courts, March 18, 1996.

"Where the Injured Fly for Justice" A Ten-Year Retrospect on the Report and Recommendations of the Florida Supreme Court Racial and Ethnic Bias Study

Commission.

Wines, Michael, 1991. "Bush Says List for Marshall Successor is Short." *New York Times*, June 29, p.1.