ANNOTATED BIBLIOGRAPHY

HISTORICAL RECORD OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN PUBLIC AND PRIVATE CONTRACTING IN NEW JERSEY

A Report Submitted to NJ TRANSIT and the Governor's Study Commission on Discrimination in Public Works Procurement and Contracts

by The Afro-American Studies Program University of Maryland at College Park
Books and Articles


Bearse, Peter. "An Econometric Analysis of Black Entrepreneurship." In The Review of Black Political Economy, Spring, 111-134. 1984. Contains a statistical assessment of the presence of blacks in business ownership. Establishes that the representation of white women and racial minority groups in large corporate ownership is even more sparse relative to their numbers in the general population that their representation in the small business world.

Betts, Roy. "Construction in the 1980's." In Hispanic Business, 8. 1980. This article contains a discussion of the construction industry in the 1980's. The focus is on problems of minorities in construction. As part of this, a survey by the Associated Minority Contractors of America is discussed. The survey reported that the inability to get bonding has resulted in a number of minority contractors having to eschew business they had won under competitive bid.

of Hightstown, New Jersey. Barlow offers evidence of the persistence of racial tension and inequality in Hightstown, engendered by white hostility toward blacks.

Blau, Francine and John Graham. "Black-White Differences in Wealth and Asset Composition." *Quarterly Journal of Economics* 105 (May 1990): 321-340. This article contains an analysis of the level and composition of black and white household assets in 1986. They find that the level of black household wealth is substantially lower than that for white and that this is true even for households with similar income. In addition, the composition of assets differs by race with blacks holding more of their assets in checking and savings accounts and less in stock and other high yield assets.

Blumrosen, Alfred. *Report of the New Jersey Commission on Civil Rights to the Honorable Richard J. Hughes, Governor and to the Legislature of New Jersey: On Matters Relating to the Work of Division of Civil Rights.* Edited by Rutgers: The State University of New Jersey. 1964. This report examines the work of the New Jersey Division on Civil Rights and offers suggestions to the Commission regarding the need for the Division to more broadly interpret its ability to proactively seek out discrimination and correct those acts counter to the State’s Laws Against Discrimination.

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Report on the Panel on Equal Employment Opportunities in Construction Trades in Newark, New Jersey. Rutgers: The State University, 1970. Professor Blumrosen provides an historical summary of the discrimination against Afro-Americans in the construction trade of New Jersey. He details the manner in which the construction trade in New Jersey was able to continue its discriminatory policy of a "closed shop" and deny access to apprenticeship programs and union construction jobs. He calls for the federal government to require compliance through more rigorous legislation and monitoring.

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"The Duty to Plan for Fair Employment: Plant Location in White Suburbia." In *Rutgers Law Review*, 1971. Argues that employers are obligated to consider any adverse impacts of location or relocation in suburbia on minorities, to assure fair employment opportunities for those minorities.

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*Enforcing Equality in Housing and Employment Through State Civil Rights Laws.* Rutgers Law School, 1974. This report
contains a discussion of discrimination in the building trades and housing in New Jersey. The authors discuss the development of a national plan or approach for rectifying discrimination in the construction industry. Evidence on under representation in construction apprenticeships and employment is tied to recommendations for the nature of affirmative action goals. In addition to statistical evidence on discrimination, the article contains court case histories and actual testimony from state officials on affirmative action programs.

"The Law Transmission System and the Southern Jurisprudence of Employment Discrimination." In Industrial Relations Law Journal. 1984. Documents the marked rise in the representation of nonwhites working in "the higher occupational categories (professional and technical, clerical and craftspersons)" between 1970 and 1980. Argues that the increase must have been to the effects of antidiscrimination legislation.


Blumrosen, Ruth, "Wage Discrimination, Job Segregation, and Title VII of the Civil Rights Act of 1964." University of Michigan Journal of Law Reform 12, no. 3 (Spring, 1979). Discusses the nature and incidence of job segregation by race and sex, the relationship between job segregation and wage discrimination, and discusses the liabilities under Title VII. The author proposes a critical analysis of the wage discrimination theory and suggested remedies.


Burns, Michael. "The Exclusion of Women from Influential Men's Clubs:


Clayton, Dusty. "Tiger Inn Fetes 100th Anniversary Amid Pickets." Trenton Times, 21 October 1990. Sixty students and alumni picketed the Tiger Inn, Princeton University's last all-male eating club to demand that it change its admission policies.


Conk, Margo Anderson. The United States Census and Labor Force Change. 1980. Provides the backdrop of the industrialization for several major cities in New Jersey from 1870 to 1940.

Cook, Robert and K. Lynn Cairnes. "The Impact of Participation in Apprenticeship." In Proceedings of 42nd Annual Meetings of the Industrial Relations Research Association, 379-386. Atlanta, Ga., 1989. This study uses data from the National Longitudinal Survey in 1972 to estimate the effect of apprenticeship on earnings and employment. These results are compared to those on the impact of vocational and academic instruction programs. The authors find substantial returns to participation in these apprenticeship programs and conclude that those lucky enough to enter these programs enjoy economic rents. They find that women and minorities would reap especially large returns from being included in the pool of apprentices.

Courant. "Racial Prejudice in a Search Model of the Urban Housing Market." Journal of Urban Economics 5 (1978): 329-345. Demonstration that a competitive housing market will not mitigate effects of white prejudice, but instead will establish competitive equilibria which are racially segmented and in which African-Americans pay more.

Inc., 1964. A history of transportation in New Jersey. Relates the impacts of the shifts from water transport to rail and land transport on the economies of local areas in New Jersey. Points out the role of railways in contributing to the growth of manufacturing industries in the State and the effects of automobiles on the growth of suburban communities. Provides a history of the origins of the Port of New York Authority and the friction between the states of New York and New Jersey over a variety of public policy and transportation-related issues. The failure to develop a comprehensive rail system connecting the States and the various rail lines is traced and the consequences for the alternative development of vehicle transport lines is detailed.


Curvin, Robert: The Persistent Minority: The Black Political Experience in Newark. Ann Arbor, Michigan: University Microfilms International, 1975. Provides an historical account of the rise of political patronage and the destructive influence on black community life in Newark New Jersey. Documents the influence of black bosses in simultaneously delivering the vote to white political leaders in return for petty favors and thwarting major structural changes that would materially benefit the black community in the long-run. An important example is the role of the Newark Housing Authority in construction of high-rise housing. The political patronage system favored the concentration of blacks in a single location for the efficient delivery of the black vote; the community worried of the impacts on crime, and lack of access to social services.


Studies Program Working Papers. University of Maryland at College Park, August 1991. Contains an up-to-date assessment of the relative economic status of black Americans as well as a statistical analysis of the factors contributing to that relative status. Particular emphasis is given to the relationship between family structure and patterns of individual and family income by race. Correspondingly detailed attention is given to the role of the female to male ratio in the black community in affecting the dramatic growth in low-income female headed families among blacks:

Darity, William and Myers, Samuel L. "Public Policy and the Fate of the Black Family." *Humboldt Journal of Social Relations* 14:1 & 2 (Fall/Winter & Spring/Summer 1986/87). Suggests that the deteriorating status of the black family is associated with the transition from a capitalist society to a managerial society. Suggests black male marginalization results in reduced numbers of marriageable men which, in turn, results in deprivation of black families.

Darity, William Jr. "Equal Opportunity, Equal Results, and Social Hierarchy." In *Praxis International*. 174-85, July 1987. Provides a critical assessment of competing concepts of equality ranging from pure procedural equality to pure equality of outcomes, as well as the intermediate case of Rawlsian "fair equal opportunity." The black neoconservative thinker, Thomas Sowell, is identified as a proponent of pure procedural equality and the implications of his perspective are pursued to their logical and disturbing limits.

Dedman, "The Color of Money: Atlanta Blacks Losing in Home Loans Scramble," *Atlanta Journal and Constitution*, May 1, 1988. Major investigative report concluding that banks are five times more likely to lend to whites than blacks of the same income; study based on banks’ Community Reinvestment Act reports.


-----. *Who Rules America Now?* Englewood Cliffs. 1983. This book is a sequel to Domhoff's *Who Rules America?* and extends the political analysis of class and power issues of the elites in corporate and political life. Chapter 6 includes an examination of the power structures at the local, community level. Wealth and income statistics provide indication of the extent to which power is controlled by a ruling elite class.


Emerson. "Freedom of Association and Freedom of Expression." *Yale Law Journal* (1964). This article discusses the difficulty in drawing the line between proscribed private behavior and constitutionally protected free association. Emerson discusses those situations which could determine the legitimacy of such involvements and indicates that there is a great need to be circumspect in delineating the activities of citizens.


Falcocchio, John C. and Cantilli, Edmond J. *Transportation and the Disadvantaged: The Poor, the Young, the Elderly, the Handicapped.* Lexington, MA: Lexington Books, 1974. Discusses the impacts of changing mass transit policies on employment prospects of inner-city residents. Concludes that minor adjustments in transportation efforts designed to assist the poor
in getting to work are not likely to be cost-effective.


"Federal Court Accepts Ivy Club Suit." in Trenton Times. 1991. The formerly male-only Ivy Club of Princeton University received the approval of a federal court to challenge a state decision which opened up the eating club to women. Eight years after student Sally Frank first filed a complaint and forced the eating club to admit women, the first woman was admitted last May.


Gates, A. "The Perk Report." In *Working Women*, 8. 1990. Leaner corporate operations are becoming a necessity for the 1990s. The conspicuous perks of the 1980s are losing favor, although for 1% of the top employees, perks still include memberships in elite clubs.

Geismar, Joan. *The Archaeology of Social Disintegration in Skunk Hollow: A Nineteenth Century Rural Black Community*. New York: Academic Press, 1982. A bit too narrowly focused on the non-extant community of Skunk Hollow from the perspective of the archaeologist to provide general insights into the black experience in New Jersey. However, the first chapter does contain useful historical information on blacks in New Jersey, much of which is replicated later in Giles Wright's book.

Geraghty, Coleen. "Clubs: The Art of Clubbing Prestige with Profit." *Asian Finance* 13, no. 6 (May 1987). Clubs in Asia today are viewed as important stepping-stones for the upwardly mobile middle class. "Clubbing" is being used by many young Asian executives as a means to advance business opportunities.

Greater Newark Urban Coalition. *The Local Public Work's II Minority Participation Program*. Newark, NJ, 1980. This report contains an analysis of Local Public Works construction programs in Newark New Jersey in 1977. The report focuses on whether these projects succeeded in achieving the mandated 10% minority set aside for each grant. The report concludes that these goals were generally not reached and that the government needs to actively develop mechanisms to identify potential minority contractors.


Hamilton, Stephen. "Apprenticeship for Adulthood." In *The Free Press*. New York, 1990. This book looks at how youth are provided with the skills needed for success in the labor market if they do not go onto college. It looks in depth at the American apprenticeship system and contrasts it to the system present in other countries like Germany. In addition, the history and current state of the vocational school system is analyzed.

One of the leading critiques of the "Ghetto Dispersal" thesis expounded by John F. Kain. Argues that there is no difference in the quality of jobs held by blacks in and out of suburbs, that racial discrimination in the labor market restricts opportunities to blacks even if they moved out of the ghetto and nearer suburban markets, and that dispersal of the ghetto may disperse the ghettos problem but would not improve black employment. Offers an alternative of ghetto economic development.


Interracial Committee of the New Jersey Conference of Social Work. 
*New Jersey's Twentieth Citizen: The Negro.* 1932. The summary 
version of the report of the results of a 1932 survey in the state 
of New Jersey that provided the basis for a comparative 
examination of the black and white populations. Contains 
information on occupational status, education, income, housing 
conditions, etc., from a survey taken in the midst of the Great 
Depression.

Jackman, M.R. and Jackman, R.W. "Racial Inequalities in Home 
ownership data controlled for socioeconomic status, family 
composition and location indicates that African-Americans are 
much less likely to own homes than comparably situated whites, 
and that (except in the South) their homes are worth less than 
those of whites.

life in the state, including study of housing discrimination.

Perspectives on Mount Laurel II*, 4th Annual Report of the New 
of African-American settlement in Mount Laurel.

Kain, J.F. "Housing Segregation, Negro Employment and Metropolitan 
175-198. Explores a number of hypotheses relating housing 
segregation to black employment. Shows that job opportunities 
became spatially dispersed throughout metropolitan areas after 
World War II. Labor markets expanded in suburban areas and 
concentrated in inner city areas, where black workers were 
concentrated as a result of housing segregation. The result was 
a spatial separation of jobs and residents among black workers. 
Kain proposes the dispersal of the ghetto as the solution to the 
black employment problem.

Kain, J.F. and Quigley, J.M. *Housing Markets and Racial Discrimination: 
A Microeconomic Analysis.* 1975. Detailed study of racial 
discrimination in the St. Louis housing market.

Sociological and economic analysis of corporate processes which 
impede women’s leadership. Case study of power and opportunity
structure of one American company.


Kelley, Charles. Apprenticeship Training in New Jersey. New Jersey Department of Education and Department of Labor and Industry, June, 1973. This report provides an analysis of apprenticeship training programs in the state of New Jersey. It discusses both union and nonunion training programs and minority involvement in those programs. It provides both a general historical overview of apprenticeships and a review of the state of apprenticeships in New Jersey. Finally, a survey is undertaken of the characteristics of apprentices and their views on apprenticeship programs.

Kovarsky, Irving. "The Negro, Apprentice Training Programs, and Testing." In Research in Apprenticeship Training, 180-190. University of Wisconsin: Center for Studies of Vocational and Technical Education, 1967. This article looks at the tensions that arise between the desire to provide access to skilled trades for minorities and laws which allow testing as an admission requirement for apprenticeship programs. The author argues that given the past history of discrimination and exclusion in the skilled trades, that racially neutral testing policies will not be sufficient to insure access. In addition, the author feels that the use of interviews and other admissions policies that are on the surface race neutral have a disparate impact on minorities given their inferior educational background.


Lawlor, Julia. "Minorities: Women on the Sidelines." Report. The USA Today, 9, August 1991, 2B. Extends the discussion in an earlier article. Indicates that even when white females reach upper management status they have "staff" rather than "line" positions.

-----. "Labor Dept. Shrugs Off 'Glass Ceiling' Study." The USA Today,
Reports on a Labor Department study that indicates that although white females can rise further up the corporate hierarchy than racial minorities they still are precluded from access to upper management positions.

Liepmann, Kate K. *The Journey to Work*. Edited by Dr. Karl Mannheim. Oxford University Press. An older treatment of the theoretical importance of distance between the job and home on the development of communities. Examines relationship between the cost of journey to work, rents and wages. Concludes that the burden of the daily journey—even with the aid of public transportation—often overshadows the essential services it renders. The journey to work, sound in principle, has been allowed to outrun its usefulness so as to cause harm to individuals and communities.

Light, Ivan. *Ethnic Enterprise in America*. Classic study of the development of business and enterprise among American ethnic groups. Identifies two key characteristics: the importance of credit (including revolving credit associations) and the role of criminal activity.


Mallach, The Tortured Reality of Suburban Exclusion: Zoning, Economics and the Future of the Berenson Decision, 4 Pace Env. L. Rev. 37 (1986). Analysis of New Jersey and New York exclusionary zoning cases by planning expert who was deeply involved in plaintiffs' cases in both states.

Marcus, K. "Club Membership: An Unresolved Issue for Judicial Nominees." *Washington Post*. This article discusses the all-male Olympic Club of San Francisco, and the ongoing debate of its discriminatory policy, particularly in light of Federal Judge Anthony Kennedy's urging to shed its restrictive by-laws. The club narrowly defeated a referendum to amend its by-laws to admit
Marshall, Ray and Vernon Briggs. *Equal Apprenticeship Opportunities*. University of Michigan: Institute of Industrial Relations, 1968. This article looks at black participation in apprenticeship training programs. They focus attention on the experience in New York City of the Worker Defense League Apprenticeship program. Under this program potential minority applicants to apprenticeship programs had to undergo an extensive screening process and were given tutoring on the skills needed to pass the admission tests for many of the skilled trades. It was found that this program was so successful that it created a situation in which minorities were more successful than whites on the union admission tests.


McIntyre, Ple$. "The Effects of Discrimination in Apprenticeship Programs on the Employability of Negro Youth: An Atlanta Study." Unpublished MBA Thesis. Atlanta University, 1990. This Master's thesis contains an analysis of the history and evolution of apprenticeship programs in the city of Atlanta. The author looks at the future role of apprenticeships in our society given the increased need for skilled workers. He also examines the extent to which discrimination has served to exclude minorities from apprenticeship programs. The author concludes that discrimination has served to directly excluded blacks from unions and hence apprenticeship programs. He further, states that this exclusion deprives black youths of role models and hence makes them less likely to aspire to working in these craft occupations even after discrimination has diminished.

Meyer, Bruce: "Why Are There So Few Black Entrepreneurs." In National Bureau Economic Research, working paper no. 3537. 1990. This article provides an econometric analysis of why black and white rates of entrepreneurship vary. The focus is particularly on testing whether it is the absence of financing or liquidity constraints that inhibit black entrepreneurship. They find that blacks do not appear to be any more likely to form businesses in industries with low
capital requirements than in those with high requirements. Thus, the lack of assets does not appear to explain the relatively low rate of black business formation.

Myers, Samuel L. "Economics of Crime in the Urban Ghetto." In Review of Black Political Economy. 1978. Explores the economic aspects of participation in illegitimate activities in urban ghetto areas. Discusses the institutional structure in which labor market and for-profit criminal decisions are made within ghettos.

Myers, Samuel L. and Phillips, Kenneth E. "Housing Segregation and Black Employment: Another Look at the Ghetto Dispersal Strategy." In American Economic Review, 2, 298-302. May, 1970. A review and analysis of the "Ghetto Development vs. Dispersal Debate." Examines the theoretical basis for the case against the Ghetto Dispersal strategy. Provides evidence from CETA data showing that wages increase for workers who travel from central city to suburban areas and job offer probabilities in the suburbs exceed those in the inner city, supporting the contentions of Kain. But, consistent with Harrison, uncovers evidence of extensive housing segregation in the suburbs as well; thus, dispersal of the ghetto fails to necessarily move black workers closer to jobs. Blacks tend to gain in employment when job opportunities expand near their neighborhoods, a finding consistent with the ghetto development argument.


Principal findings include the fact that New Jersey residents heavily rely upon bus and multiple transport modes and thereby require one to one and a half hours commute each way.


Pettigrew. "Attitudes on Race and Housing: A Social-Psychological View." *Segregation in Residential Areas* 21 (1973), edited by Hawley and RockSurvey of attitudes towards housing which concludes that African Americans prefer to live in integrated housing but fear the burden of being first in a neighborhood.

Powell, R. "Race Religion, and Promotion of the American Executive." In *College of Administrative Science Monograph*. Ohio State University, 1969. Study sponsored by the American Jewish Committee. Researchers interviewed corporate executives with regard to the professional advantages provided by social clubs.


Rawls, John, 1971. *A Theory of Justice*. Cambridge: Harvard University. Contains the exposition of philosopher Rawls' well-known and controversial maxi-min principle. Also includes an interesting development of Rawls' concept of "fair equal opportunity", his notion that procedural equality should be supplemented by a program that provides additional resources for those who start the social game with endowment disadvantages.
Report of the Panel on Equal Employment Opportunities in the Construction Trades in Newark, 1970. This report contains a summary of the evidence gathered during hearings in Newark, New Jersey on the implementation of Executive Order 11246. The hearings were held in 1970 and look at the nature of employment practices on federally funded construction projects. They document a failure on the part of construction unions to admit, refer, or provide apprenticeship training to minorities. It documents this discrimination both statistically and through reference to court cases and administrative decisions where there was a question about the presence or extent of discriminatory behavior.


Rose. "The all-black town: Suburban prototype or rural slum?" Urban Affairs Annual Reviews (1972). Study of suburban segregation, concluding that African Americans tend to be concentrated on the edge of urban ghettos, rather than being spatially dispersed throughout suburbia.


equal opportunity in the sense of pure procedural equality is a recipe for fixing social stratification patterns from generation to generation, creating de facto a caste system. The author writes at one point in the text (p.241): "[The idea of equality of opportunity] whereas it seems to defend equality...really only defends the equal right to become unequal by competing against one's fellows."


Shuster, John. "Career Patterns of Former Apprentices." In Occupational Outlook Quarterly. 1959. This article traces the career patterns of apprentices. The analysis is based on a survey of those apprentices who completed their training in 1950. It show that a substantial portion of them remain in their trades and also advance to become supervisors and contractors. The article has information on the attitudes of these former apprentices toward their training programs as well as some demographic information on their backgrounds.

Spero, Sterling and Abram Harris. The Black Worker. New York, 1931. The classic study of black labor in the United States from slavery times through the 1920s. A profound exploration of racial divisions among the working class and the historic processes of exclusion of black labor from employment through union activity by white labor.


"State Power and Discrimination by Private Clubs: First Amendment Protection for Nonexpressive Associations." In 104 Harvard Law Review. 1835 (1991). This anonymous article focuses on the difficulty in balancing the two important and vital concepts of freedom of opportunity and freedom of association. It discusses the value of private associations and the need to continue such organizations, but suggests that without courting "an intolerable
degree of government intrusion into private preferences," there
must be a guarantee of access to important economic and social
opportunities.

Stevens, Richard L. "Measuring Minority Business Formation and
Failure." In The Review of Black Political Economy, Spring, 72-6.
1984. A valuable examination of the factors associated with
business formation and failure by race and ethnicity. The author
compares the business experiences of Asian, Hispanic, and
African Americans. Demonstrates that the failure rates were
significantly higher for minority enterprises than the national rate
using 1972 and 1977 data.

Stuart, Reginald. Black Contractors' Dilemma, 5-23. Nashville, Tenn:
Race Relations Information Center, August, 1971. This article
looks at the barriers that minority contractors face from banks,
bonding firms, other contractors, and from unions. The analysis
is based on interviews of contractors, government officials, and
surety company agents. The article contains a detailed discussion
of the nature of surety contracts and the barriers that the inability
to acquire insurance pose for blacks.

Swinton, David. "Racial Inequality and Reparations." In The Wealth of
Races, edited by Richard America. Westport: Greenwood Press,
1990. Makes a similar argument to that made by Robert Browne
(see annotation above) concerning the intergenerational
transmission of racial inequality. Also seeks to measure the costs
to blacks of slavery and Jim Crow as a basis for calculating an
estimate of the sum required for reparations.

Terrell. "Wealth Accumulation of Black and White Families: The
364. African American families found to have lower mean net
wealth than white families.

planning document designed to provide guidance to decision
makers concerning transportation facilities to serve the New York-
New Jersey Metropolitan Region. Projected a steady increase in
regional employment growth, outmigration of the elderly
exceeding immigration of the young, and stable manufacturing
employment. Had nothing at all to say about employment and
demographic changes among Hispanics, blacks or other minorities.
Thomas, Ralph. "Davis-Bacon Act Hurts Minority Contractors." In Minority Business Enterprise. This article discusses the impact of the Davis-Bacon Act on minority contractors. The author is the Executive Director of the National Association of Minority Contractors. He argues that the Davis-Bacon Act tends to reduce the employment of minority laborers and have an adverse impact on minority contractors because they are disproportionately nonunion contractors. The effect on contractors is the result of prevailing wage aspects of the law and because the extra administrative burdens placed on firms wanting to comply with the law's requirements.


Whatley, Warren C. and Gavin Wright. "Getting Started in the Auto Industry: Black Workers at the Ford Motor Company, 1918-1949." Unpublished manuscript. University of Michigan at Ann Arbor, 1991. Demonstrates that when Henry Ford first decided to open the Ford Motor Company to black labor--where black workers were then disproportionately confined to the foundry--the response of black labor to the opportunity was dramatic.


Selected Cases


New Jersey’s system of financing public education violates the state constitution insofar as poorest districts are not afforded educational opportunity comparable to the wealthiest districts.


Adopts and explains fair share methodology with emphasis on housing-jobs linkage.

**Associated General Contractors of California, Inc. v. City and County of San Francisco et al.**, __ F. 2d __, 1991 WL 255916 (9th Cir. 1991)

The Court found "large statistical disparities between the percentage of contracts awarded to MBE’s and the percentage of available MBE’s." Using the City and County of San Francisco as the "relevant market", the statistics in the case compare the number of available MBE prime construction contractors in San Francisco with the amount of contract dollars awarded by the City to San Francisco-based MBE’s for the 1987-88 fiscal year. Testimony taken at more than ten public hearings indicated that City departments continued to discriminate against MBE’s and WBE’s and continued to operate under the "old boy" network in awarding contracts.


This case discusses the professional services exception to bidding requirement; i.e., installation and servicing of a complex computer network. This exception could encompass more and more contracts, particularly in the high technology industries and have a possible adverse impact on M/WBE’s.


Example of financial requirement which may have impacted MBE/WBE adversely. Middlesex County Utilities Authority (MCUA) bid specifications violated Local Public Contracts Law. One provision would have required MCUA to retain 2% from each
monthly progress payment to be held for the guarantee period for repairs, corrections, or replacements which the contractor fails to make. At the end of the year, if the work was in good order, the retainage would be paid to the contractor. Another provision retained 2% from each progress payment as security. Retainage was one of the subjects of 1979 amendments to the Local Public Contracts Law.


Rejected bidder on contract for construction on municipal water works project challenged award to another contractor. Discussion of Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq... Court held that local public contracts law did not prohibit naming of multiple subcontractors for each branch of work identified in bid proposal without contracting with each of them after the contract was awarded. But see Saldo.


After finding that the statistical evidence in the case indicated that there was discrimination specifically in the construction business commissioned by the County, not just in the construction industry in general, the Court found persuasive the following types of anecdotal evidence:

- testimony from a former County Commissioner that MBE contractors had complained during his tenure; complaints from MBE's that prime contractors were unavailable or refused to speak to them when approached; complaints that prime contractors would accept estimates from MBE but not submit them; complaints that primes would take the minority bids around to find a non-minority who would underbid the MBE; complaints that non-minority subcontractors and contractors got special prices and discounts from suppliers which were unavailable to MBE purchasers.


The opportunity to investigate past and current practices of predominately majority owned contractor organizations and their members in the public and private construction industries must be
adequate.

*Coral Construction Co. v. King County*, 941 F. ed 910 (9th Cir. 1991).

The 9th Circuit stated the a race-based preferential program will only be valid if "actual, identifiable discrimination has occurred within the local industry affected by the program." *Id.* p. 915; or, if the [governmental actor enacting the set-aside program] perpetuated the discrimination to be remedied by the program either through active discrimination or "passive participation", such as the continued "infusion of tax dollars into a discriminatory industry. *Id.* p._._

This Court cautioned that reliance on data from outside its boundaries could result in "societal discrimination" becoming the factual basis for the M/WBE program; thus, it felt that the enacting jurisdiction should limit its factual inquiry to the presence of discrimination within its own boundaries.

On the relationship between statistical and anecdotal evidence, it had this to say: "..anecdotal evidence, standing alone, suffers the same flaws as statistical evidence. Indeed, anecdotal evidence may even be less probative than statistical evidence in the context of proving discriminatory patterns or practices. While anecdotal evidence may suffice to prove individual claims of discrimination, rarely, if ever, can such evidence show a systemic pattern of discrimination necessary for the adoption of an affirmative action plan. *Id.* p. 919....Without a statistical foundation, the picture is incomplete. Strict scrutiny demands a fuller story...." *Id.* p. _._


Relaxation of strict land use controls to permit subsidized housing that would help alleviate racial segregation in Englewood.


Exclusion of apartment houses from community sustained, pre-Mount Laurel.


Five acre zoning approved, pre-Mount Laurel.
Frank v. Ivy Club, 120 N.J. 73 (1990)

Female undergraduate student brought a claim of gender discrimination in membership selection against eating clubs which served Princeton University students. The State Division of Civil Rights dismissed the claim and the student appealed. The Superior Court, Appellate Division, vacated and remanded. Thereafter, a fact-finding conference was conducted. The Division of Civil Rights issued a finding of probable cause that the clubs had discriminated against women in selecting members. The Superior Court, Appellate Division, 228 N.J. Super. 40, 548 A.2d 1142, reversed and remanded. The Division of Civil Rights appealed. The Supreme Court of New Jersey held that (1) the eating clubs are subject to the Law Against Discrimination, NJSA 10:5-1 et seq., based on their symbiotic relationship with the university which itself was subject to the law; (2) the clubs illegally discriminated against women by their policy of rejecting female applicants for membership; and (3) clubs could not be offered the option of disassociating themselves from the university in lieu of abandoning their discriminatory policy. The Court stated that central to the resolution of the case was whether the clubs are "places of accommodation" within the meaning of the Law Against Discrimination, or are exempt because they are "distinctly private." The university provided a source of members to the club and the club fed a majority of the university upper-class undergraduate students. Therefore, the court concluded that the Clubs had an integral relationship of mutual benefit with the university which deprived them of private status.


Dispersal of public housing to mitigate segregative effects of prior public housing policies. See also 690 F.2d 616, 620 n.1 (1982) for history of prior litigation. See also 707 F.2d 265 (1983); 101 F.R.D. 704 (1984) for subsequent litigation.


Leading case on application of Title VIII effects test to local zoning decisions that disproportionately disadvantage minority households by excluding low and moderate income housing.

In re Petition for Substantive Certification Filed by the Township of
Unsuccessful challenge to Regional Contribution Agreements on grounds of disparate racial impact.


This case illustrates the advantage of having one's foot in the door. State RFP invited proposals for a total data processing system, including hardware, software, conversion, maintenance and training. It outlined the State’s performance requirements, and left to the discretion of the bidders the determination of the components of the system which would accomplish the desired goals. IBM and Honeywell both submitted a proposal with IBM submitting the lowest bid. IBM was awarded the contract. Honeywell objected to IBM’s bid calculation because IBM had deducted purchase option credits of nearly a million dollars in connection with the release of equipment already in use by the State. Honeywell argued unsuccessfully that the bids should be evaluated without consideration of these credits. The Court held that IBM did not gain a competitive advantage by its prior non-competitive rental contract, which led to its ability to offer substantial credits.

Jersey Central Power & Light Co. v. Local Unions 327, 749, 1289, 1303, 1309, and 1314 of International Brotherhood of Electrical Workers, 508 F. 2d 687 (3rd Cir. 1975).

The Court faced with the issue of whether, in reducing a company’s work force, an employer is obligated to comply with collective bargaining agreement provisions requiring layoffs in reverse order of seniority, or whether the employer is obligated to implement the provisions of a conciliation agreement made with the EEOC, held that the provisions of the collective bargaining agreement must govern despite the fact that minorities and women would be disproportionately affected.


Expansion of remedies available in housing discrimination cases brought under New Jersey’s Law Against discrimination.

Conflict of Interest. Decision to award contract for state lottery advertising contract to agency other than lowest bidder appealed by lowest bidder who was denied award on basis of public interest. The president of Keyes Martin, the lowest bidder, had business dealings with the Chairman of the Lottery Commission and Commission recommended to Director of Division of Purchase and Property that Keyes Martin's bid be rejected. Keyes Martin had been the successful bidder or vendor for several years and it was the current vendor performing advertising and promotional services under a contract awarded by the Division.


Kiwanis International sought an injunction to prevent Kiwanis Ridgewood, a chapter of Kiwanis International, from using Kiwanis International's federally registered collective service marks because the Ridgewood chapter had admitted a female member. Kiwanis Ridgewood and the admitted female member filed a state action to enjoin Kiwanis International from terminating the Chapter's license. The two actions were consolidated. The District Court ruled in 627 F. Supp 1381, 1393-94 (D.N.J. 1986) that New Jersey's Law Against Discrimination prohibited the discriminatory policies upon which the licensing agreement between Kiwanis International and Kiwanis Ridgewood was conditioned and upon which the revocation was based. The Court of Appeals reversed and held that Kiwanis International, an organization of hundreds of thousands of members, may discriminate on the basis of sex by denying membership to women and may force unwilling New Jersey licensed clubs to do the same because the organizations are not places of "public accommodation." The Court of Appeals concluded that the Kiwanis Ridgewood Club was not a place of public accommodation" because the "evidence of membership practices and policy does not reflect an open and unrestricted invitation to the community at large to join Kiwanis Ridgewood." There is a vigorous dissent which describes the decision as being based on "archaic assumptions."


Successful Title VIII challenge to bank's redlining practices.
Lenox Awards, Inc. v. Div. of Purchase and Property, 1 NJAR 94 (1980).

While DPP of DOT (Division) erroneously bypassed Lenox's lower bid, Lenox lacked standing. However, ALJ also found that both bidder had communicated with Division employees prior to the opening of the bids to tilt the bidding system to their advantage, contrary to NJSA 52:34-12(c).


New Jersey Law Against Discrimination is constitutional and may be applied to private developers whose only contact with public financing is purchasers' mortgage assistance from federal government.


Example of how a case for state participation in discrimination could arise in a contract case.


Large minimum building size zoning approved, pre-Mount Laurel.


Plaintiff, a white job applicant, brought an action against the International Brotherhood of Electrical Workers No 52 (IBEW) alleging "reverse discrimination". In dismissing plaintiff's complaint and approving the affirmative action plan at issue, the Court found no conflict between the limitations on quota hiring in Title VII for the 1964 Civil Rights Act and the requirement of minority hiring goals for federal construction contracts. The Court stated that Congress, by enacting Title VII, could not have intended to protect those white males who have traditionally dominated the labor unions.


City rejected highest bid for municipally owned property, after public sale, without explanation.

The case held that benign race-conscious measures mandated by Congress - even if those measures are not "remedial" in the sense of being designed to compensate victims of past governmental or societal discrimination - are constitutionally permissible to the extent that they serve important governmental objectives within the power of congress and are substantially related to achievement of those objectives. The vigorous dissent of argues for the application of the Croson standard and, in the alternative, contends that the programs do not satisfy even the intermediate level of review enunciated by the majority.


In determining that the State had not acted unconstitutionally when setting aside a percentage of contracts containing federal funds for DBE’s, the court noted that the "overriding distinction between the federal program held constitutional in Fullilove and the state and city programs held unconstitutional in Croson is Congress’ hand in the Fullilove program and [the program under consideration in the case].

Milwaukee County Pavers Association v. Fiedler, 922 F. 2d 419 (7th Cir. 1991).

The Seventh Circuit stated: "The joint lesson of Fullilove and Croson is that the federal government can, by virtue of the enforcement clause of the Fourteenth Amendment, engage in affirmative action with a freer hand than states and municipalities can do. And one way it can do that is by authorizing states to do things that [states] could not do without federal authorization.


The Court invalidated a state statute which excluded males from enrolling in a state-supported professional nursing school. The statutes at issue in the later cases of Coral Construction v. King County, supra, and in Associated General Contractors v. City and
County of San Francisco, 813 F 2d 92 (9th Cir 1987) were measured by this standard. If the statute passes the strict scrutiny test required to support a race-based remedy, the statute will surely pass constitutional muster if it is applied to WBE's.


Cape May Housing Authority sought "facilities management control system" in connection with building renovation. Original bid specifications, which were prepared by a principal of plaintiff, Morie, required bidders to provide a system for which Morie was sole distributor or some equivalent system. Based upon recommendation of its consulting architect, Authority deleted provision allowing for provision of some equivalent system from its bid proposal. Consequently, bidders where required to provide the Morie system. Only Morie and one other contractor submitted bids and Morie was the lowest bidder. The unsuccessful bidder sued and the trial court concluded that the brand name limitation in the specifications violated NJSA 40A:11-13 of the Local Public Contracts Law.

National State Bank v. Long, 630 F.2d 981 (3d Cir. 1980).

Upholding New Jersey's antirelining law.


Unsuccessful challenge to Division on Civil Rights' Landlord Reporting Rule.


Example of attempt to avoid public bidding requirements. Ice cream company filed compliant against county park commission to set aside contract between commission and defendant ice cream company. Commission had received informal bids from two parties and awarded three-year contract to sell ice cream and refreshments throughout county park system to one party and denied other party a hearing.

Decision between first and second *Mount Laurel* cases, softening compliance requirements; not followed after *Mount Laurel II*.

**Portillo & Sons, Inc. v. Council of Borough of New Milford, N.J. 349 (1977).**

Example of neutral provision with discriminatory effect. - Discussion of reasons for strict compliance with bidding specifications. Defendant's waiver of certain deviations from its bidding specifications in awarding a garbage scavengers contract was unlawful. No suggestion that defendant acted for any reason other than to secure the most advantageous financial arrangement for the municipality.

**Prowitz v. Ridgefield Park Village, 122 N.J. 199 (1991):**

*Mount Laurel* units to be assessed for local property tax purposes at controlled prices, not market values.


Employees, applicants for employment and taxpayers brought an action against the Republican Party of Illinois, Republican party officials, the Illinois Governor, and Illinois government officials alleging that the defendants conspired to create an employment system motivated and directed by political considerations. The District Court dismissed the plaintiffs' claims for failure to state a claim upon which relief could be granted and held that the use of political considerations in hiring, promoting, transferring and hiring laid-off state employees did not deprive plaintiffs of their First Amendment rights. The Court also stated that plaintiffs had failed to show that the defendants singled out a particular group for disparate treatment and selected a course of action for the purpose of causing adverse political effects on the identifiable group. The Court of Appeals, Seventh Circuit, affirmed the holding in 641 F. Supp. 249 in part, and remanded initially in 848 F.2d. 1396, and affirmed and remanded on rehearing *en banc* in 868 F. 2d. 943. Certiorari was granted. The U.S. Supreme Court in 110 S.Ct. 2729 (1990) held that the plaintiffs had stated a claim upon which relief could be granted. The Court stated that (1) promotions, transfers, and recalls based on political affiliation or support are impermissible infringements on public employees' First Amendment rights, and (2) conditioning hiring decisions on political belief and association violates applicants' First
Amendment rights in absence of vital governmental interest.


Racially restrictive covenants in private deeds are unenforceable when enforcement is sought in courts of law.


Exclusionary zoning is not consistent with the general welfare; developing communities must zone for fair share of regional need for low and moderate income housing.


Recognizes extensive remedial powers of special courts to enforce Mount Laurel doctrine; applied to communities throughout the state.

Terminal Construction Corp. v. Atlantic City Sewage Authority, 67 NJ 403 (1975).

Local authority, after competitive bidding pursuant to the Local Public Contracts Law, awarded 5 construction contracts to Plaintiff, Terminal. The construction project was 75% federally funded and the federal government required a right of prior approval with respect to each contractor in order to assure that each contractor complied with the equal opportunity provisions contained in federal laws and regulation. Pursuant to this end, contract specification required the apparent low bidder to attend a pre-award conference with the Federal EPA where the bidder was to specify what affirmative action he had taken or was prepared to take to assure equal employment opportunity on the project. No award could be granted until the federal agency determined that the contractor met agency standards. Terminal was found to be lowest bidder but Terminal informed the Authority that it had made an error and sought to be relieved of its bid. In an attempt to invalidate its bid, Terminal filed this suit alleging that the attempt to award the contracts before the pre-award conference had been held amounted to a material variance from the bidding. The Authority argued that this specification was not material and could be waived. The Court held that the
requirement that contractor comply with equal opportunity requirements was of such materiality that it could not be waived.


Illegality. Commissioner of Transportation did not act unreasonably when he temporarily suspended contractor's classification for bidding on the basis of an indictment charging the corporate contractor's majority stockholder with conspiracy to bribe.


A sex discrimination action filed by women who had held the lesser position of "Inspection Assistant" which had been eliminated as opposed to "General Inspector" which was not eliminated and for which they had been effectively barred by NJ female labor laws (subsequently repealed). The judge held that they had done nothing affirmatively to indicated that they wanted the job and thus had not suffered from the exclusion. Their unions failure to process a grievance was insufficient to establish a breach of the duty to provide fair representation.


Challenge to NJ Treasury Department's approval of a municipal ordinance requiring that at least 40% of employees of contractors and subcontractors working on city construction projects be Camden residents.


Association of labor organizations challenged state approval of city provisions establishing a 25% minority hiring goal for contracts with the City of Camden. The NJ Supreme Court held that: (1) in approving the city's affirmative action ordinance, the State Treasurer did not act outside the scope of his statutory authority under the Law Against Discrimination; (2) the State Treasurer's approval was not an abuse of administrative agency
(3) the State Treasurer's approval of minority hiring goals, including the 25 percent goal for Camden did not violate the equal protection clause; ad (4) the 40% hiring quota for city public works projects was also constitutional and was not preempted by state statute.


Action brought by U.S. Attorney General against various unions, associations of contractors and apprenticeship committees for injunctive relief from interference with the implementation of Executive Order 11246 forbidding racial discrimination in employment opportunities by government contractors.

The District Court held that the selection and referral procedures as well as other acts of union and apprenticeship committees resulting in under-representation of blacks and Spanish-surnamed persons in unions were violations of the Civil Rights Act of 1964, section 701 et seq., 42 U.S.C.A., section 2000e et seq.

The Court ordered the parties to provide an adequate remedial decree and specific relief was granted to persons found to have been discriminated against. The Court noted that Local 52 did not admit a black into the union until 1966. In 1971, Blacks made up 2.7 percent of the union's membership while 1970 Census Bureau statistics reflect that black persons constituted 30 percent of the population of Essex County, the jurisdictional base of Local 52. The Court also noted that the union had consistently opposed programs which would train persons from minority groups in the electrical field and had instituted practices which, even if facially neutral, had a disparate impact on minorities.

The Court explained that tests or other measuring devices, may be utilized to select applications for union membership provided the tests are not designated, intended or used to discriminate by reason of race, color or national origin. However, when an examination disqualifies a proportionately higher degree of minority applicants then the union must demonstrate by appropriate data that the examination is a reasonable measure of performance for the job for which the examination is being used. The unions' failure to do so demonstrated the invalidity of the examination under the Civil Rights Act of 1964.
Extensive recitation of facts linking housing and school discrimination in racially-divided city.

United States v. International Union of Elevator Constructors, Local Union No. 5, 538 F.2d 1012 (1976)

Action against a union local whose jurisdiction included 10 counties in New Jersey. In granting relief to overcome the present effects of past discrimination, the Court found that Local 5 had never referred a black to an employer as a new probationary helper; further, that Local 5 had exercised its partial control of work opportunities in the trade to the complete exclusion of blacks.


Exclusion of mobile homes permitted, pre-Mount Laurel; notable for Justice Hall dissent giving first articulation of the general welfare/"fair share" theory of the Mount Laurel cases.


Casino Reinvestment Development Authority provides financial assistance to businesses. Under NJSA 5:12-181 proceeds received by the Casino Reinvestment Development Authority are set aside for investment in M/WBE's. In this case, minority bus owners sought relief pursuant to the Law against Discrimination and the Casino Control Act stating that they had been targets of discrimination. Merits not reached because of jurisdictional defects.