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FINAL REPORT:

**Volume I
SUMMARY OF FINDINGS**

**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 Construction Contracts**

**by
The Afro-American Studies Program
University of Maryland at College Park**

Revised

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This final report is submitted in compliance with Contract No. 91-EL-1323 between the University of Maryland and the New Jersey Transit Corporation. It is delivered in 14 volumes and an annotated bibliography.

Primary responsibility for drafting of this summary volume of the final report rests with Roberta Y. Wright, Esq., Senior Research Manager and Lecturer Afro-American Studies Program, University of Maryland at College Park. Management responsibilities for the entire project at various stages have been shared by Del Brown, Marsha Darling, James Gee, Paula Hutchinson, Samuel L. Myers, Jr., and Tommie Taylor. Additional administrative support has been provided by Anita Baines and Val Skeeter. Editorial support has been provided by Norlisha Crawford, Tommie Taylor and Claire Cohen. The findings and conclusions of the individual volumes are those of the volumes' authors and do not necessarily reflect the views and opinions of the University of Maryland.

P R E F A C E

This report contains the findings and conclusions reached in a study entitled, "Historical Record of Minority and Women Business Enterprises in Public and Private Contracting in New Jersey." The study was undertaken by the Afro-American Studies Program of the University of Maryland, College Park, at the request of the New Jersey Transit Corporation.

The purpose of the study is to determine whether there has been discrimination in New Jersey against a) minority and women business enterprises (hereinafter referred to as "M/WBEs") or b) minorities or women which has prevented or deterred them from becoming M/WBEs and which the state of New Jersey may constitutionally remedy.

The report identifies current as well as continuing effects of past discrimination

- by:
- a) The state itself including any of its three (3) branches independent agencies or authorities, or any subordinate local governments; or
 - b) Private industry, where the state is or has been a passive participant.

It also examines connections among state behavior, discriminatory practices, and the status of M/WBEs. To do this, reliance is placed on the following definitions of "passive participation".

- a) When state money is spent with an industry such as construction, manufacturing, or service, and the state is or should be aware of discrimination in that industry.
- b) When regulated industries such as finance, banking, insurance, and sureties discriminate by not contracting with or buying from M/WBEs, as well as when they discriminate in delivery of credit or bonding opportunities, and the state is or should be aware of discrimination in that industry.
- c) When private discrimination has been exacerbated by state action or inaction.

The final report is organized into fourteen volumes. In Volume One, we present a summary of the findings of the Maryland experts regarding contemporary evidence of discrimination following traditional paths to entrepreneurship: employment, development of a capital pool (finance and housing), including human capital (education). The relevant demographic trends are identified and subsequent chapters

on discrimination against Hispanics and women are described.

In Volume Two, an implementation analysis of New Jersey's extensive, progressive anti-discrimination laws is undertaken. In a state which has clearly, legally given itself the power to eradicate discrimination, the significant underrepresentation of M/WBEs who do business with the state is attributed to a lack of implementation of those laws by the government or by private industry where the state has been a passive participant. An historical account of the legacy of slavery and the status of women from the 1600s to the present provides the basis for identification of ongoing effects of intentional discrimination for later chapters.

In the third volume, we identify the factors that account for the race and gender composition of business firms in New Jersey. It contains charts and graphs that depict in explicit detail the factors affecting the formation, development, availability and participation of M/WBEs in the New Jersey marketplace. Volume Four is a companion chapter to the previous one. It completes the demographic picture of New Jersey. It describes current demographic trends and accounts for their historical development.

A description of discrimination in state purchasing is presented in Volume Five.

We next focus on barriers to entry faced by M/WBEs moving along the traditional path to entrepreneurship. In Volume Six we examine discrimination against minorities and women in employment. The extent to which state transportation policy has negatively impacted access to employment opportunity by minorities and women is included in this chapter. In Volume Seven we describe the exclusion of blacks and women by unions, particularly from participation in joint union/management apprenticeship training programs. Discrimination in mortgage lending, a significant source of initial capital and equity for small businesses, is analyzed in Volume Eight. The denial to minorities of the fundamental right to education guaranteed by the New Jersey state constitution is the focus in Volume Nine. The impact of housing discrimination, if any, on capital pool formation, education and employment opportunity is examined in Volume Ten. Thus, the relationship of housing to the ability of M/WBEs to contract with the state is made apparent.

To the extent that membership in certain clubs and associations provides an informal network which confers commercial benefits requisite to contracting with the state and to the extent that such clubs or associations exclude minorities and women, such exclusion may be legally characterized as discrimination. New Jersey's recent legal history in this area of public accommodations is examined in Volume Eleven.

The impact on Hispanics and women of any discrimination described in this study is set forth in Volumes Twelve and Thirteen. In Volume Fourteen, a comparison of post-Crosby business programs in New Jersey to programs in other SMSA's, which

include New Jersey, and to programs from other areas throughout the country is provided. Finally an Annotated Bibliography of selected sources cited in all of the volumes is appended.

The Afro-American Studies Program
University of Maryland at College Park
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FINAL REPORT:
HISTORICAL RECORD OF MINORITY AND WOMEN-OWNED BUSINESS
ENTERPRISES
IN PUBLIC AND PRIVATE CONTRACTING IN NEW JERSEY

Summary of Findings

Study of Laws and Court Decisions

An analysis of New Jersey laws and court decisions sets the historical and legal backdrop for the entire study. Through the eyes of a fictional business person one can appraise the state's geography, population, ethnic and gender composition, business and workforce composition and appreciate the legal context within which business is conducted in New Jersey. Through an historical lens one can observe how slavery and unequal treatment accorded to women have left a legacy of disparate treatment in the present day.

From early colonial times to contemporary times there has existed what is widely regarded as an elaborate statutory scheme of anti-discrimination laws. An assessment of New Jersey's implementation of those laws forms the theoretical underpinnings for the vast divergence between the promise of equality for all ethnic groups in New Jersey and the reality of that promise with respect to state contracting.

According to census data, New Jersey is one of the most ethnically diverse states in the United States of America. However, the differing groups reside in residential isolation from one another. Although there have been waves of migration for each ethnic group, because African-Americans have had a consistent presence in the state, in the main we look to the history of this group to identify barriers created

by discrimination.

That history reveals the occurrence of major race riots in New Jersey which were directly attributable to the great disparities between the socio-economic conditions of blacks as opposed to whites. Despite clear evidence of inequities, at least one attitudinal survey established that "Negroes" were reluctant to come forward to press complaints of discrimination.¹ In the more than twenty-five years since those studies, however, there has been a steady stream of complaints.² Consistently, the most frequent basis of the complaints received by the Division has been that of race. Between 1971 and 1991, over 12,500 citizens filed race discrimination with the Civil Rights Division; over 6,000 complaints of sex discrimination were filed over the same period.³ Yet, despite the fact that the New Jersey Division on Civil Rights has handled the enforcement of individual complaints of discrimination, there are still a significant number of minorities and women who, like 17% of Negroes surveyed in 1964,

...condemn the police; who do not believe that
judges, lawyers of the Civil Rights Division would

¹ Blumrosen, Alfred B., and Zeitz, Leonard, "Securing Equality: The Operation of the Laws of New Jersey Concerning Racial Discrimination, Report to the New Jersey Commission on Civil Rights, (1964).

² See, Table I, Chapter II, "Study of Laws and Court Decisions", which sets forth in chart form the complaints received per basis of discrimination per year from 1971 to March 1992. This information was obtained from Roberto Rodriguez, Supervisor for Research and Statistics Management Information Systems, Division of Civil Rights, April 1992.

³ There were nearly 35,000 individual complaints of discrimination for the period 1971 to 1991.

be helpful to them, who do not believe that the major political institutions can give them protection.⁴

Ironically, white male business owners only see themselves as "losing" at the expense of racial minorities.⁵

These incredible discrepancies in perception, in terms of how differing ethnic groups assess their chances of competing for state contracts, coupled with the fact of unremedied discrimination in most areas of economic life in the state lead to the conclusion that the law has not been effectively implemented to effect legislative policy.

Demographic Trends

Eight factors can be identified that contribute to the unequal distribution of ownership of business firms in New Jersey. Most are related to acquisition and transmission of social and economic assets across generations. Population shifts and patterns of segregation, home ownership, educational options, employment opportunities, entrepreneurial experiences, income inequalities, political participation limitations, and business ownership outcomes all contribute to the accumulation of wealth needed in order for a group to prosper in business enterprises.

We find that the size of the group plays an important role. In the most

⁴ Blumrosen, Id., page 13.

⁵ "Technical Report: SURVEY COMPARING MINORITY/WOMEN-OWNED BUSINESS ENTERPRISES TO NON-MINORITY OWNED BUSINESSES", A Report Submitted to NJ Transit and the Governor's Study Commission on Discrimination in Public Works Procurement and Contracts, March 9, 1992, page iv.

elementary sense, the numbers of persons from particular groups constrain the numbers of firms owned by members of those groups. But in a more fundamental sense the population size, its shifts, and its sources of growth help us understand the nature of the utilization of business firms owned by women and minority group members.

One of the most important sources of wealth in America is home ownership. It provides a means to accumulate equity that can be used as collateral in credit markets, and it represents an important route by which wealth can be transferred from one generation to the next. Here we sketch the reality of a legacy of housing barriers in New Jersey that has resulted in the current generation of vast racial disparities in home ownership and in housing values for those who own homes.

In contrast to the dismal effects of lack of home ownership is the relative gains in educational achievement among blacks and other minorities in New Jersey. These improvements date to the earliest years of the century and confirm that there existed huge pockets of human capital in the black community by World War II. Yet, by the 1980s, when blacks remained concentrated in the central cities, this human capital had depreciated.

For the vast majority of New Jerseyans, employment is the most important source of income. Variations in employment experiences across groups help to explain the historic disparities in incomes as well as inequalities in business ownership in subsequent generations. Good jobs and relevant occupational and industrial experience are often the stepping stones toward the creation of business enterprises

and participation in public and private contracting activities.

The rates of business participation vary widely among various groups in society. Not every one is suited to be an entrepreneur. Many persons have an aversion to the risks and the uncertainties associated with being a successful business person. For those reasons, the vast majority of New Jerseyans receive the bulk of their incomes from wages and salaries. Nevertheless, blacks and certain other minority group members do not have the same access to such important sources of income as self-employment earnings and rents, dividends or interest income.

Inequalities in the present generation in wealth and assets are rooted in inequalities in previous generations. The ability to accumulate wealth and transfer it from father to son (or father to daughter or mother to son or daughter) depends on the level of earnings. Blacks have particularly suffered from past inequalities in income. Asians and certain segments of the Hispanic population seem to have been able to overcome at least parts of the legacy of previous inequality. These other groups, however, have traditionally represented a very small portion of the New Jersey population.

Political participation among blacks and women in New Jersey historically has been constrained. Even though women, for example, make up the majority of the voting age population in the state, the majority of elected officials are white men. Blacks and Hispanics are also underrepresented at all levels of elective office.

The recent experiences of business ownership among women and minority firms show contradictory trends. Among women-owned firms, for example, there has

been a phenomenal growth in the area of finance, insurance, and real estate. The total numbers of women-owned firms in every industry in New Jersey has increased markedly. And yet, their real sales per firm have declined over the years. Black-owned firms, as another example of contradictory trends, have experienced steady growth in their real sales per firm, but still lag considerably behind many other minority-owned firms.

Eight barriers to business ownership among women and minority group members in New Jersey were considered: population shifts, housing segregation, educational inequalities, employment disparities, entrepreneurship imbalances, political participation limitations and business ownership experiences over the past two decades. The New Jersey experience of women and minority-owned firms reflects a long legacy of inequality and unequal access to some of the most fundamental resources needed for successful participation in the marketplace. Success in overcoming these barriers is uneven across the groups examined.

State Purchasing

Is the uneven success among some business enterprises due to practices and policies of the state? To answer that question, one must examine the laws and rules governing state purchasing.

The New Jersey Legislature has created three general contracting programs to address the ability of government entities to enter into contracts for the provision of goods and services. One category mandates that the award shall be made to "that responsible bidder whose bid, conforming to the invitation for bids, will be most

advantageous to the [awarding agency]." A second purchasing category applies to state authorities. State authorities are required to award contracts to the "lowest responsible bidder." The third category is that which is applicable to municipalities as set forth in the Local Public Contracts Law. This statute mandates that all purchases, contracts or agreements which require public advertisements for bids be awarded to the lowest responsible bidders. It is within this context that efforts to assist women and minority-owned firms that may have been discriminated against in the past must be understood.

In 1933, New Jersey enacted legislation with the expressed purpose of prohibiting discrimination in public works employment. The statute provided that every contract "for or on behalf of the State or any county or municipality for the construction, alteration or repair of any public building or public work shall contain provisions by which the contractor agrees" not to discriminate by reason of race, color or creed. No concern was expressed as to whether a minority contractor himself might be discriminated against and therefore unable to compete in the bidding process as a vendor or contractor. Indeed, the statute did not prohibit discrimination in the acquisition of materials, equipment supplies or services--this prohibition was not enacted into law until 1962. Thus, a vendor could not employ discriminatory hiring practices. However the legislation did not encourage or promote the awarding of contracts to minority contractors. Instead the legislation on its face did little more than maintain the status quo with regard to contract awards.

A review of the existing contract and procurement practices of the state reveals

that many barriers confront small and disadvantaged business enterprises interested in conducting business with the state. There has been an almost hostile environment within which women and minority-owned firms must compete. Although there have been many efforts to ban out-right discrimination against racial minorities in employment in New Jersey, until recently, little was done by the state to discourage discrimination against minority or women-owned business firms.

The 1945 Civil Rights Act expressly forbade discrimination in employment because of race, creed, color, or ancestry. In addition, Chapters 168 to 174 of 1945 created the Division Against Discrimination and broadened all civil rights laws to include "creed, national origin, or ancestry."

For women, the granting of civil rights protection was not created until much later. The 1933 statute contained no prohibition for discrimination against the employment of women in public works projects. This protection was not granted to women until 1970. The 1945 Civil Rights Act was amended in 1970 to prohibit discrimination based upon age, marital status and sex.

Despite the existence of bidding laws for decades, favoritism still influenced the awarding of contracts. Moreover, the bidding laws while appearing to create a system to ensure against corruption may have actually benefitted established interests by unknowingly providing the appearance of legitimacy.

It was during the Byrne Administration that the most recent reform to bidding laws occurred. These reforms were aimed at prohibiting discrimination and eliminating favoritism. In 1975, the Law Against Discrimination was amended so that state,

county, municipality, other political subdivisions of the State or any agency or authority created by any of the foregoing must include in bid specifications affirmative action contract provisions. In addition, each prospective bidder on a public works contract or contracts and each subcontract bidder to a prime contract bidder is required to submit an affirmative action plan to the State Treasurer for approval. The failure to adhere to these requirements results in the contract being declared null and void.

By far the most far reaching attempt to assist women and minority business entities to participate in the State procurement process was the Set-Aside Act for Small Businesses, Female Businesses, and Minority Businesses which was enacted in 1985. The Set-Aside Act provided that state contracting agencies have as a goal the awarding to small business of at least 15% of their contracts for goods, equipment, constructions and services, at least 7% to minority-owned businesses and at least 3% to female-owned businesses. The Act permitted contracting agencies to set aside contracts or portions thereof for bidding only by small businesses, minority businesses, and female businesses where there is a reasonable expectation that bids may be obtained from three such qualified businesses. A contract designated as a set-aside contract may be re-bid if acceptance of the lowest responsible bid of such contract will result in the payment of an unreasonable price or in a contract otherwise contrary to the governing statutes and regulations or the agency does not receive bids from three qualified bidders.

Thus, there is a long history of an absence of effective efforts by the state to prohibit discrimination against women and minority-owned business enterprises, but more recent efforts have been designed to assist women and minority-owned firms that ostensibly have suffered because of discrimination in the past.

Employment

Although there have been laws prohibiting discrimination based on race, color and creed for many years in New Jersey, we find compelling evidence of recent discrimination against women and minorities in various aspects of the labor market in New Jersey. Much of the discriminatory patterns resemble those found in other states; there are race and gender wage differentials, race and gender disparities in occupational status, and significant race and gender gaps in employment across industries.

These historical inequalities in employment are central to our understanding of current disparities in ownership of business enterprises and, thereby, in access to contracting and procurement opportunities with the state of New Jersey. Without the skills and the experiences afforded to those in certain industries and occupations, women and minorities face continuing barriers to entry into successful entrepreneurship. And, without the resources and the capital that accompanies employment in well-paying jobs, women and minorities face additional hurdles not faced by white males.

The best available statistics reveal that blacks held the lowest paying jobs

requiring the fewest skills and were concentrated in the least desirable occupations in New Jersey in every decade from 1870 to 1940. White males, privileged in previous generations, have continued in recent years to hold the best jobs in New Jersey.

For example, the vast majority of all managers and executives in New Jersey are white males. Although they make up 37.8 percent of the non-institutionalized, civilian population, white males comprise 60.4 percent of the population of executives and managers. Another 31.2 percent of executives and managers are white females, who comprise 42.5 percent of the population. Black males, who account for 9 percent of the total population, comprise 5.7 percent of the population of executives and managers, while black females, who account for 10.7 percent of the population, comprise only 2.7 percent of the population of executives and managers. There is a vast racial and gender disparity among executives and managers in New Jersey. Altogether, 9.1 percent of all white men in New Jersey are executives or managers, even though only 4.2 percent of white women are and a mere 3.6 percent of black men are executives or managers. Still, these percentages far exceed those for black females: only 1.5 percent of black females in New Jersey hold managerial or executive positions.

Other minorities also have been concentrated historically in low-paying occupations. But, unlike blacks who continue to be concentrated in low-paying occupations, the recent experience of Asians and Hispanics is different. Hispanics, for example, have replaced blacks in many manufacturing industries and Asians in

recent years have been found in many professional service industries.

The evidence of contemporary discrimination against women in top-level management and executive positions is overwhelming. While there is also ample anecdotal evidence of "glass ceilings" and increasing statistical support for the limits to which women who aspire for leadership in industry are held, the analysis of this chapter provides concrete evidence of the sources of the discrimination against women in professional and managerial jobs. Age is one factor. For males in New Jersey, one extra year of age increases the probability of being a manager/professional by not quite three tenths of a percentage point. Or, stated differently, every 10 years adds three percentage points to a male's probability of being a manager. For females, those same extra ten years result in a reduction in the probability of becoming a manager/professional. Whereas older men are rewarded with promotions up the occupational ladder, older women are scorned.

Education is another avenue of gender disparity. One year of extra education regrettably pays almost half the premium for females as it does for males. For males, the premium is an increase in the probability of professional/managerial employment of almost eight percentage points! For females, the premium is only 4.5 percent points. Women in New Jersey have to have twice as much education in order to have the same promotion prospects into the ranks of professional, managerial or executive occupations.

Transportation barriers have discernable impacts on employment. Blacks, in particular, have historically been physically isolated from major employment centers

in New Jersey. Bus lines and trolley lines have traditionally been established to gravitate towards the city's core. During the 1960s, however, when there was a dramatic growth in the black inner-city population in New Jersey, many major employers sought to relocate to the white suburbs, essentially limiting employment to those with automobiles. Specific barriers include lack of access to rail lines to white collar employment centers in Philadelphia and New York City. The suburbanization of jobs, the flight of manufacturing industries from the central business districts, and the resulting impacts on the decline in the tax bases of urban areas have converged to pose additional transportation barriers to the poor. The massive state and federal expenditures on highway construction added to this isolation by spurring automobile ownership among the non-poor--further rationalizing the suburbanization of jobs and industry outside of the reach of public transportation.

Unions have also been a source of limitation for some workers. For example, the rise of unions in New Jersey has been accompanied in almost every instance by the rise of segregated locals. The impact of these segregated local unions has been to reduce further the labor market opportunities of blacks.

In summary, then, we find overwhelming continuing evidence of gender-based discrimination in labor markets for professionals, an historical legacy of employment discrimination against blacks, and less obvious patterns of disparities faced by Asians and Hispanics. These employment differentials help explain why there are so few women and minority-owned business firms in New Jersey.

Construction and Unions

Many factors go into determining the extent of self-employment in the economy and the success or failure of new business enterprises. Access to credit, the presence of an adequate customer base, and the performance of the local or national economy are just some of the important factors. Equally if not more important than these ingredients, however, is the prior experience and knowledge of the entrepreneur or owner. This expertise is generally acquired through on-the-job experience with another firm in the industry and/or from the completion of some form of formal training program. The ability of individuals or groups to gain access to this training or expertise will have a major impact on whether they are likely to become successful entrepreneurs.

In the construction industry the majority of workers are craft workers of one form or another. In part because of the high degree of skill needed for these jobs, workers in this industry typically complete some form of explicit training program. In unionized construction this generally involves the completion of a union-run apprenticeship program which can take up to 6 years to complete. At nonunion firms, workers receive their training through vocational schools, military training programs, on-the-job experience as a "helper", or from the completion of an apprenticeship program.

Within the construction industry total employment has doubled over the post-war period. Both males and females have experienced increased employment within construction over this time period and, in fact, each group has seen the share of its total employment that is in construction rise. Nonetheless, the share of total

employment accounted for by those in construction has declined slightly from 5 to 4.6 percent.

Despite the growth in female employment in the construction industry, and the fact that women represent about 43 percent of all employees in New Jersey, women still account for only about 7 percent of all construction workers. Further, less than 1 percent of all women are employed in the industry compared to 7.4 percent of males. Thus, construction was and remains an overwhelmingly male industry in New Jersey.

Total employment and construction employment for whites and all of the minority groups rose in New Jersey over the post-war period. The share of total employment accounted for by the construction industry declined, however, from 4.3 to 3.0 for black males, but rose for white and other minority males and for white, black, and other minority women. Because female employment grew so rapidly over this period, and because women account for such a small percentage of construction employment, the share of total employment that was in construction fell for both whites and blacks as a whole. Nevertheless, women and minorities were still substantially underrepresented in construction in 1980. The degree of underrepresentation is greater for other minorities than for blacks, but black's share of construction employment is still almost 40 percent below what one might expect.

Women and minorities appear to have had particular difficulty gaining access to the high-paying craft jobs in construction. While 90 percent of white males are in skilled trades, only 72 percent of blacks males and 80 percent of Hispanic males

are.

Discrimination by unions explains some of these differentials. Given the fact that in the construction industry employers rely on unions to train and refer workers, discriminatory actions take on major importance. Because of the reliance on union hiring halls, the actions of construction unions have a direct effect on the supply of labor to the high-paying craft jobs in the industry. With unions historically barring the door, coupled with actions of employers, minorities and women were left with few avenues open to them if they wished to be employed in the industry. Thus, the underrepresentation of these groups in terms of total employment is not surprising; nor is the fact that for those who did gain employment, they were disproportionately assigned to work in the nonunion, residential parts of the industry.

There is a pervasive pattern of exclusion of women and minorities from employment and apprenticeship programs in construction. This finding is apparent in statistical data and has been recognized by the courts and federal, state, and local governments that have mandated affirmative action guidelines to rectify the problems. The systematic exclusion of women and minorities from apprenticeship programs has precluded them from gaining access to high-paying union jobs and to the superior training embodied in them. Combined with other barriers faced by women and minorities these factors help to explain the underrepresentation of women and minority-owned firms in the New Jersey construction industry.

Finance

An analysis of home mortgage data in New Jersey for 1990 underscores the

continuing and historic market barriers to successful entry into entrepreneurship among women and minority citizens residing in New Jersey. Home ownership provides a major vehicle for capital accumulation and transfer of wealth from one generation to the next. In America, the largest single purchase that a typical adult will make is a home. And, homes generally represent the single most important asset of the average person's portfolio.

The central conclusion we reach is that there are wide race and ethnic disparities in loan amounts, loan acceptance rates, and loan-to-income ratios. Yet, there are also wide disparities in the basic qualifications of loan applicants. Thus, although there is compelling statistical evidence of unequal loan outcomes, further analysis will be necessary before one can conclude that these inequalities are the result of discrimination by lenders in New Jersey.

The largest disparities in loan approval rates are between black applicants and white applicants. In New Jersey, 82 percent of white applicants for loans were approved. However, only 65 percent of black applicants were approved for loans. This difference is statistically significant at the most stringent levels. There are significant differences in the loan approval rates between Hispanics and whites. The approval rate for whites is 12 percentage points higher than the 70 percent approval rate for Hispanics. No statistically significant differences were found between the approval rates for Asians and whites.

Gender disparities exist in some aspects of loan transactions but not others. Females are slightly less likely to receive loans than males, although the disparity is

not statistically significant. White females are about as likely to have their loans approved as are white males.

Education

A large proportion of New Jersey's minority citizens have been denied fundamental rights and services in the area of public education guaranteed them by the New Jersey Constitution. These rights are intended to enable citizens to compete on equal terms in the contemporary marketplace and to otherwise function in a multi-racial society.

For more than twenty years, New Jersey's profound failures in these regards have been the subject of judicial, legislative and administrative findings. In the cases of Robinson v. Cahill and Abbott v. Burke the State Supreme Court, time after time, has documented New Jersey's systematic failure to provide children in poorer urban districts with a constitutionally adequate education. In a series of enactments prompted by the Court's decisions, the Legislature has acknowledged the unconstitutionality of the State's educational system and has responded in a way purported to rectify the problem. Yet each legislative response, from 1975 to the present, has been challenged in turn as insufficient. Each of those challenges, except the one currently pending in the courts, has been sustained.

The pattern could not be clearer and more consistent. There have been, and persist, longstanding and egregious legislatively generated disparities in the funding of public education between poor urban school districts--disproportionately populated by minority students--and wealthy suburban districts. These disparities cause, or at least are strongly correlated with, grossly inadequate educational opportunities and

results. No matter what measure is used, the education afforded students in New Jersey's cities is demonstrably inadequate to equip them to function effectively, let alone equally, as citizens or as competitors in the labor market.

The situation is different, but may prove as compelling. regarding the State's failure to assure that New Jersey's public school students learn in a multi-racial, multi-ethnic environment. Since at least 1965, the New Jersey Supreme Court has made clear that the state constitution requires administrative authorities to assure, wherever feasible, that such a learning environment is provided. Since 1971, it has been clear that district lines are not an impediment to racially balanced educational experiences.

Notwithstanding these constitutional pronouncements, however, New Jersey's public education system has been, and remains, one of the most segregated systems in the nation. The primary explanation lies in the persistent failure of the state's education officials to accept and act upon their constitutional obligation. In case after case, for more than 25 years the Supreme Court has chided the Commissioner of Education for failing to acknowledge the scope of his authority and responsibility to achieve racially balanced schools.

The issue has come to a head, once again, in a case now pending in the state courts. The Englewood school district is seeking regionalization of its high school with that of Tenafly as the only viable means of providing students of those districts, together with the students of Englewood Cliffs, with a racially balanced education. For the first time, the State Board of Education has acknowledged its power to order regionalization of districts, even if they do not constitute a de facto "single

community." After evaluating less intrusive means of promoting racial diversity in Englewood, the Commissioner has recommended, and the state board has ordered, that a regionalization study be carried out. Tenafly and Englewood Cliffs have appealed that order to the courts where it, together with other issues in the case, await decision.

A central aspect of remedying these failures relates directly to the public schools--to providing the educational programs, facilities and services necessary to enhance the ability of students in poorer urban districts to compete with their more advantaged peers, and to providing an educational environment that will equip all students to function in a multi-racial society. But the New Jersey Supreme Court increasingly has recognized, in the context of the school funding cases, that improving the public schools, by itself, is unlikely to cure the problem and achieve the constitutional objective. Nothing short of altering socioeconomic status can do so. Nor according to the Court, will education alone alter socioeconomic status.

What is required is a comprehensive program addressing housing, employment, child care, taxation, welfare, and perhaps health care as well. The Supreme Court recognized this need in its last Abbott v. Burke opinion. The Court also recognized, however, that a judicial opinion responding to a specific case and based on a specific documentary record was not an appropriate vehicle for announcing a sufficiently broad-based remedy. Unconstrained by those limits, and broadly empowered to implement constitutional and public policy objectives, the Legislature, or perhaps the Executive, is the more appropriate governmental branch to promulgate the necessary

remedy.

Such a remedy could, and should, include affirmative action plans, including even set-asides, relating to public higher education, public employment and public contracting. A clear consequence of the state's failures in public elementary and secondary education is a constricted pool of minority high school graduates fully equipped to compete for positions in higher education or in the marketplace. These constricted pools mean that, without affirmative efforts by the State to rectify the situation, a disproportionately low number of minority applicants will be selected.

So long as the affirmative action plans do not rigidly favor unqualified minority candidates over others, they seem both legally permissible and fully justified from a public policy perspective. After all, this is a situation where the state has been found to have contributed substantially to the creation of the problem. Its longstanding complicity in the massive violation of the constitutional rights of many minority citizens carries with it an obligation and a power to remedy the harms caused.

Housing

The relationship between housing discrimination and discrimination in public contracting may, on the surface, seem totally separate phenomena, but upon examination they are shown to have a close, albeit subtle, connection.

Housing discrimination affects the ability of women and minorities to form businesses and to successfully compete for public contracts in at least three possible ways:

1. Home ownership is the predominant method of capital formation for persons of relatively modest means. Small business people frequently mortgage their

homes to the hilt to provide security for business loans, particularly in the crucial start-up years. By being disproportionately underrepresented in the homeowner class, women and minorities are disproportionately burdened in one important aspect of their quest for necessary business capital. Discrimination in the rental market aggravates this problem by requiring women and minorities to allocate a disproportionate share of their income to shelter, defeating their efforts to accumulate down payment capital so that they can attempt to compete in the (discriminatory) home ownership market.

2. Access to public education is determined by one's place of residence. The quality of education varies significantly from school district to school district, and the best education is most likely to be offered in those districts where housing discrimination is at its strongest. Those who are most poorly educated are those least equipped to compete effectively in the job market and to move up the employment ladder from trainees to skilled workers and, eventually, to ownership of contracting businesses.

3. Similarly, place of residence heavily influences access to employment opportunities. We may assume that few people emerge full-blown from high school as contractors ready to compete for public jobs. A period of skills training and experience gathering is the normal first step. Even after establishment of a business, informal contacts within the local community are an important element of business attraction. The suburbanization of the economy, without a concomitant relaxation of suburban housing discrimination, deprives women and minorities of access to the most dynamic areas of the modern business scene.

Public Accommodations

Membership in various New Jersey clubs offers significant business and career enhancing benefits. In addition to the status membership conveys, active membership provides access to personal and business contacts through which invaluable networks function. Membership also affords a forum for self and business promotion, wherein one's reputation and a firm's worth is established.

While business, commercial and career enhancing advantages of clubs are difficult to quantify, these benefits have been identified by the United States Supreme Court, regardless of whether they are incidental to the club's stated objectives.

Likewise, commercial benefits are acknowledged to be a major incentive for membership in certain clubs. In order to identify those specific New Jersey clubs which offer such benefits, and to quantify the benefits offered, researchers must rely on club members' and/or officers' cooperation. This methodology becomes problematic when the members have a vested interest in perpetuating exclusion.

Discrimination by certain New Jersey club members against women and minorities is common. Whereas some clubs blatantly exclude women members, more often discrimination is more subtle. Some clubs, with no female or minority members, claim they do not exclude such membership, however nor do they invite or encourage membership among women or minorities. Several clubs limit membership to a token representation of women or minorities. Women and/or minority members of such clubs complain of having reached a sort of "glass ceiling", wherein the quality of membership is limited. Women and minorities are distinctly absent from office-holding or policy-making positions. Regardless of policy or actual practice, the predominantly white male clubs do not adequately meet the special needs of women and minorities.

Club practices of overt and subtle discrimination, combined with the failure to represent female and minority interests, have resulted in increased formation of and participation in all-female and all-minority club counterparts. Although these clubs enjoy strong memberships, they have not been able to duplicate the status of contacts and networking of their majority, male counterparts.

Past exclusion of women and minorities in the majority and male clubs has placed them at a disadvantage in competing against mostly white, male members for

state contracts. Continuing exclusion and discriminatory memberships exacerbate the obstacles and perpetuate the disadvantages. The result is a significant disparity in the success of women and minority businesses. This disparity is evidenced in the underrepresentation in the pool of qualified bidders and those contractors awarded the more lucrative prime contracts with the state.

Many clubs have been protected in effectuating their discriminatory practices by the constitutional right to freedom of association. However, several states have found innovative methods to discourage this discrimination; New Jersey has been inactive in this area. According to the U.S. Supreme Court, the state's interest in providing equal access to commercial opportunities exceeds its interest in seeking equal access to other intangible benefits. State action in enforcing laws against discrimination has proven to be an effective incentive for clubs to change their exclusionary practices and as such the state must assume a more aggressive role against offending clubs via legislation, regulatory authority and litigation.

Special Consideration of Hispanics

Nationally, Hispanic workers tend to be in low-wage service jobs or are laborers and, as of 1989, Hispanics' earnings trailed the incomes of non-Hispanics. The median income for Hispanics rose about 12 percent between 1982 to 1989, from \$19,500 to \$21,900. But the 1989 median income for non-Hispanic households was far higher, at \$29,500.

Among all Hispanic subgroups in the tri-state region, Puerto Ricans and Dominicans had the lowest earning profile while Mexicans and Cubans had the

highest. Striking earnings differentials between Puerto Ricans and white males have been documented. Even among comparably educated workers, Puerto Rican men earned approximately \$6,000 less than their white male counterparts. Earnings gaps by education levels show that the differentials between Puerto Rican and white men increase rather than decrease at higher levels of completed schooling. The presence of these differentials are partially attributed to discrimination.

Of all Hispanic subgroups, Puerto Ricans have the lowest ratio of earnings to the average for whites, regarding self-employment and wage and salary ratios.

Hispanic employees in New Jersey, particularly women, are concentrated most heavily in manufacturing. Services and retail trades are also heavily populated by Hispanics. When broken down according to subgroups, more Puerto Ricans than Cubans are employed in manufacturing. Cubans outnumber Puerto Ricans and other Hispanic subgroups in real estate and retail trades. Puerto Ricans dominate the service industries.

While Hispanics represent 10 percent of the state's total population, they represent only 3.9 percent of 76,121 state employees. Of these, almost three-quarters occupy low level clerical, maintenance, and other similar positions. In the official/administrator category, Hispanics hold only 1.1 percent of all senior state official positions.

Although there is a definite paucity of research analyzing Hispanic businesses in New Jersey, a review of two studies, combined with data from the census and other sources, reveals two common obstacles which restrict Hispanic business

performance: access to financing and access to information regarding business opportunities and assistance.

According to these studies, as a result of the discrimination by private banks and the flight of many local banks from downtown areas, Hispanic credit unions have emerged in New Jersey. These credit unions cater to Hispanics in the following ways:

- 1) Provision of bilingual staff;
- 2) Provision of non-traditional indicators for credit extension; and
- 3) Provision of essential financial information networking functions.

The state's two Hispanic credit unions are only capable of serving a nominal portion of the state's Hispanic population's credit needs.

According to the consensus of the Kean College Committee to Assist Hispanic-Owned Businesses, Hispanic businesses have been "relatively deprived in the area of government contracts". Further, at least in some cases, this underrepresentation is attributed to "discrimination".

Two characteristics of Hispanic businesses found in studies are: a general mistrust of government and the tendency toward self-reliance in overcoming business problems. Self-reliance is at least partially a result of frustration and discouragement encountered from past experiences involving discrimination, no doubt compounded by language and communication barriers. State initiatives or outreach efforts to communicate information regarding state contracting and other business assistance programs are essential to assist Hispanic businesses in overcoming self-reliance. The state has thus far been unsuccessful in helping Hispanic firms overcome this obstacle, although there is some evidence of past initiatives during the mid-80s. Due to the

state's failure to monitor its various business assistance programs, it cannot be determined whether Hispanic firms have either participated in or benefitted from any such programs.

The existence of discrimination in employment, housing, financing, and education are manifested as barriers hindering Hispanic business performance. Despite documentation that discrimination continues to affect Hispanics and Hispanic businesses in particular, the known extent of discrimination is only a conservative estimate. Relying on complaints as an accurate measure of discrimination is inappropriate as complaints only measure a small percentage. Because of the language and consequent communication handicap, Hispanics do not aggressively pursue discrimination complaints through the process of formal redress. Due to the low level of education and formalized training among Hispanics in New Jersey, many are not cognizant of their rights. Hispanic businesspersons are less likely to report instances of discrimination due to their attributes of governmental mistrust and self-reliance but also due to the lack of resources (i.e., time and money). Further, many believe their business will suffer if they pursue a formal complaint against the state or another business.

Special Consideration of Women

Recent data reveals the ongoing effects of past and present gender discrimination, particularly in education and employment among women in New Jersey's marketplace. It is possible to identify factors that inhibit the growth and success of women-owned businesses (WBEs) in New Jersey. These factors involve

a long and continuing history in New Jersey of:

1. Unequal pay for women, which prevents wealth accumulation necessary for business startups;

2. "Protective" labor laws enacted in the nineteenth century and operative until 1964, which excluded women from certain areas of employment, such as mining, or restricted the conditions of employment for women, e.g., weightlifting restrictions;

3. Sexual harassment in the workplace, particularly in traditionally male occupations such as trade apprenticeships, as well as in educational institutions;

4. The occupational segregation of women into the low-paying clerical and service sectors, which are not traditional routes to firm formation;

5. Lack of adequate and affordable childcare for all working New Jersey mothers or for those furthering their education in state institutions;

6. The advisement and placement of girls and women in "pink curricula" in schools and colleges, which later locks women out of opportunities in the higher paying science/engineering fields, which are often highways to firm formation and government contracting;

7. A long history of segregating girls and women out of technical schools and technology-oriented universities, where entrepreneurship is encouraged by faculty mentorships with students and networking with alumni;

8. Mandatory curricula which channeled females into typing and home economics fields, which leave women with low-to-no-pay opportunities, while males were channeled into "shop", which led to trades traditionally associated with

contractors.

Women suffered a severe disadvantage in business startups due to these past inequities, and this disadvantage still lingers in New Jersey today.

The state has sometimes enacted potentially effective laws in an attempt to address gender inequity in education, but has failed to adequately enforce the statutes. The state of New Jersey, particularly the Department of Education, has also failed to systematically collect sexual harassment data necessary to measure the progress of women of all colors.

Remedies

Based on a survey examination of:

1. Set-aside programs in other states in the SMSAs that include New Jersey.
2. Set-aside programs in states or local governments,

A key finding is that the degree of effectiveness of a set-aside program or a race-neutral program is largely dependent on the commitment of upper management to its implementation. With this commitment in place, one demonstrated result has been the selection of DBEs in the service area. If this commitment is not demonstrated or is not ongoing, and insurance of participation is desired, a series of internalized procedures must be institutionalized--as those implemented by AMTRAK, for example. In addition, in order for any affirmative action program to be taken seriously by the contractors, it will need to include:

1. A structured monitoring component implemented before contract award.

2. Technical assistance, a cornerstone of this initiative. (The Toll Road, the Miami Airport, and the New York/New Jersey Port Authority initiatives are three examples of effective technical assistance programs).

In the area of construction, where low bids determine the successful firm, bonding and loan programs at a competitive rate will be needed to guarantee the DBEs a place as the prime or subcontractors. Informing firms of the opportunities available is also essential. The Washington Airport Authority has recently received recognition as the most effective outreach program in the state of Virginia. This outreach program has contributed significantly to the Authority's maintaining its M/W/DBE participation goals.

An ongoing review of the effectiveness of an existing program, tailoring it so that it achieves its goals effectively, is essential. An effective program evaluation examines the following:

1. Actual participation of M/W/DBEs in the contracting process
2. Evaluation of the growth of that participation
3. Evaluation of the contribution of the race-neutral program components

The commitment of an agency or an owner must be visible and constant from the top administration. AMTRAK's use of the internalization of their program by association of performance review with successful utilization of M/WBEs is an effective motivating tool. Their strong participation in the DBE awards is another example of an effective program.

Both race-neutral and race-preference programs have potential for success and

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failure. The race-preference programs require all the basic components plus an adequate staff to implement the program or it will be perceived by the public as window-dressing. The race-neutral program requires similar support as well as strong visual and vocal commitment by upper management because the "mandated rules" are not there.

The questions to be answered concerning these programs are: What is the definition of a successful program? Is it the success of awarding service contracts to firms of a particular ethnic group that has consistently found barriers at an agency? The largest concentration of minority architects and engineers in the country are in the District of Columbia as a result of educational facilities like Howard University. Are these professionals being utilized commensurate to their numbers? What monitoring program is in place to track the growth of their participation so it can be enhanced if necessary?

If bonding ceilings have been lifted, what has been the impact of that change? How many contracts with MBE participation have been let into this dollar area? Is this the right vehicle for entry? How essential is a bonding program and access to it for the M/WBE firms? Is it possible to implement a bonding program using the same model as the umbrella insurance program? Would such a bonding program be effective with the same level of scrutiny that the safety program receives? What is the impact of not enforcing an EEO program? What effect does enforcement have? Does it produce real results? Does the program contribute to the development of M/WBEs?

All these questions should be addressed by any program whose goal is the inclusion of ethnic and racial group members into the economic and opportunity mainstream.

Conclusion

Despite extraordinary efforts to promote equal opportunity in employment and other areas of social and economic life in New Jersey, significant inequalities remain. One persistent area of inequality is business ownership. Many minority group members and women lack access to key channels for entry into business ownership. Some of these blocked paths are the direct result of specific policies by the state in the past to favor white-owned firms or the indirect result of inaction on the part of the state to prevent discrimination that ultimately has resulted in an under-utilization of the potential business talents of women and minority citizens of New Jersey. The record of these actions and inactions--detailed in the following volumes--strongly supports the (re-)introduction of race- and gender-specific remedies to fulfill the state's own constitutional mandate to promote equality of opportunity to all its citizens.

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