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The Background and Significance of Mount Laurel II {Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J.)}

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THE BACKGROUND AND SIGNIFICANCE OF *MOUNT LAUREL II*

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There has always been a strong strain in American culture emphasizing equal treatment before the law;[1] it is a recurrent strain, and one that will not go away. From one viewpoint, American history may be viewed as one long story of how this concern has eventually vanquished contrary public policies. Yet the process has often been agonizingly slow. Take for example the story of equal access to land and housing: public enforcement of private racial covenants survived for thirty years after racial zoning was held unconstitutional,[2] and for a similar period restrictions upon land ownership by aliens were constitutional.[3] There has been a similar story as to discrimination along

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1. For present purposes this may be distinguished from pure egalitarianism, which raises different and more difficult issues.

2. The Supreme Court held unconstitutional zoning ordinances which prevented non-whites from living in "white areas" in Buchanan v. Warley, 245 U.S. 60 (1917). In Shelley v. Kraemer, 334 U.S. 1 (1948), the Court held that state courts cannot enforce private agreements to exclude persons from the use or occupancy of real estate on the basis of race.

3. In 1923, the Court decided that a state could deny aliens the right to own land within its borders. Terrace v. Thompson, 263 U.S. 197 (1923). Sei Fujii v. California, 38 Cal. 2d 718, 242 P.2d 617 (1952), marked the end of this form of discrimination. *Cf.* Oyama v. California, 332 U.S. 633 (1948) (a state alien land law could not be used to deprive a minor American citizen of lands actually purchased by his alien father—a unanimous decision, but 5-4 on the narrow basis of invalidating a presumption which was purely racial in its operation).

In the case of both racial zoning laws and alien land laws, the later decisions were not simply superior exercises in logic; after the Second World War, the use of govern-

economic lines, that is, against not only the minority poor but the poor generally. In 1953, the New Jersey Supreme Court announced the advent of judicial approval of—nay, even enthusiastic endorsement of—precisely such economic discrimination.[4] Here again, the timetable for the reassertion of democratic values has been roughly similar; *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mount Laurel I)*[5] came in 1975, and has now been strongly reaffirmed in 1983 (*Mount Laurel II*).[6]

I. THE BACKGROUND

In recent decades, planning law in this country has been characterized by a series of sharp zigs and zags, which must seem quite baffling to the uninitiated. Actually, the pattern of decisions has been clear-cut, although extremely complex. Up until about 1950 the case law was moving, slowly but definitely, towards increased respect for municipal decisions on the use of land. The 1950's and the 1960's saw a sharp shift, at least in the leading states. By a conscious change of judicial policy, the courts decided to give the towns relatively free rein in regulating buildings and activities on land, to pursue whatever aspects of their own general welfare seemed most appropriate to them. In this period the "general welfare" was defined quite specifically as the welfare of each individual town, with the clear implication that the devil could take the hindmost.

Under the prevailing "fairly debatable" test, any restriction on land use was upheld, particularly if it concerned a residential area, as long as there was *something* which could be said in its favor. In other words, if a lawyer defending such a restriction was struck dumb as he

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mental measures to enforce the particular discriminations involved was no longer morally tolerable.

4. Lionshead Lake v. Wayne Township, 8 N.J. Super. 468, 73 A.2d 287 (Law Div. 1950), *rev'd*, 9 N.J. Super. 83, 74 A.2d 609 (App. Div. 1950), *on remand*, 13 N.J. Super. 490, 80 A.2d 650 (Law Div. 1951), *rev'd*, 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed*, 344 U.S. 919 (1953) (minimum building size regulations approved). *Lionshead Lake* was discussed, and much of it was rejected, though not officially overruled, in a later decision. *See infra* note 42.

5. 67 N.J. 151, 336 A.2d 713, *cert. denied and appeal dismissed*, 423 U.S. 808 (1975).

6. Southern Burlington County NAACP v. Township of Mount Laurel (*Mount Laurel II*), 92 N.J. 158, 456 A.2d 390 (1983), decided along with Urban League of Greater New Brunswick v. Carteret; Caputo v. Township of Chester; Glenview Dev. Co. v. Franklin Township; Urban League of Essex County v. Township of Mahwah; Round Valley, Inc. v. Township of Clinton.

rose before the court, and could think of nothing to say, the restriction would be in some real trouble—but as long as he could manage to keep on making a noise like a lawyer, all would be well.[7]

This era of judicial laissez-faire and judicial respect for "home rule" led, not surprisingly, to various unhappy consequences; some municipal control of land use was arbitrary as to developers, and more was exclusionary as to large groups of the population.[8] A few commentators had concentrated on these problems all along,[9] but apparently most people did not want to deal with them. By the late 1960's, however, the word was getting around even to the judges. Around 1970, there was a clear and widespread shift towards a more skeptical judicial attitude about municipal autonomy regarding land use. In the 1970's (again in the leading states), a more active judicial review was thus characterized by a prevalent suspicion as to what the towns were really up to. This active judicial review has continued into the 1980's, but if a town has a good reason for its land use restrictions—that is, if the goal sought is clearly legitimate, and the means used are reasonably appropriate—all will be well. Municipal attorneys are now therefore well advised to pay more attention to Brandeis briefs, and less to the presumption of validity: municipalities must have good reasons for their actions. The changed attitude was most obvious in the sudden development, around 1970, of a wave of anti-exclusionary litigation, but it also underlies the changed attitude towards the planning basis for zoning, and a more restrictive attitude towards approving variances.

II. ANTI-EXCLUSIONARY LITIGATION IN NEW JERSEY

In anti-exclusionary litigation principal attention necessarily fo-

7 American planning law consists primarily, but not entirely, of reported zoning cases, now running at about 600 annually. The description of trends above is necessarily greatly over-simplified. For a fuller description, see N. WILLIAMS, AMERICAN LAND PLANNING LAW ch. 2-7 (1974-75).

8 Among many problems, one was dominant: the overall system, including the effects of the local real property tax system, was heavily stacked in favor of those land uses thought to be "good ratables," and against those considered "bad ratables."

9 For early examples, see Williams, *Zoning and Planning Notes*, THE AMERICAN CITY, Feb. 1951, at 129, Oct. 1951, at 130-31, and Dec. 1952, at 125; Haar, *Zoning for Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Haar, *Wayne Township: Zoning for Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954); Williams, *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROBS. 317 (1955).

cused on New Jersey for a number of reasons. First, the New Jersey court had long been the leading court in all kinds of zoning matters—in part because New Jersey is more intensely settled than any other state, so that more land-use conflicts arise, and in part because of the competence of the New Jersey Supreme Court, led by four distinguished judges—Chief Justice Weintraub and Justices Francis, Hall, and Jacobs. Moreover, it was the New Jersey court which had developed the pro-exclusionary rationale in the early 1950's;[10] therefore, New Jersey was the place where it had to be destroyed. Finally, the logical author to lead the great reversal was already on the New Jersey court; the first sign of a broadside attack upon exclusionary practices came in the famous 1962 dissenting opinion of Justice Frederick Hall in *Vickers v. Gloucester Township*.[11] Justice Hall's dissent has long been recognized as the most distinguished opinion in the field of planning law.

By the late 1960's, however, the world suddenly began to look rather different than it had when Justice Hall wrote his *Vickers* dissent, and other judges began to reexamine their tolerance of exclusionary zoning practices. In an otherwise relatively unimportant case, the New Jersey Supreme Court in 1970 upheld (against a challenge by neighbors) a New Jersey "d" variance[12] approving a housing project in Englewood, which was (a) located in a "white area" and (b) clearly designed at least in part to accommodate blacks from the Englewood ghetto.[13] In upholding the grant of the variance, the opinion—by Hall, and now unanimous—commented in dictum that under those circumstances such a variance could not have been denied. The only logical basis for this comment is that there must be some affirmative duty to plan on behalf of all sections of the population. Once those familiar with this field of law read the *Englewood*

10. *See, e.g.*, Lionshead Lake v. Wayne Township, 8 N.J. Super. 468, 73 A.2d 287 287 (Law Div. 1950), *rev'd*, 9 N.J. Super. 83, 74 A.2d 609 (App. Div. 1950), *on remand*, 13 N.J. Super. 490, 80 A.2d 650 (Law Div. 1951), *rev'd*, 10 N.J. 165, 89 A.2d 693 (1952), *appeal dismissed*, 344 U.S. 919 (1953).

11. 37 N.J. 232, 252, 181 A.2d 129, 140 (1962), *appeal dismissed*, 371 U.S. 233 (1963). Only Justice Schettino agreed at the time. The majority opinion was overruled by *Mount Laurel II*.

12. A New Jersey "d" variance is a unique form of special permit (not really a variance), essentially without standards, which has flourished in New Jersey. *See* N.J. STAT. ANN. § 40:55D-70(d) (West Supp. 1983).

13. DeSimone v. Greater Englewood Hous. Corp. No. 1, 56 N.J. 428, 267 A.2d 31 (1970).

opinion, it was clear that the jig was up; the court seemed to be sending out signals that it was ready for a major reversal on the exclusionary problem. What ensued was a great rush, in New Jersey and other states, to be the hero who slayed the dragon of exclusionary zoning, and all sorts of badly-thought-out cases were brought by people necessarily in a hurry.

Mount Laurel became the leading case in an odd way. It was long thought that the leading case for the great reversal would be one brought against Madison Township in Middlesex County, usually referred to as *Oakwood at Madison*.[14] This case was argued first before the whole New Jersey Supreme Court in March, 1973, along with another case from South Jersey which had not received much public attention (*Mount Laurel I*). At the end of that term the two cases were set down for reargument the following year, presumably because the personnel on the court were changing, and it was deemed wise to let the new judges decide how they wanted to deal with this complex problem. At the second oral argument in January, 1974, however, *Oakwood at Madison* fell apart in extraordinary fashion. Suddenly everyone in the courtroom realized that the vehicle for the great reversal would be the relatively unknown case from South Jersey.[15] *Mount Laurel I* had been brought by lawyers working for

14. Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353 (Law Div. 1971), and 128 N.J. Super. 438, 320 A.2d 223 (Law Div. 1974), *aff'd*, 72 N.J. 481, 371 A.2d 1192 (1977) (overruled in part by *Mount Laurel II*).

Oakwood at Madison was brought by a well-financed civic organization, organized for the specific purpose of opening up the suburbs to lower-income housing, which carried on a brilliant propaganda campaign on the issue. This case was not a happy choice. Madison Township had been undergoing very rapid growth, so it was at least a possible candidate for a legitimate slow-down under some sort of growth-management scheme, and it was the only township in central New Jersey which had permitted large numbers of multiple dwellings as of right. (In fact, in the years before the suit was brought, a majority of recent construction was in garden apartments rather than single-family houses—a unique situation in the area.) Moreover, the plaintiffs aligned themselves with a developer, presumably to protect themselves against an argument that they did not have standing to bring the case; that developer's choice of a site for the proposed rather intensive housing was an ecologically sensitive site, where both the ground water and the surface run-off would be used (now or in the future) for drinking water. When the question of standing to sue came up in the course of oral argument on *Oakwood at Madison* and *Mount Laurel*, Chief Justice Weintraub dismissed the matter with his usual blunt vigor: "Counsel, don't waste our time arguing about questions of standing. If there is any such question in this suit, we herewith grant standing. Proceed."

15. Many of those in the courtroom, including me, did not even know where Mount Laurel was. There was a certain amount of quiet looking into the atlases.

Camden Legal Services, and was directed against a township just entering a period of large-scale development, with some scattered rural slums remaining from an earlier period, characterized by a lot of migratory agricultural labor. To these lawyers (led by Karl Bisgaier) belongs all the credit that the great reversal came at all, or at least that it came without several years of further delay. The complaint was phrased largely in terms of racial exclusion; the New Jersey Supreme Court decided to transmute the case into one involving segregation along economic lines—that is, segregation of the poor generally, regardless of their race.

Mt. Laurel I, written by Justice Hall as his farewell to the bench, has been the subject of extensive commentary practically everywhere, and need not be reviewed in detail here.[16] Clearly the most important zoning opinion since *Village of Euclid v. Ambler Realty Co.*,[17] it does not have quite the distinction of Hall's dissent in *Vickers*, presumably because of the importance of producing a unanimous opinion. The decision nevertheless established, without dissent, three major points:

1. Zoning restrictions must affirmatively promote the general welfare, on a regional basis.
2. The need for housing, and particularly for low- and moderate-cost housing, is a major facet of the regional general welfare—and, in effect, a favored use.
3. Each municipality has the responsibility for its "fair share" of the regional housing need.

The decision was phrased in terms of "developing municipalities," because that was the type of municipality then before the court. As usual in landmark decisions, major questions remained for later reso-

16. *E.g.*, Rose, Oakwood at Madison: *A Tactical Retreat to Preserve the* Mount Laurel *Principle*, 13 URBAN L. ANN. 3 (1977); Williams & Doughty, *Studies in Legal Realism*: Mount Laurel, Belle Terre *and* Berman, 29 RUTGERS L. REV. 73 (1975); Note, *Exclusionary Zoning: The View from* Mt. Laurel, 40 ALB. L. REV. 646 (1976); Note, *The Inadequacy of Judicial Remedies in Cases of Exclusionary Zoning*, 74 MICH. L. REV. 760 (1976); Note, *Exclusionary Zoning and Timed Growth: Resolving the Issue after* Mount Laurel, 30 RUTGERS L. REV. 1237 (1977); Note, Southern Burlington County NAACP v. Township of Mount Laurel, 7 TEX. TECH. L. REV. 182 (1975); Note, *The* Mount Laurel *Case: A Question of Remedies*, 37 U. PITT. L. REV. 442 (1975); Note, *Fiscal-Based Exclusionary Zoning Ordinance Invalidated as Improper Exercise of State Police Power*, Southern Burlington County NAACP v. Township of Mount Laurel, 7 U. TOL. L. REV. 341 (1975); Comment, *Exclusionary Zoning: The* Mount Laurel *Doctrine and the Implications of the Madison Township Case*, 8 SETON HALL L. REV. 460 (1977).

17. 272 U.S. 365 (1926).

lution—including how to define a region (or sub-region), how to determine "fair share," and the appropriateness of various remedies.

III. Anti-Exclusionary Litigation In Other States

While primary attention necessarily and properly focused on New Jersey, much was going on in the rest of the country as well. In perhaps the most important development, the courts of the two largest states have fairly explicitly adopted the most important part of *Mount Laurel I*, the regional general welfare approach. Two important opinions in the lower federal courts explicitly reasoned along the same lines.[18]

The leading cases from the two biggest states originated in connection with ordinances dealing with "growth management"—that is, regulating the rate of growth in relation to the availability of public services. In New York, the first important "growth management" case in the 1970's upheld a scheme in the town of Ramapo in Rockland County, which required residential development to await the availability of part of the necessary public infrastructure.[19] Judge Breitel dissented strongly, in an opinion essentially maintaining that the towns could no longer be trusted with major land use controls. Clearly in answer to this dissent, the majority, in an otherwise rather confused opinion, made a strong, but rhetorical, statement against exclusionary zoning: "What we will not contenance, then, under any guise is community efforts at immunization or exclusion."[20] There is little definition of "exclusionary" in either the majority or the dissent.

18. Kennedy Park Homes Ass'n, Inc. v. City of Lackawanna, 318 F. Supp. 669 (W D.N.Y.), *aff'd*, 436 F.2d 108 (2d Cir. 1970), *cert. denied*, 401 U.S. 1010 (1971); Southern Alameda Spanish Speaking Org. v. City of Union City, 424 F.2d 291 (9th Cir. 1970), *on remand*, No. 51590 (N.D. Cal. July 31, 1970). The critical paragraph in *Southern Alameda* read as follows:

> Given the recognized importance of equal opportunities in housing, it may well be, as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the needs of its low-income families, who usually—if not always—are members of minority groups.

424 F.2d at 295-96.

19. Golden v. Planning Bd. of Town of Ramapo, 30 N.Y.2d 359, 334 N.Y.S.2d 138, 285 N.E.2d 291 (1972). This was *not* the first case upholding the regulation of the timing of development in relation to the availability of public services, which originated a decade earlier in the adjacent town of Clarkstown. *See* Josephs v. Town Bd of Town of Clarkstown, 24 Misc. 2d 366, 198 N.Y.S. 2d 695 (Sup. Ct. 1960).

20. 30 N.Y.2d at 378, 334 N.Y.S.2d at 152, 285 N.E.2d at 302.

In a subsequent case[21] the court cited this language from *Ramapo* and went on to argue that suburban housing needs should be considered over a substantial area, clearly implying that various housing types would be needed. In a California case directly involving growth management,[22] a town inland from the East Bay region was explicitly regulating growth in relation to the availability of school seats. The prevailing opinion, written by Justice Tobriner, adopted the *Mount Laurel* rationale in a significant passage, which may be cited as the best example of the spreading influence of *Mount Laurel*.[23]

Moreover, there has been some significant movement in other states. The case against exclusionary zoning in California has been

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21. Berenson v. New Castle, 38 N.Y.2d 102, 378 N.Y.S.2d 672, 341 N.E.2d 236 (1975), and 67 A. D.2d 506, 415 N.Y.S.2d 669 (2d Dept. 1979)—the latter reversing an important, but unreported, lower-court opinion, which had mandated "fair share." For a discussion of the lower-court opinion, see 3 N. WILLIAMS, AMERICAN LAND PLANNING LAW (1974-75), § 66.19 Supp., at 85.

22. Associated Home Builders of the Greater East Bay, Inc. v. City of Livermore, 18 Cal. 3d 582, 557 P.2d 473, 135 Cal. Rptr. 41 (1976).

23. The court stated:

A number of recent decisions from courts of other states, however, have declined to accord the traditional deference to legislative judgment in the review of exclusionary ordinances, and ruled that communities lacked authority to adopt such ordinances. Plaintiff urges that we apply the standards of review employed in those decisions in passing upon the instant ordinance.

The cases cited by plaintiff, however, cannot serve as a guide to resolution of the present controversy. Not only do those decisions rest, for the most part, upon principles of state law inapplicable in California, but, unlike the present case, all involve ordinances which impede the ability of low or moderate income persons to immigrate to a community but permit largely unimpeded entry by wealthier persons. (Footnote omitted.)

We therefore reaffirm the established constitutional principle that a local land use ordinance falls within the authority of the police power if it is reasonably related to the public welfare. Most previous decisions applying this test, however, have involved ordinances without substantial effect beyond the municipal boundaries. The present ordinance, in contrast, significantly affects the interests of nonresidents who are not represented in the city legislative body and cannot vote on a city initiative. We therefore believe it desirable for the guidance of the trial court to clarify the application of the traditional police power test to an ordinance which significantly affects nonresidents of the municipality.

When we inquire whether an ordinance reasonably relates to the public welfare, inquiry should begin by asking whose welfare must the ordinance serve. In past cases, when discussing ordinances without significant effect beyond the municipal boundaries, we have been content to assume that the ordinance need only reasonably relate to the welfare of the enacting municipality and its residents. But municipalities are not isolated islands remote from the needs and problems of the area in which they are located; thus an ordinance, superficially reasonable

strengthened by an amendment to the state planning enabling act,

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from the limited viewpoint of the municipality, may be disclosed as unreasonable when viewed from a larger perspective.

These considerations impel us to the conclusion that the proper constitutional test is one which inquires whether the ordinance reasonably relates to the welfare of those whom it significantly affects. If its impact is limited to the city boundaries, the inquiry may be limited accordingly; if, as alleged here, the ordinance may strongly influence the supply and distribution of housing for an entire metropolitan region, judicial inquiry must consider the welfare of that region. (Footnote omitted.)

As far back as *Euclid v. Ambler Co.*, courts recognized "the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." (272 U.S. 365, 390, 47 S. Ct. 114, 119, 71 L. Ed. 303.) More recently, in *Scott v. Indian Wells* (1972), 6 Cal.3d 541, 99 Ca. Rptr. 745, 492 P.2d 1137, we stated that "To hold . . . that defendant city may zone the land within its border without any concern for [nonresidents] would indeed 'make a fetish out of invisible municipal boundary lines and a mockery of the principles of zoning.' " (P. 648, 99 Cal. Rptr. p. 749, 492 P.2d p. 1141.) The New Jersey Supreme Court summed up the principle and explained its doctrinal basis: "[I]t is fundamental and not to be forgotten that the zoning power is a police power of the state and the local authority is acting only as a delegate of that power and is restricted in the same manner as is the state. So, when regulation does have a substantial external impact, the welfare of the state's citizens beyond the borders of the particular municipality cannot be disregarded and must be recognized and served." (So. Burlington Cty. NAACP v. Tp. of Mt. Laurel, *supra*, 336 A.2d 713, 720.) (Footnote omitted.)

We explain the process by which a trial court may determine whether a challenged restriction reasonably relates to the regional welfare. The first step in that analysis is to forecast the probable effect and duration of the restriction. In the instant case the Livermore ordinance posits a total ban on residential construction, but one which terminates as soon as public facilities reach specified standards. Thus to evaluate the impact of the restriction, the court must ascertain the extent to which public facilities currently fall short of the specified standards, must inquire whether the city or appropriate regional agencies have undertaken to construct needed improvements, and must determine when the improvements are likely to be completed.

The second step is to identify the competing interests affected by the restriction. We touch in this area deep social antagonisms. We allude to the conflict between the environmental protectionists and the egalitarian humanists; a collision between the forces that would save the benefits of nature and those that would preserve the opportunity of people in general to settle. Suburban residents who seek to overcome problems of inadequate schools and public facilities to secure "the blessing of quiet seclusion and clear air" and to "make the area a sanctuary for people" (*Village of Belle Terre v. Boraas*, *supra*, 416 U.S. 1, 9, 94 S. Ct. 1536, 1541, 39 L. Ed. 2d 797) may assert a vital interest in limiting immigration to their community. Outsiders searching for a place to live in the face of a growing shortage of adequate housing, and hoping to share in the perceived benefits of suburban life, may present a countervailing interest opposing barriers to immigration.

Having identified and weighed the competing interests, the final step is to determine whether the ordinance, in light of its probable impact, represents a rea-

requiring a "housing element" as part of each town's mandatory master plan.[24] Massachusetts, nearly alone among the states, has adopted an "anti-snob zoning law," under which a state agency is authorized to give a comprehensive permit for low-income housing in any instance where there is a shortage of such housing in a given town.[25] In a considerable volume of litigation, the courts have up-

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sonable accommodation of the competing interests. (Footnote omitted.) We do not hold that a court in inquiring whether an ordinance reasonably relates to the regional welfare, cannot defer to the judgment of the municipality's legislative body. (Footnote omitted.) But judicial deference is not judicial abdication. The ordinance must have a real and substantial relation to the public welfare. (*Miller v. Board of Public Works, supra*, 195 Cal. 477, 490, 234 P. 381.) There must be a reasonable basis in fact, not in fancy, to support the legislative determination. (*Consolidated Rock Products Co. v. City of Los Angeles* (1962) 57 Cal.2d 515, 522, 20 Cal. Rptr. 638, 370 P.2d 342 (1962). Although in many cases it will be "fairly debatable" (*Euclid v. Ambler Co., supra*, 272 U.S. 365, 388, 47 S. Ct. 114, 71 L. Ed. 303) that the ordinance reasonably relates to the regional welfare, it cannot be assumed that a land use ordinance can never be invalidated as an enactment in excess of the police power.

The burden rests with the party challenging the constitutionality of an ordinance to present the evidence and documentation which the court will require in undertaking this constitutional analysis.

18 Cal. 3d at 606-09, 557 P.2d at 486-89, 135 Cal. Rptr. at 54-57.

24. The amended act reads as follows:

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

. . .

c) A housing element as provided in Article 10.6 (commencing with Section 65580).

CAL. GOV'T CODE § 65302 (Deering Supp. 1983).

25. MASS. GEN. LAWS ANN. ch. 40B, § 20 (West 1969). "Shortage" is arbitrarily defined.

In addition, a few other states have made some legislative progress in this area. Perhaps the most striking example is in Vermont, where a recent amendment to the State Planning and Development Act provided an administrative remedy for those unable to afford a lawyer to challenge exclusionary zoning, with a remedy strikingly like one of those suggested in *Mount Laurel II*. The amendment provides:

The attorney general or his designee may investigate and may hold a public hearing when there is a complaint that a bylaw or its manner of administration violates subdivision 4406(4) or subsection (d) of § 4382 or subsection (b) of § 4383 relating to mobile homes, mobile home parks and adequate housing. Upon determining after hearing that a violation has occurred, the attorney general may file an action to challenge the validity of the bylaw or its manner of administration in the superior court in the county where the municipality lies. In any such action, the municipality shall have the burden of proof to establish by a preponderance of the evidence that the challenged bylaw or its manner of administration does not violate the above provisions. If the court finds the bylaw or its

held this provision against various kinds of attack.[26] Similarly, the Massachusetts court has upheld the right of another Boston suburb to permit low- and moderate-income housing, while at the same time excluding any other type of multiple dwelling.[27] Some of the smaller states, particularly in the Northeast Corridor, have been moving in the same general direction. Even in Connecticut, where large-lot zoning is a major and much-praised tradition,[28] a court has indicated that the use of zoning to exclude people for ethnic or economic rea-

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administration to be in violation, it shall grant the municipality a reasonable period of time to correct the violation, and may extend that time. If the violation continues after that time, the court shall order the municipality to grant all requested permits and certificates of occupancy for housing relating to the area of continuing violation.

VT. STAT. ANN., tit. 24, § 4445a (Supp. 1983).

The basic provisions referred to read as follows:

§ 4406:

4) Equal treatment of housing.

A) Except as provided in section 4407(6) of this title, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.

B) No zoning regulation shall have the effect of excluding from the municipality housing to meet the needs of the population as determined in section 4382(c) of this title.

C) No provision of this chapter shall be construed to prevent the establishment of mobile home parks pursuant to chapter 153 of Title 10.

VT. STAT. ANN., tit. 24, § 4406 (Supp. 1983).

§4382:

d) A municipal plan shall consider the housing needs of the existing and projected population, and may classify suitable land areas for appropriate housing to meet the need of the existing and projected population and to further the purposes of section 4302(a) of this title.

VT. STAT. ANN., tit. 24, § 4382 (Supp. 1983).

§ 4383. The plan for a rural town:

b) A rural plan shall consider the housing needs of the existing and projected population, and may classify suitable land areas for appropriate housing to meet the need of the existing and projected population and to further the purposes of section 4302(a) of this title.

VT. STAT. ANN., tit. 24, § 4383 (Supp. 1983).

26. Board of Appeals of Hanover v. Housing Appeals Comm. in the Dept. of Community Affairs, 363 Mass. 339, 294 N.E.2d 393 (1973).

27. Cameron v. Zoning Agent of Bellingham, 357 Mass. 757, 260 N.E.2d 143 (1970).

28. Senior v. Zoning Comm'n of New Canaan, 146 Conn. 531, 153 A.2d 415 (1959), *appeal dismissed*, 363 U.S. 143 (1960).

sons "might in fact be constitutionally impermissible."[29] A similar hint was given by the Maine court at about the same time.[30]

IV. ANTI-EXCLUSIONARY LITIGATION IN THE SUPREME COURT

The role of the United States Supreme Court cannot be ignored, of course, although the state courts have been trying their best to keep the Court out of this area. Before the exclusionary issue became a crisis in New Jersey, the Supreme Court began issuing opinions which had the clear effect (one can only speculate as to the motive) of chilling the enthusiasm for anti-exclusionary litigation. The first of these[31] involved a California provision requiring that any proposed low-cost housing project—but no other type of housing—had to be submitted to a local referendum. The Supreme Court upheld this provision on the ground that a referendum was inherently a democratic device—a decision clearly traceable to Black's ancient populism. In the next case[32] the Court construed the rules on standing for federal courts rather narrowly to dismiss a case brought on behalf of black residents of Rochester against the allegedly exclusionary zoning in a nearby suburb. In a third case, *Village of Belle Terre v. Boraas*,[33] the Court rejected an attack on a suburban zoning provision which limited to two the number of unrelated individuals who could live in a house in a single-family district, whereas of course a normal family could be of any size.[34] Finally, in *Village of Arlington*

29. Zelvin v. Zoning Bd. of Appeals of Town of Windsor, 306 A.2d 151, 159, 30 Conn. Supp. 157, 171 (1973).

30. Barnard v. Zoning Bd. of Appeals of Town of Yarmouth, 313 A.2d 741 (Me. 1974).

For a number of reasons there is no need to take seriously in this connection the following rather highly publicized Pennsylvania decisions: National Land & Inv. Co. v. Kohn, 419 Pa. 504, 215 A.2d 597 (1965); Appeal of Kit-Mar Builders, Inc., 439 Pa. 466, 268 A.2d 765 (1970); and Appeal of Girsh, 437 Pa. 237, 263 A.2d 395 (1970). These decisions are clearly concerned with a quite different question—essentially that of "growth management," *i.e.*, restrictions on the amount and the rate of growth, with no trace of special concern for low- and moderate-income housing. This is perfectly clear in *Girsh*. Moreover, the leading opinion in perhaps the best-known of these, *Kitmar*, is not the opinion of the court, but merely an opinion signed by a minority of three judges. Finally, the strong language against large-lot zoning in *National Land* and *Kitmar* has, in effect, been overruled by more recent Pennsylvania cases upholding much larger lot requirements.

31. James v. Valtierra, 402 U.S. 137 (1971).

32. Warth v. Seldin, 422 U.S. 490 (1975).

33. 416 U.S. 1 (1974).

34. The case is typical of how badly some of the anti-exclusionary litigation has

Heights v. Metropolitan Housing Development Corp.,[35] the Seventh Circuit issued a strong opinion condemning suburban exclusionary zoning, yet this decision was reversed by the Supreme Court in an opinion which simply did not deal with zoning at all—it rested on a precedent[36] which involved the discriminatory effect of a civil service exam, which might be thought to raise rather different questions. Based on this precedent, the Court ruled that proof that certain restrictions had the effect of segregation was constitutionally irrelevant, so long as there was no showing of an intent to segregate. In other words, as long as segregationists refrained from shouting their motives from the housetops, they could do anything they wanted without running afoul of the Constitution.

A good deal of recent trouble has resulted from the poor choice of cases to raise the exclusionary issue before the courts. Thus, it was in a case actually involving a restriction on a landlord's right to evict[37] that the Supreme Court concluded that housing was not a "fundamental interest" triggering "strict scrutiny" under the fourteenth amendment of the Constitution. (Under the alternative "rational relationship" test, almost every state action passes; the choice of test is where the actual decision is made.) Obviously, a case like this could give the Court no notion of the full extent of the shut-out, explicitly decreed by public authority, which was fully documented only in New Jersey[38] but obviously existed elsewhere.

The Supreme Court has now been threatening to upset the whole

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been thought through. A major problem here was that the lawyers who brought the case for the student plaintiffs had run out of student plaintiffs by the time the case got to the U.S. Supreme Court—all the students originally involved had graduated, and apparently there were no new students who wished to join the attack. As a result, Douglas and the Court majority treated the matter simply as a question of the economic return to the landlord—from how many students could he get rent?

Moreover, the direct attack on the single-family principle was almost ideally designed to raise hackles about the defense of low-density areas and "the American home;" even *Mount Laurel II* does not attack that, in principle. Because the plaintiffs lost, the result was a disaster; but even if they had won, it is unlikely that the resulting principle would have been broad enough to provide much help in the main anti-exclusionary campaign on behalf of the lower-income groups.

35. 517 F.2d 409 (7th Cir. 1975), *rev'd*, 429 U.S. 252 (1977).

36 Washington v. Davis, 426 U.S. 229 (1976).

37. Lindsey v. Normet, 405 U.S. 56 (1972). *See also supra* notes 13 and 33.

38 Williams & Norman, *Exclusionary Land Use Controls: The Case of North-Eastern New Jersey*, 22 SYRACUSE L. REV. 475 (1971) and 4 LAND USE CONTROLS QUARTERLY 1 (1970). Somewhat similar documentation, on a lesser scale, is now necessarily being built up in Oregon under their land use legislation.

applecart, and in effect create a whole new land use control system, by foisting upon all the state courts a constitutional requirement that damages be paid whenever the zoning of a particular tract is found to be a "taking".[39]

V. POST-*MOUNT LAUREL I* ANTI-EXCLUSIONARY LITIGATION IN NEW JERSEY

Presumably because of extensive changes in the personnel of the New Jersey Supreme Court—in the last fifteen years there have been two practically complete turnovers in its personnel, so that in effect three courts have ruled on these matters—the New Jersey court was waffling on *Mount Laurel* issues for a long period in the late 1970's.[40] The first step backward came in *Oakwood at Madison*; that case finally did reach the court in a state ready for serious decision—and then did a lot more harm than good. The court used it to step backwards in two important ways. First, a serious question was raised about whether Middlesex County was an appropriate sub-region to consider for purposes of analyzing housing need; apparently the available documentation on this point was none too strong. Second, and much more serious, Judge Furman below had had considerable difficulty in establishing a precise figure for housing need in Madison Township, because it is very difficult to establish such a figure for a single township. (This is one reason that a case brought against a single township is inherently vulnerable.) On appeal, the New Jersey Supreme Court held that, because Furman had had so much trouble

39. *Compare* Agins v. Tiburon, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979), *aff'd*, 447 U.S. 255 (1980), *with* San Diego Gas and Elec. Co. v. City of San Diego, 450 U.S. 621, 636 (1981) (Brennan, J. dissenting). In these two cases, the plaintiffs alleged that the defendants' zoning of the plaintiffs' property constituted a "taking" requiring just compensation under the fifth amendment.

40. Of the four giants on the 1960's New Jersey court, two (Hall and Jacobs) joined in *Mount Laurel I* and retired soon thereafter. (Chief Justice Weintraub retired between the two oral arguments on *Madison* and *Mount Laurel*; Justice Francis, a bit earlier.) A somewhat different group dominated the opinions in the later 1970's, holding back from further advances, and backing water a bit. (This group, a bare majority of the court, included Chief Justice Hughes and Justices Mountain and Clifford, usually joined either by one more regular colleague or by a temporary appointee from the Appellate Division.) Justice Pashman pressed consistently for a more activist course; Justice Schreiber and (occasionally) Justice Sullivan were in between. The *Mount Laurel II* court included only Clifford from the consistent "holding-backers;" Pashman naturally agreed, and Schreiber and Sullivan did also. Chief Justice Wilentz (author of the opinion) and Justices Handler and Pollack were new to this controversy.

in establishing this figure, the court would affirm his decision that he did not have to set such a figure. Ironically, by that time Judge Furman had tried a much more broadly-based suit, challenging exclusionary zoning in Middlesex County.[41] With the county-wide picture before him, Furman had been able to establish a figure for housing need in Madison Township *before* the New Jersey Supreme Court had finally passed on the *Oakwood at Madison* appeal, affirming that he could not and need not do so. This created enormous confusion, as lower courts began to interpret the *Oakwood at Madison* decision as saying not only that it was unnecessary to establish a precise figure, but that it was improper to do so. The basic notion in *Oakwood at Madison*, that towns are more likely to comply with a general instruction to do something, and less likely to comply if they are told exactly what to do, is one of those things which simply passes all understanding.

A second major retreat came with respect to fully-developed municipalities, of which there are many in New Jersey. In two cases in 1977, a sharply-divided court held that the *Mount Laurel* rationale, which in the original opinion was limited to "developing municipalities," did not apply to municipalities which were fully developed.[42] As dissenters naturally pointed out, this meant that if a town could somehow get away with exclusionary zoning until its vacant land was used up, then it was in free and clear—there was no need to bother about the poor. As the Court subsequently pointed out in *Mount Laurel II*, such municipalities—at least when they were located in areas with any growth potential—would have a definite but relatively small need for low- and moderate-income housing, if only to preserve for people the possibility of staying in a community where they grew up.

All of this waffling came to a very sharp end with *Mount Laurel II*.

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41. Urban League of Greater New Brunswick v. Carteret, 142 N.J. Super. 11, 359 A.2d 526 (1976), *rev'd*, 170 N.J. Super. 461, 406 A.2d 1322 (1979) (and again reversed as one of the cases decided along with *Mount Laurel*).

42. Pascack Ass'n Ltd. v. Washington, 74 N.J. 470, 379 A.2d 6 (1977); Fobe Assocs. v. Demarest, 74 N.J. 519, 379 A.2d 6 (1977). The vote was five to two—or, arguably, four to three. Both were overruled by *Mount Laurel II*.

Another prime example of waffling came in Home Builders' League of S. Jersey, Inc. v. Berlin, 81 N.J. 127, 405 A.2d 381 (1979) (opinion by Schreiber, J.), where the court rejected all the real substance of *Lionshead Lake*, see *supra* note 4 and accompanying text, but did not explicitly overrule it.

On the pattern of voting in this period, see also State v. Baker, 81 N.J. 99, 405 A.2d 368 (1979) (Hughes, C.J. and Mountain, J. dissenting).

VI. *MOUNT LAUREL II*

The unanimous opinion in *Mount Laurel II*[43] is profoundly significant in a number of ways. Perhaps its most striking feature, as of this moment, is that it stands squarely and quite unabashedly in the long tradition of American liberal humanitarianism. The implications of this tradition for the *Mount Laurel* kind of problem are clear enough: it is the function of judges to vindicate the basic values of our civilization, as it is the function of decent human beings to take a serious interest in helping those less fortunate.[44] *Mount Laurel II* states specifically that the planning and zoning powers must not be used to favor rich over poor. The description of the prevailing pattern of ghettoization-by-law rivals that by Justice Hall in the classic *Vickers* dissent. The natural consequence of the prevailing attitude in the opinion is a policy of judicial activism. More frankly than most, the opinion says almost directly that when a major constitutional right is involved and the Legislature does not act, the responsibility to act passes to the judiciary.[45]

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43. 92 N.J. 158, 456 A.2d 390 (1983). Twenty-six months elapsed between oral argument (by some 40 lawyers) and the opinion.

44. This is particularly striking because of the sharp contrast with the dominant mood in Washington—a mood emphasizing a favoritism to the very rich and to developers, which has been practically unheard of since before the days of Teddy Roosevelt.

45. The court stated:

> No one has challenged the *Mount Laurel* doctrine on these appeals. Nevertheless, a brief reminder of the judicial role in this sensitive area is appropriate, since powerful reasons suggest that the matter is better left to the Legislature. We act first and foremost because the Constitution of our State requires protection of the interests involved and because the Legislature has not protected them. We recognize the social and economic controversy (and its political consequences) that has resulted in relatively little legislative action in this field. We understand the enormous difficulty of achieving a political consensus that might lead to significant legislation enforcing the constitutional mandate better than we can, legislation that might completely remove this Court from those controversies. But enforcement of constitutional rights cannot await a supporting political consensus. So while we have always preferred legislative to judicial action in this field, we shall continue—until the Legislature acts—to do our best to uphold the constitutional obligation that underlies the *Mount Laurel* doctrine. That is our duty. We may not build houses, but we do enforce the Constitution.

92 N.J. at 212-13, 456 A.2d at 417.

> The situation must be remedied. In the absence of executive or legislative action to satisfy the constitutional obligation underlying *Mount Laurel*, the judiciary has no choice but to enforce it itself. Enforcement, to be effective, will require firm judicial management.

92 N.J. at 252, 456 A.2d at 438.

In the same vein, the opinion is a superb example of "legal realism." The opinion fairly bristles with fine examples of this. Among the more obvious is the demonstration that it is "nonsense" to call inclusionary zoning "socio-economic,"[46] and argue that it is therefore impermissible, while assuming that other zoning regulations have no such purpose; a large number of zoning regulations have always had major social or economic consequences, which are well known to those who invoke them.[47] The only question is whether zoning can be "socio-economic" in a socially progressive sense, as well as in a regressive sense. Again, there is the demonstration that under present circumstances reliance on "filtering down" to provide housing for the poor is absurd. What is happening instead, in a period of heavy inflation, is that bad housing is filtering up to higher-income groups.[48]

The opinion reflects the time needed for its preparation (more than two years) by the care with which various possible dodges are foreseen and foreclosed. For example, it is noted that local population forecasts need not be considered conclusive, because these may themselves incorporate an assumption of continued exclusionary zoning.[49] Moreover, the Court does not hesitate to face some of the most difficult issues. For example, in reference to keeping lower-income housing in the lower-income brackets, it is stated specifically the towns *must* deal with this problem.[50] Finally, the opinion fairly crackles

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This case (*Mount Laurel*) is accompanied by five others, heard together and decided in this opinion. All involve questions arising from the *Mount Laurel* doctrine. They demonstrate the need to put some steel into that doctrine.

92 N.J. at 199-200, 456 A.2d at 410.

This puts more directly than usual the theory obviously underlying activist judicial remedies in the desegregation and reapportionment cases over the last two decades. The parallels to the situation in exclusionary zoning are obvious. First, after a new constitutional right has been declared, its implementation requires extensive revision of legislative and administrative arrangements. Second, the machinery which needs to be revised for that purpose remains in the hands of those whose good faith cooperation is open to serious question. (The township of Mount Laurel has certainly been going out of its way to emphasize this point in these proceedings.) Third, for an effective remedy, continuing judicial supervision is necessary. *See generally* Williams, Doughty, & Potter, *The Strategy on Exclusionary Zoning: Towards What Rationale and What Remedy?*, 1972 LAND USE CONTROLS ANNUAL 177 (a memorandum which became the basis of *Urban League of New Brunswick*).

46. 92 N.J. at 272-73, 456 A.2d at 449.

47. *Id.* at 273, 456 A.2d at 449.

48. *Id.* at 278, 456 A.2d at 451-52.

49. *Id.* at 257-58, 456 A.2d at 441.

50. *Id.* at 269, 456 A.2d at 447.

with sharp language.[51]

The opinion opens up new ground in several ways. In addition to reaffirming the *Mount Laurel I* doctrines on "regional general welfare" and "fair share," and the importance of employment in connection therewith, the opinion goes on at enormous length—it runs over 120 pages in the ATLANTIC REPORTER—to spell out in detail how to make these doctrines effective. It is clear that the court intends to do

51. The court said:

> This is the return, eight years later, of Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975) (*Mount Laurel I*). We set forth in that case, for the first time, the doctrine requiring that municipalities' land use regulations provide a realistic opportunity for low and moderate income housing. The doctrine has become famous. The *Mount Laurel* case itself threatens to become infamous. After all this time, ten years after the trial court's initial order invalidating its zoning ordinance, Mount Laurel remains afflicted with a blatantly exclusionary ordinance. Papered over with studies, rationalized by hired experts, the ordinance at its core is true to nothing but Mount Laurel's determination to exclude the poor. Mount Laurel is not alone; we believe that there is widespread non-compliance with the constitutional mandate of our original opinion in this case.
>
> To the best of our ability, we shall not allow it to continue. This Court is more firmly committed to the original *Mount Laurel* doctrine than ever, and we are determined, within appropriate judicial bounds, to make it work. The obligation is to provide a realistic opportunity for housing, not litigation. We have learned from experience, however, that unless a strong judicial hand is used, *Mount Laurel* will not result in housing, but in paper, process, witnesses, trials and appeals. We intend by this decision to strengthen it, clarify it, and make it easier for public officials, including judges, to apply it.

Id. at 198-99, 456 A.2d at 409-10.

And again, in the warnings against misuse of the doctrine by developers:

> Of at least equal importance, the criteria will not necessarily result in the imposition of the obligation in accordance with sound planning. There may be areas that fit the "developing" description that should *not* yield to "inevitable future residential, commercial and industrial demand and growth." Those areas may contain prime agricultural land, open spaces and areas of scenic beauty; apart from these their development might impose unacceptable demands on public investment to extend the infrastructure required to support such growth. Indeed, to some extent the very definition of "developing" suggests results that are quite the opposite of sound planning, for the whole purpose of planning is to prevent or deflect what would otherwise be "inevitable."

Id. at 224, 456 A.2d at 425.

> Builders may not be able to build just where they want—our parks, farms, and conservation areas are not a land bank for housing speculators. But if sound planning of an area allows the rich and middle class to live there, it must also realistically and practically allow the poor. And if the area will accommodate factories, it must also find space for workers. The specific location of such housing will of course continue to depend on sound municipal land use planning.

Id. at 211, 456 A.2d at 416.

everything possible to see to it that they will be effective. First, in place of the distinction between "developing" and "developed" areas, *Mount Laurel II* makes the doctrines apply only in "growth areas" as indicated on an officially adopted State Development Guide Plan.[52] The cases exempting any fully-developed municipality are therefore overruled. (The opinion can be quoted both ways as to whether the obligation applies also to the indigenous poor, living in substandard housing in non-growth areas; this is one of the few points where the opinion is not clear.)[53] Second, a wide range of choices is left open to towns to comply with the *Mount Laurel* obligation, yet the opinion is clear and very firm that towns may have to do more than merely remove obstacles to inexpensive housing. If necessary to get results, the towns are obligated to take further affirmative steps to encourage both low- and moderate-income housing. Such actions may include subsidies—that is, requirements that a stated percentage of a project must be devoted to low- or moderate-income housing.[54] The most

52. NEW JERSEY DEPT. OF COMMUNITY AFFAIRS, DIVISION OF STATE AND REGIONAL PLANNING, STATE DEVELOPMENT GUIDE PLAN (1980). The plan was based on many years of intensive work by a respected planning group, and has been used for some years in various state-level reviews of development proposals. In the plan the land in New Jersey has been allocated into the following categories:

Urban Aid Municipalities
Growth Areas
Limited Growth Areas (essentially, a land reserve to accommodate some moderate growth)
Agriculture Areas (with the best soil)
Conservation Areas (to protect natural resources)
Various special areas already under special protection
—the Coastal Zone and the Pinelands

The proposal is that public investment in infrastructure should be concentrated in the growth areas, and generally kept out of the others. The important point is that in the Plan these categories have been applied to specific areas of land: there are county maps showing fairly precise boundaries for the various categories, together with township boundaries (for purposes of orientation).

Some reservation may be appropriate as to the wisdom of depending so heavily on the State's Guide Plan. Such administrative measures can easily be gutted if the pressure becomes heavy enough, and the Kean Administration in New Jersey has already taken a number of steps which appear to gut what is left of a once-impressive state planning function. The opinion does indicate some concern about this in a footnote, however, suggesting that the plan will be relied upon so long as, and only so long as, the court regards it as a sound planning document. (This of course may open up other problems for the court in the future.)

If the state government chooses not to cooperate, implementation will of course be much more difficult.

53. 92 N.J. at 214-15, 456 A.2d at 418.

54. *Id.* at 265-69, 456 A.2d at 445-47.

realistic remedy of all is explicitly stated: towns have an obligation to zone substantial land to accommodate mobile homes. This is an easy remedy which is obviously well within the judicial competence.[55] (*Vickers* is therefore overruled.) Third, the size of the fair-share obligation must be quantified precisely—[56] thus overruling the disastrous opinion in *Oakwood at Madison*. Fourth, it is recognized that a calculation of "fair share" may result in different allocations to different kinds of towns, and the opinion emphasizes strongly that the *Mount Laurel* obligation need not preclude diversity of development in various parts of New Jersey.[57] In this context considerable emphasis is given to several major themes: the importance of environmental considerations, the appropriateness in certain areas of large-lot zoning, and even the desirability of no-growth areas, as visualized in the adopted plan.[58] Finally, it is stated explicitly that the anticipated financial disadvantages resulting from compliance provide no excuse for non-compliance.[59] The *Mount Laurel* doctrine explicitly applies only to low- and moderate-income housing, however, and not to any form of more expensive housing.

A long section on specific remedies is equally impressive, and equally determined. In brief summary, all *Mount Laurel* litigation from now on will be handled by three judges specially assigned to handle such cases; in all instances such litigation must be settled in a single trial, with no right of appeal until *after* a remedy has been either agreed upon or assigned. (The assignment of three judges should in time help to clear up the problems resulting from a possible initial lack of consistency of decisions about regions and fair-share allocations.) Moreover, judges are encouraged to appoint special masters to help towns make the necessary zoning changes; specific instructions are set forth as to when a builder's remedy is indicated.[60]

Major constitutional litigation may serve to trigger major political and even social readjustments, and has repeatedly done so—but only when public opinion is reasonably sympathetic, and when there are some who are willing to take the initiative to conform. On the surface the 1980's do not look like a propitious time to implement *Mount*

55. *Id.* at 274-75, 456 A.2d at 450.
56. *Id.* at 256-57, 456 A.2d at 440.
57. *Id.* at 219-20, 456 A.2d at 421.
58. *Id.* at 230, 456 A.2d at 426.
59. *Id.* at 285, 456 A.2d at 455.
60. *Id.* at 314-15, 456 A.2d at 470-71.

Laurel. The New Jersey Supreme Court has dared to assume that basic democratic values can be vindicated now, over powerful political and institutional opposition. The next few years will show us whether it is right.