

~~W. V. Carter~~ CA-General 1/21/76

Depositions upon oral examination of
Ernie Erber.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - MIDDLESEX COUNTY
DOCKET NO. C-4122-73

URBAN LEAGUE OF GREATER NEW
BRUNSWICK, a non-profit
corporation of the State of
New Jersey, et al.,

Plaintiffs,

-vs-

THE MAYOR AND COUNCIL OF THE
BOROUGH OF CARTERET; TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
CRANBURY; MAYOR AND COUNCIL
OF THE BOROUGH OF DUNELLEN;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF EAST BRUNSWICK;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF EDISON; MAYOR
AND COUNCIL OF THE BOROUGH
OF HELMETTA; MAYOR AND COUNCIL
OF THE BOROUGH OF HIGHLAND
PARK; MAYOR AND COUNCIL OF
THE BOROUGH OF JAMESBURG;
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MADISON; MAYOR
AND COUNCIL OF THE BOROUGH
OF METUCHEN; MAYOR AND
COUNCIL OF THE BOROUGH OF
MIDDLESEX; MAYOR AND COUNCIL
OF THE BOROUGH OF MILLTOWN
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MONROE; TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
BRUNSWICK; TOWNSHIP
COMMITTEE OF THE TOWNSHIP

DEPOSITIONS UPON

ORAL EXAMINATION

OF

ERNIE ERBER

RICHARD C. GUINTA

CERTIFIED SHORTHAND REPORTER

53 PATERSON STREET

NEW BRUNSWICK, N.J. 08901

PHONE: 247-5551

1 OF PISCATAWAY; TOWNSHIP
2 COMMITTEE OF THE TOWNSHIP
3 OF PLAINSBORO; MAYOR AND
4 COUNCIL OF THE BOROUGH OF
5 SAYREVILLE; MAYOR AND
6 COUNCIL OF THE CITY OF
7 SOUTH AMBOY; TOWNSHIP COMMITTEE
8 OF THE TOWNSHIP OF SOUTH
9 BRUNSWICK; MAYOR AND COUNCIL
10 OF THE BOROUGH OF SOUTH
11 PLAINFIELD; MAYOR AND COUNCIL
12 OF THE BOROUGH OF SOUTH
13 RIVER; MAYOR AND COUNCIL
14 OF THE BOROUGH OF SPOTSWOOD;
15 TOWNSHIP COMMITTEE OF THE
16 TOWNSHIP OF WOODBRIDGE.

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Defendants.

TRANSCRIPT OF DEPOSITIONS, taken by and before
RICHARD C. GUINTA, Notary Public and Certified Shorthand
Reporter of the State of New Jersey, at the Metuchen Borough
Hall, Metuchen, New Jersey, on Wednesday, January 21, 1976,
commencing at 10:15 a.m.

1 A P P E A R A N C E S :

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4 and
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6 Attorneys for the Plaintiffs

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8 Attorney for the Borough of Carteret

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11 Attorneys for the Township of Cranbury

12 MESSRS. BUSCH & BUSCH
13 By: Bertram E. Busch, Esquire
14 Attorneys for the Township of East Brunswick

15 RICHARD F. PLECHNER, ESQUIRE
16 and
17 ALAN O. DAVIDSON, ESQUIRE
18 Attorneys for the Borough of Helmetta

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21 Attorneys for the Borough of Highland Park

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By: Joseph Baker, Esquire
Attorneys for the Borough of Sayreville

MESSRS. SEIFFERT, FRISCH & GRUBER
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SANFORD E. CHERNIN, ESQUIRE
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ARTHUR W. BURGESS, ESQUIRE
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MESSRS. JOHNSON & JOHNSON
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MESSRS. RAFANO AND WOOD
Attorneys for the ~~Borough~~ of South River

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I N D E X T O W I T N E S S

WITNESS

DIRECT

CROSS

ERNIE ERBER

By Mr. Plechner	4 37 127	
By Mr. Johnson	9	
By Mr. Lerner	9	180
By Mr. Shapiro	24	
By Mr. Bernstein	26 35	
By Mr. Spritzer	33	
By Mr. Moran	35	
By Mr. Busch	36 122	
By Mr. Chernin		142
By Mr. Cummins		203

I N D E X T O E X H I B I T S

EXHIBIT

DESCRIPTION

IDENTIFICATION

DH-1	Fair Share Allocation	38
DH-2	1976 Letter, three pages	104

1 E R N I E E R B E R, sworn.

2 10425 May Wind Court, Columbia, Maryland.

3 DIRECT EXAMINATION BY MR. PLECHNER:

4 Q Mr. Erber, could you give us your educational
5 background as a planner?

6 A My education is in the practice of planning. I
7 have no formal degrees.

8 Q How long have you been a planner?

9 A Since 1949.

10 Q Could you tell us what your experience has been
11 as a planner?

12 A During the period of 1949 to 1960, I worked for
13 the Passaic Valley Citizens Planning Association. At
14 the end of 1949, taking over as executive director.

15 In 1960, I went on to the staff of the Regional
16 Plan Association, based in New York, which, at that time,
17 decided to open an office and create a separate New Jersey
18 Committee of the Regional Plan Association.

19 The office was located in Newark, New Jersey. I
20 directed the area studies for the Regional Plan Association
21 for northern New Jersey from 1959, part-time, 1960 full-time
22 to the end of 1968, when I went on to the staff of the
23 National Committee Against Discrimination In Housing, the
24 organization that employs me at present.

25 And I went on to that staff with the title of Director

1 of Research and Program Planning, which position I occupy
2 as of now.

3 During the course of my planning activity, I did
4 local planning consulting work for, I believe, some seven
5 or eight municipalities in Passaic, Bergen and Essex
6 Counties, and during the 1960's I did regional planning
7 work for the Planning Association, the work for the National
8 Committee Against Discrimination In Housing has been both
9 regional and national.

10 The regional work being largely in the New York
11 Metropolitan area, devoted to a study of the relationship
12 of homes to jobs, and then followed that with studies of
13 larger developments in housing at the national level
14 in different parts of the country.

15 Q You said you had no degrees in planning. What is
16 your academic training?

17 A My academic training, I'm a high school drop-out.

18 Q Could you tell us the towns that you did planning
19 for in Passaic?

20 A City of Passaic, City of Clifton, Town of Nutley,
21 Borough of Garfield, Lodi, Wallington, East Rutherford.

22 There may have been some others, but those come
23 to my mind.

24 Q Did you draft a master plan for any of those plans?

25 A I drafted master plans for Passaic, Clifton, East

1 Rutherford, Wallington.

2 I think we updated the master plan in East Rutherford.
3 I did a master plan for the reclamation of the Hackensack
4 Meadows for the Borough of East Rutherford and then for a
5 Meadowlands Regional Planning Board, which was the outgrowth
6 of the earlier East Rutherford study.

7 The latter master plan was done for a Regional Board
8 of five communities that had land in the meadowlands.

9 Q Did you do these as a consultant by yourself or
10 did you do these for a consulting firm?

11 A I did these as the executive director of the Passaic
12 Valley Citizens Planning Association, which entered into
13 a contract with these communities to do these plans.

14 Q Were other people working on these with you or
15 did you do these alone?

16 A No, I had other people. I had a staff, a professional
17 staff.

18 I was, of course, the responsible planner and took
19 the responsibility for the product, for both my own
20 board and for the municipality that had contracted for it.

21 Q Incidentally, are you licensed as a planner in the
22 State of New Jersey?

23 A I was licensed, but since I'm not living in New
24 Jersey, I permitted my license to lapse.

25 Q Have you ever drafted a zoning ordinance for a

1 municipality?

2 A Yes, I have.

3 Q Could you tell us what municipalities?

4 A City of Passaic, City of Clifton, City of Garfield,
5 East Rutherford. I'm not sure how many others I drafted
6 from scratch, but I know that in Nutley we revised the
7 zoning ordinance and there were several other towns where
8 we worked on revisions and updating.

9 Q And again, was this by yourself or was this as
10 executive director of --

11 A As executive director of the Passaic Valley Citizens
12 Planning Association.

13 Q During what period did you draft these master plans
14 and zoning ordinances?

15 A During the period between 1949 and 1959.

16 Q Have you drafted any since 1959 in New Jersey?

17 A I have not drafted any, no.

18 Q Have you ever in your capacity as a planner planned
19 any residential or mixed residential developments?

20 A Yes, I have.

21 Q Could you tell us where and for which developers?

22 A Are you speaking for a developer specifically?

23 Q Well, let's first ask for a developer. Have you
24 done it for any commercial developers?

25 A No, only working with developers, but as a representative

1 of a municipality.

2 Q And have you --

3 A I should say --

4 Q You've reviewed plans, in other words.

5 A I reviewed plans and made proposals for revisions.

6 I think I once did some consulting work for a firm of
7 Frogman and DePetro, which is interested in developing
8 a large tract of land in Sussex County, and I visited the
9 site and did some work on that. But the development
10 finally did not proceed and it was just preliminary studies
11 on that.

12 Q So you have never actually planned a development,
13 is that correct?

14 A For a developer, no.

15 Q Now, Mr. Erber, have you done any planning in the
16 County of Middlesex?

17 A I've done planning studies that relate to Middlesex.

18 Q But, have you done any planning for any municipality
19 in Middlesex?

20 A No.

21 Q Or have you done any planning for the County of
22 Middlesex?

23 A No, I have not.

24 MR. PLECHNER: Off the record.

25 (Discussion off the record.)

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(After discussion.)

BY MR. JOHNSON ON QUALIFICATIONS:

Q I have one question.

You indicated that you had at one time a New Jersey license as a professional planner. During what period of time was that?

A I believe -- whatever the year was that licensing took effect, and my closest recollection would be that it was about 1958. I think my license number is 125.

Q And how long did you have that license before you allowed it to lapse?

A I believe to the end of the 1960's.

MR. JOHNSON: That's all, thank you.

BY MR. LERNER:

Q Mr. Erber, my name is Lawrence Lerner, L-e-r-n-e-r, attorney for the Borough of Highland Park. With regard to this Citizens Authority, what was that?

A That was a privately constituted, non-profit organization that was formed in the late 1940's, when there was very little or no official or municipal planning being undertaken in the counties of Passaic and Bergen, and a group of business leaders who were concerned with developments that were taking place organized to inform the public and elected officials of the necessity of planning and created

1 an official planning staff **to do pilot studies**
2 that would indicate what could be gained through planning,
3 the result of which was that when the officials were
4 convinced that planning was a good thing for their clients,
5 they invariably turned to the professional staff of this
6 organization, so we became sort of advocates of planning
7 and practitioners under contract to these towns.

8 Q Who was the founder of this organization, to your
9 knowledge?

10 A Well, the man mostly identified as its founder is
11 a man named Albert Metz, president of the Okonite Cable
12 Company in Passaic, and served as first president. There
13 were a succession of other people.

14 Q Mr. Metz himself was not a planner.

15 A No.

16 Q Do you consider him to have been, in general parlance,
17 the guiding light to amass the staff, or funded the group
18 to start or what?

19 A Well, he mainly raised the funds through business
20 sources in the Passaic and Clifton area, and I believe
21 relied almost entirely on the guidance of the Regional
22 Plan Association for the design of the staff and its program.

23 Q Now, in the year 1949, did New Jersey, in fact,
24 license planners?

25 A No, it did not.

1 Q And the work that was done by this Passaic Valley
2 Citizens Planning Authority, was that gratuitously performed
3 for a period of time, and then at a time later the Authority
4 charged for its services, or was it always gratuitous or
5 did it always charge?

6 A No. It started as a gratuitous service, funded by
7 public subscription, and, I believe in 1950 or '51 a
8 contract was signed with the City of Passaic, which to my
9 recollection was the first contract that required payment.

10 Q Did the City of Passaic have at that same time its
11 own planning department or planning staff?

12 A No, it did not. It had a Planning Board, but it
13 had no consultants or staff.

14 Q The Planning Board meaning a statutory Planning Board?

15 A Yes.

16 Q In the late 1950's, would you state that the work
17 of the Citizens Planning Authority was more contractual
18 than gratuitous?

19 A Yes, it was.

20 Q It evolved to that point in its life span?

21 A Yes. Actually, I believe that after 1951 or '52,
22 there was very little gratuitous work done on what we
23 might call the municipal level. The gratuitous work was
24 mainly for the larger Passaic, Bergen region, relating to
25 location of highways, flood control of the Passaic River and

1 other regional studies, potable water supply studies. Those
2 were done as gratuitous studies.

3 Q And towns were eventually -- tied their own planning
4 structures into the overall plan that your group had formed?

5 A Yes, in large part, that was true. That was the
6 objective of the Association to get that kind of regional
7 coordination of planning.

8 Q And, really, it effected, in essence, natural courses,
9 where it transcended the geographic boundaries of these
10 municipalities, is that the overall picture you were trying
11 to tie in?

12 A Yes. For instance, we did an urban renewal study
13 in Passaic, and since this urban renewal study took place
14 in a blighted area that extended across the line into the
15 City of Clifton, we convinced the City of Clifton to also
16 engage in urban renewal, and have an urban renewal study
17 made of that same area on its side of the line, and we
18 tried to get the federal authorities to recognize this as
19 a joint renewal project, which had some difficulty, because
20 there was no precedent for this in federal operations.

21 But, eventually, both areas were renewed.

22 Q In 1960, you say you joined the Regional Plan
23 Association, the New Jersey Committee.

24 A Right.

25 Q Now, that is a different entity as opposed to the

1 Passaic Valley Citizens Planning Authority?

2 A Yes.

3 Q Were you a salaried member of that group?

4 A Yes. I joined the staff of the Regional Plan
5 Association.

6 Q Now, is that a group that contracted out its services,
7 or did it offer gratuitous services?

8 A No, that offered gratuitous services.

9 Q Who funded that particular organization?

10 A Well, that organization was founded in 1929, and,
11 actually its professional work started in 1922. At that
12 time, it was funded by foundation support.

13 I believe there's been foundation support of the
14 Regional Plan Association since 1922 to this day, although
15 there are some preliminary studies they have taken under
16 contract to the federal government, to states, to the
17 Port of New York Authority, I guess now the Port Authority
18 of New York and New Jersey, and to other -- to the City
19 of New York.

20 I don't believe that they have done any work at
21 the level of counties or municipalities since the 1940's.

22 Q The work that you've performed for them in New
23 Jersey, Northern New Jersey, was that gratuitous work or
24 contract work?

25 A That was, to the best of my recollection, all

1 gratuitous work, what we would call public service work.

2 Q And that work dealt with what areas of New Jersey?

3 A It dealt with nine counties of Northern New Jersey,
4 Hudson, Bergen, Passaic, Essex, Morris, Somerset, Middlesex,
5 Monmouth, Union, if that adds up to nine, that's it.

6 Q What work was it that you did for them?

7 A We did studies on overall metropolitan regional
8 development trends as they affected the counties of Northern
9 New Jersey. This dealt with -- we were very much involved
10 in studies of traffic and transportation. These studies
11 required us to study and to project population growth,
12 employment growth, the demand for various types of services.

13 We studied the impact of poverty upon the ability
14 of old cities to provide services, we played an active role
15 in connection with the efforts to reclaim and develop the
16 Hackensack meadowlands.

17 Q How large a staff was represented in this grouping?

18 A The staff of Regional Plan at that time, I think,
19 was probably about thirty or thirty-five, three of whom
20 worked in the New Jersey office, the New Jersey studies
21 were done in New York and New Jersey. We were kind of a
22 field extension of the main staff.

23 Q So that the -- someone did all the field work was
24 represented by yourself and two other people.

25 A Right.

1 Q And they are responsible for all this work that
2 was done in the nine counties.

3 A No, they are not, because the staff as a whole
4 worked in New Jersey, as well as Long Island or West
5 Chester County. The work of the New Jersey office was
6 the first of what were to become a series of field offices.
7 As it turned out, funds were not available to establish
8 similar offices in Long Island, West Chester and Connecticut
9 area as had been intended.

10 Actually, my title was Area Direc -- title was
11 Areas Director, because while I worked out of New Jersey,
12 I was really in charge of local work in other parts of
13 the New York, metropolitan area.

14 But, we never succeeded in setting up the separate
15 offices.

16 Q Would it be fair to say that even though three
17 people were in the area office, the entire staff worked
18 on each project?

19 A Yes.

20 Q Meaning the entire staff of the Regional Plan
21 Association.

22 A Right.

23 Q So that the New Jersey Committee was merely an
24 office designation, in essence.

25 A That's right. Well, when you say, "merely an

1 office designation, we were to keep closer tabs on what was
2 developing in New Jersey, to make that input.

3 Q To the main office, which had the bulk of the staff.

4 A Right. And also to a Regional Plan Committee of
5 New Jersey, which what was sort of a semi-autonomous
6 offshoot of the Board of Regional Plan Association, which
7 was composed of people from New Jersey who served on the
8 committee.

9 Q At the same time that you were working on this
10 project in New Jersey, were there other groups working on
11 projects affecting West Chester County, New York and Long
12 Island?

13 A Not separate groups. It was just done by the
14 Regional Plan as a whole.

15 Q So at the same time, the work was being done on
16 behalf of New Jersey, works were being done on behalf of
17 other sections of the state.

18 A Yes, but not by separate offices.

19 Q All the work was being done out of one office.

20 A Yes.

21 Q When did you leave that job? I think I missed that.

22 A I left that job -- actually, I left that job in --
23 February first, 1969.

24 Q Sixty-nine?

25 A Yes.

1 Q So you were there from approximately 1960 to
2 approximately 1969.

3 A Right. There was a transition during '59 to '60,
4 when I stayed on as part-time director of the Passaic
5 Valley Association and assumed the job with Regional Plan
6 as part-time in order to have a transition period while
7 Regional Plan Association was looking for someone as my
8 successor.

9 So the period of '59, '60, I was involved in both,
10 and from '60 on, I was involved only with Regional Plan.
11 I left Regional Plan, as I say, actually beginning with
12 the National Committee Against Discrimination In Housing
13 February 1, 1969.

14 Q Can you tell me when New Jersey first licensed
15 planners?

16 A I tried to remember, in answer to that question
17 earlier. I believe it was in -- sometime in the late 50's.

18 Q And do you know whether or not a test was required
19 to secure a license at that time, or whether or not --

20 A No, there was not.

21 Q So that the mere application was required, with no
22 testing procedure, as much as you know?

23 A No, but one had to be able to certify for members
24 of a board that there had been adequate years of prior
25 experience to receive the license.

1 Q Is that true today?

2 A No, that is not true today.

3 Q So that would it be fair to state that you received
4 your license, based upon your past experience, as opposed
5 to the educational background, and today -- and no test
6 was required.

7 Whereas, today, a written test or some kind of
8 testing procedure is employed to license?

9 A I believe your question involves some reference to
10 educational background.

11 Q I'm skipping over that. I'm just assuming that
12 whatever --

13 A The record should show that.

14 Q Well, the record can speak for itself. But, the
15 procedure for applying for a license did not require a
16 test when you were licensed, it merely required some kind
17 of educational background, which I understand you stated
18 before, you were a high school drop-out.

19 A That's right.

20 Q But, it was primarily based, if I can be fair to
21 you and the record, based on your past experience in the
22 field, and that was what was utilized as a basis for
23 your licensing.

24 A Yes. Just the way attorneys used to be licensed
25 before you had law schools.

- 1 Q Well, I guess --
- 2 A And still are, by the way, in some states.
- 3 Q Well, I don't know of any.
- 4 A I read that in the New York Times very recently.
- 5 Q Well, I wasn't aware of that too. And since --
- 6 A Like Abe Lincoln.
- 7 Q Since 1969, you have, in fact, been an employee of
- 8 the National Committee Against Discrimination In Housing,
- 9 is that correct?
- 10 A Yes, I am.
- 11 Q And during that period of time, what time have you
- 12 spent devoted to New Jersey affairs? If any.
- 13 A Yes, I have spent time. Between 19 -- beginning of
- 14 1969 and the end of 1972, a great deal of my time was
- 15 devoted to a project which we called The Study of Jobs and
- 16 Homes. This was funded by the Carnegie Corporation of
- 17 New York, which is a foundation. It studies the relationship
- 18 of employment opportunities in relation to housing opportunities
- 19 for minorities in the New York metropolitan area, which,
- 20 of course, includes the Northern part of New Jersey.
- 21 Q What was the area that you used for this study?
- 22 It was conducted, I understand, for the Carnegie Foundation,
- 23 affecting New York City?
- 24 A No, for the metropolitan area.
- 25 Q And what was included in that area?

1 A It was conducted for the National Committee Against
2 Discrimination In Housing.

3 Its funds were supplied by the Carnegie Foundation.

4 Q And what was the area you surveyed for that project?

5 A Northern New Jersey --

6 Q Could you break that down a little bit finer for me?
7 What areas of New Jersey?

8 A Well, again, the nine northern counties of New Jersey.
9 That's --

10 Q Hudson, Bergen, Passaic, Middlesex, Essex, Somerset,
11 Monmouth, Middlesex and Union?

12 A That's right.

13 And of those nine, we identified for special study
14 three of them, which were Bergen County, Essex County and
15 Middlesex County, because we felt they each represented
16 a different set of factors in metropolitan regional growth.

17 Q And this was included in a study, you say, of New
18 York City.

19 A No, New York metropolitan area.

20 Q Well, did you go into West Chester County, then?

21 A Yes.

22 Q I'm trying to find out the definition of the New
23 York metropolitan area.

24 A Well, generally the New York metropolitan area has
25 been -- the original concept of the New York metropolitan

1 area was established by the Regional Plan Association in
2 the early 1920's and hasn't changed, really, since then.

3 It includes the nine New Jersey counties which I've
4 mentioned, it includes Rockland County, West Chester County,
5 and a part of Dutchess County in the -- the lower part of
6 Dutchess County in New York State, that part of New York
7 State, over onto Long Island it includes the -- in addition
8 to the Boroughs of New York City, Queens and Brooklyn, it
9 includes Nassau and Suffolk Counties.

10 It includes the southwestern corner of Connecticut,
11 which no longer has counties, abolished in Connecticut,
12 but they're identified by State Planning areas.

13 Q This would be up to, about Stamford, Greenwich?

14 A It includes Stamford, yes.

15 Q And the areas you worked on, the Regional Planning
16 Association, would also be these same areas that you have
17 now designated as the metropolitan New York area?

18 A Right.

19 Q So that the area that you're familiar with, from
20 1959, 1960, through today, would be the same basic area.

21 A Right.

22 Q While you were working for the National Committee
23 Against Discrimination In Housing, you indicated this
24 particular project was 1969 through 1972.

25 Did that result in a written work?

1 A Yes, it did. It resulted in an interim report and
2 a final report.

3 Q And how was that entitled?

4 A I think the title in both cases is Jobs/Housing,
5 then there's a subtitle, which is rather long, and I can't
6 give it to you exactly from memory, but it says something
7 about a study of opportunities for housing and employment
8 for minorities in the New York metropolitan area. And one
9 is entitled Interim Report and one is entitled Final Report.

10 Q Is this document in print today?

11 A Copies are available, yes.

12 Q From where?

13 A Well, we have copies.

14 Q The National Committee Against Discrimination In
15 Housing.

16 A Yes.

17 Q If I write to them, will they send me one?

18 A Yes, they sure will.

19 MR. SEARING: You don't even have to
20 write.

21 Q Since 1972, can you describe your work efforts for
22 the National Committee Against Discrimination In Housing?

23 A Well, we have made studies of the changing character
24 of cities, with regard to race, especially looking into
25 evidence as to whether there is any recent period, any

1 evidence of whites moving back into cities --

2 Q Excuse me, but I really didn't mean the question
3 the way you're answering it, and it was my fault.

4 I meant, with regard to New Jersey, I'm only
5 concerned with your efforts in New Jersey. From 1972 I'm --
6 I just want to find out if you worked in New Jersey.

7 If it deals with other areas of the United States,
8 I would just like you to say that.

9 A Well, the latter project I described would affect
10 only Trenton in New Jersey, as far as our investigation
11 of that particular aspect.

12 It's difficult for me to respond with specific
13 recollections of things that related to New Jersey. Our
14 studies during the past years, since '72, have been dealing
15 with broad subject matters, one of them being the relationship
16 of environment to the opportunities of minorities for
17 housing in suburban areas, and we would follow information
18 in whatever part of the country it developed that related
19 to that subject. And if it developed in New Jersey, why,
20 we'd be in New Jersey.

21 Q I understand that. And is that represented by any
22 kind of a writing, the work efforts from 1972 on?

23 A Well, I could supply copies of things that I've
24 written since 1972.

25 Q That pertain to New Jersey or include New Jersey in it?

1 A Well, I would have to go through my material and
2 identify that.

3 Q Well, I wonder, then, rather than belabor the point,
4 if you could just provide that to Mr. Searing and Mr. Searing
5 I'm sure will provide copies to us.

6 MR. LERNER: No further questions.

7

8 BY MR. SHAPIRO:

9 Q My name is Barry Shapiro, appearing on behalf of
10 the Township of Woodbridge.

11 You indicated earlier that you have been involved
12 in planning studies relating to Middlesex County, is that
13 correct?

14 A Yes, that's correct.

15 Q What planning studies have you been involved in?

16 A All regional plan studies related to Middlesex
17 County, and so far as I was involved in the studies of
18 Regional Plan Association, reference to transportation,
19 state or federal subsidies for rail transportation --
20 I did a study on origins of passengers served by New Jersey
21 railroads, which involved, obviously Middlesex.

22 Whatever regional studies we did invariably affected
23 Middlesex.

24 Q For whom were you doing these studies?

25 A For the Regional Plan Association.

1 Q When was the last time you were involved with the
2 studies relating to Middlesex County for the Regional
3 Plan Association?

4 A Well, I would say sometime, when I left their
5 employment, which was in 1968, the first month of '69.

6 Q And since you left the employment of the Regional
7 Plan Association, have you been involved in any studies
8 relating to Middlesex County?

9 A Yes. The ones that dealt with the relationship of
10 jobs to housing for the National Committee Against
11 Discrimination In Housing.

12 Q Was that study --

13 A I also did a study for the so-called Musto Commission,
14 which appears in one of their volumes.

15 This is the Municipal and County Government Study
16 Commission, I believe the official name is, which dealt
17 with the question of regional Development in New Jersey
18 and its effect upon individual municipalities, and, of
19 course, Middlesex had to be very prominent in that study,
20 because of its particular location.

21 Q And what is peculiar about its location that would
22 make it prominent?

23 A Well, Middlesex sits at the middle of everything
24 in the State of New Jersey, and its whole historical
25 development is as a result of a location.

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MR. SEARING:

That's shading into fact, which I have no objection to getting into now.

However, the agreement was to kind of go around the board and stick to credentials.

I don't know if you want to pursue that now.

MR. SHAPIRO: No.

Q Your involvement with the study relating to Middlesex County for the National Committee, was that restricted solely to Middlesex County?

A No. Middlesex was one of many counties we studied.

Q And were the counties that you studied restricted to New Jersey?

A No. They were also in New York State.

MR. SHAPIRO: No further questions.

BY MR. BERNSTEIN:

Q I'm Daniel Bernstein, I'm here in behalf of Piscataway Township.

Mr. Erber, you testified that you personally did the master plans for certain communities while you were employed by the Passaic Valley Citizens Planning Association, is that correct?

A That's right.

1 Q And one of the communities that you mentioned
2 was Passaic, correct?

3 A That's right.

4 Q Can you tell us what year you did that master plan?

5 A I believe that was in '52 or '53.

6 Q And that was done by yourself primarily, is that
7 correct?

8 A Yes. I was responsible planner, yes.

9 Q And can you tell us who the municipal liaison was?
10 In other words, if we were to ask a municipal official who
11 you worked with on it, who would you refer us to? If you
12 remember.

13 A Yes. I'm trying to remember the name of the Chairman
14 of the Planning Board at that time. It was an attorney in
15 Passaic.

16 His name doesn't come back to me for the moment.
17 Although for a good part of our study in Passaic, work was
18 done for the mayor, who was Morris Pashman.

19 Q And in Clifton, can you tell us what year that master
20 plan study was done?

21 A That was done in the middle 50's, I believe about
22 '54, '54 though '58.

23 Q And can you tell us --

24 A I'm talking off the top of my head. I have a
25 biographical list of my professional experience, which if

1 I were permitted to refer to --

2 Q I have no objection to that.

3 MR. PLECHNER: If you have enough,
4 we might save time by distributing them.

5 MR. SEARING: We don't have enough.

6 MR. SPRITZER: How many pages?

7 MR. SEARING: Ten pages.

8 (Discussion off the record.)

9 (After discussion.)

10 Q To save time, Mr. Erber, I've been given a copy
11 which indicates record of professional experience, 1949
12 to 1972. Does this include all of the work which you
13 have done with regard to master plans and zoning ordinances
14 in New Jersey?

15 A Yes, it does.

16 Q Could you tell us, Mr. Erber, ~~what~~ what you consider
17 yourself familiar with in New Jersey, as far as exclusionary
18 housing is concerned?

19 A I would say I'd be familiar with all of the northern
20 counties that I've mentioned.

21 Q That's the nine counties previously alluded to. Would
22 you consider yourself familiar with Monmouth County?

23 A Yes, I would.

24 Q Somerset?

25 A Yes, I would.

1 Q Morris?

2 A Yes, I would.

3 Q You testified you obtained your planner's license
4 late in the 1950's, is that correct?

5 A Well, whatever the year was that licenses were handed
6 out, I was among the first to get them.

7 Q And it lapsed in the 60's, correct?

8 A Yes.

9 Q You didn't think it was important that you continue
10 your New Jersey Planner's license?

11 A No, I did not.

12 Q You didn't anticipate doing additional work in
13 New Jersey in planning?

14 A No. I had no need for it. I objected to licensing
15 on principle, but that's something else.

16 Q Now, have you ever worked in New Jersey on behalf
17 of corporations that are trying to build housing units in
18 order to make a profit?

19 In other words, did any private construction firms
20 retain you to aid them in obtaining municipal approvals?

21 A No. The only one I mentioned earlier was one where
22 I did a kind of a reconnaissance study and preliminary plan
23 for a firm that was interested in something in Sussex County.

24 Q What year was that?

25 A I think that was in the late 1950's.

1 Q Were you paid for that?

2 A I believe I was paid a small fee, yes.

3 Q Less than two hundred dollars?

4 A I would say so. I think I was paid -- it was
5 certainly not any more than that.

6 Q So with this one exception, you've never worked
7 in New Jersey for a profit-making construction firm in
8 any planning capacity, true?

9 A Not that I can recall.

10 Q And would it be a fair statement that with this
11 one exception, you haven't worked for any profit-making
12 construction firm anywhere?

13 A That's a fair statement, yes. Well, profit-making.
14 I did some consulting work for a bank.

15 Q I'm referring to housing.

16 A Yes, right.

17 Q Have you done any work on behalf of any municipality
18 in Middlesex County?

19 A No, I have not.

20 Q Have you ever testified in any court that a municipality
21 does not have discriminatory or exclusionary zoning? That
22 is, on behalf of the municipality.

23 A No, I have not.

24 Q And could you tell us which towns that you have
25 testified to as being exclusionary?

1 A I believe the only one which I ever testified
2 in court on was Montclair, New Jersey. And I don't know
3 that one could identify my testimony as saying the town
4 was exclusionary. It related to a particular request for
5 variance that involved the question of race. But, I
6 don't know that the town as a whole could be called
7 exclusionary.

8 Q I assume that the studies that you've testified you've
9 done have gone into the question of exclusionary zoning,
10 is that correct?

11 A Yes, they have.

12 Q And have your studies determined that any of the
13 communities in New Jersey, in fact, are not practicing
14 discriminatory or exclusionary zoning? I'm interested
15 in those towns that you consider non-discriminatory or
16 non-exclusionary.

17 A Well, I don't have any occasion to study the zoning
18 ordinances of particular towns, so I'm not in a position
19 to really respond in terms of which towns, except for the
20 studies that I did where I was directly involved in the
21 preparation of master plans and zoning ordinances. My
22 studies in the 1960's and my studies since, have been on
23 the broader metropolitan regional plane, and have looked
24 at data which is not broken down at the municipal level.

25 Q Now, with regard to the Passaic Valley Citizens

1 Planning Association, I believe you testified you worked
2 between 1949 and 1960, are the dates correct?

3 A 1960.

4 Q Did you work full or part-time for this organization?

5 A Full-time, except, I think, for the last six months
6 when I worked part-time for them and part-time for Regional
7 Plan.

8 Q You had no other employment during this period of
9 time?

10 A No, I did not.

11 Q Now, have you written any tracts giving your views
12 as to what constitutes discriminatory or exclusionary
13 zoning?

14 A Yes.

15 Q Could you tell us the name of those tracts?

16 A Well, when you say, "tracts," they're papers --

17 Q Papers.

18 A Papers, lectures, some of them are listed in this
19 list.

20 Q Well, to get to the heart of the matter, can you
21 make these available to your attorney? I'd be happy to
22 pay whatever cost your organization charges for them, so
23 that I could examine your viewpoints.

24 Would this be possible?

25 A Yes.

1 Q Is it a fair statement that the only study, other
2 than for this case, that you've done in New Jersey, related
3 to the Regional -- strike that. Related to the housing
4 study that you've previously alluded to, the Job/Housing
5 study for the National Committee for Discrimination, would
6 that be the only other housing study that you've done
7 exclusively for New Jersey?

8 A Well, I was involved in the studies of the Regional
9 Plan Association staff as a whole as they dealt with
10 development in Northern New Jersey, as it affected housing
11 and its location, lot size, other things. So that the
12 Regional Plan Association's studies during the period when
13 I was on their staff was something I was involved in
14 professionally and had knowledge of.

15 Q Could you make the studies that you've done for
16 either the Regional Planning Association or the National
17 Committee for Discrimination available to your attorney?

18 Of course, whatever the cost is, so I may have a copy.

19 A Yes.

20 MR. BERNSTEIN: No further questions.

21

22 BY MR. SPRITZER:

23 Q I'm Martin Spritzer for the Borough of Metuchen,
24 Mr. Erber. There have been a couple of reports, papers
25 you've written and reports, studies that you've made, which

1 indicated, you indicated that your attorney would make
2 available to the particular attorney requesting.

3 I'll direct this to Mr. Searing. Is it possible
4 that all of those reports will be made to all attorneys,
5 without further request?

6 MR. SEARING: Yes. That's going to
7 have to be billed out, because the cost of
8 copying some of these articles is excessive.

9 Where we have copies available, such
10 as the Jobs/Housing report, I really see
11 no problem.

12 There will be a problem in terms of
13 Xeroxing what other reports are available.
14 But, I will be happy to do that, to all
15 attorneys.

16 (Discussion off the record.)

17 (After discussion.)

18 MR. BUSCH: It's been agreed counsel
19 for the plaintiffs will send out reports
20 to the firms representing Piscataway, South
21 Plainfield, East Brunswick and Woodbridge,
22 and the rest of the attorneys may contact
23 any of us for copies.

24 MR. SPRITZER: One other question,
25 Mr. Erber.

1 Q Are you a member of the American Institute of
2 Planners?

3 A Yes, I am. I have been since '52 or '53.

4 MR. SPRITZER: No further questions.

5
6 BY MR. MORAN:

7 Q You made a comment, Mr. -- my name is William C.
8 Moran, representing Cranbury Township. You made a comment
9 earlier in connection with the lapsing of your New Jersey
10 Planner's license. You objected to licensing.

11 Is that objecting to licensing of planners or do
12 you object to licensing of any professional group?

13 A No. I do not object to licensing as such. I
14 objected to licensing of planners among a number of other
15 professions that were listed by the Governor's Commission
16 as being unnecessarily licensed, and Legislature has not
17 yet taken note of that to repeal the licensing law. But,
18 we challenged it in the courts and there's a long -- I
19 was chairman of A.I.P. My predecessor was Douglas Powell,
20 who instituted the suit.

21 MR. MORAN: No further questions.

22
23 BY MR. BERNSTEIN:

24 Q Wasn't the reason of the planners objection to the
25 licensing statute not the fact that there was a license,

1 but the fact it allowed engineers, land surveyors, and
2 others, to get a so-called Grandfather's clause license,
3 rather than making it exclusively for planners? Wasn't
4 that the objection?

5 A Yes. But we had favored -- we had never favored
6 licensing. We had favored a registration of the name of
7 "Planner," so that it would not preclude anyone else from
8 doing planning services if he could convince any governmental
9 agency he was qualified.

10 The Legislature passed it under pressure from the
11 engineers, and we sought to revoke either the law or at
12 least to strike down the clause that gave the engineers
13 and the architects the planner's license without undergoing
14 the same examination of background and ability that was
15 written into law for planners.

16
17 BY MR. BUSCH:

18 Q My name is Bertram Busch for the Township of East
19 Brunswick, Mr. Erber.

20 We have been furnished by Mr. Searing with a
21 notification of intention to use expert witnesses, under
22 date of January 9, 1976, with your name on it.

23 Have you seen this document?

24 A Yes, I have.

25 Q Did you furnish information to your attorneys or to

1 Mr. Searing for the purpose of compiling this document?

2 A Well, I wrote that document for him.

3 Q And with regard to the bibliography, did you prepare
4 that list?

5 A Yes.

6 Q Have you read and are you familiar with all the
7 items?

8 A Yes, I'm familiar with them.

9 Q Every one of them. This is your list, in other words.

10 A Yes.

11 MR. BUSCH: No further questions.

12 MR. LERNER: It appears we have no
13 other further questions on qualifications.

14 MR. PLECHNER: Let me begin.

15 MR. SEARING: Let me have a five minute
16 time out.

17 (Recess at 11:10 a.m.)

18
19 (After recess at 11:20 a.m.)

20 CONTINUED DIRECT BY MR. PLECHNER:

21 Q Mr. Erber, we'll now commence asking you questions
22 on the general meat of your testimony as opposed to
23 qualifications.

24 Now, sir, are you the author of the Fair Share
25 Allocation of Housing Units proposal that was furnished

1 to counsel in this matter, by letter of Mr. Searing
2 dated November 13, 1975.

3 A Yes, I am.

4 MR. PLECHNER: Off the record a minute.

5 (Discussion off the record.)

6 (After discussion.)

7 (Fair Share plan marked DH-1 for

8 identification.)

9 Q Now, sir, did you work on this alone or did you have
10 other people working on it with you?

11 A Just my staff assistants.

12 Q And they worked under your direction?

13 A They did.

14 Q Are any of them licensed planners in the State of
15 New Jersey?

16 A No, they are not.

17 Q Now, sir, I note from reading this plan that most
18 of your data is hinged to the 1970 Census, is that correct?

19 A Yes, that plays a large part.

20 Q Could you tell us what data base other than the
21 1970 Census you used in arriving at this Fair Share Housing
22 Plan?

23 A Well, I think all of the data is footnoted. We
24 used the state's report on the definition of housing need
25 by county, and we used -- we used the material that's from

1 the state's Department of Community Affairs zoning survey
2 of 1970, which identified how vacant land was zoned.

3 We used the Middlesex County Interim Master Plan
4 to project growth, used their growth projections.

5 Q What year was that, sir?

6 A The Master Plan that was, I believe it's '70, 1970.

7 And we used the recent application of, I believe
8 it's 20 municipalities and the county in applying -- as
9 an urban county applicant for federal community development
10 funds.

11 Q Now, sir, what materials, if any, did you use, or
12 what independent research, if any, did you do, to bring
13 forward to 1975 or '76, the 1970 materials that you have
14 just mentioned?

15 A The county Master Plan Projection.

16 Q Now, those were projections made in a 1970 Master
17 Plan, were they not?

18 A That's right.

19 Q Did you do any independent work to verify the
20 projections?

21 A No, I did not.

22 Q Now, you also referred to a 1970 study of zoning
23 of vacant land in Middlesex County. Have you done any
24 research or study to bring that up to date?

25 A No, I have not.

1 Q Have you made any recent study of vacant land in
2 Middlesex County?

3 A No, I have not. Except insofar as I did look at
4 the responses of the various communities to interrogatories,
5 in which they cited vacant land.

6 Q Have you made any studies as to what vacant land
7 is buildable for residential housing?

8 A Well, I have made studies all my career as a planner --

9 Q I'm referring now to Middlesex County, New Jersey.

10 A No.

11 Q So you don't presently know what land in Middlesex
12 County is vacant and suitable for residential development,
13 do you, sir?

14 A Except that the report of the state said vacant and
15 buildable.

16 Q And that was a report from 1970, is that correct?

17 A Yes.

18 Q Do you know when the data used in that report for
19 1970 was gathered?

20 A I believe it was gathered in 1970. I believe I
21 was asked to advise on how the material was to be computed.
22 I recall that was in 1970.

23 Q Do you know whether there have been any changes in
24 any zoning ordinances in the County of Middlesex since 1970?

25 A I know there have been changes. I would know that

1 only from having gone through the answers to interrogatories.

2 I haven't made any particular study of changes.

3 Q Have you made any particular study of zoning
4 ordinances in the County of Middlesex?

5 A No, I have not.

6 Q Now, sir, I call your attention to page 9 of your
7 Fair Share Housing plan, and a chart that is entitled
8 Part three, updating and projection of fair share.

9 Do you see what I'm talking about?

10 A Yes, I do.

11 Q Now, is this chart the result of your work and
12 your study?

13 A Yes, that's part of the whole work.

14 Q And you arrived at the figures in this chart, is
15 that correct?

16 A Yes, I did.

17 Q Could you tell us by what formula you arrived at
18 those figures?

19 A Well, the one on page 9, is based on the chart on
20 page 8, which is called Part 2, and in Part 2, under column
21 5, there is a fair share given for each community as of
22 1970. The reason we did 1970 was because that related to
23 a data base for 1970 in the Census and in the state's
24 study of vacant land.

25 And the one you referred to, counsel, on page 9,

1 simply takes the 1970 allocation of housing units as a
2 fair share of each municipality, and projects it to the
3 period of '75, and from '75 to 1980, and ends up in column
4 4 giving the fair share for 1980. As I said earlier, the
5 projections were based on the county's master plan, using
6 its projection base of annual increment of annual housing
7 and other factors.

8 Q The chart entitled Part 2, on page 8, were those
9 your projections or were those the County of Middlesex'
10 projections?

11 A On Part 2, page 8, I don't believe has any projections.
12 That deals with the unmet housing need for low and moderate
13 income families as of 1970. And then allocates a fair
14 share as of 1970.

15 Then the one on page 9 projects from that base.

16 Q Now, whose figures are on page 8?

17 A Well, the figures for the unmet need for housing
18 are taken from the report of the Department of Community
19 Affairs of the State of New Jersey. What we did, we took
20 their unmet need, and simply allocated it mathematically
21 on the basis of what the percentage of dwelling units were
22 that each municipality had, gave the unmet need of 1970
23 to each municipality that way. The unmet need, I should
24 correct myself, is made up of two factors. One, the unmet
25 need as identified by the state, which is based on two

1 factors, one, the factor of persons living in substandard
2 housing and persons living in housing for which they pay
3 more than twenty-five percent of their income.

4 And they use a factor which is based on other studies
5 that there is in that case a 38 percent overlap of people
6 who live in substandard housing and pay over 25 percent
7 of the income, which 38 percent is then subtracted to
8 remove that duplication.

9 This factor of unmet need, which is in the state's
10 report, we then added to this the number of persons who
11 work in Middlesex County, but reside outside of the county,
12 with incomes under 10 thousand, and use a factor which we
13 developed on what percent of those people are heads of
14 households, so we then end up with a figure which is
15 people commuting to jobs from outside of Middlesex County
16 who are heads of households and earning less than 10
17 thousand, as being people who are in need of housing near
18 their place of work.

19 We added that, in commuting figure, with the unmet
20 housing figure, with current residents of Middlesex County,
21 to provide, to give a figure of total unmet need.

22 That figure of total unmet need is then shared out
23 mathematically on the basis of equal shares, based on the
24 number of housing units existing in the municipality, and
25 that's shown in column 1. We then took the figure of --

1 we determined how many were adequately housed, lived in
2 housing which was substandard housing and were paying less
3 than 25 percent of their income, and were of lower
4 moderate income, and we used these as credits for those
5 communities that had such units.

6 And then ended up with an adjusted share, which is
7 shown in column 3, that is, we credited each municipality
8 for the ones -- the units they already had, and then we
9 redistributed the balance in column 4, and added --
10 redistributed that balance shown in column 4 to the fair
11 share originally given on the basis of the amount of
12 vacant land that each community had, and by using the
13 amount -- their percentage of vacant land in Middlesex
14 County as the criteria, we then came up with the fair
15 share that was determined for 1970, shown in column 5.

16 Q Now, sir, you said that you applied a figure as to
17 head of household commuting into the county from outside
18 of the county.

19 A Yes.

20 Q Could you tell us what that figure is and how it
21 was arrived at?

22 A I would have to go back to my work sheets on that one.
23 I don't know that that is -- that was taken from a study
24 by the -- a man by the name of Schangho Kim, principal
25 planner on the Middlesex County Planning Board, and is

1 cited here as a study he did in 1973, on page 41.

2 The study is entitled "Study on Low and Moderate
3 Income Housing in Middlesex County, New Jersey. An
4 Analysis Forecast and Allocation for 1975."

5 Q Do you know what Mr. Kim based his figure on?

6 A I read his report.

7 I'm not sure that I could recall his methodology
8 for arriving at that.

9 Q All right, sir.

10 Well, as a planner, an expert in this field, how
11 would you arrive at such a figure?

12 A On the number of heads of households?

13 Q Commuting into the county. Where would you determine
14 that?

15 A There are ways in which this can be done. I would
16 have to go back over work sheets to work out the
17 methodology for that. I don't know that I could give you
18 a methodology off the top of my head. I would say that
19 generally this is a specialized form of study that one
20 works out, given the problem.

21 Q Okay. Now, to get back to the chart called Part 2,
22 page 8.

23 You said before that you developed column 1, Equal
24 Share, based on existing housing in a municipality after
25 you had determined the need for housing in the county, is

1 that correct?

2 A That's correct.

3 Q Now, how did you apply existing housing in the county
4 to unmet housing needs to arrive at equal share? What was
5 this relationship?

6 A We just took the total number of housing units in
7 Middlesex County, determined what percentage was located
8 in each municipality, and used that percentage as the
9 basis of the Equal Share that they were to take of the
10 additional units.

11 Q Now, does that mean, then, sir, that if -- let's
12 take the Borough of Helmetta, which you have listed as
13 one thousand units.

14 And let's compare that to the Township of Monroe, also
15 one thousand units.

16 Does that mean that there are the same number of
17 housing units in the Borough of Helmetta as in the Township
18 of Monroe?

19 A Unless there is an error in proof reading here, I
20 would have to say yes.

21 Q And then I could also tell by that chart that there
22 would be 8.6 times as many houses in the Township of
23 Woodbridge as in the Borough of Helmetta, is that correct?

24 A What's that?

25 Q I could also tell by this chart, then, that there

1 are 8.6 times as many houses in the Township of Woodbridge
2 as there are in the Borough of Helmetta, is that correct?

3 A That would follow, yes.

4 Q And then the other columns, 2, 3, 4, 5, are based
5 on projections of column 1, Equal Share, is that correct?

6 A Yes, they are.

7 Q Now, let's go to column 2, Adequately Housed.

8 I note that several municipalities have minus figures.
9 What does that mean?

10 A Well, in those instances, the number of units that
11 are available to people of low and moderate income that
12 are standard units, and available without paying more
13 than 25 percent of their income, exceed the number that
14 are given on the basis of the first allocation in column 1
15 by that number.

16 And, consequently, in terms of adjusting the numbers
17 in column 3, some are given credits and some are not changed.

18 Q Well, let's take Cranbury, for instance. That's
19 the first of those.

20 You indicate that Cranbury's equal share is 158,
21 is that correct?

22 A That's right.

23 Q Then you have in the next column a minus 22.

24 A Yes. That means that there are -- that in Cranbury
25 there are 22 more units than their equal share that are

1 occupied -- that are either dilapidated or occupied by
2 families paying more than 25 percent, and that consequently
3 Cranbury's equal share is not reduced in the adjusted share.

4 We didn't add to, we just kept it.

5 Q I see.

6 So, what you are saying, then, that only in Cranbury,
7 Helmetta, Highland Park, and New Brunswick is there an
8 excess of people living in housing that they can't afford?

9 A Either living in housing that they can't afford
10 or is dilapidated, in excess of what would be the equal
11 share.

12 Q In excess of what would be their equal share.

13 A Right.

14 Q You're saying each town has a certain equal share
15 of dilapidated and inadequate housing.

16 A No. Each town is given an equal share of the unmet
17 need in column 1.

18 But, then, because some towns already are supplying
19 part of the need, since the need is determined without
20 reference to housing conditions, it's just a need based
21 on the number of families that are of low and moderate
22 income, and that live in substandard housing, to which is
23 added, then, those who are employed in Middlesex County,
24 but do not reside there, as a total need figure, that is
25 then distributed in column 1 based on the number of units

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1 they have.

2 Now, in the case of Cranbury, that comes to 158.
3 But, there are 158 plus 22 -- 158 plus 22 units in
4 Cranbury that are either substandard or are occupied by
5 persons paying more than 25 percent of their income, and
6 that, consequently, the number being supplied by Cranbury
7 would not -- they have no credit, as in the case, let's
8 say, of Carteret. 279 units of housing available to low
9 and moderate income people, that's standard housing, and
10 for which they are paying no more than 25 percent.

11 So, Carteret is assumed to be supplying 279 units
12 of its share of 257.

13 Q And Cranbury is not supplying any.

14 A Right. It's a minus.

15 Q That would be true of Helmetta, Highland Park and
16 New Brunswick.

17 A That's right.

18 Q Now, could I take it from reading that, then, that,
19 for instance, New Brunswick has no adequate public housing?

20 A It has adequate public housing, but the total need
21 of New Brunswick is greater by the amount of 778 units.

22 Q The adjusted share in column 3, then, is by
23 subtracting the adequately housed in column 2 from the
24 figure in column 1, is that correct?

25 A That's right.

1 Q Now, in column 4, you list redistribution of balance.
2 Could you explain to me what that means?

3 A Yes. After we made -- after we give each community
4 its adequate -- its credit for adequately housed in column
5 2, we add up that total, and that number which represents
6 the total that are adequately housed already required a
7 redistribution, because that total involves an unmet
8 total need figure.

9 We had come up with a figure of total unmet need
10 which we divided in column 1, on the basis of percentage
11 of housing units.

12 Now, that total is now reduced by the fact that
13 there are adequately housed people in some communities,
14 but not in others.

15 And, as a result, that number is redistributed to
16 those -- to all communities based on the factor of vacant
17 land, on the assumption that if communities have vacant
18 land they are in a position to absorb greater number of
19 units, and the redistribution in column 4 reflects the
20 numbers that are being redistributed, and what we do
21 there is that we take the total of the adequately housed,
22 that is, we take the difference between the adjusted
23 share and the equal share, and we redistribute that on the
24 basis of percentage of vacant land, of all the vacant land
25 in Middlesex County that is located in that community, and

1 then add that to the adjusted share to come up with the
2 figure in column 5, and that's then the fair share of
3 unmet need as of 1970.

4 Q Now, you're saying, then, that you take from the
5 equal share, you subtract from that the adjusted share?

6 A No. From the equal share we subtract those who are
7 adequately housed, to come up with an adjusted share.

8 Q One minus 2 equals three, right? Column one, you
9 subtract column two from column one to arrive at the
10 figure in column three, is that correct?

11 A Yes.

12 Except in those instances where there is a minus,
13 where we just carry.

14 Q Then you have column 3. That gives you the
15 adjusted share.

16 A Right.

17 Q Now, where do you get the numbers that are in column
18 4?

19 A We take all of the credited ones --

20 Q That would be -- the credited ones would be the
21 ones in column 2, right?

22 A Right.

23 Q All right.

24 A And we reallocate that to the county as a whole on
25 the basis of the percentage of vacant land that each

1 community has.

2 Q And then you distribute it --

3 A To those municipalities.

4 Q Now, why do you take the credit that a town has
5 for providing adequate housing for those numbers of people
6 and take it away from them and redistribute it to other
7 areas?

8 A Well, because some communities are not in a position
9 to meet their needs and others are, and there should be --
10 there should be opportunity in all communities.

11 This is what the fair share is aiming for.

12 Q So, in effect, what you are doing, is you are
13 taking away the credit, is that correct, and then,
14 because the credit is taken away, you have to place those
15 families somewhere, too, so you're redistributing them on
16 the basis of vacant land.

17 A That's right.

18 Q Column 5, I presume, is arrived at by taking the
19 adjusted share, plus the redistributed share, is that correct?

20 A Yes. Column 3 plus column 4.

21 Q Now, when you arrived at column 1, which was the
22 amount of -- which was distributed on the basis of the
23 amount of housing presently existing in each of those
24 municipalities, where did you obtain those figures?

25 A I believe from the Census of Housing.

1 Q I see.

2 And when you got figures for column 4, as to the
3 amount of available land, where did you get those figures?

4 A From the state's 1970 study of vacant land zoning.

5 Q If a municipality in column 4 has a zero for
6 redistribution of balance, does that mean there's no
7 vacant land in that municipality?

8 A No.

9 It may not mean that there's no vacant land. It
10 may mean that there's no significant amount of vacant land.

11 Q Well, then I would ask, for instance, if the City
12 of New Brunswick, which shows a zero redistribution of
13 balance, which means there is very little vacant land,
14 is that correct?

15 A Yes, that would be so.

16 Q Is given a fair share allocation of unmet housing
17 needs of 3,746. Where are they going to put them?

18 A Through urban renewal, they may find that in some
19 areas densities could be increased, in other instances
20 there can be renovation of housing, which adds to units,
21 and since part of the unmet need is people who are living
22 in units that are dilapidated, the renovation of those
23 units would make them standard units and would, therefore,
24 add to supplying their need.

25 Or, in cases where families are paying more than 25

1 percent under subsidy programs, such as Section 8 of the
2 Federal Housing and Community Development Act, the subsidy
3 can reduce their payment to 25 percent and that would
4 become a standard unit then.

5 Q This wouldn't have anything to do with zoning in
6 the community, would it?

7 A Not necessarily.

8 Except it does have to do, if it involves renovation,
9 the latter does not. The 25 percent subsidy. But renovation,
10 renewal and higher densities, of course, do.

11 Q And in arriving at these figures, have you made any
12 determination as to the people who you feel are either
13 inadequately housed or that are adequately housed, but
14 paying more than 25 percent of their income, whether they
15 reside in single family or multi-family dwellings?

16 A No, we do not. We just took dwelling units as a
17 category.

18 Q Now, have you made any attempt, incidentally, in
19 this distribution, to make a distinction between low and
20 moderate income families?

21 A No, we did not.

22 Q Incidentally, could you tell me how you arrive at
23 your definition of low and moderate income?

24 A We took the same figure that was used by the state
25 in its study, since we were basing ourselves on its study

1 of unmet need.

2 Q Do you mean monetary figure or do you mean quintile
3 of income?

4 A I'm using the monetary figure. The quintile figure
5 is from the standard practice in federal housing, which
6 has been reenacted in the Federal Housing Act which makes
7 25 percent of income the cut off point for ability to pay.

8 Q Well, sir, as a planner, what quintile of total income,
9 family income, rather, would be considered by you to be low?

10 A Well, that's not particularly within the unique
11 jurisdiction of planners.

12 Basically, these come from data that's developed
13 by the Bureau of Labor Statistics, and generally speaking,
14 I gather the figure today is somewhere around five thousand
15 dollars.

16 Q Well, sir, aren't there certain percentages of the
17 population by income, by family income, that are considered
18 as low income families for federal housing subsidy programs?

19 A Yes, there are.

20 Q And that's what I'm trying to get at. What are
21 those figures?

22 A Well, you asked me as a planner. Those figures are
23 based on the median income for the metropolitan area, which
24 that municipality is a part. The moderate is 40 percent of
25 the median income and the low is half of that or 20 percent.

1 Q So the lower quintile, you would consider to be,
2 in the low income category, is that correct? And the
3 second quintile would be moderate income, is that correct?

4 A Well, let's see.

5 How are you using the word, "quintile"?

6 Q The way the federal government uses it in their
7 housing subsidy programs.

8 A Isn't a quintile 25 percent?

9 MR. BUSCH: No. That's a quartile.

10 A Yes, that's right. The lower is the 20 percent
11 of median income in the metropolitan area.

12 Q Could you tell us for the year 1975, which is the
13 year you made your study, what figure the federal government
14 used in the metropolitan area, of which Middlesex County
15 is a part, for low income families?

16 A No, I don't know that off the top of my head, but
17 I think it's higher than five thousand dollars.

18 Q Do you know the figure for moderate income families?

19 A No, but I think that it's ^{more} than ten thousand dollars.
20 I think it's somewhere around 13 thousand five, if I'm not
21 mistaken.

22 Q Moderate income?

23 A Yes.

24 Q Sir, don't you think as a planner there should be
25 a difference in treatment for low and moderate income families

1 when formulating methods of resolving their needs?

2 A Yes, I do. And I think that if there is a detailed
3 fair share allocation for Middlesex County, it would
4 probably reflect that, because it would also relate to
5 the method of implementation.

6 Q Well, did you reflect that in your fair share
7 allocation plan?

8 A I didn't believe it was necessary for this purpose.

9 Q I see.

10 Well, for what purpose?

11 A This -- the purpose here, as I responded to the
12 request of Mr. Searing, was to prepare a fair share plan
13 for Middlesex County that would indicate how housing ought
14 to be distributed in order to allocate units to all
15 communities on an equitable basis to provide housing
16 opportunities for low and moderate income people.

17 Q Now, doesn't the methodology of providing for such
18 opportunities relate at least in part to whether we are
19 discussing low income or moderate income families?

20 A Well, what it does is it requires a further
21 subdivision of the fair share totals that I've come up with
22 by income groups.

23 You could get any number of income groups, as a
24 matter of fact, some allocations plans in different parts
25 of the country are not limited even to moderate. They

1 allocate all housing units on some equitable basis to
2 the communities that are part of it.

3 Q And have no breakdown?

4 A No, they do have a breakdown, but they go across
5 the range of all income groups.

6 Q Have you done that for Middlesex County?

7 A No, I have not.

8 Q In other words, you have not made any breakdown --

9 A Yes, I have. I've made breakdowns that relate to
10 the unmet need as identified in the state report, which
11 I used as the basis of identifying unmet need, as to the
12 dilapidated and overpaying.

13 Q I call your attention, sir, to page 9, Part 3.

14 That is a further projection of the figures you
15 utilized on page 8 Part 2, is it not?

16 A Yes, it is.

17 Q Now, could you interpret these figures for us
18 column by column?

19 A Yes. We took the projection of housing units
20 projected by the Middlesex County Planning Board, and on
21 the basis of data which showed that one-third of these
22 housing units should be available for people who are low
23 and moderate income, we updated one-third of the increase
24 for the period of '70 to '75, and then updated that again
25 by a projection for '75 to '80.

1 Q Now, let me break this down, then.

2 Column 1, you say, Annual Increment, 1970 to '75.

3 I take it the annual increment is one-fifth of the -- well,
4 no, it's not. How do you get the figure for Carteret,
5 300. Is that one-fifth of column 5, on page 8?

6 A No.

7 I think that's a typographical error. That should be
8 Annual Increments, 1970 to 1975.

9 Q What I'm getting at is, are the figures in column 1,
10 on page 9, one-fifth of the figures, or approximately
11 one-fifth of the figures in column 5, on page 8?

12 Is that how you arrived at it?

13 A No, that is not how I arrived at it.

14 We took the figure of total housing units projected
15 for the period of 1970 to 1975 in the Middlesex County
16 Planning Board Report, Comprehensive Master Plan, and
17 then took one-third of that, so I would assume here that
18 the projection in the master plan for Carteret, '70 to '75,
19 is 900 units, we took one-third of that and allocated 300
20 for Carteret.

21 Q Now, is that a projected need?

22 A Yes, it is a projection of need, because we assume
23 that as the population and the number of dwelling units
24 grows, the number of those in low and moderate income will
25 increase proportionately.

1 Q Well, if Carteret in 1970 had a fair share allocation
2 of 1,778 units, and an annual increment of 300 units up
3 until 1975, wouldn't that mean by 1975 they would have
4 a fair share substantially higher than the 2, 078 that you
5 show in column 2? Column 2, Part 3?

6 A I don't see why it should be, because if their
7 fair share in 1970 was 1,778, the addition of 300 by
8 1975 would add up to 2,078.

9 Q These aren't annual increments, then.

10 A No, I'm sorry. That's why I said, this, I think,
11 is typographical here. It should say, The Total of
12 Annual Increments. Actually, it should be a five year
13 increment for '70 to '75. These are not annual.

14 Q So we can then strike the word, "Annual."

15 A Well, either that or say Annual Increments Total.
16 I think originally it was intended to be Annual
17 Increments for '70 to '75.

18 Q I wonder if you could make that change on the copy --

19 MR. BUSCH: Following your advice, I
20 drew a line through the word, "Annual," on
21 the marked copy.

22 Q Would you write the word, "total," on the original
23 that we're using? To make it correct.

24 MR. SEARING: Off the record a minute.

25 (Discussion off the record.)

1 (After discussion.)

2 A You want me to initial this?

3 Q Yes, if you would, and write the word, "annual,"
4 where you think it should be.

5 For the record, Mr. Erber, you have marked column 2
6 by striking the word, "annual," writing in the word, "total,"
7 -- I'm sorry, column 1. Striking the word, "annual,"
8 marking in the word, "total," the same has been done for
9 column 3, and the initials, "EE," are your initials on
10 it, is that correct?

11 A Right.

12 Q So the projection, then, from column 1 is taken
13 from a study by Middlesex County?

14 A That's right.

15 Q Did you do any independent research to verify
16 their figures?

17 A I assumed that if the county spent millions of
18 dollars and the Planning Board held public hearings and
19 adopted it, it must have some validity to it.

20 Q So, you are merely testifying to the county's
21 figures, is that correct?

22 A For the projection, yes.

23 Q Now, column 2, then, represents the addition of
24 column 1, on page 9, to column 5, on page 8, is that correct?

25 A That's right.

1 Q Now, in arriving at column 2 on page 9, which shows
2 the fair share of housing that you feel should be
3 constructed in each of the municipalities, has any
4 consideration been given to the amount of actual housing
5 constructed in the various municipalities between 1970
6 and 1975?

7 A No. The fair share would obviously be that minus
8 such housing as had been constructed, available to those
9 of low and moderate income housing.

10 Q So, you don't know, then, and you have not studied,
11 then, how many units have been constructed in the various
12 municipalities in the years in question, is that correct?

13 A That was completely unnecessary, because the number
14 I show for '75 is the target for '75, and whether they have
15 achieved it or not would be a matter of record.

16 Q Do you have those records?

17 A No, I do not.

18 Q So as far as you know, every municipality in
19 Middlesex County might be presently meeting its fair share
20 housing needs, is that correct?

21 A Well, there's always a factor here of time, as
22 to when the next report, next study and report is made, I
23 would assume that, if I had data of yesterday, someone
24 might say they have been built since yesterday. So, there's
25 really no way of knowing.

1 Q Well, there are ways of knowing if they have been
2 built since 1970, aren't there?

3 A Yes, there could be another study made to determine
4 the adequacy of housing for low and moderate income people.

5 Q But, you have not made such a study.

6 A No.

7 Q And you are not familiar with such studies?

8 A Others may have made studies, I'm not familiar
9 with them.

10 Q Now, column 3 provides a total increment from 1975
11 to 1980.

12 Q Could you tell us how you arrived at that increment?

13 A We simply took the 1975 fair share and again applied
14 here the updating of housing units projected in the
15 Middlesex County Master Plan, and added them to the fair
16 share of '75 to indicate how many should have been --
17 what the increment would be, the total increment for '75
18 to '80 to have the fair share projected for the 1980's.

19 Q You're taking the projection from 1970? Where are
20 you taking the original projection from?

21 A Yes. The Middlesex County Master Plan projection
22 for the period '75 to '80, the projected -- the increment
23 of housing units, and again I took one-third of that
24 projection.

25 Q Again, you made no study whatsoever of what housing

1 construction had occurred between 1970 and 1975, is that
2 correct?

3 A No, I didn't, because I didn't think it would matter.

4 Q Well, wouldn't it matter if, for instance, the
5 Township of Madison had provided 8 thousand housing units
6 between 1970 and 1975? Wouldn't that then reduce the
7 increment from 1975 to 1980 required of them?

8 A Well, if Madison had provided its share, there would
9 be no problem. They would have achieved its goal.

10 Q How would that be reflected in your study?

11 A Well, because someone who, in 1980, looked at
12 what the fair share for Madison should be in 1980 and
13 added up how much of that they have achieved, would have
14 found that they either were deficient or had exceeded it,
15 possibly.

16 Q Suppose they were an over-achiever, so to speak.
17 Wouldn't that take up the slack in another town that might
18 be an under-achiever?

19 A Yes, as a matter of fact, I think that a fair
20 share plan like this should be updated from period to
21 period, and this would be one of the functions of whoever
22 is in charge of fair share allocations.

23 Q Well, this is your fair share allocation, so you're
24 in charge of this one. What have you done to update it?

25 A I'm not in charge of anything here. I'm only here

1 testifying as an expert planner and giving, to the best of
2 my ability as a planner, an allocation plan for how it
3 can be done in Middlesex County. But, I'm not in charge
4 of its administration.

5 If you ask me my opinion, should there be a monitoring
6 and a reallocation from time to time, I should say by all
7 means.

8 Q And your figures are based actually on 1970 data,
9 projecting forward, is that correct?

10 A That's correct.

11 Q Your fair share for 1980, which is your column 4,
12 indicates the total amount of housing for low and moderate
13 income families, that you believe should be constructed
14 in each municipality in the ten years beginning with 1970
15 to 1980, based on statistics arrived at in 1970 and earlier.

16 A That's right.

17 Q Incidentally, many of these statistics would be
18 derived from the 1970 Census, would they not?

19 A They would.

20 Q When was the 1970 Census begun?

21 A That's taken in 1969.

22 Q So, actually, as of 1976, these figures would be
23 almost seven years old.

24 A Well, actually, when I say begun, there's certain
25 kinds of sample data usually done in the spring of the

1 census year, so that it would reflect, I think, usually
2 around April of 1970. Some of the questions on the Census
3 relate to where did you live in 1969, so that it might
4 reflect a year earlier.

5 Q Now, sir, you've done a great deal of study on
6 availability of jobs, have you not?

7 A Yes, I have.

8 Q And you consider yourself an expert in that field,
9 do you not, sir?

10 A Not as much an expert as an economist, who does
11 employment studies, but as a planner I have specialized
12 in this question, yes.

13 Q And you feel it's very important if you're locating
14 people that jobs be somewhere within commuting distance
15 of those people, do you not?

16 A Yes, there is an objective of planning.

17 Q Sir, could you tell me where in your fair share
18 plan you have taken this objective of planning into
19 consideration?

20 A We consider all of Middlesex County to be a common
21 housing and labor market area, and the allocation of housing
22 ought to permit people to live in all parts of the county,
23 even if they are low or moderate income, and because there
24 are jobs in all parts of the county.

25 Q Well, sir, could you tell us, for instance, how many

1 jobs there are in the southeast part of the county, in
2 the vicinity of, say, Madison Township?

3 A I couldn't tell you that from the top of my head,
4 but wherever there are people there are jobs, because by
5 rule of thumb, some 66 percent of all employment is
6 population based. And there are some economists who think
7 that in our affluent society it's higher than 75 percent.

8 Q So we don't have to consider availability of plans,
9 because we know there's going to be jobs and people.

10 A Well, there are other jobs that are regional and
11 national market oriented that get concentrated in certain
12 areas.

13 Q Aren't there certain jobs that attract certain income
14 level families?

15 A There are certain jobs that are -- that require,
16 or that can hire people of moderate skills, and these
17 are usually low paying, so that the possibility that there
18 are low paying jobs in one area is going to lead to many
19 people earning less to work there and want to live there,
20 yes.

21 Q And, if an area has no industrial jobs requiring
22 unskilled or semi-skilled labor, that area may attract a
23 large population of affluent, professional and office
24 workers who commute a great distance to work, but would not
25 attract nor would it be suitable for low income and moderate

1 income unskilled and semi-skilled workers, is that correct?

2 A Well, yes, although I don't know of any affluent
3 population that's tried to live by itself, because in
4 that case no one would pump the gas in their cars or
5 come to scrub their homes, so that there are always poor
6 people who are needed to support the rich people. So,
7 wherever you have a rich population there are poor people.

8 Q Have you ever been in Short Hills?

9 A Yes, I have.

10 Q What percentage of Short Hills is poor people?

11 A There are a lot of poor communities, if you look
12 at people who go to Short Hills, to work in those homes,
13 who have deliberately located close to that job opportunity.

14 As a matter of fact, the whole town of Montclair
15 has been developed, Engleland, other great estate areas,
16 by virtue of the fact that there is always a small pocket
17 of poor black people who live in a town, because they are
18 required there.

19 Summit is another one. If you want to count the
20 towns that have large black populations in the suburbs of
21 New Jersey, the higher the income of that town, the more
22 black people there are.

23 Q And that is as a result, historical result, is it
24 not, of a labor market that at one time employed many
25 domestic workers, but no longer exists. Isn't that part

1 of the problem of those towns?

2 A Well, I think that there are people who move out
3 from every poor income community in the morning to go to
4 work in more affluent areas and come back at night. You
5 see them on buses and on trains.

6 Q Are you familiar with the work of Mr. George Sternlieb?

7 A Yes, I am, broadly. I've read most of his works.

8 Q Are you familiar with the studies that he has made
9 with regard to low and moderate income families and the
10 distance that they can, as a practical matter, travel to
11 work?

12 A No, I don't particularly remember that statistic.
13 I would have to ask also whether that relates to the distance
14 that they have to travel or the distance that they would
15 desire to travel.

16 Q Well, I would say it relates to the distance that
17 they are able to travel. As a planner, don't you think
18 there is a relationship between cost of transportation
19 to employment and cost of shelter?

20 A Yes, there is. There are people of low income who
21 often can not afford to take better paying jobs of more
22 distance, because the cost of transportation cancels out
23 the higher income that they earn.

24 Q And it would, therefore, be unwise, would it not,
25 to locate low and moderate income housing in an area that

1 is a substantial distance from opportunities for
2 employment, would it not?

3 A Yes, it would.

4 Q Have your projections and your fair share allocations
5 taken this into consideration at all?

6 A Yes, on the assumption that the jobs distributed
7 throughout Middlesex County would sustain people living
8 in these houses.

9 Q Do you know where the jobs are in Middlesex County?

10 A They are distributed throughout the county. They
11 are distributed in greater number in the northern portion
12 of the county and down through the central corridor, the
13 Route 1, Turnpike, Pennsylvania Railroad corridor, but are
14 available throughout the county.

15 Q Well, if I told you that Mr. Sternlieb's projection
16 as to distance to jobs for low and moderate income families
17 is approximately fifteen miles, would you say that that
18 was a reasonable projection, a reasonable figure?

19 A Well, I think some low income people travel further
20 than that.

21 Q So low income people pay more than 25 percent of
22 their income for housing, too, don't they, but isn't that
23 what we're trying to prevent?

24 A That's true.

25 Q And would you think it wise to locate low and moderate

1 income people more than fifteen miles from their jobs?

2 A I would not think it advisable.

3 Q And has any of that consideration ^{been} placed into
4 your figures?

5 A No. I didn't think it was a factor in this context
6 of Middlesex County.

7 Q I see. What consideration, if any, has been given
8 in your figures to recreational opportunities?

9 A None. I assume that they are present in each
10 municipal community, or it's the obligation of the community
11 to provide them.

12 Q What consideration has been given in your figures
13 to sewer and water facilities in the municipalities?

14 A The history of every developing area is that these
15 facilities are provided as its need develops for them, and
16 would be in this case.

17 And the other thing is, I don't know that poor
18 people need more sewers than rich people, and we're talking
19 here about what share of the housing that expect, which the
20 Master Plan said you will get in any case, should be
21 available to poor people or to low income people.

22 Q You will agree that all people need sewers and water,
23 will you not?

24 A That's right. And I think they all need them equally.

25 Q Would you also not agree that it is a proper function

1 of planning to provide housing in areas that are readily
2 sewerable and watered?

3 A Yes. I think that planning should provide housing
4 in areas that are most economically sewerable, if I can
5 use that word, and that the most economically sewerable
6 housing is the highest density housing.

7 Q Have you made any studies, or -- first, have you
8 made any studies as to what areas of Middlesex County are
9 most economically sewerable and waterable?

10 A No, I have not.

11 Q So those considerations were not included in your
12 fair share allocation plan, is that correct?

13 A No, only on the basis of the assumption that where
14 there is housing built at high density, that it is possible
15 to provide sewers.

16 Q Now, have you in arriving at the fair share for
17 each municipality, taken into consideration what land is
18 vacant and usable for low and moderate income housing?

19 A Only as computed by the state in its 1970 study of
20 vacant buildable land.

21 Q Wouldn't there be some differences between those
22 computations in 1970 and similar computations, were they
23 to be made in 1976?

24 A They could be, but that's why I took 1970 as the base
25 figure and projected from there.

1 Q So again, you aren't taking into consideration
2 at all the differences in available land between 1970 and
3 today.

4 A I am, on the assumption that if vacant land was
5 built on since 1970, for people of low and moderate income,
6 that that would be considered to their fair share.

7 Q And if it was built on for people in general, it
8 would be subtracted from available, usable land, would it not?

9 A Yes, that's true.

10 Q If it were used for park land and were taken over
11 by state, county or municipality for park land, that would
12 subtract it too.

13 A There would be less land available, yes.

14 Q And if subsurface conditions were discovered that
15 made that land unbuildable, that would subtract it too,
16 would it not?

17 A Subsurface conditions are sometimes subject to
18 remedy, depending upon the type of condition.

19 Q But you haven't taken that into consideration,
20 have you?

21 A No.

22 Q Now, sir, I seem to recall when you were discussing
23 your qualifications you had stated that you in the past
24 had made some studies with regard to transportation, is
25 that correct?

1 A Yes, that's correct.

2 Q And as a planner, do you consider yourself an expert
3 in the relationship of transportation to planning?

4 A Yes, I consider myself knowledgeable in that area.

5 Q Now, sir, could you tell me in your fair share
6 allocation plan where you have taken into consideration
7 the availability of public transportation in allocating
8 housing units?

9 A Transportation for at least moderate income people
10 need not be public. There are automobiles available at
11 relatively lower cost, and people do use car pools, so that
12 the existence of public transportation, which is more
13 desirable, is not -- the need for these -- the existence
14 of public transportation is not a barrier to the location
15 of people of low and moderate income. On the contrary,
16 I believe to the extent that there are larger numbers of
17 people of low and moderate income housed at higher densities,
18 it facilitates the expansion and sustaining of public
19 transportation.

20 Q So, then you feel, sir, that the availability of
21 public transportation is not relevant to the location of
22 low and moderate income families?

23 A I would say it's relevant, but not essential.

24 Q And that has not been taken into consideration in
25 any of your figures, is that correct?

1 A No.

2 Q Sir, in arriving at these figures, have educational
3 facilities been taken into consideration?

4 A No, they have not.

5 Q And has the ability of the municipality in which
6 you intend to locate these families to provide for water,
7 sewer, education -- I presume you believe education is
8 important to low and moderate income families, don't you?

9 A Yes.

10 Q Is the ability of a municipality to provide for
11 water, sewer, educational facilities, recreational facilities,
12 transportation you say is unimportant so we'll leave that
13 out of the equation.

14 A I didn't say that.

15 Q All right, let's leave it in. Public transportation.
16 The ability of the municipalities to provide for these
17 things been considered anywhere in arriving at your fair
18 share formula?

19 A No, they have not, because on the assumption that
20 it is required under state and local laws that children
21 be schooled and where there's a health problem, sewers
22 be built, and that these are done whether rich or poor
23 people live there, and they would be done when the
24 population grows.

25 Q Let me give you an example, then.

1 If you had a town of, say, 300 families, more or
2 less, and you would require that town to provide for 14
3 or 15 hundred new low and moderate income families, and
4 that town were to have little or no industries, how would
5 the 14 or 15 hundred low and moderate income families
6 that are moving into that town be provided with sewer
7 and water, assuming they were not presently there, and
8 schools and recreational facilities, and whatever public
9 transportation you feel is necessary, and police facilities
10 and the other facilities and amenities necessary to operate
11 a municipality?

12 A Well, if that were to happen, I would assume that
13 the -- in the natural course of events, if there were
14 critical problems, the Legislature would have to take note
15 of it, and the state would have to, as is required of the
16 state, with reference to the creature government, have to
17 make some kind of adjustment in terms of state revenues
18 to handle that.

19 During World War 2, we put working class families
20 in all kinds of places in high concentration, and no one
21 asked who could pay for the sewers, the schools or other
22 things. And in the end it all worked out somehow.

23 In fact, they had to do it to win the war, and we
24 ought to have the same attitude here.

25 Q You wouldn't consider that good planning, would you?

1 A Let me say, I'm not -- as a planner, I'm not an
2 advocate of fair share, if I may get that on the record.
3 The courts have said that fair share is the way it has to
4 be done.

5 I would be for county allocated housing, in
6 Middlesex County, where the county made a study and told
7 you how many units you can handle and why you should have
8 them.

9 But, the requirement is to have a fair share plan.
10 And this is as best I can come up with a fair share plan.

11 Q Before we get into that next one, would anybody
12 like to break for lunch for an hour?

13 A I should add to that, I've done some writing on the
14 distinction between planned housing allocation and fair
15 share. They're not the same thing. But, we're talking
16 about fair share.

17 MR. CHERNIN: May I have the name of
18 that writing?

19 MR. SEARING: I'll put it on the list.

20 A Sometimes I say them or write them and don't remember
21 where.

22 (Discussion off the record.)

23 (After discussion.)

24 (Whereupon, hearing adjourned for
25 lunch.)

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(After lunch at 1:40 p.m.)

BY MR. PLECHNER:

Q Mr. Erber, you indicated that in arriving at unmet housing needs, you took into consideration heads of households commuting into the county and earning under ten thousand dollars a year in 1970, is that correct?

A That's right.

Q Did you take into consideration anywhere in your formula people from Middlesex County commuting outside of the county in any particular wage group?

A No, we did not. And, I proceed on the assumption that the number of low and moderate income people commuting out would be relatively small.

Q Well, if the number commuting out were equivalent to the number commuting in, wouldn't that be a wash-out and hence eliminate the necessity to consider the ones commuting in from your figures?

A Well, it would be a wash-out if we had a fair share plan which included more than Middlesex County, included the whole metropolitan region.

And, if people of low income who are living in Middlesex County and working, let's say, in Union County, were supplied with housing within their means closer to their job, that could be a wash-out then.

But, as of now, since I was proceeding on the basis

1 for fair share for Middlesex, I did not include that.

2 Since I have no basis for assuming that anything
3 will happen beyond Middlesex.

4 Q I see.

5 Now, I would assume from your figures that you
6 used Middlesex County as your region, is that correct?

7 A Yes, it is.

8 Q Could you tell me why you selected Middlesex County
9 as a region?

10 A Because Middlesex County happens also to be a
11 metropolitan region and is a common housing and labor
12 market area.

13 Q You say it's a metropolitan region. Who selected
14 it as such?

15 A Well, it's so identified by the federal government,
16 the Office of Management and Budget, which makes the
17 designations, and then carried out by the Census and by
18 all other federal agencies that have to use a metropolitan
19 region as a basis for any of their -- the implementation
20 of federal laws.

21 Q Do you know what they base that region on?

22 A Yes. On the existence of a central city or central
23 cities, and a commuting pattern between those central
24 cities and other parts of that metropolitan region.

25 In this case, it's a triple central city, it's the

1 New Brunswick, Sayreville, Perth Amboy standard
2 metropolitan statistical area, as it's known in federal
3 publications.

4 Q Now, are there other regions that include towns
5 within Middlesex County?

6 A Not to my knowledge. I don't believe they could,
7 because the standard metropolitan statistical areas are
8 mutually exclusive.

9 Q Well, for fair share housing formulation, have other
10 definitions been used of region by governmental bodies,
11 including Middlesex County?

12 A Not that I know of, as to fair share plans. I
13 don't know of any fair share plans that are in effect in
14 New Jersey.

15 Q Well, hasn't the County of Middlesex come forth
16 with some plans?

17 A Yes, they have.

18 Q Are you familiar with those plans?

19 A Yes.

20 I participated in a meeting at which the director
21 of the County Planning Board presented those plans, he and
22 his staff. That was the meeting, I think, that took
23 place in --

24 MR. SEARING: September.

25 THE WITNESS: When was it?

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MR. SEARING: September.

A September. With the counsel present.

Q Don't some of their plans include the Township of Franklin?

A Yes. As a matter of fact, the Township of Franklin is included in all of the Middlesex County planning studies.

Q But, it's not included in your plan, is it?

A No, it isn't.

Q Is there any reason why you excluded it?

A Yes. Because I feel that in this sense, this is a decision of the county Planning Board to include Franklin, but Franklin is not included in the definition of a standard metropolitan area by the federal government.

And, it was convenient, I imagine, for the county planners to include it, because of the geographical location of Franklin with regard to New Brunswick.

Q Well, wasn't it also considered because of its proximity to jobs and because housing opportunities in Franklin Township would be directly related to transportation and job opportunities in the City of New Brunswick and other areas?

A They might have taken that into account, and I must say that I have looked at the county's studies of fair share, and I think that there are any number of ways by which you can arrive at the fair share.

1 And, I think, for purposes of a plan that can be
2 put in motion, I think that it would only cause problems
3 rather than solutions.

4 Q But, isn't it a fact that fair share housing is
5 more a geographic and demographic problem than a political
6 problem in the sense that it should follow geographic
7 and demographic lines rather than political subdivisions?

8 A Well, yes, there are limits, though, because if you
9 took one half of a municipality, you obviously would be
10 increasing the problems, which you would call political
11 problems, of implementation, and in this case taking one
12 single, additional municipality from another county, I
13 think, could cause some additional problems here in ease of
14 implementation.

15 Q Now, sir, as a planner, would you consider it to
16 be wise to subdivide Middlesex County, assuming Middlesex
17 County as a region, which is the assumption that you're
18 working on, into developed municipalities and developing
19 municipalities?

20 A Well, in effect, I do that, because there are certain
21 communities that have developed housing for low and moderate
22 income families, which they are considered in the fair share
23 with having done.

24 But, I don't know that there is any virtue to
25 dividing the county into developed and undeveloped for the

1 purposes of fair share, because, I think, this could
2 become a very arbitrary decision, because of how one would
3 define developed or undeveloped.

4 There are some counties that have highly developed
5 sections and vacant land, and there are some that have
6 large lands that have spread development.

7 So, we have different development in different
8 counties.

9 Q Well, sir, as a planning tool, don't you have
10 certain municipalities that cluster about the older urban
11 centers which are developed in many instances, and then
12 a ring of municipalities in the outlying areas that have
13 developed more recently, because of their distance from
14 jobs, and because of other factors, lack of utilities and
15 facilities, that are basically developing municipalities?
16 Isn't that true?

17 A No, it's not, because the peculiar nature of
18 metropolitan regional development in, especially the last
19 30 years, is to obliterate the old concepts of central
20 city and suburb, as we knew them, central city as a job
21 base and suburbs as a dormitory, or **bedroom community**,
22 and have scattered jobs throughout whole areas, and the
23 relationship of those jobs to the types of housing
24 available in proximity in suburban areas, I think, is the
25 root of the problem we're facing in the development of

1 Middlesex County.

2 Q Well, for instance, couldn't we reasonably develop
3 Middlesex County into two areas, one consisting of the
4 developing -- the developing municipalities and one
5 consisting of the developed municipalities?

6 A It could be done, but I don't know that it could
7 lead to any useful tool, and the doing of it, I think,
8 would not result in any geographical division.

9 I think that you would have, depending upon what
10 your criteria of development is, but you could have a
11 mixture in developed and undeveloped in different parts
12 of the county.

13 So, there isn't necessarily geographic contiguity.

14 Q It follows relatively geographic lines in Middlesex
15 County, though, doesn't it?

16 A No, I looked at the division of the county in the
17 master plan studies, and I think they have something they
18 call east, and central and south.

19 I mean, I believe that the Middlesex County planners
20 have valid reasons for that kind of division for statistical
21 purposes, although I could also see that one might make
22 further divisions beyond those three in order to refine
23 that, that way of looking at the county.

24 As a matter of fact, I think they do, they go to
25 some 87 planning analysis areas.

1 I could foresee also just having some planning
2 analysis allocation, or allocation by population or densities
3 that could be somewhere in between those two extremes of
4 3 and 87.

5 There are various ways by which planners break
6 down the area they're studying in order to get a handle
7 on it.

8 But, I don't know that either in the way the county
9 did it or the way that anyone else might do it would
10 necessarily proceed from the point of view of developed
11 and undeveloped.

12 Q Well, don't you think the problems are different
13 in allocating fair share housing quotas to a developed
14 municipality from an undeveloped municipality?

15 A Yes. I believe that if a large amount are considerable
16 amount of vacant land is a factor that relates to undeveloped,
17 then I would say yes, but I think that the amount of vacant
18 land should be taken into consideration.

19 Q Vacant and usable land.

20 A Vacant and buildable, yes.

21 Q Sir, in arriving at your fair share housing
22 formula, what other formulas did you study?

23 A I studied the ones for the Dayton, Ohio area, which,
24 to the best of my knowledge, the first plan that was both
25 completed and implemented in a metropolitan area, that's

1 known as the Miami Valley Regional Planning Board Plan,
2 City of Dayton and a number of, I think, seven adjacent
3 counties.

4 I studied the plan for -- developed by the
5 metropolitan Council of Governments for the Twin Cities
6 area.

7 I studied the one for the Washington metropolitan
8 area, which was done by the Washington Council of
9 Governments, and includes the District of Columbia and
10 a number of counties on the Maryland and Virginia sides.

11 I studied one for San Bernadino County, California.

12 The ones I mentioned, I think, were the first --
13 the first four nationally that reached the stage of official
14 acceptance by the bodies that sponsored them.

15 Since then there have been considerable number more
16 that have gone into operation, but the time I did the
17 analysis, I think we identified either 30 or 32 plans that
18 had been completed, some had officially been adopted and
19 others were before their sponsoring regional planning
20 boards.

21 So that I -- we published an annotated bibliography
22 of the plans which was published by the Council of Planning
23 Librarians, a national organization that publishes such
24 materials.

25 And, I think, that we could make those available

1 through the Council of Planning Library.

2 I think they sell them for two dollars a copy. This
3 is an annotated bibliography of housing allocation plans.

4 Q Now, do any of those housing -- fair share housing
5 allocation plans utilize only the factors that your plan
6 utilizes, or do they all utilize other additional factors?

7 A I'm not sure that I can speak for all of them.

8 I think that the original Miami Valley Plan was
9 very close to what I have developed here.

10 I think they have updated that with a more sophisticated
11 version on the second go around, after it has been in
12 operation some five years, I believe. There's a second
13 amended version of that plan.

14 Q So, as far as you know, every plan that you are
15 familiar with, including the updated version of the Miami
16 Valley Plan, utilizes additional factors to those factors
17 used by you in arriving at your formula, isn't that correct?

18 A No, I do not know that of my knowledge.

19 Q You know of none that utilizes only these factors,
20 is that correct?

21 A I believe there are some. I would say there are
22 some that are more elementary than mine. Simple mathematical
23 allocations.

24 Q Can you name any of them?

25 A I'd have to go through the bibliography.

1 We did them chronologically. The first one listed
2 as a study is the Middlesex County Planning Board Study,
3 here, I think in '67 or '68, when they began working on
4 this. So they are the banner county on allocation studies.

5 Q And that has long since been abandoned and newer,
6 more sophisticated formula has developed.

7 A Yes. Like zoning, as such, this is a developing
8 science and art. It builds on experience.

9 Q Why didn't you use one of the more recently
10 developed, more sophisticated formulas in arriving at your
11 fair share allocation?

12 A Because the basis for allocations here is called
13 fair share.

14 And I assume it's within the definition of the
15 New Jersey Constitution of right to live in places as
16 defined by the court in the Mount Laurel case, and I'm
17 not an attorney here, you attorneys will have to argue
18 that one out, but a planner has to take his bearings from
19 some legal source.

20 And in the Mount Laurel decision, the court said
21 that it was not in a position to prescribe more sophisticated
22 allocation, because there's no machinery for it, because
23 with a lack of such machinery, it is prescribing fair
24 share, and I've done a fair share plan.

25 Q But, the Mount Laurel case in no way went into the

1 matter of formulation, did it? It didn't recommend any
2 formulation.

3 A It said fair share and said it could not give a
4 more sophisticated plan, because there was no machinery
5 for it.

6 Q Because it is a court and not a planning consultant
7 body, is that correct?

8 A That's right. And this is done at the instructions
9 of a court. That's why I did it. Because a judge asked
10 for it.

11 Otherwise, we would not have prepared it. We are
12 not called to make a plan to make --

13 Q No court asked for this formula.

14 A I think counsel will have to answer to that.

15 MR. SEARING: You like me to respond?

16 MR. PLECHNER: Yes.

17 MR. SEARING: I believe the history
18 of this is that the defendant Piscataway
19 initially asked for the numbers of what
20 we conceived of as a fair share of low and
21 moderate income units in each defendant
22 municipality, and at a conference held
23 before Judge Furman, I believe back in
24 April, the judge indicated that plaintiffs
25 were expected to respond to that **interrogatory**.

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The development of this plan, this fair share plan is such a response.

MR. PLECHNER: But, it is your expert's response. It is not based on factors presented by the court, but rather based on factors considered important by your expert.

MR. SEARING: It is our expert's response, to the ~~interrogatory~~^{as} presented.

Q Now, Mr. Erber, have you studied Middlesex County's most recent formulations with regard to fair share housing?

A Yes, I have.

Q And they have resulted in --

A You better identify which is the most recent.

Q All right.

There were several Middlesex County fair share housing plans developed by the County Planning experts, is that correct?

A Yes.

Q And, I think, they numbered approximately four, am I correct there? I shouldn't say approximately. They numbered four.

A Yes.

Q Are you familiar with those four?

A Not in detail.

1 Q Are you familiar with the results, the resulting
2 figures of those four?

3 A Not that I could quote.

4 Q Do you know whether or not they are consistent
5 with your figures?

6 A My impression is that in making comparisons, I
7 believe that they did not adequately provide for the factor
8 of employment in Middlesex County by low income persons
9 who live outside the county, and would, if given an
10 opportunity, be likely to live within the county.

11 Q Well, some did and some didn't, didn't they?

12 A Yes, but the ones that did I think had, in my
13 estimation, as I would call it, made an inadequate provision
14 for that factor.

15 Q On the other hand, their formulas made provisions
16 for numerous other factors that yours ignored, is that not
17 true?

18 A That's right. Some of them did, yes.

19 Q Now, are you familiar with the formula developed
20 by the firm of Abeles, Schwartz and Associates, that you
21 footnote on page 2, footnote 3 of your -- perhaps it's
22 page 1.

23 Page 1, footnote 3, of your study?

24 A Yes. I went through that report.

25 Q And that report contains radically different conclusions

1 from yours, does it not?

2 A It's at variance, yes.

3 Q And again the conclusions are because it uses a
4 great deal more sophisticated formulation than yours,
5 does it not?

6 A It might be due to that, yes.

7 Q And don't you think in using a great many more
8 factors, such as the county formulas and the Abeles and
9 Schwartz formula used, that they are developing a more
10 truly fair share allocation?

11 A Well, I could not respond to that, because that
12 involves definitions of fair share, and truly fair share,
13 and that is still subject to great controversy.

14 Q Well, wouldn't you think they more accurately, or
15 more logically place the population where it can best be
16 cared for?

17 A That is again subject to the interpretation of a
18 lot of data, and I don't believe that -- let me speak in
19 defense of my plan.

20 I don't believe that mine places the population in
21 a position where they can not be cared for.

22 I think that Abeles and Schwartz are able professional
23 planners, I think the county planning people are able
24 professional planners, and I have a feeling that there are
25 a number of methodological approaches to this, and it would

1 be a question of adopting the very best one in the opinion
2 of whoever is going to be doing the adopting.

3 Q Have you, sir, taken into consideration present
4 concentrations of low and moderate income housing units
5 in various municipalities?

6 A Yes, we have.

7 Q And where have you taken that into consideration?

8 A Well, we -- when we consider communities with the
9 provision of housing for low and moderate income families
10 that are already adequately housed, we take that into
11 consideration.

12 Q In other words, in your column 2, page 8.

13 A That's right.

14 Q So could I assume from column 2, page 8, then, that
15 the City of Perth Amboy has only 26 families low and
16 moderate income that are adequately housed?

17 A And not paying more than 25 percent of their income.

18 Q And that was as of what year?

19 A 1970.

20 Q And where did you get that figure?

21 A Well, that came out of the Census of Housing,
22 1970, that's why I used 1970 as my base figure.

23 Q Now, have you made any studies since then to
24 determine whether or not the City of Perth Amboy has
25 undergone construction programs to provide low and moderate

1 income housing in greater quantities than 21 units --
2 26 units?

3 A No, I haven't. But, if they have since 1970, that
4 would be credited to them for their goal.

5 Q If you credited them, is that correct?

6 A What's that?

7 Q If you were to credit them it would be credited?

8 A Yes.

9 Q But, you haven't.

10 A Whoever administers the plan would obviously credit
11 them.

12 Because, what is shown in a fair share plan is
13 simply a goal, and each municipality will contribute to
14 that goal as it puts up housing or renovates housing or
15 does other things about housing to diminish its unmet need
16 and reach its fair share.

17 Q Now, I believe you've already indicated that you
18 did not consider a municipality's financial resources
19 to enable them to create this housing, is that correct?

20 A That's right.

21 Q Failing to consider these resources, how would you
22 propose that the housing be created?

23 A Well, there are assistance programs by federal
24 government and by state government, and there is the
25 possibility that private developers can put up housing

1 under Section 8 of the Federal Act under which they
2 contract with the Housing and Urban Development Department
3 to pay the difference between 25 percent of income and the
4 market rent that they would charge other people in that
5 unit.

6 Q And these are all subsidy programs, are they not?

7 A In one form or another, yes.

8 Q Do you know how many available funds are provided
9 by the subsidy programs to create low and moderate
10 income housing in the County of Middlesex?

11 A I don't have the exact numbers, no.

12 Q You didn't take that into consideration, did you?

13 A No.

14 Those aren't the only sources for housing.

15 There are possibilities that if there were an
16 adequate supply of housing in Middlesex County to meet
17 the total demand of low, moderate, middle and high,
18 that the cost of housing would go down, the vacancy rates
19 would go to a normal range, and that the housing market
20 would normalize itself with a filtering down process,
21 where a lot of good, standard housing would again become
22 available to poor families by virtue of the fact that
23 more affluent families are moving into other housing
24 that's being built that they can afford.

25 So that the problem of meeting fair share has to be

1 considered beyond subsidy within the context of the
2 entire housing supply of Middlesex County.

3 Q So what you're saying is that you feel that
4 the process of filtering is a dynamic process that can
5 provide housing for even low and moderate income families
6 by providing housing for families in general, is that
7 correct?

8 A Yes, but that can not be the sole source, because
9 while that can give standard, decent housing to low income
10 families, it doesn't always give it to them in the locations
11 where it's most needed, in terms of job opportunities,
12 better schools, better parks, atmosphere and so on, which
13 they should have access to by virtue of the fact that they
14 are covered in the sense of being Americans, when Congress
15 said that every American citizen should have a right to
16 decent, sanitary housing.

17 Q Those factors weren't considered in your formula.

18 A The filtering down?

19 Q No, the factor that you feel every American is
20 entitled to.

21 A Yes, I do, because I say at the very beginning,
22 the rationale for my plan, it is federal and New Jersey
23 state policy that an opportunity should be provided for
24 every family without regard to race or income to live in
25 a standard dwelling unit, i.e., and in physically sound

1 condition and not overcrowded, at a cost that is reasonably
2 within their means, i.e., not in excess of 25 percent of
3 income, and to have a reasonably adequate choice as to
4 location, especially with regard to place of work.

5 Now, it's the latter, the reasonably adequate
6 choice, that is not entirely satisfied by the filtering
7 down process.

8 Q Nor is it entirely satisfied by your formula, is
9 it?

10 A Well, I think that if each municipality in Middlesex
11 County fulfilled the fair share goal as I have set it
12 down here, it would reasonably -- it would give reasonably
13 adequate choice as to location.

14 I think that a low and moderate income family would
15 have a wide choice of where they would choose to live in
16 Middlesex County.

17 Q True, but would the housing be located where,
18 considering factors of transportation, employment,
19 recreation, and education, among others, low and moderate
20 income families would normally locate, normally choose to
21 locate?

22 A Well, I would say that the best way would be to
23 put that to a test.

24 If, for instance, you take the municipality of
25 Carteret, which I think has an annual increment, if they

1 once meet their 1970 goal, of 60 units a year additional,
2 if they start putting up units and there were no takers,
3 you wouldn't put up any more units.

4 So, I think, the market even among low and moderate
5 income people is a test as to whether they want to exercise
6 it. We only speak here of an opportunity for a reasonably
7 adequate choice. If they don't exercise the choice, if
8 it turns out that all low and moderate income people
9 choose to live in New Brunswick and Perth Amboy, then,
10 of course, there would be no need to continue building
11 them elsewhere.

12 Q But, isn't it part of your function as a planner
13 to determine where these people would normally, rationally
14 choose to live, and design your formula to meet that
15 rational choice?

16 A Well, I have to go on the assumption that there
17 aren't any vacant units for low and moderate income people
18 that have been standing idle in other parts of Middlesex
19 County, and there are, if they're not vacant, there must
20 be takers for them.

21 Q Existing housing you're speaking of.

22 A Yes. But, I would have to assume that one would
23 test whether there's a need for more by putting up more.

24 You know, if you began to find that you couldn't
25 find any takers for it, you stop putting them up. Even

1 a builder knows enough to put up only a couple of model
2 homes and he sells from that on the basis of people --
3 because even housing authorities, when they put up a
4 housing project, they usually announce that the project is
5 going to be topped at a certain date and people flock to
6 get on the waiting list.

7 If no one goes on the waiting list, you cancel the
8 project immediately.

9 Q But, that's not very good planning, is it?

10 A Well, it rarely happens. I don't know of any
11 project that's been cancelled in the United States for
12 low and moderate income people. You can make the assumption
13 that they're there.

14 Q We keep talking about low and moderate.

15 As a matter of fact, there are a number of available
16 housing opportunities in Middlesex County right now for
17 moderate income families, aren't there?

18 A There might be. I couldn't say that there are not.

19 Q You made no studies to determine that.

20 A Well, I wasn't asked to, so I didn't.

21 Q There would be a difference in housing opportunities
22 between low and moderate, is that not correct?

23 A There's a difference in income, and the question of
24 the depth of subsidy, where subsidy is required.

25 Q And you would agree with me that it is impossible

1 to construct low income housing without some subsidy in
2 some form, is that correct?

3 A Yes, of some form.

4 Q And on the other hand, it is possible for the free
5 marketplace to create moderate income housing, is that
6 not true?

7 A It's becoming increasingly difficult, but where
8 there is, for instance, zoning for town houses, and
9 condominiums, this is about the only kind of housing that
10 I think people of moderate income can afford that's put
11 up without subsidy on the private market now.

12 Q Did your formula take into account the availability
13 of multi-family housing in various municipalities as
14 opposed to single family?

15 A No. We just take dwelling units as a category.

16 Q And that makes a difference, too, whether it's
17 multi-family or single family?

18 A Yes, it makes a difference, in that the ability of
19 some municipalities to achieve their fair share goal will
20 require building multi-family or in some way building at
21 densities that would permit them to use smaller areas of
22 land than are available to other communities.

23 Q But your formula didn't take any of that into
24 consideration.

25 A No, it didn't.

1 Q Now, sir, in studying the county figures that were
2 the basis of your original statistics in Part 2, on page 8,
3 did you discover any subsequent revisions of these county
4 figures, or county projections?

5 A Subsequent to 1970?

6 Q Yes.

7 A No, I did not.

8 MR. SEARING: This question and others
9 in the past fifteen or twenty minutes, I
10 think, have been and can be demonstrated to
11 be quite repetitious, in that we have covered
12 a lot of these before lunch.

13 I would ask that in order to perhaps
14 allow other people an opportunity to ask
15 different questions, we might speed things
16 along.

17 MR. PLECHNER: Yes, certainly.

18 I just wanted to determine whether
19 or not he had discovered any revisions in
20 the county projections.

21 MR. SEARING: I think that was asked
22 before, in a variety of ways.

23 Q I would ask one other question along that line, then.
24 Were these county projections developed in 1970 and
25 earlier proven by later statistics to be accurate or

1 | inaccurate projections, if you know?

2 | A I believe that they are on the high side, because
3 | the county was optimistic in assuming that there would be
4 | zoning changes in keeping with the Middlesex County Planning
5 | Board, which did not take place and consequently housing
6 | starts were way down.

7 | Q How about need?

8 | A Well, I think need is as big as it was in 1970,
9 | if not greater.

10 | Q Do you think the county projections proved accurate
11 | as to need?

12 | A Well, I don't know that the county projected need.
13 | I took the 1970 state figures on need, and I projected
14 | them just on the basis of the county's projection of the
15 | number of additional housing units that would be built
16 | in Middlesex County and took one-third of that number as
17 | being allocated for those of low and moderate income.

18 | Q So you don't really know whether the various
19 | projections are proved accurate or not?

20 | A Whether the need is still there?

21 | Q Yes.

22 | A No. I have to assume the need is still there.

23 | Q I call your attention to a document dated January 9,
24 | 1976, entitled "Notification of Intention to Use Expert
25 | Witnesses" and identifying the witness as Ernest Erber, A.I.P.

1 Did you prepare that document?

2 A Yes. I prepared it with counsel.

3 MR. PLECHNER: Let's have that
4 marked.

5 (Whereupon, document dated 1-9-76,
6 three pages, marked DH-2 for identification.)

7 Q Now, sir, in that document DH-2, it states: "It
8 will be the general conclusion of Mr. Erber that the
9 pattern of land use that has emerged in Middlesex County
10 as a consequence of the defendants' regulation of land
11 use is at variance with metropolitan regional growth
12 patterns, and is prejudicial to the opportunities of
13 persons of low and moderate income in seeking to live
14 in decent housing within their means, located broadly
15 within portions of the county where they might desire
16 to live."

17 Now, what did you mean by that statement?

18 A Well, I think the statement speaks for itself.

19 I think that Middlesex County was affected by the
20 expansion of the New York metropolitan area, the post
21 World War 2 period particularly, especially during the
22 50's and 60's, and continues in the 70's, and that the
23 land pattern, the land use pattern that emerged was not
24 conducive to accommodating that growth, because -- and
25 the manner in which land is used in Middlesex County.

1 Q Doesn't land use pattern refer to the location of
2 particular types of used?

3 A Well, land use pattern in a way represents the
4 sum total of all decisions that affect the way land is
5 used.

6 And these relate to the provision of transportation
7 arteries, utilities, and specifically and directly the
8 application of land use regulations through master plan,
9 official maps, subdivision ordinances and zoning.

10 Q Well, land use pattern refers to what actually
11 is present on the ground, doesn't it?

12 A That's right, exactly.

13 Q And land use pattern in Middlesex County historically
14 and presently has been one of population being located
15 in relatively close proximity to jobs for the income level
16 of the population, isn't that correct?

17 A That was so, up until about the middle of 1940,
18 and then we got into a different pattern of growth in
19 Middlesex, in the New York metropolitan area as a whole,
20 and practically every metropolitan area throughout the
21 northern, central and west coast metropolitan areas.

22 In the south and southwest there's a slightly
23 different pattern, because of the laws of annexation,
24 which permit central cities to annex by their own powers
25 adjoining suburban areas.

1 So there you have just taking place within the
2 incorporating cities like Houston, Dallas, Phoenix, so on.

3 But, here in Middlesex County, we did not have a
4 continuation of the pattern which prevailed through the
5 1920's, '30's and partly into the '40's, of the major
6 job concentrations in New Brunswick, Perth Amboy, several
7 other job concentrations in the northern part of the county,
8 with a cluster of low income, or lower and moderate
9 income employees living close to those jobs.

10 What is known as the metropolitan explosion took
11 place after World War 2 and the jobs were scattered over
12 the landscape, wherever there were highways, there were
13 highway-side industries established, and the relationship
14 of home to job took on a whole different pattern.

15 Q Isn't it still the pattern, though, sir, that your
16 heavy industrial plants that employ the most unskilled
17 and semi-skilled labor, are still in areas which are
18 surrounded by large numbers of low and moderate income
19 families?

20 A Well, I would not know this for a fact, but I would
21 be very much surprised if the people who worked for
22 Johnson and Johnson in their New Brunswick plant are paid
23 less than are employed in other plants that Johnson and
24 Johnson has established in suburban locations in Middlesex
25 or Somerset Counties.

1 Q When, as a matter of fact, most of the Johnson
2 and Johnson plants located in Middlesex County, which is
3 the county we're discussing, are located in close proximity
4 to New Brunswick, aren't they?

5 A Well, I don't know what you mean by, "close proximity."

6 Q Within a fifteen mile radius.

7 A Yes, if that's the proximity. That's not the image
8 of the people who can walk to work that you developed
9 earlier about the low income people clustered near the
10 factory, which was once the historical pattern.

11 And fifteen mile radius requires automobiles and
12 car pooling, or at minimum a bus.

13 Q Public transportation.

14 A Yes.

15 Q Sir, have you made any study of, town by town, of
16 the figures published by the Tri-State Regional Planning
17 Commission, regarding where the people in each of the
18 towns works?

19 A No, I have not.

20 Q So you wouldn't know what percentage work within
21 the county or what percentage work outside of the county,
22 would you?

23 A As to the county, I know what percentage -- I have
24 the figures which were used in the fair share plan as to
25 the number of people that live outside and commute in.

1 But, I didn't take into consideration, as I said
2 before, those that live in the county and work outside.

3 Q Are there some municipalities within Middlesex
4 County where a large percentage of the people work outside
5 of the county?

6 A I would assume that there are variations in the
7 number of people who work outside the county from one
8 town to another.

9 This is always a factor of the socio-economic
10 composition of the population of that town.

11 Q And what would it indicate to you if a municipality
12 had fifty percent of its population working outside of
13 that municipality?

14 A Well, it would indicate that, first of all, that
15 they are probably people of higher income, who are going
16 elsewhere to work, white collar professional, managerial
17 people, and that there's a strong likelihood that in time
18 a greater number of them will be working close to that
19 town, because managerial, professional and technical jobs
20 are moving to the suburbs as a trend for the last twenty
21 years.

22 Q Wouldn't the converse also be indicated, that there's
23 probably not much local industry to attract lower and
24 moderate income groups?

25 A That wouldn't necessarily follow, because if there

1 were no housing they could afford, they wouldn't, obviously
2 live there.

3 Q For instance, if a municipality had, say, eight
4 percent of the county's population, but only eight percent
5 I'm sorry, only .8 percent of its low and moderate income
6 jobs, would you think that was important when considering
7 how much low and moderate income housing should be
8 constructed in that municipality?

9 A Not within that municipality, because I think
10 municipalities in New Jersey tend to be relatively of
11 small size, certainly in Middlesex County, and that one
12 has to provide housing not just in the town where the jobs
13 are, but there should be a relationship to the jobs, but
14 in addition to the jobs, people choose to live in places
15 that have good schools and good parks and good environment.

16 And, I think, this should not be reserved only for
17 high income people. I think that what Congress committed
18 us to in 1949, which we're still trying to achieve, is
19 that this should be an opportunity for every American.

20 Q But, you haven't considered these good parks, good
21 schools or good facilities, have you?

22 A I assume that if people have a choice, have adequate
23 choice as to where they're going to live, many of them
24 will choose to live where there are good schools and good
25 well, they may even travel further in order to get that

1 for their kids.

2 Others may choose to go to a place with less adequate
3 schools and be closer to work. But, this is an individual
4 choice.

5 Q How do you determine that from looking at your
6 figures?

7 A My figures are based on maximizing choice. And
8 they're based on the principle of fair share, everyone is
9 to provide their fair share of such choices, and that the
10 people will find their own way to the housing opportunities
11 once they are provided for them.

12 Q So the town should go ahead and build along these
13 formulas, then, and after the housing is built, we'll
14 find out some will be empty and some will be overcrowded
15 and it will all wash out in the end, is that your theory?

16 A Yes, because no town will use such poor judgment
17 as to put up two thousand units in one crack, if that's
18 what their fair share is.

19 They will be building and renting and actually
20 they will be leasing them even before they're off the ground.

21 Q If a town is allocated two thousand units under your
22 formula and it starts building them, and it finds it
23 can only utilize five hundred, doesn't that throw the
24 whole formula off?

25 Don't we have fifteen hundred people with no place

1 to go?

2 A No. First of all, I rather doubt that that will
3 happen.

4 But, if that were to happen, it may be necessary
5 to make a revision at that point, because even when a
6 space ship goes into flight, there are corrections that
7 are needed when it's off course, and so that something
8 dealing with something so less scientific, there have to
9 be correctives based on experience.

10 I think what's so desperately needed here is
11 experience with fair share, so we can get experience under
12 our belt and become sophisticated and refined as we go
13 along.

14 Q How far into the plan do we make the corrections?

15 A Well, I would say that there can be an annual
16 report and annual -- just as your local zoning -- your local
17 planning boards look at zoning plans and look at what's
18 happening, and every once in a while they decide that they
19 ought to do something about it because the way development
20 is taking place is not the way they had anticipated, and
21 they do some rezoning.

22 Unfortunately in Middlesex County, it's always to
23 zone for more industry on the whole, or for larger lot
24 sizes, which is going in the wrong direction.

25 Q Well, shouldn't we have, between 1970 and 1980,

1 shouldn't there be some checking on these figures along
2 the line?

3 A I think there should, yes.

4 Q And shouldn't some of that have been done before 1976?

5 A Well, I think that would be correct, if we had
6 instituted the fair share plan in 1970. But, as of now,
7 we have nothing to go by.

8 Q But, it's all based on figures from 1970, isn't it?

9 A Well, if someone wants to add up how many standard
10 units for low and moderate income people have been built
11 since 1970, I think that it would be reasonable to credit
12 those to their accomplishment, and their 1975 goal would
13 be reduced by that many.

14 MR. SEARING: We are back to asking
15 repetitious questions. These have been
16 answered before lunch and since lunch.

17 Q Now, you also indicate, sir, that you intend to
18 testify on the historical pattern of distribution of
19 population, economic activity in Middlesex County prior
20 to 1945.

21 How is that relevant to fair share, if it is?

22 A Well, I don't know that my testimony is limited
23 to fair share.

24 I think I'm appearing, as I understand it, I'm
25 being asked to testify as a professional planner, with

1 particular expertise in metropolitan regional development
2 and its impact upon local land use patterns.

3 When I testify as to what has transpired in
4 Middlesex County, in terms of the historical development
5 of the county, I have to, in order to show how the county
6 is really part of a larger metropolitan region, which is
7 pressing economic and population development upon this
8 land area, it's well that I begin with the earlier
9 formation here, when it was not under that pressure, and
10 then show what happened once it came under that pressure.

11 Before 1945, the metropolitan regional pressure upon
12 Middlesex County was rather slight, in terms, largely
13 only of a northern band of land, whereas after '45,
14 particularly with each additional decade, 1950 and 1960,
15 this pressure became more pronounced.

16 And what my testimony wishes to do is to elaborate
17 on how Middlesex County was affected by a metropolitan
18 regional growth factor, and how Middlesex County reacted
19 under those pressures, in terms of where people lived,
20 worked, what kinds of people, what kinds of transportation
21 was provided, because I think that the whole question of
22 what is -- what the problems are in Middlesex County,
23 including the problem of concentration of people by
24 income and race, relates to that pattern.

25 Q What other counties do you consider in that region

1 you just discussed and just mentioned?

2 A I think there are 22 counties in the region, and
3 in addition to the nine which I cited earlier, I believe
4 I cited all the counties that -- New York City has five
5 counties within it, each borough being a county, although
6 sometimes the names are not the same.

7 So, there are the five counties within New York
8 City, the two on Long Island, Nassau and Suffolk, the one
9 in Connecticut, Westchester, Rockland, Dutchess, and
10 then the nine in New Jersey.

11 I don't know what that adds up to.

12 Q What are those nine?

13 A Oh, that's --

14 MR. SEARING: He's answered that
15 question before and I object to the repetitious.
16 He's answered it twice.

17 MR. PLECHNER: He hasn't answered
18 that question with regard to the fact
19 portion of this deposition.

20 He answered that question with regard
21 to his qualifications, because he said he
22 made a study of nine counties.

23 I'm not sure if they're the same nine
24 counties.

25 A It will take less time for me to repeat them.

1 Hudson, Bergen, Passaic, Morris, Essex, Union,
2 Somerset, Middlesex and Monmouth.

3 Q How have you found Middlesex has responded with
4 relation to those other counties?

5 A I can't venture that kind of a comparative judgment,
6 but I would say in some respects better, in some respects
7 worse.

8 Q In arriving at fair share for that region, have
9 the responses of the other counties been considered?

10 A I have had no occasion to do fair shares for the
11 other counties.

12 Q Has the impact of the other counties on Middlesex,
13 or Middlesex' impact on the other counties been considered?

14 A Well, there is the impact of the other -- of the
15 more populated counties to the north, Union, Essex, Hudson.
16 They have spill-over of population that affects Middlesex
17 and they have a great many jobs that break loose from those
18 areas and come and locate in more suburban areas, like
19 Middlesex County, so it is in that respect, those other
20 counties have been taken into account as generators of
21 population and employment that comes to Middlesex.

22 Q Aren't some of the neighboring counties in Middlesex,
23 Somerset, Monmouth, able to absorb increased populations
24 much more readily than Middlesex?

25 A That might be so, and I think that eventually they

1 should all have fair share plans.

2 Q But you haven't considered those at the present.

3 A As to --

4 Q You haven't considered the availability of housing
5 opportunities in Somerset or Monmouth Counties, when
6 considering Middlesex' fair share?

7 A My impression, Somerset, I don't think they're
8 providing enough fair share for their own low income
9 people that already work in Somerset.

10 This is based on a Somerset County Planning Study
11 which showed that to be the case. That study is a little
12 bit old now, but I don't know of nothing that's happened
13 in Somerset County in the last seven years to change that.

14 Q Don't you think, though, that the opportunity by
15 way of usable land available in Somerset and Monmouth
16 Counties should be considered when one allocates fair share
17 housing to Middlesex?

18 A I think that Middlesex could very well go a long
19 way towards achieving its own goal before it began to
20 worry about the need for more vacant land in other counties.

21 Q So you think each county should be considered as
22 an entity of itself, and that they should not be considered
23 together when arriving at fair share.

24 A Well, I think that one has to start somewhere, and
25 I think that starting with the problem in one county is a

1 good starting place, and if at some future date we had
2 fair shares percolating in Middlesex, Somerset and Monmouth
3 and the three counties wanted to get together and work out
4 a better distribution, that's possible under state law,
5 which permits counties to collaborate in a blanket legislation,
6 which permits them to do jointly what they have the power
7 to do separately.

8 Q Calling your attention to Paragraph 3, page 2, DH-2.

9 You say you're going to testify as to the response
10 to urbanization in Middlesex County by federal, state
11 and county governments.

12 And provision of facilities and services.

13 To what do you refer there?

14 A Well, I think that as urbanization began to press
15 upon Middlesex County, the State Highway Department, as
16 early as 1945 with federal money, made a massive study
17 of origin and destinations of trips on highways, and
18 then projected them in terms of an assumption as to how
19 many people would live in Middlesex, on the basis of which
20 they laid out a road pattern for Middlesex, as along with
21 all other parts of the State of New Jersey, and the
22 State then allocated massive amounts of money to build those
23 roads, all the state roads being built with 50 percent
24 federal money and fifty percent state money, the county
25 allocated money to build county roads in different parts

1 of Middlesex County, widen roads, improve them, all
2 under the pressure of increased population, increased
3 movement of vehicles, and eventually we got into federal
4 and state programs to assist with sewers, with the building
5 of libraries, hospitals, state school aid, all of them
6 being the federal, state and county response to the
7 pressures of urbanization, and I think that one may say
8 that perhaps they didn't do enough or they didn't do it
9 in a sufficient time, or they didn't do it in the quality
10 way that people might have expected that it be done, but
11 I think that there was a massive response on the part of
12 federal, state and county government to equip the area to
13 handle the type of urbanization that was taking place.

14 Q Now, this doesn't relate at all to fair share
15 housing, does it?

16 A Well, it does, because it relates to the fact that
17 if the municipalities had responded in the same way to
18 urbanization and had planned the future of land use in the
19 county in such a way that it would have adapted to
20 urbanization, and to where the highways and all the other
21 facilities were going, the problem, the need for fair
22 share may never have arisen.

23 Q Upon what do you base that statement?

24 A Because if there had been enough land made available
25 for an adequate supply of privately constructed units, we

1 would not have reached a housing crisis, a housing shortage,
2 there would have been less of a skewing up of land values,
3 which were translated into housing values and rentals,
4 and if the towns had each taken advantage of the enabling
5 legislation to create housing authorities and of the
6 availability of public housing which was made available
7 first in 1937 and has been available since, all the various
8 other housing programs that have been developed, I think
9 that we would have had a more reasonable distribution of
10 people in the county with relation to employment and
11 housing opportunities, and we would not have faced the
12 problem here.

13 Q So what you're saying, then, is that whereas the
14 federal, state and county governments have adequately
15 met the needs for transportation in New Jersey, the
16 municipalities have not adequately met the needs for
17 housing.

18 A Exactly.

19 Q Now, paragraph 6 on the same page --

20 A And the last one, I'd just like to add, in your
21 question, you said, whereas the federal, state and so on,
22 adequately met the need for transportation.

23 I think that they did a reasonably good job. I
24 think that their failure was in putting too much money into
25 roads instead of public transportation.

1 I think that would have been a much better balance,
2 had they done that.

3 But, there was at least a reasonable response,
4 as they saw the problem.

5 Q Incidentally, do you know of any federal, state
6 or county funds for housing that go unexpended?

7 A Not to my knowledge, although I think that the
8 amounts of money that remain unexpended in HUD always amaze
9 me, but the reason why they are unexpended is something
10 I am not in a position to respond to.

11 Every time the people from HUD appear before the
12 Senate Committee on Banking and Currency, which was the
13 Housing Subcommittee, they say how come you haven't spent
14 what we allocated last year. And usually it's attributed
15 to red tape and bureaucracy and the dispensation of the
16 funds, and they always say there's money in the pipeline.

17 I know even now there are the impounded funds for
18 235 and 236 which were impounded by the Nixon Administration
19 in January of 1973, shortly after the second Inaugural,
20 that have been tied up, and they're tied up in litigation
21 between Congress and the Administration now.

22 But, new funds have been appropriated since, but
23 we think the new funds plus the release of the old funds
24 would provide opportunities of people within Middlesex
25 County to take advantage of housing.

1 Q Do you think there are adequate funds available?

2 A They are never adequate.

3 Q Do you think there are funds available for large
4 scale development, presently available?

5 A Yes, under Section 8.

6 Q Are there under any other programs than Section 8?

7 A Well, just a newly announced, 235 Program, which is
8 a kind of a subsidized FHA, and then there's the regular
9 FHA program which is another form of a subsidy, and that's
10 insofar as -- that's the only one that was widely taken
11 advantage of in building housing in Middlesex in 1950's
12 and early '60's, which is a form of a subsidy, in that
13 the government underwrites the risk that's involved in
14 FHA and holds the bag if it doesn't work out.

15 But, I think that there are programs that are
16 available.

17 How far they would go, I'm not in a position to
18 predict.

19 MR. SPRITZER: Excuse me.

20 (Recess at 2:48 p.m.)

21
22 (After recess at 2:55 p.m.)

23 MR. PLECHNER: For the record, I'll
24 waive part of my time to Mr. Busch.

25

1 BY MR. BUSCH:

2 Q My name is Bertram Busch, the Township of East
3 Brunswick.

4 I'm only asking a few questions, because of the
5 exigencies of time facing us.

6 Is it fair to say with reference to your table on
7 page 8, Mr. Erber, that if the number in column 1 is
8 defective or incorrect, that every other column on that
9 page and every column on page 9 would fall?

10 A It wouldn't fall. It would have -- if it's
11 incorrect in terms of the numbers that are there, it
12 would have to be adjusted accordingly to whatever is the
13 valid number.

14 Q Isn't every other number in the remaining four
15 columns on page 8 and in the four columns on page 9 based
16 at least in part on column 1?

17 A Right. The adjustment would have to be carried
18 right through to the end.

19 Q Is it fair to say the only column on those two
20 pages that reflects open space, or available land, would
21 be column 4, page 8?

22 A Redistribution of the balance, right.

23 Q And at no time in computing column 1 did you use
24 a vacant land factor, is that correct?

25

1 A That's right.

2 Q With regard to column 1, that's composed basically
3 of two sub-figures, the total of 29 thousand and some odd
4 number for the heads of household outside of the county
5 and the 23 thousand for sub-standard housing, based on
6 two factors.

7 A Yes.

8 Q That's correct.

9 A Yes. That's -- one is based on, taking that
10 figure as the total need, and then apportioning it on
11 the basis of the number of standard units that are in
12 the town now.

13 Q But for starters, you derived a total county unmet
14 need, is that right?

15 A That's correct.

16 Q And then you developed percentages for each town
17 based upon the number of standard units in that town as a
18 ratio to the total number of standard units in the county.

19 A Right.

20 Q And by way of analogy, if East Brunswick had 9
21 thousand units standard, and the county had 90 thousand,
22 we would have the ten percent factor.

23 A Yes.

24 Q And the ten percent factor would be multiplied
25 against the unmet housing needs and then you come up with the

1 East Brunswick figure.

2 A Yes.

3 Q If the figures which were the underlying basis
4 for column 1 have now been projected at a much lower
5 number, would that not affect all of the figures that you
6 have in column 1?

7 A Not in column 1. That would be as of 1970.
8 What it would do is, if any changes have occurred between
9 '70 and '75, it would affect the projection for 1975.

10 Q We talked about two sub-categories that comprised
11 column 1, and one was the substandard housing.

12 A Right.

13 Q If that number turned out to be less, as far as
14 unmet needs, would not all the figures across all the
15 columns be changed?

16 A If it were found that the figure for 1970 was
17 not valid, then that would have to be revised, yes.

18 Q Are you aware of the very latest projections by
19 the Middlesex County Planning Board which have come out
20 within the last two months?

21 A I received some very, I think it's something of
22 two or three pages, where they were looking at the question
23 of growth, the pace of growth.

24 Q And is it fair to characterize their latest projections
25 as substantially downgrading the projections for the next

1 twenty-five years?

2 A Well, I don't know whether it would affect 25 years.
3 I looked at it rather as something that is just a pause
4 in a count down, when I might -- I might have to refer to
5 my analogy of a missile going into flight.

6 But, due to the economic situation, there is going
7 to be a slow up for a couple of years, after that's over,
8 you may get a crazy period of growth, just the way we did
9 as a result of the slow up during the depression decade,
10 and that was postponed again by World War 2. So when
11 it took off, it really took off and Middlesex doubled
12 its population within one decade, the highest within
13 the state.

14 Q Are you aware the County Planning Board has
15 downgraded its long-range population from 1.3 million to
16 about 900 thousand?

17 A No.

18 Q Are you aware the long-range projection for job
19 increase has been substantially downgraded?

20 A No, I'm not aware of that.

21 Q Are you aware of any national trends with regard
22 to the out migration from the northeast to the sun belt
23 or the south and west?

24 A Yes. The Regional Plan Association has put out
25 some material on that. And it's a factor which is as yet --

1 that is, it's a factor which is valid for the whole
2 metropolitan area. What its impact is upon any particular
3 part of the area, such as a county, is not yet clear.

4 And also, it is not clear how -- what its effects
5 are upon the different socio-economic levels of the
6 population.

7 Are the rich people leaving? Are the middle income
8 people leaving or the poor people leaving?

9 I think that could make a great difference.

10 Q If, in fact, the county projects far fewer jobs
11 than ~~it~~ previously projected in 1970, would that have
12 a bearing on the figures which are part of your model?

13 A Well, it could upon projection. My model is based on
14 1970. I feel that the need that was there in 1970 hasn't
15 gone away. And if we then project from 1970 to '75,
16 this relates to what ~~has~~ actually taken place.

17 We project from '75 to '80. This could have
18 bearing upon the revised projections of the Middlesex
19 County Planning Board.

20 Q All of which figures were prepared actually prior
21 to 1970 and published in 1970, is that right?

22 A Well, just how much prior, I wouldn't know, but
23 I would assume that a planning board and a staff like
24 that tries to take into account the most up to date data,
25 and they probably at least in 1970 already had the early

1 returns on the 1970 Census.

2 So, I don't know how much in advance that was prepared.
3 Obviously the plan they -- the plan they were studying
4 these things, for six years, but they try to update as
5 much as they can.

6 Q You have prepared just one model or one formula.

7 A That's correct.

8 Q Did you prepare any other alternate formulas
9 which you have not given to your attorney?

10 A No.

11 Q Were you familiar with the formula that was
12 utilized by Judge Merritt Lane in Monmouth County after
13 the Mount Laurel case in the case involving the Township
14 of Homdel?

15 A No.

16 Q And you're not familiar with a job-oriented formula
17 that was prepared in that case?

18 A No.

19 MR. BUSCH: Under the circumstances,
20 I would like to reserve my right to continue,
21 and I'll yield the floor back to Mr. Plechner.

22

23 BY MR. PLECHNER:

24 Q You indicated previously that you did not particularly
25 favor the fair share allocation plan, is that correct?

1 A No, if I said, "favor," if that's what the record
2 says, I meant that in terms of prefer rather than favor.

3 Favor may mean I don't want a fair share plan.
4 I certainly want a fair share plan. I wouldn't have
5 prepared this if I wasn't for it.

6 But, if, as the old saying goes, if one had one's
7 druthers, or if one could write at will as to what should
8 happen, I believe that planning should be reorganized on
9 a different basis.

10 I think that we're moving toward this. And that
11 fair share would be affected by such reorganization.

12 I believe as many planners do, and not all of
13 them, but I believe that planning ought to be hierachal
14 in forms of government.

15 I think there should be national planning, as set
16 forth in Javits-Humphrey Bill, which is now in Congress.

17 I think that the national plan ought to give each
18 state a framework within which to make its own plans.

19 And, each state ought to give each county a framework
20 within which the county can make plans, and the county
21 ought to be binding within the municipalities and work
22 within the framework in doing the municipal planning.

23 At present, the problem is that the Legislature
24 has given powers to the municipalities to do planning and
25 zoning on the assumption that they would also give heed

1 to the planning that's being done at county and metropolitan
2 levels, but that in effect, this does not take place to
3 the degree that it avoids the problems which require
4 fair share.

5 So coming back to your question, counsel, I would
6 say that if we had such a hierachy of planning decisions,
7 there ought to be a fair share plan for the State of
8 New Jersey, such as Governor Cahill recommended and asked
9 the state planners to prepare, which they're working on,
10 I understand, and that that fair share plan for the state
11 should then have fair share plans -- fair share allocations
12 to each county, and each county ought to then be in the
13 power -- have the power to give them to each municipality.

14 Now, if that were the case, I think that fair share
15 would not be the proper designation of what is happening.
16 I think they ought to be housing allocations, or what you
17 might call planned housing allocations, and what I made
18 reference to before is that I would prefer that to what
19 we have now, and what we have now is just simply the
20 rudimentary concept of justice, which says that if we're
21 going to have poor people, they ought to be distributed
22 among all of the municipalities to assume their fair
23 share of the burden of people who might take more services
24 than they're in a position to pay back in the way of taxes,
25 so that we are working here with what I would say is the

1 second best, under the given circumstances the only one
2 that seems positive of implementation, and this is what
3 I referred to here as saying that fair share as conceived
4 here would not necessarily be the best way a planner
5 would go about doing this.

6 Q And you think the other method you just described
7 would be a more equitable one?

8 A Whether it's -- planners are not too concerned from
9 that point of view about the equitability, because, you
10 know, sometimes when you plan a state highway, its effects
11 are unequal. Some people suffer, and some people gain.

12 But, there is a rational place where a highway has
13 to run and you put it there.

14 Now, I think that if there is a rational place
15 where jobs should be encouraged and where housing for
16 low income people should be encouraged, and some people
17 do better and some people do worse, I think there are
18 ways in which that can be compensated for, by way of
19 federal and state assistance.

20 But, those mechanisms are either not in place
21 yet or to the extent that they are, are not adequate to
22 cause the balance, and consequently, what we are dealing
23 with here is the need to provide justice. That's what the
24 court is for. The court is not a planning body. It's a
25 court of justice. And justice is fair share. And that's

1 what we have worked out here.

2 Q Where -- is that your concept, that justice is
3 fair share, or is that someone else's concept?

4 A Well, I read that out of the New Jersey Supreme
5 Court's decision in Mount Laurel, that's what they said.

6 Q In other words, that's your interpretation of
7 Mount Laurel.

8 A Yes.

9 Q But, the Mount Laurel case does not deal with county
10 lines, does it?

11 A No, but it deals with fair share, and this is my
12 own application of fair share, because I think that in
13 some places, county lines make a lot of sense.

14 In the case of Middlesex, I think they do.

15 Q Mount Laurel, however, would, on the basis of a
16 20 mile radius outside of Center City, Camden, which
17 includes portions of Gloucester and Camden County, is
18 that correct?

19 A That's correct.

20 But, I think, had all of that area been within
21 one county, then it would have been a neat way of doing
22 it, to do it within one county, which is the situation
23 we have here.

24 Because Perth Amboy and New Brunswick are within
25 Middlesex County.

1 Q Yes, but if you drew a radius 20 miles outside of
2 New Brunswick, for instance, it would encompass a good
3 deal more than Middlesex County, wouldn't it?

4 A Yes, it would.

5 Q And the same is true of Perth Amboy, is it not?

6 A Yes, that's true.

7 But there are other factors that do relate here
8 to the fact that both the federal government's Housing
9 Agency and its office and its census has designated
10 Middlesex County as a standard metropolitan statistical
11 area, I think the only other county that they have still
12 designated as a single county is Hudson County.

13 And based on Jersey City and its peripheral towns,
14 and all others are grouped in various ways.

15 Also, the Department of Labor in designating
16 common labor market areas has designated what they call
17 the Perth Amboy-New Brunswick labor market area for all
18 labor market statistical analyses and projections, and
19 have by definition described that area as being co-terminus
20 with Middlesex County.

21 Again, to my recollection, I believe that's the
22 only federally designated labor market area that is within
23 the confines of one county.

24 Further, to the best of my knowledge, the
25 New Jersey Department of Labor and Industry, which administers

1 the employment security program, unemployment insurance
2 and the state employment offices, operates within the
3 same definitions as the federal Department of Labor.

4 So, that from that point of view, I think that
5 fair share is applicable within the county limits of
6 Middlesex, with no problem.

7 Q However, that is not consistent with the Mount
8 Laurel definition of 20 mile radius, is it?

9 A Well, all I can say is that had the court been
10 dealing with a different situation, than in the suburbs
11 of Camden they might have used a separate designation.

12 Q To go back to the federal subsidy programs that
13 you recommend for utilization in providing housing, there
14 are certain standards applicable to those programs with
15 regard to facilities available to that housing, are there
16 not?

17 A Let me just get that question again.

18 (Whereupon, pending question read

19 back by the reporter.)

20 A Yes, there are. There have to be schools, or,
21 given densities of populations there have to be stores.
22 There are other things that are known as neighborhood
23 standards in the publications of HUD.

24 Q So municipalities that could not provide adequate
25 sewers, water, schools, could not take advantage of those

1 funds, is that correct?

2 A That doesn't follow, necessarily, because the
3 question of "can not provide," assumes that this only
4 relates to facilities already available.

5 It might be that with the addition of such a
6 project, it might now become timely to provide a facility
7 which before was considered not necessary, or not at the pop -
8 or not that the population was sufficient to require it.
9 And it would, therefore, just as one adds rooms to a school,
10 one may provide other kinds of facilities.

11 There are also package sewers that are used by
12 builders which could also be used for subsidized housing,
13 which would be a temporary solution until such a time as
14 a more adequate one were available when a hook up would
15 take place with a trunk sewer.

16 Q Wouldn't the New Jersey E.P.A. and other agencies
17 prohibit the use of such package sewers?

18 A They could under certain circumstances. I'm not
19 sure that they have eliminated them under all circumstances
20 every where.

21 Q Generally, they are not approved by the State of
22 New Jersey, isn't that correct?

23 A Well, I would say that they scrutinized them very
24 closely, because they have to meet their standards.

25 I think they go by performance standards. And if the

1 performance is one which is acceptable by their standards,
2 then it is acceptable.

3 Q Do you know of any large scale development that's
4 been built based on that in recent times in New Jersey?

5 A I'm not acquainted with that, no.

6 Q And if a town did not have adequate or sufficient
7 unused bonding capacity, it could not build the sewers,
8 schools and water facilities, isn't that correct?

9 A Well, there are some federal programs that are
10 available for sewers.

11 As a matter of fact, I think a number of the
12 Middlesex County communities are getting such funds as a
13 right under their so-called Entitlement to Community
14 Development monies, and others that are not under such an
15 entitlement have applied, together with the county, what
16 is known as an urban county grant.

17 Q If it were determined that a municipality lacking
18 these facilities was unable to get sufficient federal
19 funds to create these facilities, would you say that that
20 fair share allocation should be removed from them?

21 A No. I would say that there would have to be some
22 way by which there were an examination of what would be
23 considered good faith effort on the part of a community.

24 If a community could demonstrate a good faith
25 effort, and that it had exhausted every possibility of

1 achieving its goal, I would certainly say that there has
2 to be some means by which that community would then have
3 its goal reduced.

4 Q Have you made any studies of any of this material?

5 A Of good faith effort?

6 Q Well, of the availability of facilities which would
7 enable municipalities to obtain federal subsidization
8 of housing in Middlesex County?

9 A Well, I -- except for knowledge of the fact that
10 there has been an application filed with HUD, the progress
11 of which I am not informed on, but there would be some
12 money coming to Middlesex County communities under that
13 program.

14 And there could very well be other programs in the
15 future at the state and federal level that would be taken
16 advantage of.

17 Q But, none of those things were considered in your
18 formulation, were they?

19 A No. I just assumed that if there were fair share
20 formulations that the towns would all push for the maximum
21 amounts of funds, just as they would now, let's say, for
22 state school aid or any other grants that they can get.

23 Q But, you don't know that even if they pushed they
24 would received them, do you?

25 A No. I assume that if they did their very best to

1 complete the goal and also rezone to encourage builders
2 to come in to build housing that would permit filtering
3 down of existing housing for poor people, that at some
4 point, a town might be able to say we've done everything
5 in the world, and this is as far as we can go, and we
6 can't quite meet what you've said, I think that some agency
7 would have to sit in judgment as to whether that's so or
8 not.

9 Just as, let's say, a zoning board sits in terms
10 of a hardship case, when someone has a variance and says,
11 "I can't build within the set back line, because there's
12 a huge boulder that would cost 50 thousand dollars to
13 remove, and I therefore have to have five feet of relief
14 from your requirements," so there must be also, where
15 there's a valid hardship, I think that there probably
16 ought to be something built into a fair share administration
17 which would look into that.

18 Q Are you recommending here any specific type of fair
19 share administration?

20 A No, I am not.

21 Q Who do you propose would administer your formula?

22 A I don't know. The State of New Jersey, the county,
23 collaboratively, the towns, under court's order. I don't
24 know how it could be done. It could be done various ways.

25 Q You mentioned, again, the zoning to permit housing,

1 which would permit filtering.

2 Is that the main impact of zoning on the creation
3 of low and moderate income housing?

4 A Yes, it has two effects. One, that effect which is
5 the indirect effect, by loosening up the housing market,
6 permitting people to move onto other housing, because
7 there is movement, but secondly, there are certain types
8 of units which I believe even at present high construction
9 costs could be built for people of moderate income.

10 I'm thinking here of condominiums, and every of
11 town houses, where it's possible to cut the costs of land
12 and the amount of money that goes into the on-site
13 facilities, or on development facilities, such as paving
14 of streets, the number of square feet of pavement that has
15 to be poured, the lineal feet of sewer that have to be laid
16 and so on.

17 So that if you have town houses, which are common
18 every where from Philadelphia south, and I think you'll
19 find beginning in Trenton, which is, I think, a very
20 reasonable way of housing people and a satisfactory way.

21 Q Do you --

22 A Incidentally, town houses in the Washington area
23 now sell from 28 thousand dollars to 125 thousand. I've
24 seen it in the real estate pages. So the fact it's a
25 town house or attached house doesn't mean it is of necessity

1 low cost housing.

2 It depends how and where it's built.

3 Q The ones you just mentioned in fact would not be
4 within the reach of low income families, is that correct?

5 A Well, if -- it depends on just what the land costs
6 are in --

7 Q I'm talking about the 28 thousand to 120 thousand
8 or whatever it was.

9 A Yes. At the lower scale, the 28, possibly, I
10 don't know. It would be close.

11 Q Sir, are you going to give testimony as an expert
12 on the effect of zoning on land costs?

13 A No, I am not. Except generally to say that there
14 are directions in which land costs go under different kinds
15 of zoning.

16 Q You are not an expert on housing costs, per se, are
17 you?

18 A No.

19 Q And you're not going to give testimony as to the
20 effect, for instance of the money market on housing costs?

21 A No.

22 Q Do you plan to testify at all on the effect of rent
23 skewing on the production of low and moderate income --

24 A Rent controls?

25 Q Skewing.

1 A You mean the inflationary pressures on rent?

2 Q No. Are you familiar with the concept of rent
3 skewing where various apartments are charged different
4 rents -- various units charge different rents, though
5 they be the same units?

6 A For different income groups?

7 Q That's correct.

8 A I'm familiar with it, because that's the heart of
9 the Section 8 program.

10 That is in the sense that the federal government
11 will pay the difference between 25 percent of the family's
12 monthly income and the monthly rental that is set as the
13 market rent by the builder.

14 All of this, though, under an overall ceiling as
15 to market rents.

16 Q Are you going to relate the concept of rent skewing
17 whereby a man might build three units and charge three
18 different prices, though the units be equal, based on the
19 income of the occupant? Are you going to testify as an
20 expert on that and its relationship to zoning?

21 A Well, I think what you call rent skewing is what
22 we call density bonuses, and that is that --

23 Q Well, it relates to density bonuses, yes.

24 A And that is where the zoning provides that if a
25 builder builds -- under normal zoning would be permitted

1 to build ten units per acre in garden apartments,
2 and if he obligates or contracts himself to providing
3 two units for low income or moderate income families,
4 he's permitted to build twelve to the acre, or some
5 variation of that relationship.

6 And, of course, these plans can work in various
7 ways, because some of them depend on whoever is the owner
8 of that property, the builder or subsequent owner, to
9 simply carry through that long-range contract with the
10 public authority to make the rents available at the
11 contracted price, and he must pay the difference, and,
12 therefore, if it comes out of the rest of his units, they
13 pay more.

14 Unless it comes out of his profits one place or
15 the other. Or, under some of the local provisions, he
16 can make available these additional two units only if
17 there is a public subsidy program which pays the difference.
18 And in different parts of the country there are different
19 formulas as to how that arrangement is made.

20 Q What I was asking you, are you going to testify
21 as an expert in this concept? As to its feasibility and
22 workability?

23 A I would simply say that this is a concept which is --
24 where it's significant, which could help provide the number
25 of units that are needed to achieve a goal.

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MR. PLECHNER: Off the record.

(Discussion off the record.)

(After discussion.)

MR. PLECHNER: I have no further questions at this time of this witness.

CROSS-EXAMINATION BY MR. CHERNIN:

Q Just a couple of questions.

My name is Sanford Chernin and I appear for the Borough of South Plainfield.

Mr. Erber, I'm curious about the method by which you come to what we'd -- what you have defined or accepted as a regional area.

I understand that you have accepted the geographical boundaries of Middlesex County as the region.

Now, is that acceptable to you in your philosophy here, or is that just that you are accepting someone else's designation?

A Well, frankly, I've agitated over this question as long as I've had anything to do with planning in New Jersey.

Q What bothers you about that problem?

A What bothers me about the problem is that neither municipal boundaries nor county boundaries were initially devised in what might be called ideal planner's terms.

1 And at one time, I was engaged as a consultant by --

2 Q Mr. Erber, if I can interrupt you, it's getting
3 late in the day, and in all due respect, and I have been
4 sitting and noticing you have an awful lot to say which
5 I'm thankful for, but we can save a lot of time --

6 A What bothers me about it.

7 Q If you just respond. If I miss something, somebody
8 else will pick it up.

9 A What bothers me about it, the boundaries of
10 municipalities and counties were set in an earlier
11 historical period, during which our forefathers had a
12 weakness for using rivers as boundary lines, because then
13 you didn't have to go out and survey them and determine
14 where they are, and there was a quick way of doing it,
15 and since river valleys often become common socio-economic
16 units, in some places the boundaries of counties are awkward
17 for the kind of regional grouping of socio-economic
18 data.

19 In time, I came to feel that between ideal planner's
20 dreams of how units ought to be grouped and how things get
21 done in this world, one has to strike a balance.

22 In some places, counties will work very well, and
23 I think that Middlesex is one such.

24 Q Do you feel that basically the geographic lines of
25 the county are somewhat archaic, for your concerns and

1 your considerations?

2 A Less so in Middlesex than in most other counties
3 that I would be commenting on.

4 Q Let's be more specific. If we refer to the Borough
5 of South Plainfield, that's an extreme end of Middlesex
6 County.

7 Have you taken into account whether there's an
8 impact on that borough more from New Brunswick, Perth
9 Amboy, or more from Plainfield?

10 A Well, at one point, I looked at a Plainfield regional
11 study that took place, I think in the 1960's, and I
12 concluded, at that time, that it would be nice, if it
13 were possible, to group things like the City of Plainfield
14 with its contiguous areas.

15 But, as development proceeds, I have a feeling
16 that there is less and less strength to that consideration,
17 because we are spreading out in sort of amorphous, highway
18 oriented pattern of development, where, whether a person
19 lives in -- whether a person who lives in South Plainfield
20 will relate to Plainfield or to New Brunswick or to Trenton,
21 becomes less a matter, because in terms of travel time and
22 other factors, he begins to move around over a larger area
23 than was the case. I would like to feel that we move in
24 the other direction our planning.

25 Q Are you then referring your information to the

1 proximity to work as can be reached by a certain time of
2 travel?

3 A Yes, I think that the ideal is to reduce the time
4 of travel.

5 Q Are you familiar with the various state highways
6 or federal highways that abut or go through the Borough
7 of South Plainfield?

8 A I can't say that I would be exact about those.

9 Q Well, I'm not asking you to be exact. I just
10 want to know if you're familiar with them.

11 A Well, I don't know that I would say I'm familiar
12 with what serves South Plainfield.

13 Q Do you know of any identification of the highways?

14 A No. I know that that whole section has been very
15 much affected by the Interstate 287.

16 Q Do you know whether that abuts or goes anywhere
17 near South Plainfield?

18 A It goes near to. Whether it abuts, I don't know.

19 Q Are you familiar with whether or not a portion
20 of South Plainfield, in fact, does abut 287?

21 A I'm not familiar with that.

22 Q Are you familiar with whether or not there is
23 industry along 287, having a need for people to work and
24 would be located in South Plainfield?

25 A I wouldn't know whether it's in South Plainfield.

1 I know there's industry along 287.

2 Q In your contemplation as to the area to be serviced^d
3 in the sense of people who would like to live in South
4 Plainfield and work in other areas, have you come up with
5 a time travel approximation which you think should be
6 applicable here?

7 A No, I haven't.

8 All I know is that your reference to time travel
9 would be that a more appropriate tool than miles,
10 because if someone can get to their place of work in
11 fifteen minutes, that's more important to him, if courses
12 are equal, than the mileage is a factor.

13 Q What you're saying is the mileage itself is not
14 the best guide, but the time travel would be a better guide.

15 A Yes, time travel as modified by costs.

16 Q And I would assume the mileage involved, and I
17 think we can agree on it, does not really determine time
18 of travel, when you take into account the facility of
19 travel, congestion of traffic and that sort of thing.

20 A Well, it makes a difference as to what kind of a
21 facility one is traveling on, and one can go faster on
22 287 even with heavy peak hour traffic than on a county road,
23 usually.

24 Q Or on streets like George Street in New Brunswick,
25 things of that sort.

1 A Yes.

2 Q Particularly during migration periods.

3 A Yes.

4 Q Do you have any conception of how far you can travel
5 along Interstate 287 from South Plainfield in any
6 direction?

7 A Well, I would say that all factors being normal,
8 one could travel at the rate of 55 miles within an hour.

9 Q What would you say is the reasonable amount of
10 time which you feel should be allocated to traveling to
11 and from work?

12 A Well, that's a very elastic figure, because the
13 national average is somewhere around thirty minutes.

14 Q Do you accept that average?

15 A What's that?

16 Q Do you accept that average?

17 A I would like to have that average workable within
18 the New York metropolitan area, but for the New York
19 metropolitan area, I think it was just a little bit over
20 an hour as the average.

21 Q I gather you're including Middlesex County in
22 the New York metropolitan area?

23 A Right.

24 Q The question is, pertaining to Middlesex County.
25 That's the matter you have in front of you. Do you accept

1 the time travel of thirty minutes as being reasonable?

2 A I would, yes.

3 Q And by that same token, based upon the 55 mile
4 per hour, some 28 miles or 27 miles should be a reasonable
5 distance within which someone can commute.

6 A If he zips along in either direction on 287. I
7 don't know how far east you can go. Going west you can
8 go quite a ways.

9 Q How far in 25 miles?

10 A I guess probably somewhere into Morris County.

11 Q Morristown?

12 A I don't know whether quite to Morristown, but somewhere
13 in Morris County.

14 Q Somerville?

15 A I would think so, yes.

16 Q Manville?

17 A Probably, yes, yes.

18 Q Are you familiar with the heavy industrial areas
19 in Manville, Somerville, Bridgewater, Bound Brook?

20 A Yes. I know those are very old industrial areas,
21 and that 287 has brought a lot of new industry, yes.

22 Q And old industry, like Johns Manville.

23 A I say there was a lot of old industry. And there's
24 been new as a result of 287.

25 Q American Cyanimid?

1 A Yes.

2 Q Have you taken the fact, that factor into account,
3 that based upon these computations, you can readily work
4 in, say, Bound Brook or Manville, and still happily live
5 in Piscataway, South Plainfield, even Edison?

6 A Well, I don't know how happy people are who commute
7 by expressway, and I think that during the time of the
8 gasoline shortage, they were all very unhappy.

9 Q I will withdraw the word happy if it makes you
10 feel happy.

11 The fact is, did you take that travel arrangement,
12 or travel capabilities into account when you came up with
13 your formula and your explanation on the formula?

14 A Yes. I took into account the fact that the
15 expressway sometime created the possibilities of longer
16 trips between home and job, but also at greater cost and
17 made the ownership of a car almost essential unless one
18 went into a car pool.

19 Q Do you accept the fact that the ownership of a
20 car in this day and age is almost a necessity to every one?

21 A Yes, but I also understand the federal policy to
22 make reliance upon the automobile less necessary.

23 That's what the president told us.

24 Q And in order to do that, you need a substitute.

25 A Yes.

1 Q Mass transportation.

2 A Yes. But --

3 Q Which doesn't exist in this area.

4 A Yes. But the substitute of mass transportation
5 is a goal of the federal government and of the State
6 of New Jersey, and that goal is dependent entirely upon
7 the extent to which additional jobs and population are
8 grouped in such ways that it can be served by mass transit.

9 Q I'm talking about things as they exist today, not
10 the utopian arrangement which can be projected by some
11 politicians.

12 Today, with today's factors staring you in the
13 face, there is no mass transportation as such. In this area.

14 A Well, I think we've got the first sign, at least,
15 of a bottom in the decline of mass transportation, and
16 the turn around, so that I can say from here on, public
17 bodies will be making every effort to increase mass
18 transportation.

19 So, I think, optimism is not utopian. It may be
20 long-range, but not utopian.

21 Q As of today, there is or is not mass transportation
22 servicing the run up and down or parallel to Interstate 287,
23 is there?

24 A No, there's not. Not to my knowledge.

25 Q The only way anyone today can work in Manville and

1 live in Edison or the area there, would be by car.

2 A Yes. Unless he found housing that he could walk
3 from.

4 Q And that means relocating up to Manville, Bound
5 Brook and that area.

6 A Yes.

7 Q Did you take that possible exodus from this
8 area, that is, the Middlesex County area, to the Somerset
9 County area, into account in your numbers?

10 A No. I think we went over that earlier and I said
11 that --

12 Q Well, Mr. Searing was going to interrupt me if
13 I became repetitive.

14 A Yes, I see. But, I did respond to that question
15 by saying that at such a time that other counties had
16 fair share plans and provided housing for low and moderate
17 income people near employment, so that they left Middlesex
18 County, that would have to be taken into consideration
19 in revising the quotas or goals for each community.

20 Q All right. Then you're drawing the distinction
21 between the base formula, which you have in front of you,
22 and a periodic revision of the application of that formula.

23 A That's correct.

24 Q All right. Have you any projections as to over what
25 point in time or what periods they ought to be revised?

1 A Well, I think there ought to be annual reports
2 on the progress of the fair share plan, and whether they
3 ought to be revised annually, I don't know, but perhaps
4 at some period, every three, four, five years, perhaps
5 there ought to be a revision.

6 If the facts warrant it.

7 Q Do you feel that the City of Plainfield ought to
8 be contained in the regional reas involved in the
9 considerations we have here in this litigation?

10 A That it ought to be contained?

11 Q Yes. That you ought to include the numbers involved,
12 the data as to the housing, the data as to the types and
13 kind of people, income stratas, whether or not those
14 pieces of information ought to be added to what you
15 already have taken into account.

16 A Well, I don't know. I thought you meant whether
17 Plainfield ought to be a plaintiff in this case. I
18 think they are victims of the kind of zoning that goes
19 on in the suburbs of Plainfield, because of the concentration
20 of low income and racial people in Plainfield.

21 Q In the same way that, say, New Brunswick and Perth
22 Amboy would be.

23 A Right.

24 Q And in that sense, they have very similar interests
25 to Perth Amboy and New Brunswick.

1 A Yes, that's right.

2 Q All right.

3 Do you have any idea, for instance, how long it
4 takes to go from Plainfield to Elizabeth?

5 A Well, by railroad or by --

6 Q The same means of transportation we're talking about,
7 the good old automobile.

8 A Well, I assume it's, maybe thirty minutes, it
9 could be more in times of heavy traffic.

10 Q Do you feel that these same type of zoning
11 considerations, that is, the impact on -- strike that.
12 Do you feel that there is a similar impact on the City
13 of Elizabeth by virtue of existing zoning practices as
14 you've alluded to pertaining to the City of Plainfield?

15 A Yes, I believe there is.

16 Q And that would make them have the similar consideration
17 as Plainfield, Perth Amboy and New Brunswick.

18 A Yes.

19 Q You feel that any portion of Middlesex County receives
20 any kind of impact from people who work in Elizabeth and
21 live in the county, or vice versa?

22 A Yes, obviously there is commuting both ways.

23 Q And people who live in Elizabeth and work in
24 Middlesex and vice versa.

25 A Yes, correct.

1 Q Have you taken those elements into account?

2 A Only insofar as that I proceed on the assumption
3 that a person of relatively low income, working in
4 Middlesex County and living outside the county, would be
5 very likely to wish to relocate closer to his place of
6 work to cut down on time and travel costs and take
7 advantage of better environment.

8 Q Do you have any of those figures involved that you've
9 just mentioned?

10 A No, but I think that these are something that
11 most sociologists assume of being a pattern of human
12 behavior.

13 Q I think what you're saying is that there are some
14 people and families who live in Elizabeth, work in this
15 county and would like to live here as well and can't.

16 A That's right.

17 Q Do you have any figures as to the number of those
18 people? Or families?

19 A On Elizabeth specifically, no. We just have the
20 total figure of workers who commute -- who work at jobs
21 in Middlesex and commute from outside the county.

22 Q In those figures, the ones who work outside the
23 county and live in here, do you have any tabulation of
24 the areas where they are working? Or the cities where they
25 are working?

1 A No, but I think that's available.

2 Q Do you have any idea how far it ranges in miles,
3 from the geographic boundaries of Middlesex County?

4 A Well, you could always find -- I know, I remember
5 we did a study of people who work in lower Manhattan
6 come from and we found to our amazement that there were
7 70 people who commuted every day from Philadelphia.

8 But, the greater the distance, the greater -- the
9 smaller the number of people get. So that there are people,
10 I'm sure, who come from Newark, there may be people who
11 come from Bergen County, but they would be odd and very
12 small in number.

13 Q But I'm getting at the reverse, I think, of where
14 you're at. What about some people who are living in
15 Elizabeth and are working in Middlesex County and would
16 like to live in Middlesex County, all right?

17 A Yes.

18 Q Do you have any idea as to those numbers who might
19 migrate or would like to migrate into the county?

20 A Well, the only numbers that I have which could
21 serve me as a guide are the fact that the Port of New York
22 Authority made a study on the number of commuters who live
23 in New York and work in New Jersey over a period of time,
24 and to their amazement they found that this number, the
25 total remains constant, but the people who commute constantly

1 changes.

2 And they came to the conclusion that people who
3 live in New York and work in New Jersey are rarely doing
4 that for a long period of time.

5 They either give up the job or find a house in
6 New Jersey, which is the more likely thing that happens.
7 So that the growth of jobs in New Jersey does not
8 increase the number of cross Hudson commuters, they
9 concluded.

10 This had an important bearing on their planning
11 of public transportation.

12 Q I'm not concerned with New York. Let's drop it.
13 I'm concerned with Elizabeth.

14 Do you have any data, as I asked you, about Elizabeth?

15 A Data.

16 Q As to those who would migrate into Middlesex County
17 who, in fact, are now living in Elizabeth.

18 A I go at the assumption that the pattern is that low
19 income people wish to live near the job.

20 Q That's a basic generalization that you have come up
21 with.

22 A That's right.

23 Q And you've got nothing to support it in the form of
24 data.

25 A I haven't now. I think I might find data, but I don't

1 have it at present.

2 Q And the same question that I asked about Elizabeth
3 I would repeat when we talk about the City of Plainfield.

4 A That's right. How many people from Plainfield
5 might want to move to --

6 Q Into the County of Middlesex.

7 A I don't know that.

8 Q Would those --

9 A I only feel they can test it by putting up the
10 housing and seeing what they do.

11 Q What I guess that the plaintiffs in this litigation
12 are getting at is the idea that they would like to
13 live where they work, or close enough to where they work.
14 Would these figures that I just asked you about which you
15 don't seem to have have any relationship on the growth
16 of Middlesex County by virtue of the implementation of
17 that desire? That is, to live approximate to where they
18 work.

19 A We're talking about something that everyone knows
20 happened. Middlesex had a tremendous population growth
21 in the '50's and '60's in migration, and only a portion
22 of those in migration came here to live and work elsewhere,
23 that a great many of the people who migrated in came here,
24 because they worked here. This is the common pattern. And
25 this is what we're talking about.

1 Q Succinctly put, Mr. Erber.

2 What we're trying to get to is a total number of
3 those people who should be accommodated somewhere in
4 Middlesex County who are not now in Middlesex County,
5 but who would like to live in Middlesex County, because
6 that's where they presently work.

7 A Yes. I proceed on the assumption that every head
8 of household who lives outside of Middlesex County and
9 commutes to a job here is likely to be a candidate for
10 housing in Middlesex County.

11 But, there are no numbers on that, because you
12 can not -- well, even if you went and asked people, that
13 wouldn't be a reliable way.

14 Almost everyone may say yes. When it came to
15 moving, only 90 percent may move. So I wouldn't know.

16 Q Do you have those figures?

17 A Which?

18 Q Of those people who work in Middlesex County and
19 live outside of it?

20 A Yes.

21 Q And can you readily find those figures?

22 A Well, I don't have them with me, but they went
23 into the computation of the fair share plan.

24 Q So if, for instance, there were, I don't know, 50
25 thousand such people, you've included that whole 50 thousand

1 in your tables and formula that you have in front of you.

2 A Yes.

3 Q And if, however, a poll were taken of the same
4 50 thousand asking them if they'd like to live in
5 Middlesex County, and you got negative responses, your
6 figures would become defective in that sense, wouldn't
7 they?

8 A That's true, because we just have to go ahead on a
9 hypothesis, also the fact that a lot of people who work
10 in Plainfield and live in Plainfield now may decide to come
11 to live in Middlesex County, if there were housing that
12 they could afford.

13 So, we don't know what those projections would
14 be like.

15 Q Mr. Erber, without regard to someone else's
16 philosophy about area, region, zone, metropolitan area
17 and that sort, would you, being an expert in the field,
18 like to see the City of Plainfield and/or the City of
19 Elizabeth, taken as part of the Middlesex County, in
20 quotes, region?

21 A No, I wouldn't because you have to structure a
22 completely different kind of region. You have to include
23 Newark then, Essex County, Morris County, Monmouth County,
24 and you're really talking of a completely different kind of
25 animal then.

1 Q Why do you make the distinction?

2 A Because each central city has its own, so to
3 speak, labor market, its commuter shed. If you take
4 Elizabeth, and you can't take Elizabeth only on the basis
5 that there is some travel between Elizabeth and Middlesex
6 County --

7 Q Suppose you add to that the travel time?

8 A If there's a lot of travel between Elizabeth and
9 Essex, then you have to add Essex. So it becomes an endless
10 chain.

11 Q That is a difficult problem, I agree.

12 But, the fact is that the City of Plainfield,
13 for instance, abuts South Plainfield, with common streets,
14 common arteries, common properties, common problems,
15 common patterns of zoning, that is, common patterns
16 resulting maybe from zoning.

17 Why would you exclude the City of Plainfield?

18 A Well, because it's another central city, and
19 once you include the City of Plainfield, it has its own
20 arc --

21 Q Satellites?

22 A Yes. So you bring Union County in. So it's a
23 question here of saying, well, is it arbitrary to take
24 county boundary lines? I say not, but is it neat and ideal?
25 And I say no, but it's the best we have to work with.

1 Q You agree that South Plainfield is far more close
2 to Plainfield than to Perth Amboy?

3 A I would agree, but say that that's less meaningful
4 now than it was twenty years ago.

5 Q Let me ask you something in a different area,
6 Mr. Erber. Let us assume, for instance, that one
7 municipality in Middlesex County is considered to be
8 totally built up. Then your population -- strike that.

9 The other municipalities would then have to absorb
10 your allocated share to that town, is that right?

11 A Well, I don't know what -- how you define completely
12 built up.

13 Because cities are dynamic, they constantly build
14 and rebuild, densities of cities change, and as a consequence,
15 you know, if you want to take an extreme example, the
16 Island of Manhattan has been built up maybe for a hundred
17 yeras, and yet for a long period of time its population
18 increased, at some point it leveled off finally, but we
19 don't really know what is the leveling off point,
20 communities at the density of communities in Middlesex County.

21 Q Let us assume that a town, such as Perth Amboy, is
22 determined to be totally built up, but you have allocated
23 a substantial number of new housing accommodations to that
24 town.

25 Is it your philosophy, then, that the remaining towns

1 would have to absorb that which was previously allocated
2 to New Brunswick? -- Perth Amboy, I'm sorry.

3 A I believe that Perth Amboy could achieve a very
4 large part of its goal by taking substandard units and
5 making them standard.

6 MR. LERNER: What was that?

7 (Whereupon, last answer read back
8 by the reporter.)

9 MR. SEARING: He kind of got into
10 this before with Mr. Plechner, you know,
11 what would happen if there was a developed,
12 developing division.

13 Q Mr. Erber, are you then saying that irrespective
14 of whether or not a given town is determined to be a
15 fully and totally built up town, that it still should
16 absorb its fair share of low and middle income housing?

17 A Yes, I am saying that.

18 Q So if in your formula, cities like New Brunswick
19 and Perth Amboy have not met their fair share, as you
20 calculate it, then you're saying that both of those
21 cities or towns should have additional such housing
22 accommodations, some way.

23 A In some way, yes. In some instances, if the
24 people are now paying over 25 percent to live in standard
25 housing, a financial subsidy to bring them down to 25

1 percent would remove them from the unmet need.

2 Q Now, if you have figured on a percentage basis
3 that as of 1970, a given municipality was accommodating,
4 say, ten percent of the low and middle income housing
5 units within the county, and that percentage figure is
6 retained by you on the basis of computing its fair share
7 allocation -- do you follow me so far?

8 A When you say if a municipality has ten percent --
9 all right. If the municipality has ten percent of the
10 low and moderate income families in standard housing?

11 Q Let me try to do it a little differently. If,
12 in your formula, you attribute to a given municipality
13 that its fair share on a percentage basis, say, ten percent
14 of overall, and then you figure the county's additional
15 housing needs of this category, you would then take ten
16 percent of the additional needs and attribute it to that
17 particular municipality, right?

18 A Assuming that it has now ten percent of the county's
19 standard housing.

20 Q So you maintain the same ratios throughout the county?

21 A Yes.

22 Q As existed in 1970.

23 A Right.

24 Q But, you would then give each the additional amount
25 of housing, based upon that ratio.

1 A That's right.

2 Q In that formula, there would be no change in balance
3 of those congested areas, in quotes, ghetto-like areas,
4 as existed in 1970, then, would there?

5 A That's right, except that --

6 MR. SEARING: Pardon me?

7 Q I was mumbling to Mr. Lerner.

8 A Except that the number of units that that community
9 has as its equal share could be achieved by a certain
10 amount of renovation of existing units that are now substandard

11 Q But, that's still in total number as distinguished
12 from ratio between various municipalities.

13 A Right.

14 Q The ratio will remain the same.

15 A Yes, on the first go at it. Column 1.

16 Q The ratio remains the same and there is no effectual
17 dispersing of ghetto-like communities, is there?

18 A On the first go, no.

19 Q As a matter of fact, following the same formula,
20 when you attribute a certain amount of additional housing
21 to cities, such as Perth Amboy and New Brunswick, you
22 increase the amount of its burden by what -- the amount
23 of its deficiency in numbers.

24 A We increase the requirement, or we set a requirement
25 that they meet their goal, however they meet it, either by

1 rehabilitation or by subsidy of families overpaying, or
2 by construction of additional units.

3 Q But the total numbers would increase.

4 A The total numbers would increase.

5 Q In cities like Perth Amboy and New Brunswick.

6 A Yes. Except that insofar as the total number of
7 units in the goal could be achieved by the rehabilitation
8 of existing units, so that in that sense it doesn't add
9 to the total number of units.

10 Q You're talking about present units privately
11 owned and in a substandard state.

12 A Yes. I assume that all publicly owned ones are
13 standard.

14 By law they're supposed to be.

15 Q I'm glad you add, by law. What I'm referring to is
16 in your definition of existing substandard units, you are
17 taking into account only those which are privately owned
18 at the present time.

19 A Well, I made no distinction. We just -- I took, --

20 Q I thought you just excluded publicly owned.

21 A Yes. On the assumption, I assume that if at the
22 time --

23 Q There's not much left.

24 A If there was a census of housing and the census
25 determined that there was overcrowding and other factors

1 in public housing, then they would be listed as substandard.
2 But, I don't think that's the case, because, at least if
3 management is following its guidelines.

4 Q We're off the mark, Mr. Erber.

5 What I'm getting at, in your definition of the
6 substandard housing which could be brought up to date
7 and made usable, you have excluded the accommodations
8 which are publicly owned.

9 Am I in error?

10 A I've excluded them, because they do not -- I don't
11 have to exclude them. They are not present in the
12 substandard category.

13 Q All right, fine. What you're referring to, then,
14 is exclusively the substandards which are privately owned.

15 A Right.

16 Q And if the privately owned property is not voluntarily
17 built upon by the owner, it's kind of difficult to resurrect
18 it.

19 A Well, how difficult it is -- we have laws in the
20 state, when I did local planning, they're already on the
21 books, so they were on the books in the late 1940's and '50's.
22 It's a question here of the energy of the municipality in
23 using them.

24 Q Not to resurrect by private money, because they're
25 privately owned, but also to have it refurbished, formerly

1 substandard accommodation allocated to middle and low
2 income people.

3 A Well, whether they're allocated to middle and low
4 income people would be a matter that's within the jurisdiction
5 of the owner as to who he rents it to.

6 Q Exclusive of government?

7 A Unless he got some form of government aid, then
8 there could be a condition that he rent only to low and
9 moderate income, as there almost always is where there is
10 rehabilitation money made available.

11 Q Can we agree that so long as the property is privately
12 held and the owner does not seek public funds, he is not
13 obliged to rent to any given income area?

14 A I would gather that this is probably the case now.
15 I don't know whether there is a legal means by which the
16 owner could be directed as to whom he should rent, except
17 under Civil Rights law, where it has to be on a racial
18 basis, but that doesn't involve income, necessarily.

19 Q If there is no way to compel the privately owned --
20 If there is no way to compel owners of substandard homes
21 or housing accommodations, do you feel -- to rent to low
22 and middle income categories, do you feel that your inclusion
23 of those housing accommodations is a proper use?

24 A Yes. I think it's proper because if I didn't think
25 it was proper, I would only think it was improper if I

1 foresaw the possibility that there would be a great rush
2 of people from Piscataway and other communities in
3 Middlesex County to occupy such renovated units in
4 Perth Amboy. And if that were to take place, I suppose it

5 (Whereupon, the reporter changed
6 paper.)

7 (Whereupon, pending answer read
8 by the reporter.)

9 A --I suppose it would relieve the shortage of housing
10 for low and middle income people throughout the county.

11 Q One last question and we'll knock off.

12 If these privately owned units are not refurbished,
13 should they be excluded from your accommodations?

14 A No, because I believe that the total need which we
15 had identified must be met, and there is a fair share
16 allocation which gives Perth Amboy its share, as every
17 other community, and short of some mechanism for hardship
18 and demonstration of good faith in trying to meet the goal
19 and a sheer impossibility, I should think that the goal
20 should stand.

21 Q If your formula and your projections and your analysis,
22 Mr. Erber, indicate that both Perth Amboy and New Brunswick
23 have not met their fair share allocations -- is that an
24 accurate statement so far?

25 A Yes, it is.

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Q Do you have any idea as to why they were not named as party defendants in this litigation?

A I don't know.

MR. CHERNIN: No.

(Discussion off the record.)

(After discussion.)

BY MR. CHERNIN:

Q Mr. Erber, --

MR. PLECHNER: Did you want to go on the record as to what the game plan will be?

MR. CHERNIN: Mr. Searing, why don't you state what the game plan will be.

MR. SEARING: There's been an agreement to proceed until five o'clock, if, at that time, there are still questions to be asked, those present in the room can reserve their right to do so at a future date.

MR. PLECHNER: I would, on behalf of Mr. Farino, of Monroe, reserve his right, because he asked me to look out for his rights.

MR. CHERNIN: And Mr. Busch. And the attorney for South Brunswick I know wants to have some questions.

MR. LERNER: The record should reflect,

1 sometime prior to this time, sixteen minutes
2 past four, that there was an understanding,
3 verbal understanding among some of the
4 attorneys that the proceeding would stop at
5 four o'clock. It should also be noted
6 that we are in the midst of what would
7 appear to be a somewhat more than a modest
8 snow storm.

9 I think it would be fair to assume
10 for purposes of this record that some people,
11 as the hour approached four, realizing that
12 the proceeding was going to stop at four,
13 left without indicating publicly or
14 privately as to whether or not they wished
15 their interests to be protected in the
16 sense of having the ability to cross-examine,
17 assuming that the witness would have concluded
18 at four.

19 And, I think, that should end it for
20 everybody.

21 MR. JOHNSON: One other item, for the
22 Borough of Middlesex, I have to leave now,
23 but I would like to reserve my right to
24 cross-examine.

25 MR. SPRITZER: Martin Spritzer for

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Metuchen will reserve his right to question.

(Discussion off the record.)

(After discussion.)

BY MR. CHERNIN:

Q Mr. Erber, you feel that there is a relationship between the increased number of family units, which is to be absorbed by municipalities, according to your formula, and the increased amount of auto traffic flow in and out of that particular municipality.

A Yes. All population growth results in increased traffic in areas that are not well served by public transportation.

Q Have you had any consultation with any traffic experts to see what kind of an impact would be engendered by the application of your formula to any of the given towns?

A No, I have not.

Q Do you think that it's -- that the use in consultation with such a traffic expert should be taken into consideration pertaining to the feasibility of the application of your formula?

A I don't believe that my formula anticipates much higher population distribution over the county broadly than would take place under the projections of the Middlesex County Master Plan. And, therefore, I feel that the traffic

1 problems would be somewhat the same, whether it was
2 population represented people living in housing that was
3 expensive or moderate or low, although there is obviously
4 a factor here that has to account for the higher incident
5 of car ownership among wealthy people, as compared to low,
6 and consequently usually a higher incidence of two and
7 three car families among those living on one acre lots
8 as compared to people living in public housing.

9 Q We're not talking about multiple cars in given
10 families. What I'm talking about is a new family moving
11 into town and bringing its car with it. Do you follow me.

12 A Yes.

13 Q Whether or not the new family comes from outside
14 of the county and now has found an accommodation to live
15 where it works, or whether it's from within the county,
16 relocating into a different municipality.

17 A I believe that my fair share plan with the direction
18 in which the Middlesex County Master Plan is going, emphasis
19 on public transportation, could result in easing traffic
20 congestion on roads, and that it would also result in
21 less air pollution by virtue of the fact that the journey
22 to work is shortened and, therefore, there's less mileage
23 of cars used.

24 Q Do you place yourself forth as an expert in
25 transportation and transportation problems?

1 MR. CUMMINS: Repetitive.

2 MR. LERNER: I don't remember that one.

3 A I am a comprehensive planner, with experience in
4 transportation.

5 Q Have you ever conducted traffic surveys yourself?

6 A Yes, I have.

7 Q Is what you're saying, then, is that the application
8 of your formula would have no greater impact upon the
9 transportation problems in a given municipality than
10 that which is already projected by the county?

11 A That's right.

12 Q In coming up with your fair share figures attributable
13 to any given municipality, is there a relationship in
14 its application with the available vacant land in that
15 town, or has it nothing to do with the available vacant
16 land?

17 A On the first distribution of equal share, it has
18 nothing to do with available land. It's just an increased
19 projection, based on the existence of standard units, present
20 standard housing units.

21 However, on the redistribution, in column 4, that
22 is based on the availability of vacant land.

23 MR. SEARING: The methodology has been
24 covered in depth, by Mr. Plechner.

25 Q I just want to explore that, even though it may be

1 a little repetitive.

2 Did you take into account in that methodology the
3 usability of given land, whether or not it's affected by
4 flooding conditions, railroad tracks, or whether or not
5 the soil itself is capable of housing a structure?

6 A We took the total vacant land in Middlesex County
7 that was buildable and used that as the basis, so that
8 the concept of buildable land would preclude land that is
9 in a flood plain, I would assume.

10 Q You're accepting someone else's figures as to what
11 land is available for building purposes?

12 A Yes.

13 Q Is that contained in some document that you have
14 referred to?

15 A Yes. Well, there are two. Well, I think there
16 are three sources. There's the state study of the zoning
17 of vacant land in 1970, there is material in the Middlesex
18 County Master plan studies, and lastly, there is material
19 in the answers of the municipalities to interrogatories.

20 Q Is your land use allocation broken down municipality
21 by municipality or is it a gross figure for the entire
22 county?

23 A It's a gross figure, that is, a composite figure of
24 all the available land, yes, and then subdivided as to what
25 share, what percentage within each municipality, where there

1 is some.

2 Q You lost me there. What percentages?

3 A We took the total acreage of vacant buildable
4 land in Middlesex County and then allocated the redistribution
5 on what percent each community has of the total.

6 In other words, if there were a thousand acres of
7 buildable land in the county, as an example, and if a
8 community had one hundred acres of that, it was assumed
9 to have ten percent of the total, and the redistribution
10 was to give the ten percent of the redistributed total.

11 Q Then the figures did not take into account the
12 possibility of disproportionate available land in any
13 given town.

14 A Well, --

15 Q Even to the point of total exclusion of available
16 land.

17 A Well, yes, it did, because where there was no
18 available land to be -- to use as a base for redistribution,
19 we didn't do so.

20 For instance, Carteret, Dunellen, Helmetta, Highland
21 Park, Jamesburg, Metuchen, Milltown, New Brunswick, Perth
22 Amboy, South Amboy, South River and Spotswood were assumed
23 not to have vacant land for purposes of redistribution.

24 Q Mr. Erber, do you feel that your application of
25 your formula should have no relationship to the ability

1 of a municipality to reserve some of its vacant land for
2 other than residential purposes?

3 A No, they can reserve land for non-residential uses
4 or public uses, public or private non-residential uses.
5 We assumed here that there would still be adequate land
6 for them to meet their goal.

7 Q Do you feel --

8 MR. CUMMINS: Excuse me.

9 (Discussion off the record.)

10 (After discussion.)

11 Q Mr. Erber, do you feel that the allocation of
12 usable land ought to be, in the first instance, applied
13 to the providing of the new low and middle income housing
14 units?

15 A Yes. I would say that takes priority now over all
16 others, because it's been neglected in the past.

17 Q You would give a preference to this type accommodation
18 above and beyond all other types of residential units,
19 business, industrial, commercial.

20 A Yes.

21 Q Do you not feel that that's somewhat of an inverse
22 way of discriminating?

23 A No, I do not, because I think we're simply trying to
24 right the balance of what has happened in the past.

25 Q By giving a discrimination chargeable to it, so to

1 speak, others beyond the middle and low income bracket.
2 A Well, I feel that it's a matter here of simple
3 justice, of giving people a greater opportunity in the
4 choice of where they're going to live and the conditions
5 under which they're going to live, and I can't think of
6 anything that should ^{take} precedence over that, unless it
7 dealt with national defense or some emergency that threatened
8 the whole public.

9 Q Mr. Erber, do you figure that two people standing
10 side by side ought to have equal opportunity to live
11 where they wish?

12 A I would say that two people standing side by side
13 should have equal choice in place of residence within a
14 reasonable, local area.

15 I don't mean that, therefore, everyone has the
16 same right to live in the same house or the same apartment
17 building or on the same block, but I would say within a
18 reasonable area.

19 And I would say here, certainly within the confines
20 of a municipality.

21 Q You feel a man who, say, earns 50 thousand annually
22 ought to be able to select where he wishes on the same
23 basis as someone who earns five thousand?

24 A Yes. I believe he should have that same right.

25 Q With no discrimination one way or the other?

1 A That's right.

2 Q Are you not discriminating by your philosophy
3 an application of your formula against a man who has the
4 capacity to earn 50 thousand dollars a year, because of
5 your priorities given to someone earning five or ten
6 thousand a year?

7 A I think if a person has an income of 50 thousand,
8 he can buy the kind of amenities in environment which
9 a low income person can not, and that if a person who
10 earns 50 thousand chose to live in New Brunswick, he
11 could live in New Brunswick under better conditions than
12 someone earning five thousand would live in New Brunswick.

13 But, I think that a person earning five thousand
14 should have the right to live in any other community
15 in Middlesex, and I don't think that his living there in
16 any way impinges upon the right of a man who has 50 thousand.

17 The man who has 50 thousand, and if the lot sizes
18 that the community has are just ten thousand square feet,
19 if he wishes, he'll buy five lots, and he'll have 50
20 thousand square feet to live on. There's no law that
21 prevents him from living on as many lots as he wishes.

22 Q Don't you feel that by giving a priority to one of
23 the two men standing side by side, that you are preferring
24 one over the other?

25 A I'm not giving either of them a priority. I'm giving

1 them equality of choice.

2 Q Did you not say a moment ago that you would give
3 preferential choice, or preferential application, to land
4 use for low and middle income housing?

5 A Yes, but --

6 Q And I underscore the word preferential.

7 A Right. But by giving an opportunity for low income
8 people to live in a town does not exclude opportunity
9 for wealthy people to live in that town. Unless they wish
10 to live in towns that have no poor people.

11 MR. SEARING: He's given you his
12 opinion. If you want to debate with him,
13 we can put you on the stand.

14 MR. CHERNIN: That may come about
15 somewhere in the eight weeks of trial
16 anticipated, but at this minute, I think
17 the witness has nicely dodged the key word
18 that I'm trying to employ, and that is to
19 simply find out from him whether or not
20 he feels that giving preferential use for
21 housing to be made available for the low
22 and middle income person, and again I
23 underscore the word preferential, whether
24 or not the mere giving of the preference to
25 one and not to the other is not discriminating

1 against the other.

2 Can you answer that?

3 A I can try one more answer to that, and see whether
4 I can satisfy you that I've answered the question.

5 And that is that to give an opportunity for a low
6 income family to live in a particular community does not
7 deprive the 50 thousand dollar man of the right to live
8 there.

9 He has as much opportunity as the poor man has.
10 They both have equal opportunity. But, if we do not
11 provide for the fair share plan, then, of course, the
12 man with the 50 thousand dollars has wide choice and the
13 other does not.

14 Q I'm only concerned about your using discrimination
15 to correct discrimination, and that's all.

16 Thank you very much, Mr. Erber. I reserve my
17 right, Mr. Searing, to continue, because of pressing
18 conditions, both inside and outside.

19

20 CROSS-EXAMINATION BY MR. LERNER:

21 Q I'm Lawrence Lerner, Borough of Highland Park.

22 Mr. Erber, can you tell me how your proposed fair
23 share plan would change the character of any of the
24 existing communities within Middlesex County, if at all?

25 A Yes. In some counties, I believe -- in some

1 municipalities of the county, I believe that it would
2 change the socio-economic character of the population.

3 I do not believe it would change the physical
4 character of the community.

5 I think that there would be a greater mix of people
6 by income and by race than has been the case in the past.

7 But, that the tools that the State of New Jersey
8 has given every community for planning and zoning can
9 be used in such a way that if they zone inclusively, they
10 can also plan esthetically, and housing for poor people,
11 or for low income and moderate income people, need not
12 be viewed as something which degrades the esthetic
13 appearance of a community.

14 Q If your figures of fair share serve as the basis
15 for the obligation to provide fair share, are you not
16 then perpetuating the economic make up of the municipalities
17 within Middlesex County?

18 A No, I feel that fair share reverses the trend that
19 has given us the present distribution by income and race,
20 and that the achievement of the fair share goals which --
21 as with any tool of government, is necessarily short of
22 Utopia in recreating the communities that are subject to
23 it.

24 But, that it will definitely reverse the trend
25 toward the concentration of population by income and race,

1 with low and -- minority race, low income and minority
2 race concentrated in the central cities, and middle
3 and higher income and white race predominating in the
4 suburbs.

5 Q Isn't, in fact, Middlesex County a suburb?

6 A No, I don't believe that that would be an acceptable
7 definition.

8 I believe that Middlesex County as a whole is part
9 of the New York metropolitan area, but that doesn't make
10 it a suburb.

11 Q Would it be considered in the outer most tier of
12 the areas from New York City?

13 A Yes, I think that beginning particularly with 1950
14 it was the frontier of urbanization in the New York
15 metropolitan area.

16 Q In fact, beyond 1950, your definition of 1922, of
17 the Regional Planning Association included Middlesex
18 County.

19 A That's right, it did, although the pressure of
20 urbanization was hardly felt upon the county then, and
21 the descriptions that are given in that planning study
22 were almost bucolic as to the atmosphere in Middlesex in
23 those days.

24 Q And in 1960 you considered Middlesex County as
25 part of the New Jersey area, when you were working for

1 the Regional Plan Association.

2 A Yes.

3 Q And geographically it was still in the outer
4 most ring?

5 A Yes.

6 Q There were no other areas in New Jersey considered
7 beyond Middlesex County, going south.

8 A True, and I would say that's true today.

9 Although the Princeton area is a kind of ^{an} addition
10 which exists for reasons of special connections by rail
11 and other things to the New York labor market.

12 Q But then we wind up with Princeton playing the same
13 game as Plainfield, South Plainfield. It's across the
14 brook from Kingston, which is Middlesex County.

15 A Yes.

16 Q So that we can go on endlessly.

17 A I said Princeton is sort of an oddity there.

18 It really has less to do with the Philadelphia region or
19 with Trenton than it does with New York.

20 Q Where in your fair share make up does it take into
21 consideration your use of the word race that you used to
22 answer my previous questions?

23 A Well, in this sense, that because a much higher
24 percentage of the minority races are of low and moderate
25 income than of the white race, providing expanded opportunity

1 for people of low and moderate income has special significance
2 for people of minority race, by increasing their opportunities
3 for housing disproportionately, you might say, to people
4 of low income whites, because of the unequal distribution
5 of poverty between the races, or low income or moderate
6 income.

7 Q So that you seek to cure the ill by, if you raise
8 the standard of living for all poor, you're going to
9 raise the standard of living for more blacks than whites,
10 because there are more black poor than white poor.

11 A Well, insofar as good housing is part of the
12 standard of living, yes.

13 Q So that by increasing the need for housing, you
14 would tend to induce or increase the percentage of black
15 people to a community.

16 A I would assume that that would follow, if we had
17 the distribution of low and moderate income that was
18 set forth in the fair share plan.

19 Q But if the percentage of your fair share plan takes
20 into consideration the percentage of occupancy now, how
21 would that affect a developing community which has large
22 land mass, many new industrial complexes, and no housing?

23 A Well, if you were to choose at random any one that
24 meets your description, I would say that without the fair
25 share plan, there is very few additional low and moderate

1 income households that would find housing there, and by
2 the same token, very few persons of minority race, whereas
3 with the fair share plan, we are providing for an expansion
4 of housing opportunities for low and moderate income
5 persons, and that, therefore, these communities that
6 you have described would, for the first time, have sizable
7 numbers of people of lower income and of minority race
8 living in their midst.

9 Q When you say, "sizable numbers," you're talking
10 in relationship to themselves and not in relation to the
11 county needs?

12 A I would say sizable, in certain of these instances,
13 compared to what's there now.

14 Let's say in the case of Madison, if we had our
15 1970 unmet need which we have decided was 4,617 units,
16 I think that that would be a sizable addition to the housing
17 opportunities for low and moderate income people who might
18 want to live in Madison who have very little opportunity
19 there now.

20 Q Yet you only ascribe 536 to Cranbury, or 734 to South
21 Amboy.

22 A Yes, because I think that there is justice in
23 beginning with the number of units that are in a community
24 now, and we add on to that number first. And then we add
25 on the second lap in proportion to their vacant land.

1 So that Cranbury, because of its lesser number of
2 standard housing units today would be in a better position
3 to accommodate its share of the increase, even its share
4 as resulting from vacant land, than would be the case if
5 we disregarded that and just simply did it on the basis
6 of vacant land.

7 Because, then, I think some communities could
8 possibly be overwhelmed.

9 I don't know that, again, here, I would say that
10 in the future, at some point, there may be reason for
11 a readjustment and redistribution, after there's been
12 some experience with this, and it might be found that
13 Cranbury is in a position to handle more than its share
14 that's been allocated to it.

15 Q How have you compensated for the fact of attempting
16 to induce or increase the minority populations when you've
17 excluded public housing from your statistics?

18 A Well, I didn't --

19 Q I want to make a preface.

20 Would it be fair to conclude, as a basis for that
21 question, that public housing is predominantly occupied
22 by ec --lower economic grouping, and in essence a higher
23 statistical average of minority in race?

24 A I would say that's true.

25 Q So that by excluding those figures from your

1 calculations, you have, in effect, eliminated the minority
2 make up, black make up, racial make up, of all these
3 communities in Middlesex County.

4 A No. I think you misunderstood some previous
5 discussion, then, if you got that impression.

6 We did not eliminate the factor of public housing,
7 because we gave credit under column 2 for adequately
8 housed for public housing units, among other units, that
9 are available to people of low and moderate income, and
10 if a community has a high percentage of public housing,
11 that was a factor taken into account.

12 Q I think, in fairness, that that was not disclosed
13 before. I think the only thing that was disclosed was
14 the exclusion of the public housing.

15 MR. SEARING: I beg your pardon.

16 A No. I think the record will speak for itself on
17 this, but I could clarify that, because the question I
18 was responding to was whether I included public housing
19 among substandard units, and I said I didn't, and we had
20 some question and answer back and forth on the question
21 of whether we could assume that public housing is standard.

22 I said I didn't go into that particularly, but I
23 just relied on what the Census says in this regard, and
24 generally I would assume that public housing is standard
25 housing, even if someone may feel that it's a poorly managed

1 project.

2 Q Would it be true to conclude, then, that the
3 greater density, the greater the density would continue?
4 If, in fact, your figures don't conclude -- don't take
5 into consideration land area?

6 A Well, they do take into consideration land area,
7 in that when we redistribute the balance, we do that
8 on the basis of the percentage of vacant land, which each
9 community has, as a percentage of the total vacant land
10 in Middlesex County.

11 So that, for instance, South Brunswick is redistributed
12 here, the balance, the redistribution of the balance South
13 Brunswick is given 1,197 units, which is one of the higher
14 amounts.

15 Based on the availability of vacant land. What we
16 don't do is we don't give, you know -- I guess there
17 was a previous question about proportionate, in the
18 overall, it's not proportioned, someone made the reference
19 to Cranbury, I already answered that.

20 Q Well, my -- if you conclude on availability of
21 land as a limiting factor for the redistribution of the
22 balance, then if a municipality, like one of ten, has
23 a zero in that column, that that municipality's ability
24 to meet a fair share under your proposal would then be
25 restricted substantially.

1 A It would be restricted largely to the increased
2 densities in areas presently occupied through rehabilitation,
3 renewal, renovation, redevelopment, and generally in the
4 reuse of existing land area at higher density.

5 But, of course, insofar as the simple -- since
6 part of the total unmet need that we are seeking to answer
7 here includes those households occupying substandard housing,
8 if a community changes from -- changes a unit from having
9 been a substandard unit to being a standard unit, or if
10 it subsidizes the rental of a family living in a standard
11 unit so they pay only 25 percent of their income for
12 the unit, then that is one dwelling unit which they have
13 achieved to meet their goal.

14 So that communities like New Brunswick would achieve
15 a very large part of their goal, simply by the standardization
16 of substandard units and by the subsidies of those who are
17 now overpaying in standard units.

18 Q Wouldn't that be met immediately, perchance, by
19 the same as the Kansas City Direct Housing Allowance concept,
20 or Section 8, where substandard income families would
21 immediately get a rent subsidy allowance that would permit
22 them to not fall under -- take them from above the 25
23 percent of income factor?

24 A Yes, if they were living in standard housing. If
25 they were living in substandard housing, then there are two

1 things would have to happen.

2 They would have to get the rent supplement to
3 bring their own payment down to 25 percent, plus something
4 would have to be done about the unit to make it meet the
5 standard unit criteria.

6 Q Your gross figures of standard and substandard, do
7 they take into consideration aged as opposed to working
8 heads of households with wives and children?

9 A No, they do not.

10 This is just an undifferentiated statement of
11 housing need without breaking it down between elderly
12 and family need. But I would say that a refined design
13 would have to take into account, since one is building
14 for exact families here, not just the statistical category
15 of a household with need, one would have to take into
16 account family size, and even if one didn't differentiate
17 between elderly and non-elderly, one would build for
18 different size families, and I'm sure that the elderly,
19 being a large component in some communities, would be
20 provided for with a large number of small units, whether
21 in housing for the elderly or just scattered among other
22 housing.

23 Q You indicated to a question concerning the reliability
24 of asking people where they would choose to live as being
25 an unreliable basis. Was that a correct paraphrase?

1 A Yes, in this sense, that there are two things.

2 One, there's always the time factor. So that between
3 answering the question and being confronted with the
4 opportunity, people's minds may change, or they may
5 not even be the same people involved if the time factor
6 is long enough.

7 And in planning and housing, we have to have several
8 years run here to get a head start.

9 And, secondly, there is just the factor which all
10 public opinion polls are subject to, and that is that
11 if a person answers a question, we don't know whether he
12 would actually act on his answer. So that, for instance,
13 we have in the -- our organization, National Committee
14 Against Discrimination In Housing has been very alert to
15 all the public opinion polls which deal with fair housing,
16 and the question, would you accept a person of minority
17 race as your neighbor, and we're always surprised that the
18 public opinion polls come out with such a large percentage
19 saying yes, they would, and yet we find when there are
20 actual situations, it seems as though that majority is
21 far less in terms of how people act.

22 So, we're a little dubious as to what people say
23 and how they act will also coincide.

24 Q What about the question of asking people how much
25 they earn, as opposed to statistically auditing Internal

1 Revenue Tax Returns?

2 A Well, I would not hazard an opinion there, because
3 I think this is really an area for statisticians who have --
4 there's a whole science of statistics here and the way in
5 which data is gathered.

6 Q Pardon me for interrupting. You only used the
7 statistics available to you, assuming the reliability of
8 them?

9 A I have to assume their reliability, yes. And
10 again here, with income data, the main source for that is
11 the Census, and this is in answer to a Census gatherer's
12 question.

13 Q Just to change ~~the tack~~ for a minute, it's getting
14 late --

15 A I didn't know you were attacking me anyway.

16 Q No, ~~tack~~, not attack.

17 Hasn't it been historically true that water causeways,
18 developable, navigable waters, historically,
19 were the sources of factories in early America?

20 A Yes, water power was one of the first industrial
21 uses for building plants.

22 Q And weren't they also a major means of transportation?

23 A Yes, they were, and they played a big role in
24 Middlesex County.

25 Q The Raritan Canal, being one of the older forms of

1 transportation and commercial development in the State
2 of New Jersey.

3 A That's correct.

4 Q The heavy industrial area of Perth Amboy, South
5 Amboy, the mouth of the Raritan, would you say that was
6 the reason it developed historically the way it did?

7 A Well, historically, Perth Amboy was located where
8 it was because -- well, actually, Middlesex developed,
9 really, as a result of the valley of the Raritan, good
10 farmland and so on, and the two cities, one was at --
11 relatively at the mouth of the river and the other was
12 at the head of navigation for any larger vessels.

13 And so that historically, those two were located where
14 they were, and when the Industrial Revolution began in
15 the 19th century, the availability of water power was one
16 of the factors, plus the fact that there was a labor
17 supply in the cities, as against completely rural areas.

18 And also the possibility of using the waterways
19 for transportation and bringing in goods and taking away
20 finished products.

21 But, in the latter period, the development of the
22 chemical industry was located in the lower Raritan, I
23 think in large part, because it was such a heavy pollutant,
24 and it took advantage of the fact that it was a short run
25 out into the bay.

1 Q The effect of the heavy pollutants is now first
2 being discovered, isn't that true?

3 A No, that's not really true.

4 Q Did you know -- did you know for a fact that
5 Middlesex County has been designated, if not the highest,
6 one of the three highest Cancer-producing areas in the
7 United States?

8 A I didn't know that, but I'm not surprised.

9 Q Would it surprise you that New Jersey has been called
10 the Cancer capital of the world?

11 A I didn't know it had been called that. I know it's
12 been called a lot of other things. I lived here 22 years
13 and I was proud of the state when I lived here, so I don't
14 say it invidiously.

15 Q The statement, Cancer deaths occur in New Jersey
16 at a higher rate than in any other state in the country,
17 a report issued by the Cancer Institute of New Jersey.

18 That would not surprise you?

19 A Well, it would not, only because I live near the
20 City of Baltimore, and the city was called the Cancer
21 capital of the nation, so I don't know, there may be --
22 but the conditions of industrial pollution in Baltimore
23 and in the upper end of Middlesex, I'd say, particularly
24 in the lower Raritan, are probably very similar.

25 Q The fact that -- but you were unaware of the fact

1 that Middlesex County achieved the star billing in that
2 designation.

3 A Yes, I was unaware of that.

4 Q It would not surprise you, perhaps, to learn,
5 that they ascribe that designation, because of the
6 pollutants from the chemical industry that was in the
7 area.

8 A That could very well be so.

9 I think we're only beginning to understand the
10 connection between Cancer and its causes, and we may be
11 constantly surprised with new discoveries in this area.

12 Q Are you aware of an attempt by the Environmental
13 Protection Agency of the State of New Jersey to enforce
14 certain air pollution codes on the existing industries
15 in Middlesex County?

16 A Yes, I am aware of that.

17 Q Are you aware that New Jersey in its attempt to do
18 this in Middlesex County and in other counties has caused
19 the termination of certain industries in the State of
20 New Jersey?

21 A Well, I don't believe that there's a necessary cause
22 and effect there. I believe that these industries close
23 not to pay the costs of cleaning up their pollution and
24 may have gone elsewhere, where they're permitted to pollute.

25 Q Would it surprise you that the Secretary of Agriculture

1 of the State of New Jersey is actively seeking to reduce
2 the pollution control devices in an attempt to keep industry
3 within the State of New Jersey?

4 A Secretary of Agriculture?

5 Q Yes, of the State of New Jersey.

6 A I'm surprised as the Secretary of Agriculture, but
7 I would sure assume that New Jersey State Government would
8 be concerned, if there were industry leaving, because of
9 the enforcement of environmental laws.

10 But, I think that insofar as these laws are
11 federal, I don't know where the industries can go.

12 Q Well, do you know -- are you aware of the fact
13 that New Jersey has its own agency and its own standards
14 that are -- that may or may not be different from the
15 federal controls.

16 A I know there is a department and there are standards,
17 yes.

18 Q Would it surprise you to know that New Jersey's
19 Environmental Protection controls are the most strict and
20 stringent? In the United States?

21 A No, I don't know that I'd be surprised by that,
22 but I would think that there is certainly a great awareness
23 of this problem in New Jersey, which would lead to a tough
24 attitude on pollution.

25 Q But, in any event, economically, plants and factories

1 that exist in population centers, as they are presently
2 constituted, if they close, and the plant goes out of
3 business or moves, what then would your plan on fair
4 housing, what effect would it have if you're considering
5 only increasing the housing stock and not considering the
6 effect of business, the effect of factories, the land
7 development, separate and apart?

8 A Well, I think first of all that many polluting
9 firms will decide that New Jersey is such a good place
10 to do business, because of the labor supply and other
11 things, that they will pay the added cost to clear up
12 their pollution in the air or the water.

13 Secondly, I believe that the prospects for economic
14 and employment growth in New Jersey will include a very
15 large percentage of non-manufacturing employment,
16 because actually manufacturing employment nationally is
17 now declining, and it's declining especially in the northern
18 portion of the nation, and the projections which the various
19 towns have made in Middlesex County are completely erroneous,
20 as to the amount of manufacturing that will ever come to
21 this county.

22 Q As opposed to manufacturing, what other industries
23 are available to New Jersey? Are you suggesting farming?

24 A Well, there are now types of farming, which is
25 sort of somewhat esoteric, I'm no expert on, but there are

1 people who are developing all kinds of gimmicks/ present, at
2 but it may become a very important economic factor, you know
3 of growing things under plastic, and one thing or another,
4 which I read about, but I'm no expert in that field.

5 But, I don't know that there is that great a prospect
6 for intensive crop agriculture, but I think that there
7 are opportunities for it because of our closeness to
8 big markets.

9 Q You are aware statistically of the unemployment
10 rate for the State of New Jersey.

11 A Yes. This is a very high rate among the states
12 of the nation.

13 Q Are you familiar with the relative rate of New Jersey
14 to the nation as Perth Amboy-New Brunswick to the State
15 of New Jersey?

16 A That is that Middlesex is higher than other counties
17 in the state, is that what you're saying?

18 Q That's correct.

19 A I don't know that for a fact, but I would gather
20 that given the nature of its industry, that could very well
21 be the case.

22 Q And that by, again, assuming your equal share factor,
23 if the municipalities in Middlesex County that have large
24 populations were to perpetuate that same ratio, they
25 in turn would ennure to a greater number of unemployed,

1 a greater number of people more dependent on that
2 municipality for services.

3 A Well, I consider economic cycles to always come and
4 go, and I don't think we're in a state of permanent depression.

5 I must, therefore, assume that since we have large
6 amount of faith now in the ability of government to affect
7 the economy, that no one thinks the economy, like a tornado,
8 is something that is only God-made. I think it's man-made
9 and men by the wise use of the powers of government can
10 affect it.

11 At least, in listening to the president the other
12 night, he claimed he already had a big affect on it and
13 that we're turning around, we're getting more people
14 employed.

15 But, I would think that we will have people working
16 again and that the only factor that's involved here is to
17 whether the growth rates for one type of economic activity
18 or another will continue as they have in the past, and I
19 think that there will be some changes there, probably.

20 Q Isn't it so, though, that you'll have people working
21 again, but they may not be working in New Jersey?

22 A Well, if that's the case, I would wonder where they
23 will be working. Because I don't know what factors have
24 changed to take away from New Jersey those things that have
25 made it a very favorable climate for the economy.

1 Q I would suggest that asbestosis is one of them,
2 the pollutants and chemical residue from chemical
3 manufacturing plants is another.

4 In fact, if anyone read the newspaper, and read
5 that New Jersey was the Cancer capital of the United
6 States, this would be one of the least attractive places
7 to live and raise your family; unless all the conditions
8 were corrected.

9 A If it's true that those polluters are leaving,
10 then I think many industries who have not wanted to come
11 here, because of pollution may then want to come here and
12 you may have an upgrading of the whole economy in New
13 Jersey.

14 Q And you may also in a same sense be left with the
15 very immobile poor, who will continue to stay, because
16 they are financially incapable of leaving, and factories
17 and plants that would require a different kind of work force
18 would not even choose to locate here.

19 A Well, I think if they live in better housing and
20 in better environments and the children have a chance to
21 go to better schools, that the employability of the parents
22 in terms of their ability to earn or hold occupations will
23 not be perpetrated or perpetuated upon their children,
24 and that we'll, under the fair share plan, I think there
25 will be much better opportunity for a second generation

1 of those of low and moderate income to take the jobs
2 that are upgrading and be better than that which their
3 parents had.

4 MR. SHAPIRO: Off the record a minute.

5 MR. LERNER: Well, let's do it on the
6 record.

7 I'm not finished. It's eight after
8 five, it's dark and it's snowing.

9 MR. BERNSTEIN: I'm Dan Berstein. My
10 firm represents Piscataway. I, too, wish to
11 ask questions.

12 I understand that we're going to
13 stop at five o'clock, because of the hour,
14 but I also have a number of questions, which
15 I would like to ask.

16 In fact, I'd be willing to stay. I'm
17 not sure --

18 MR. CUMMINS: I have three questions
19 to ask. And I'd like the opportunity.

20 THE WITNESS: I'm willing to accommodate
21 them.

22 MR. SHAPIRO: I have a lot of
23 questions to ask, and if we're going to
24 continue, I'm next. Township of Woodbridge.

25 We have agreed that this would be

1 discontinued at five o'clock. It is
2 now eight minutes after five.

3 I, personally, think it is unreasonable
4 to require us to be here beyond seven hours.
5 I've been here since ten o'clock awaiting
6 the opportunity.

7 Reliability is affected somewhat
8 by fatigue, and I would request the opportunity
9 to ask questions at a later date.

10 MR. SEARING: I think there are
11 physical limitations and reasons for quitting
12 at five, as per the agreement.

13 MR. BERNSTEIN: Can we have the
14 witness back on another date?

15 MR. LERNER: We don't know the answer
16 to that and we won't know until tomorrow or
17 so.

18 MR. CUMMINS: I have about three
19 questions to ask.

20 Does anybody have any objection?

21 MR. SHAPIRO: Wait a minute.

22 THE WITNESS: Off the record? I
23 don't have any say on the record here.

24 MR. SEARING: Can we go off?

25 (Discussion off the record.)

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(After discussion.)

CROSS-EXAMINATION BY MR. CUMMINS:

Q Sir, did you consider density of the town as being a factor in allocating fair share?

A Yes. I was aware of the factor of density, but I have to proceed on the assumption that density, while not having an absolute limit, is relatively elastic, and that densities, as has been demonstrated in other cities, can be increased, even beyond what some person may consider to be the ultimate density.

We see where there are advantages to people to invest in increased density, they do it, and the place gets denser.

Q All right, excuse me.

If -- from a planning point of view, what is a good standard for density?

A That's a question I really could not answer, because we are talking here about density under all kinds of conditions, and we're talking about density on the Island of Manhattan to density in Cranbury. So it's a range of conditions.

If, for instance, one is planning a new town, when one begins from scratch, one can plan in terms of density, which is quite different where there's already

1 development, and one has to proceed from the point of
2 view that there are already factors that govern what one
3 chooses to plan for in the way of density.

4 Q Assuming an older town, that's fairly well developed,
5 would you say that there would be a density factor that
6 would have its upper and lower limits, from a good planning
7 point of view?

8 A Well, I would say that -- like, giving an example,
9 the City of Elizabeth, where I lived for a period in an
10 apartment house, I was amazed at how many big old single
11 family houses were taken down, and I thought too many units
12 crowded onto that lot, beyond what I think should have been
13 tolerated.

14 But, too many here, here I only judged from appearance,
15 but I think that they had densities which went to something
16 like 40 or 50 apartments per acre. And these were not high-
17 rise. These were three story walk-ups and they ran from
18 one end to the other.

19 But, I would consider that the example I cite of
20 Elizabeth is an indication that old cities redevelop existing
21 housing at higher densities and it would be up to the local
22 planning to make that higher density compatible with the
23 nature of that community, and I think it can be done.

24 Q Well, I was asking --

25 MR. LERNER: Let the record reflect

1 I have left after the third question.

2 Q This is a clarification of the previous question.

3 Would you say that there is -- just a clarification
4 of your previous answer.

5 Are you in a position to say, X number of people
6 per square mile?

7 A Well, I would say in terms of numbers of families
8 per acre, which is the usual way in which it's done, and
9 I would say that outside of large cities, central areas,
10 and densely developed cities, core cities, if one can
11 rehouse people at no more than 20 dwelling units per acre,
12 that this is a livable density, because 20 units per acre
13 can provide for a workable amount of off-street parking,
14 even if some of it has to be put in a parking garage underneath,
15 and keep some of the acre with -- planted with trees and
16 shrubbery, so it doesn't become a sea of asphalt.

17 So I have a feeling that -- and here I'm talking
18 about walk-ups. If you talk -- talk about high-rise, 40
19 to 50 to the acre is a usable density.

20 Q How does that work out per square mile?

21 A Well, once you talk about square mile, you no longer
22 talk about a net density. You then have to throw in
23 streets, and usually streets, depending on when the city
24 was laid out, older city streets take as much as 25 percent
25 of the land area of the street. It's amazing.

1 You never realize it until you compute it.
2 In newer subdivisions, it's been reduced, it's only about
3 20 percent is devoted to streets.

4 But -- so that when we get to the square mile,
5 we have to allow here for those -- for use, like streets,
6 small parks, schools, other things that have to go within
7 that mile to serve the people.

8 Q Would you say five to seven thousand people per
9 square mile? That's the answer I'm trying to get. I'm
10 trying to get a figure per square mile. In my third question.

11 A I'm not being difficult, as I assure you. I don't
12 feel sure myself here to give you a quantified figure, like
13 so many. If you wanted me to look into that, I could
14 come back at some other time and give you that answer.

15 Q I would appreciate that. That's what I was looking
16 for specifically. I was looking for, given an older city --
17 strike that. An older suburban community, that was not a
18 core city, that was perhaps fifty years old, what would be
19 an optimum range of the density of a borough that's one
20 square mile.

21 MR. SEARING: You mean you want to
22 send him a report on that?

23 THE WITNESS: Well, either way.

24 MR. SEARING: You would make yourself
25 available?

1 THE WITNESS: I would make myself
2 knowledgeable of that, and I can get it
3 to you in whatever form you would prefer.

4 Q That's what I'm looking for. Something that would
5 tell me what's an optimum density range for one square
6 mile or so, that's at least fifty years old.

7 A All right.

8 Q I do want to reserve my right, but I think it's unfair
9 to pursue.

10 MR. BERNSTEIN: I have a question
11 for the plaintiff's attorney.

12 I'm Dan Berstein, I'm the last
13 attorney here, other than Mr. Cummins. I
14 have probably at least an hour's worth of
15 questions, maybe more.

16 I'm willing to stay, but I'm leaving
17 the option up to you. If we can get the
18 questions at another date, that's fine with
19 me.

20 But, I'd be happy to do it right now.
21 But, again, it is five-twenty, and I'm leaving
22 it up to you. Off the record.

23 (Discussion off the record.)

24 (After discussion.)

25 MR. SEARING: Back on the record, in

1 accordance with the agreement with the
2 other defendants, and because the witness
3 has to return to Washington, D.C., for the
4 purpose of continuing work in preparation
5 for the trial, plaintiff's counsel has
6 decided to terminate the deposition at
7 this point.

8 (Whereupon, deposition adjourned
9 at 5:22 p.m.)

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I, **Richard C. Guinta** the officer before whom the foregoing depositions were taken, do hereby certify that the witness (es) whose testimony appears in the foregoing depositions was (were) duly sworn by me and that said depositions are a true record of the testimony given by said witness (es); that I am neither attorney nor counsel for, nor related to, nor employed by any of the parties to the action in which the depositions were taken; and further, that I am not financially interested in the action.

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