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2/18/76

Testimony of Ernest Erber Vol. III

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URBAN LEAGUE OF GREATER NEW
BRUNSWICK, a non-profit
corporation of the State of
New Jersey; CLEVELAND BENSON;
FANNIE BOTTS; JUDITH CHAMPION;
LYDIA CRUZ; BARBARA TIPPETT;
KENNETH TUSKEY and JEAN WHITE,
on their own behalf and on
behalf of all other similarly
situated,

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; TOWN-
SHIP 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 TOWN-
SHIP 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
NORTH BRUNSWICK; TOWNSHIP
COMMITTEE OF THE TOWNSHIP OF
PISCATAWAY; TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF PLAINSBORO;
MAYOR AND COUNCIL OF THE BOROUGH
OF SAYREVILLE; MAYOR AND COUNCIL
OF THE CITY OF SOUTH AMBOY;
TOWNSHIP COMMITTEE OF THE

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ERNEST L. TORRAN, J.S.P.

TESTIMONY OF:

ERNEST ERBER

VOLUME III

1 TOWNSHIP OF SOUTH BRUNSWICK; :
MAYOR AND COUNCIL OF THE
2 BOROUGH OF SOUTH PLAINFIELD; :
MAYOR AND COUNCIL OF THE
3 BOROUGH OF SOUTH RIVER; MAYOR :
AND COUNCIL OF THE BOROUGH
4 OF SPOTSWOOD; TOWNSHIP COMMITTEE :
OF THE TOWNSHIP OF WOODBRIDGE,
5 :
Defendants. :
6 :

7
8 MIDDLESEX COUNTY COURTHOUSE
9 NEW BRUNSWICK, NEW JERSEY
FEBRUARY 18, 1976

10 B E F O R E:

11 THE HONORABLE DAVID D. FURMAN, J.S.C.
12

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INDEX TO WITNESS

ERNEST ERBER

Cross

By Mr. Lerner	3
By Mr. Farino	19
By Mr. Lefkowitz	22
By Mr. Bernstein	27
By Mr. Stonaker	107
By Mr. Chernin	114
By Mr. Shapiro	143

INDEX TO EXHIBITS

Exhibit

Ident.

DP-6	Population Estimate	27
DP-7		27
DP-8		27
DP-9	Map	27
DP-10		27
DP-11	Jobs & Housing Study	27
DP-12	Spread City	27
DP-13	Journey to Work, June '64	27
DP-14	Journey to Work January '73	27

1 WEDNESDAY, FEBRUARY 18, 1976, MORNING SESSION:

2 MR. SEARING: Your Honor, if I may make
3 a statement for the record. The plaintiff on
4 Friday prepared and served a Notice to Produce on
5 all defendants, requiring the witness list seven
6 days before the presentation of their case and
7 exhibits three days prior to their case. I'm sure
8 by now all the defendants have received their
9 copy.

10 THE COURT: All right, Mr. Searing.

11 MR. SEARING: Our cross-examination of
12 Mr. Erber will continue this morning.

13 CONTINUED CROSS-EXAMINATION OF ERNEST ERBER BY MR. LERNER:

14 MR. LERNER: Could you have the Reporter
15 read back the last question of yesterday?

16 (The last question of the previous day's
17 proceedings was read back by the Reporter.)

18 THE COURT: Do you understand the thrust
19 of the question, Mr. Erber?

20 Would you rephrase it?

21 Q Mass transit, would that be essential
22 to housing?

23 A Not essential but it would be an important factor.

24 Q And would the response to provide the
25 mass transit be in the same definition of region? In other

1 words, could you measure the availability of mass transit
2 in the same framework?

3 A I find it difficult to answer that question within
4 that framework.

5 Q You indicated to another Counsel's
6 question about a vacancy rate as opposed -- you used those
7 figures to show availability of housing?

8 A Yes.

9 Q Did any of your figures take into
10 consideration presence or lack of the presence of rent
11 control?

12 A No. Just Census figures on vacancy for 1970.

13 Q Does rent control or the presence of or
14 absence of affect the moving habits of a renter?

15 A I would assume that if someone has a rent controlled
16 apartment he would be less likely to move than an uncontrolled
17 apartment.

18 Q Do you know of any studies that have been
19 conducted that indicate that?

20 A Only the massive studies for New York City
21 conducted by Doctor Sternleib.

22 Q And with regard to the equation of the
23 quintile to determine that which constitutes substandard
24 or low income, a person on fixed income, I mean by that a
25 person receiving a pension or social security, meaning his

1 only source of income, whose rent is raised by let's say
2 the consumer price index, do pensions usually go up by the
3 same module, same equation?

4 MR. SLOANE: Objection, your Honor. This
5 goes beyond the scope of direct examination.

6 THE COURT: Do you know about that subject,
7 Mr. Erber?

8 THE WITNESS: I know that social security
9 is increased by Congress with some relationship
10 to the cost of living. If it's the same, I don't
11 know.

12 Q But if it were less, it would not increase
13 the same amount as the cost of living.

14 A That's right.

15 Q And if someone was paying twenty-five
16 per cent of his income or less for his apartment, and would
17 then have cost of living increases added on would find
18 himself paying greater than twenty-five per cent for his
19 rent for his apartment?

20 A Yes.

21 Q And if that person were on fixed income
22 that apartment would fall into a category of substandard,
23 would it not?

24 A If he were paying more than twenty-five per cent
25 of his income for shelter. Not the apartment wouldn't be

1 substandard; he would be living somewhat in a --

2 Q Well, all the tables that you've produced
3 that indicate substandard housing, they are really mathe-
4 matical equations reflecting the income of the occupant.

5 Isn't that so?

6 A I didn't testify to any conditions of substandard-
7 ness.

8 Q I think you testified that that was a
9 definition that the Census utilized in determining that
10 column.

11 A Which column?

12 Q What constitutes a substandard house.

13 A I didn't testify on substandard housing at all.

14 Q Okay. Would it be then true that the
15 cost of living increases at a higher rate than what, unless
16 it's passed directly to the recipient, meaning a person on
17 fixed income, that more and more units would fall into that
18 category, if that definition were applied?

19 MR. SLOANE: Objection, your Honor. It's
20 repetitious.

21 A I have no knowledge of that.

22 Q You have no knowledge of that?

23 THE COURT: Wait a minute.

24 Do you have any knowledge of that?

25 THE WITNESS: I don't know which category

1 he's speaking of.

2 Q Would the percentage of the population
3 within a municipality, for example, the number of old
4 people living within the municipality, be a factor in your
5 study?

6 MR. SLOANE: Objection, your Honor.

7 There's been no reference to any study Mr. Erber
8 has done in this connection.

9 MR. LERNER: Jobs and Housing Mr. Erber
10 has done.

11 THE COURT: The objection is overruled.
12 You may answer that.

13 A The study on Jobs and Housing, we did not go into
14 the question of the elderly as any separate category and
15 only dealt with race and income.

16 Q The percentage of the population in the
17 United States as a general factor includes a greater number
18 of older people in it, is that not so, today as it was
19 thirty years ago?

20 A That is true.

21 Q And the population of the United States
22 also includes a greater number of young, single people, is
23 that not so?

24 A I'm not sure but that could be so.

25 Q The housing characteristics are also

1 affected by this phenomenon, where we have older people
2 and younger people seeking housing.

3 A Yes.

4 Q The housing needs for these older and
5 younger people are less in terms of space requirements, are
6 they not?

7 A Yes.

8 Q As opposed to the middle ground people,
9 family people.

10 A Yes.

11 Q The space requirements for older people
12 are met by providing housing for elderly. Is that correct?

13 A There are programs for the elderly, yes.

14 Q Do these then become single purpose
15 buildings?

16 A Some do and some do not.

17 Q When you say that some do, they do because
18 of their size. Is that correct?

19 A Size of what?

20 Q Size of the apartment or residence.

21 A Some are limited to people by age, and certain
22 developments are limited to people by age. There are
23 developments for elderly. Some are housing that has a
24 mixture of people of different ages and some are housing
25 that have a mixture of different size apartments.

1 Q You don't know of any movement to
2 segregate housing for the young singles, do you?

3 A I read a magazine article on that but I have no
4 professional knowledge of it.

5 THE COURT: It seems pretty remote from
6 the issues of the case, Mr. Lerner.

7 MR. LERNER: Well, your Honor, I find
8 myself trying to determine -- Mr. Erber has
9 testified in depositions that must have lasted
10 fifteen hours and he covered more than just region
11 in the deposition. If he's only talking now about
12 the development of the suburbs and the outer rings
13 from the core --

14 THE COURT: Well, what does housing for
15 single people have to do with it?

16 MR. LERNER: Well, your Honor, the single
17 people and elderly, at least as far as I've been
18 able to determine, have less spatial requirements
19 than the people who are choosing to raise a family.
20 If the housing then becomes single purpose --

21 THE COURT: You can make that point at the
22 appropriate time. It's an obvious point.

23 MR. LERNER: I have no further questions.

24 THE COURT: I don't see Mr. Alfonso in
25 the Court.

1 MR. SPRITZER: I don't believe he's here,
2 your Honor.

3 THE COURT: Mr. Spritzer.

4 MR. SPRITZER: Yes. I have a few
5 questions, your Honor.

6 CROSS-EXAMINATION BY MR. SPRITZER:

7 Q Mr. Erber, you'll be surprised to know I
8 have no questions on all of those statistics that have been
9 entered. You did testify, however, that in preparing this
10 case it took you about three weeks to gather these
11 statistics together.

12 A Yes, to prepare the exhibits.

13 Q All right. Now, would it be fair to say
14 that you had an interest in promoting low and moderate income
15 housing for a much longer period than three weeks?

16 A Yes.

17 Q Would it be fair to say that that interest
18 has gone back over a number of years?

19 A About twenty-five years.

20 Q And that was when you were with the
21 Regional Plan Association?

22 A Prior to that, to the Passaic Valley Organization,
23 yes.

24 Q And when did you go with the National
25 Committee Against -- I get it mixed up.

1 A National Committee Against Discrimination in
2 Housing.

3 Q The National Committee Against Discrimina-
4 tion in Housing.

5 A In February of 1969.

6 Q And prior to that period had you written
7 any documents, books or periodicals concerning exclusionary
8 zoning or low and moderate income housing?

9 A I think I -- yes. I wrote papers, articles, I
10 believe. Yes.

11 Q And your position with the National
12 Committee in 1969 was exactly what?

13 A Director of Research.

14 Q And I think when you were being asked on
15 qualifications for things that you had produced or papers
16 or books you had produced, one of the documents you
17 mentioned that you were in charge of or had responsibility
18 for was this Jobs and Housing report. Is that correct?

19 A Yes.

20 Q And that was done under your supervision,
21 basically?

22 A Yes.

23 Q And that was not a three-week effort,
24 was it?

25 A No, it was not.

1 Q As a matter of fact, that was a two-year
2 effort.

3 A Right.

4 Q And that was an extensive effort.

5 A Yes.

6 Q And it is entitled "A Two-Year Study of
7 Employment and Housing Opportunities for Racial Minorities
8 in Suburban Areas of New York Metropolitan Region," conducted
9 under a grant provided by The Carnegie Corporation of New
10 York. Is that correct?

11 A Yes.

12 Q And if you know that, the grant was given
13 to the National Committee.

14 A Yes.

15 Q Now, was this merely an internal document
16 for distribution in the National Committee?

17 A No.

18 Q This was -- would it be fair to say that
19 this was a document intended to influence action?

20 A Yes.

21 Q And it's a document that was intended to
22 influence, if possible, legislators.

23 A Yes.

24 Q Governors.

25 A Yes.

1 Q Judges, where proper.

2 A Where proper.

3 Q Other planners.

4 A Yes.

5 Q In fact, all persons that might have an
6 interest or an effect in promoting the problems or in
7 solving the problems in which you were interested.

8 A Yes.

9 Q And is it fair to say that not only have
10 you had a professional interest in promoting low and
11 moderate income housing and in changing zoning patterns
12 which might exclude housing for such people but you're
13 deeply committed as an individual to that.

14 A Yes.

15 Q All right. Now, in this two-year study
16 a final summary report was released, and I assume distributed
17 as widely as possible, by the National Committee.

18 A Yes.

19 Q Now, in this final summary, which I have
20 and it seems to run, oh, about forty some odd pages,
21 together with a few tables, there's one section entitled,
22 if I'm correct, "The Suburban Zoning Barrier."

23 A Yes.

24 Q Mr. Erber, based on this report for which
25 you are responsible for, isn't it fair to say that in

1 respect to exclusionary zoning the gravamen of this
2 study's complaint is against municipalities with a
3 significant amount of vacant land?

4 A Gravamen, yes.

5 Q And as a corollary to that, isn't it true
6 that there is little or no complaint in this two-year study
7 of the zoning practices of so-called built up communities,
8 developed communities or communities with what could be
9 termed an insignificant amount of vacant land?

10 A No.

11 Q That would not be true?

12 A No.

13 Q In other words, you would say that
14 based on this report and there are areas in this report
15 which detail a complaint and specifically mentions the
16 problems of developed and built up communities with small
17 amount of vacant land, even though it may not make them
18 the gravamen of the complaint. Is that your testimony?

19 A My testimony is that the report dealt with various
20 types of exclusions and that the report identified
21 suburban communities only generally. It didn't mention
22 them specifically in terms of how they excluded.

23 Q You're not saying it made no emphasis
24 or no distinctions between communities with a considerable
25 amount of vacant land and little vacant land? Is that what

1 you're saying?

2 A No. I already testified that the burden of the
3 finding pointed to the communities with large amounts of
4 vacant land as being the major obstacle to finding housing.

5 Q And as a matter of fact did not the report
6 set up a criteria or two criteria in respect as to whether
7 zoning or certain zoning ordinances should be struck down
8 for exclusionary reasons? Did it not set up criteria?

9 A Struck down refers only to a --

10 Q Can you answer?

11 A Well --

12 Q In my terms struck down, can you answer
13 that with either a yes or no, if possible?

14 A Yes.

15 Q All right. It did set up the criteria.
16 And was not one of the criteria for striking down or sus-
17 pending a zoning ordinance in a suburban town the amount of
18 vacant land in that community zoned for multi-family use?

19 A Yes.

20 Q And was not the second criteria for
21 striking down or suspending, if you prefer that exact
22 language, whether the community had less than twenty-five
23 per cent of all existing dwelling units in multi-family
24 structures?

25 A Yes.

1 Q So those were the two criteria specified
2 in this two-year report.

3 A Yes. And I already testified that I --

4 Q You can only answer yes or no.

5 A Yes, I know.

6 Q It's possible, Mr. Erber --

7 MR. SPRITZER: If I may, your Honor.

8 Q I think that a yes or no answer is
9 proper. If more is needed I think that either the Court
10 or Counsel in redirect can advise.

11 THE COURT: If a question is asked and
12 it calls for a yes or no answer, it would be
13 proper to answer it that way. If it calls for
14 some further explanation, I suppose that Mr. Erber
15 can offer it.

16 MR. SLOANE: Your Honor, I would request
17 that the witness be allowed to complete his
18 answers, and sometimes what may appear to call for
19 a yes or no really is not but calls for an
20 explanation in addition to the yes or no.

21 Q Mr. Erber, on DEB-1 for identification,
22 which was by Mr. Busch, the attorney for East Brunswick,
23 the second page contained certain recommendations, and one
24 was a recommendation which we just discussed, the two
25 criteria, or the one. One or the other says an additional

1 policy recommendation is that the housing or families of
2 low and moderate income be allocated by an overall plan for
3 the New York Metropolitan Region in accordance with a
4 formula based on location of employment, vacant land and
5 transportation access as pioneered in the widely heralded
6 Dayton, Ohio plan. Now, was this recommendation one which
7 you agreed with or one that the Committee put in the report
8 without your agreeing to?

9 A I agreed to that.

10 Q And would it be fair to say that the
11 way this reads there are three criteria set up for what
12 could be called fair share allocation and one of the
13 criteria is vacant land, one of the criteria is vacant land?
14 Is that correct?

15 A Yes.

16 Q I'm curious and I'll only be a minute or
17 two longer. I'm curious about one other additional
18 recommendation in these recommendations here, which was made
19 after this two-year study. This recommendation seven, it's
20 two lines and I'll read it to you.

21 "Restructuring of the State tax systems to remove
22 responsibility for schools and welfare from municipalities
23 and counties."

24 MR. SLOANE: Your Honor, I object. Now

25 Mr. Erber has not testified at all on restructuring

1 State taxes or any other kind of State taxes.

2 THE COURT: I suppose it could be included.

3 The objection is overruled.

4 Q Are you familiar with that?

5 A Yes.

6 Q Now, this was inserted in a recommendation
7 concerning exclusionary zoning and to improve housing for
8 low and moderate income families.

9 Can you say, if you can tell us, what is the
10 relationship between that recommendation, if you know, and
11 the recommendation as far as removal of the exclusionary
12 barriers? Is there any relationship between what the
13 municipalities are doing in zoning and this particular
14 recommendation?

15 A Yes.

16 Q And I'm curious. What is the relationship?
17 I would like to know.

18 A The relationship is that there would -- that a
19 legislative reform in any one of the affected States would
20 bring about a more equitable distribution of resources in
21 relationship to the location of need.

22 Q When I read it, and I frankly don't
23 know, does it have anything to do with the fact that if
24 some zoning, if some zoning ordinances are invalidated and
25 more people move into some municipalities because of that,

1 that municipalities would therefore have, might have, larger
2 obligations to provide services, and if they had larger
3 obligations to provide services it would be unfair to have
4 them perform the services under the present property tax
5 structure?

6 A Yes. Not fair but legal.

7 Q Thank you.

8 THE COURT: I believe that Mr. Johnson
9 is not in the Courtroom or Mr. Booream.

10 Mr. Farino.

11 MR. FARINO: Yes, your Honor. I have just
12 a few brief questions for Mr. Erber.

13 CROSS-EXAMINATION BY MR. FARINO:

14 Q Mr. Erber, the Department of Community
15 Affairs in preparing its analysis of lower and moderate
16 income housing, the need thereof in New Jersey, selected
17 primarily the low and moderate income household. Is that
18 correct?

19 A Yes.

20 Q As the target group.

21 A Yes.

22 Q Could you tell us why in your opinion
23 that was done, that particular target group?

24 A I think they are the ones most in need of housing.

25 Q Okay. Would it be fair to say these are

1 the families and individuals who are most often affected
2 by serious housing deficiencies?

3 A Yes.

4 Q Would another reason be the fact that they
5 have little mobility?

6 A That is a factor but I don't give it great
7 importance.

8 Q That they have reduced purchasing power?

9 A Yes.

10 Q Mr. Erber, are you aware of the fact that
11 approximately ninety per cent of the State's population is
12 located in urban areas?

13 A Yes. By Census definition of urban areas.

14 Q And would it be fair to say that since
15 that high percentage of the population is located in urban
16 areas that in determining an analysis of low and moderate
17 income housing, the need in New Jersey, that perhaps a
18 separate income definition should be formulated for rural
19 households versus urban households?

20 A I think by the Census definition every community
21 in Middlesex County is defined as urban.

22 Q Well, the point I'm trying to make: if
23 we don't make a distinction between an urban household and
24 a rural household in terms of income, would not any
25 statistics in the rural areas, where the cost of living is

1 lower, with respect to urban areas, reflect a greater need
2 than actually would be the case in the rural areas, the
3 need for housing?

4 A Yes. As a national -- national relationship, yes.

5 Q Okay. Mr. Erber, I show you what has been
6 introduced into evidence as Plaintiff's Exhibit 38, Page 1,
7 and I direct your attention to the footnote 2. Would you
8 read it, please.

9 A "Since 88.91 per cent of the State's population
10 is located in urban areas, a separate income definition was
11 not formulated for rural households. As a result, in rural
12 areas of the State, where the cost of living is somewhat
13 lower, more households are enumerated as part of the need
14 than normally would be the case."

15 Q Okay. Thank you.

16 Now, Mr. Erber, in the course of performing your
17 studies, did you take into account the fact that the cost
18 of living in rural areas is lower than in urban areas?

19 A No.

20 Q You did not.

21 A No.

22 MR. FARINO: I have no further questions,
23 your Honor.

24 THE COURT: Mr. Lefkowitz.

25 MR. LEFKOWITZ: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. LEFKOWITZ:

2 Q Mr. Erber, I show you what's marked as
3 P-27, Table Three, Page 2. It's a 1970 Dilapidated Housing
4 Units in the Tri-State Region Table. Is that correct?

5 A Yes.

6 Q Where was this information or data
7 gathered from?

8 A This is a report by the Tri-State Regional Planning
9 Commission, an Interim Technical Report 4434-3411.

10 Q And the table itself, is there any
11 indication from the table itself as to where the figures on
12 dilapidated housing were derived?

13 A Yes. The source is given as U.S. Bureau of the
14 Census, 1970 Dilapidated Housing Estimates.

15 Q Now, from your understanding of this table,
16 is it correct to say that there is a column which indicates
17 per cent of dilapidated by population communities under
18 ninety-nine hundred, to be exact, 9,999?

19 A Yes.

20 Q Now, I show you what has been marked
21 P-33, Interim Technical Report, Housing Needs, Tri-State
22 Region. Specifically on Page 4, footnote four, would you
23 read that for us, please.

24 A "The U.S. Bureau of the Census did not compile
25 dilapidated housing in places with a population of less than

1 10,000."

2 Q Can you reconcile those two statements?

3 A Yes. The Bureau of the Census did not compile these
4 but they are available on Bureau of the Census tapes and
5 Tri-State took it from the tapes.

6 Q Doctor, or Mr. Erber, is it a fair
7 statement to say that planning isn't an exact science?

8 A We refer to it as the science and art of planning.

9 Q And as a planner are there certain
10 established techniques for doing studies and investigations?

11 A Yes.

12 Q And isn't it fair to say that one of the
13 established techniques is to accumulate data and to examine
14 that data and to analyze the data before you reach a
15 conclusion?

16 A Yes.

17 Q Now, when you did this study that Mr.
18 Spritzer was referring to, you had accumulated data on that,
19 had you not?

20 A Yes.

21 Q And you accumulated data over a long period
22 of time, did you not?

23 A Yes.

24 Q And then ultimately you reached a con-
25 clusion, did you not?

1 A Yes.

2 Q Did you do field studies when you were
3 doing that investigation?

4 A Yes.

5 Q Now, when you did that investigation and
6 you did your field studies to come to your conclusions that
7 you had in that large study, did you investigate Middlesex
8 County specifically?

9 A Yes.

10 Q And did you do field studies in Middlesex
11 County specifically?

12 A Yes.

13 Q When were your field studies done in
14 Middlesex County?

15 A I believe in 1970.

16 Q Was that the last -- and when was that
17 study issued?

18 A 1972.

19 Q And isn't it a fact that one of the good
20 tools for a planner is to have field studies as close as
21 possible to the time in which the conclusions he's going to
22 reach are published?

23 A It depends on the scale on which one is making the
24 study.

25 Q Is it fair to say that you haven't done

1 any field studies in Middlesex County since 1970?

2 A Yes. That's fair.

3 Q Is it fair to say that you didn't --
4 strike that.

5 At some time you began to develop charts and some
6 of those charts are in evidence before this Court. Is that
7 correct?

8 A Yes.

9 Q And is it fair to say that those charts
10 were developed in January of 1976?

11 MR. SLOANE: Objection, your Honor. This
12 is really repetitious.

13 THE COURT: He has testified to that a
14 number of times, Mr. Lefkowitz.

15 MR. LEFKOWITZ: Okay.

16 THE COURT: The answer would be yes.

17 MR. LEFKOWITZ: Thank you.

18 Q Is it a fair statement to say that you
19 reached your conclusions with regard to Middlesex County,
20 specifically that there's an unbalanced distribution of
21 persons of low income and resources, prior to your drawing
22 of those charts in January of --

23 A Yes.

24 Q Is it a fair statement to say that two
25 planners with common experience and background and educational

1 training can reach different conclusions, depending upon
2 the data that they examine?

3 A Yes.

4 Q The charts that you prepared, some of
5 which are in evidence before this Court, is it a fair state-
6 ment to say that you selected certain data to be included
7 in those charts?

8 A Yes.

9 Q And you omitted other data, did you not?

10 A Not relevant data.

11 Q Uh-hum. But didn't you establish prior to
12 drawing up this data and prior to drawing up the charts
13 what your conclusion was?

14 A Yes.

15 Q Is that a normal planning technique?

16 A It's a normal planning and scholarly technique.

17 Q To reach a conclusion before --

18 A To reach a conclusion on the basis of the raw data
19 and then write the exposition of one's thesis on the basis
20 of that conclusion.

21 MR. LEFKOWITZ: May I have one moment, sir?

22 Q By the way, Mr. Erber, are you an employee
23 of the National Committee?

24 A Yes, I am.

25 Q And is it a fair statement to say that this

1 is your primary means of earning a living?

2 A Major means, yes.

3 Q Your major means.

4 A Yes.

5 MR. LEFKOWITZ: I have no further questions.

6 THE COURT: Now I see that Mr. Johnson is
7 in the courtroom.

8 Did you wish to cross-examine?

9 MR. JOHNSON: I have no questions for
10 Mr. Erber, Judge.

11 THE COURT: Mr. Bernstein.

12 MR. BERNSTEIN: Yes.

13 Before I start, your Honor, I would like to
14 have a number of exhibits marked for identification.

15 THE COURT: Well, DP-6 and so forth for
16 identification.

17 (DP-6, Population Estimate; DP-7, document;
18 DP-8, document; DP-9, Map; DP-10, document;
19 DP-11, Jobs & Housing Study; DP-12, Spread
20 City; DP-13, Journey to Work, June '64; and
21 DP-14, Journey to Work, Jan. '73, received and
22 marked for identification.)

23

24 CROSS-EXAMINATION BY MR. BERNSTEIN:

25 Q Mr. Erber, would you consider yourself to

1 be a social scientist?

2 A Yes.

3 Q And a social scientist has to work with
4 statistics. Correct?

5 A Yes.

6 Q And is it important that the social
7 scientist use the exact or correct statistics?

8 A Yes, to the best of his ability.

9 Q The best statistics that are available.

10 Is that correct?

11 A Yes.

12 Q And if he were to use statistics that were
13 off, that would influence his results. Isn't that right?

14 A Yes.

15 Q Now, in this particular case you used
16 exclusively secondary sources for statistics. Correct?

17 A Yes.

18 Q You didn't make up any of the statistics
19 based on your own field work. Correct?

20 A Correct.

21 Q Therefore it would be especially important
22 that the statistics that you used were correct statistics.
23 Right?

24 A Yes.

25 Q Now, isn't it true that some of the

1 research was done by your staff rather than yourself?

2 A Yes.

3 Q And they reported, I assume, the results
4 to you.

5 A They brought the data to me, yes.

6 Q The little tables that we have in evidence,
7 who prepared them?

8 A The exhibits, I prepared them.

9 Q So that you would be responsible for the
10 correctness of the exhibits. Correct?

11 A Yes.

12 Q Now, when dealing with secondary sources,
13 would you say it's a fair statement that the social
14 scientist should be especially certain that he understands
15 the sources that he's quoting from?

16 A Reasonably so.

17 Q Otherwise his conclusions may be faulty.
18 Correct?

19 A Yes.

20 Q Now, did you testify previously that there
21 are no statistics that the Census Bureau has prepared with
22 regard to Townships in New Jersey?

23 A They haven't published them, no.

24 Q Have they prepared any statistics with
25 regard to townships in New Jersey?

1 A They have the data; they have not published it.

2 Q Has anyone published the Census data?

3 A Yes.

4 Q On townships in New Jersey.

5 A Yes.

6 Q And who is that?

7 A The State of New Jersey.

8 Q Now, I believe you testified you felt it
9 was significant that Federal funds were being used for
10 highways in New Jersey.

11 A I said that was a fact, yes.

12 Q Do you have any statistics on the amount
13 of Federal money that was used for road construction in
14 Middlesex County in any of the following years: 1970, 1971,
15 1972, 1973, 1974, 1975?

16 A It runs into millions of dollars. Yes, sir.

17 Q No. No, sir. The question is do you have
18 any statistics that you can present to the Court as to the
19 amount of Federal money which was spent for road construction
20 in Middlesex County in any of the aforementioned years.

21 A Not in my possession.

22 Q Do you have any statistics as to the amount
23 of Federal money which was spent on any highway in Middlesex
24 County in any year?

25 A Not in my possession, no.

1 Q Do you have any statistics as to the
2 amount of State, County or Local money which was spent on
3 roads in the aforementioned years?

4 A Not in my possession, no.

5 Q Do you have any statistics on the amount
6 of money which was spent by either the Federal, State,
7 County or Local governments with regard to road maintenance
8 in any of the aforementioned years?

9 A No.

10 Q You testified that it was significant
11 that Federal funds were spent in Middlesex County for F.H.A.
12 and V.A. mortgages and as well as education, hospitals, and
13 health. Correct?

14 A Yes.

15 Q Do you have any statistics on the total
16 amount of Federal money which was spent in any of those
17 areas for 1970, '71, '72, '73, '74 or 1975?

18 A Not in my possession.

19 Q Do you have any statistics on any
20 Federal money which was spent in Middlesex County during
21 the aforementioned years which you can relate to us?

22 A No. Not in my possession. No.

23 Q Now, didn't you testify on cross-examination
24 that for 1970 low income was under \$5,000?

25 A That's what I used, that figure, yes.

1 Q And moderate income was under \$8,500.

2 A Yes.

3 Q Where did you get those figures?

4 A From the report by the State on unmet housing needs.

5 Q Is that report P-38 in evidence?

6 A Yes, it is.

7 Q And you're sure, Mr. Erber, that in P-38
8 the figure that the State gave for low income housing was
9 under \$5,000 -- strike that. You're sure that in P-38 the
10 figure that the State gave for low income families was an
11 income of less than 5,000 a year?

12 A I recall it that way. I know the 8,500 but the low
13 I just remembered as being about 85 -- about 5,000, yes.

14 Q But this definitely is the book that you
15 took your figures from. Correct?

16 A None of my exhibits quote this book, I don't
17 believe.

18 Q Isn't this book the source of your
19 knowledge of what was low and moderate income housing in
20 1970?

21 A One source, yes.

22 Q I ask you to turn to Page 1 of the book.
23 What figures, sir, does P-38 give for a low income household
24 in 1970?

25 A It says low income households under \$5,568 a year.

1 Q And what figure does the book give for
2 moderate income households?

3 A Up to 5,000 -- up to \$8,567 a year.

4 Q Thank you.

5 A I just spoke in round figures.

6 Q Sorry, sir. If you could just answer the
7 question I think we'll do better rather than making comments
8 at the end.

9 Sir, did you testify on direct or cross-examination
10 that you were familiar with adequate minimum floor area ratios?

11 A I'm familiar with them, yes.

12 Q But you couldn't give us any statistics
13 as to what would be a reasonable minimum floor area for an
14 apartment in suburban Middlesex County, could you?

15 A Yes.

16 Q You could give us those statistics today?

17 A Yes.

18 Q And could you give us those statistics
19 for homes as well as for townhouses?

20 A Yes.

21 Q Do you remember, sir, when I deposed you
22 along with other attorneys in the Courthouse here in
23 Middlesex County?

24 A Yes.

25 Q And a Court Reporter took down what was said?

1 A Yes.

2 Q I show you a copy of that deposition, sir,
3 and I ask you did I not ask you the question --

4 MR. BUSCH: What page?

5 MR. BERNSTEIN: Page 71, line fourteen.

6 Q "QUESTION: I'm not interested in the
7 cities. I want to know if you can give us a minimum today
8 for the one-bedroom and two-bedroom and three-bedroom for
9 your suburban Middlesex County communities. If you can't,
10 that's all right."

11 And the answer: "No, I couldn't. No."

12 Was that your answer?

13 A Well, do I have to answer yes or no?

14 Q Yes. Was that your answer?

15 A Yes. That was my answer as given there, yes, of
16 what you asked me.

17 Q Sir, you can't give us a breakdown today
18 of how many -- strike that -- of percentage of a munici-
19 pality's housing stock should be in garden apartments, town-
20 houses and single-family dwellings for a typical suburban
21 Middlesex County community, can you?

22 A No.

23 Q You have to make a complete study of each
24 of the communities before you could give those figures,
25 wouldn't you?

1 A As a planning recommendation, yes.

2 Q And you haven't made a complete planning
3 study for any of the communities in Middlesex County of
4 sufficient depth to give those figures.

5 A That's right.

6 Q Sir, would you subscribe to the theory
7 that a family shouldn't spend more than twenty-five per cent
8 of its income on housing as far as rent is concerned?

9 A For any kind of shelter, yes.

10 Q And would you subscribe to the theory
11 that a person shouldn't pay for a home for more than two and
12 a half times his salary?

13 A That's used as a good rule of thumb, yes.

14 Q And would you say that in recent times
15 possibly two times his salary might also be a more
16 conservative figure because of the increased taxes and
17 interest and other costs associated with home ownership?

18 A Possibly.

19 Q Would you agree that there's no quick,
20 reliable way to determine the number of jobs in a
21 community?

22 A Yes.

23 Q These are done by estimates. Correct?

24 A In between Census years, yes.

25 Q You can't give us a suburban community

1 in New Jersey in 1976 which in your opinion has a non-
2 exclusionary zoning ordinance. Correct?

3 A Repeat that.

4 Q Okay.

5 A Sorry.

6 Q That's quite all right. If you don't
7 understand the question, I want you to ask me to repeat it.
8 You cannot name a suburban community in New Jersey
9 in 1976 which in your opinion has a nonexclusionary zoning
10 ordinance. True or false?

11 A True. I haven't made any study.

12 MR. CHERNIN: Your Honor, I didn't hear
13 the witness' last comment.

14 What did he say?

15 MR. VAIL: He didn't make a study.

16 Q If one were to set up regions in order to
17 analyze the housing needs, wouldn't you think it would be
18 advisable to study all recommendations and studies on regions
19 which were done by the State in which the regions are
20 located?

21 A Yes.

22 Q Are you aware of the fact that the --
23 strike that.

24 First, can you tell us who the Department of
25 Conservation and Economic Development of the State of New

1 Jersey is?

2 A The Department of the State Government which is
3 given certain responsibilities that relate to community
4 development.

5 Q And they were the predecessor to the
6 Department of Community Affairs or the D.C.A. Is that
7 correct?

8 A You're speaking about the --

9 THE COURT: You don't need to go back
10 over that, Mr. Bernstein.

11 THE WITNESS: Yes. Right. Okay.

12 Q Okay. Are you aware, sir, of the fact
13 that the Department of Conservation and Economic Development
14 has in fact made a study on regions in New Jersey?

15 A Yes.

16 Q And are you familiar, sir, with the
17 criteria which they have taken into account in establishing
18 regions?

19 A Yes.

20 Q And isn't it a fact, sir, that in
21 determining regions that they used such factors as news-
22 papers, weekly newspapers, retail sales, banks, hospital
23 service areas, telephones, high schools, labor market area,
24 radio coverage, joint Chamber of Commerce, traffic and
25 transportation and other social indicators?

1 A Yes. On my recommendation. I was a consultant on
2 that study.

3 Q You feel that these are all accurate
4 criteria?

5 A No.

6 Q Well, didn't you just say that on your
7 recommendation as a consultant they used these factors?

8 A They studied those factors. They all ran into a
9 blind alley.

10 Q All, each of these factors, ran into a
11 blind alley?

12 A Yes. In defining a region, yes.

13 Q You feel that none of these factors
14 are pertinent?

15 A No. They cancel each other out.

16 Q But these in fact were the criteria that
17 were used by the State Department of Conservation and
18 Economic Development.

19 THE COURT: He already said yes to that,
20 Mr. Bernstein.

21 Q P-22 shows the number of workers who live
22 in a County and the number of jobs in a County. Correct?

23 A Yes.

24 Q And that's for the year 1970.

25 A Yes.

1 Q Didn't you testify on cross-examination
2 that you didn't know of any counties in New Jersey that
3 had more jobs than workers which were in the New York
4 Metropolitan area?

5 A I said I didn't know from memory, no.

6 Q Sir, I would ask you to look at Essex,
7 Passaic and Union counties and tell us whether or not
8 these three counties have more jobs within their borders
9 than they have workers living within their geographical
10 area.

11 MR. SLOANE: Your Honor, I object again
12 going into counties other than Middlesex County.

13 THE COURT: That objection is sustained.

14 MR. BERNSTEIN: Your Honor, could I be
15 heard on that just for the record?

16 The reason that I would like to make
17 comparisons between other counties is that I
18 believe it's pertinent for a few reasons: number
19 one, I don't think that planning can be done in a
20 vacuum, and number two, there are innumerable
21 exhibits in evidence, both from the State, the
22 Department of Community Affairs, exhibits made by
23 Mr. Erber, in which there have been comparisons
24 made between Middlesex County and other counties,
25 such as, Union, Essex and Hudson. I feel that it's

1 only fair that the defendants are allowed to make
2 comparisons with other counties which may show
3 results more favorable to their positions than
4 the aforementioned counties.

5 THE COURT: The objection was sustained.

6 MR. BERNSTEIN: Well, then on the basis of
7 credibility could I ask those questions?

8 THE COURT: No. Too remote.

9 MR. BERNSTEIN: No. Very well.

10 Q I have what's been marked DP-9 for
11 identification and I ask you if you can identify this.

12 A Yes. This is a map prepared by the Regional Plan
13 Association showing regional plan study areas by rings of
14 development.

15 Q And are you aware of this fact, that this
16 particular plan was given out by your Counsel to the
17 attorneys for the defendant communities?

18 A Yes.

19 Q Now, can you explain to us what the
20 designation C.B.D. stands for?

21 A Central Business District.

22 Q And what is that?

23 A C.B.D. for the New York Metropolitan area here
24 is the lower part of the isle of Manhattan.

25 Q And what does it mean, central business

1 district? Is that the most built up areas that one can
2 find?

3 A It's the center of greatest economic activity,
4 concentration of economic activity.

5 Q And can you tell us what the term core
6 refers to?

7 A Core is a term that the Regional Plan Association
8 used to designate the center of the region that lay
9 immediately adjacent to the central business district.

10 Q And what does inner ring refer to?

11 A The inner ring refers to a number of counties
12 lying directly adjacent to the core.

13 Q And intermediate ring.

14 A A ring of counties beyond the inner ring.

15 Q And outer ring.

16 A Counties that are on the edge of the
17 metropolitan area.

18 Q Would you say that this map has validity
19 as a planning tool?

20 A For regional studies, yes.

21 Q Can you tell us, sir, in what ring --
22 strike that.

23 Sir, first can you tell us in what ring is Hudson
24 County?

25 A In the core.

- 1 Q That's the area adjacent to the central
2 business district. Correct?
- 3 A Right.
- 4 Q And in what ring are Essex and Union
5 Counties?
- 6 A In the inner ring.
- 7 Q That's the next developed state. Correct?
- 8 A Right.
- 9 Q And in what ring is Middlesex County?
- 10 A In the intermediate ring.
- 11 Q Which is less developed yet. Correct?
- 12 A Yes.
- 13 Q Now, wouldn't you expect, sir, that there
14 would be a higher concentration of population and of
15 minorities in the central business district than in the core?
- 16 A That's what I prepared the table on gradients to
17 demonstrate, yes.
- 18 Q As a planner, you would expect in the
19 built up regions they would have more indications of I
20 believe you called it urban gradient?
- 21 A Yes.
- 22 Q And wouldn't you expect then, sir, that
23 Middlesex County would be similar to Monmouth County,
24 Somerset County, Morris, Passaic and Mercer Counties, which
25 are all in the intermediate ring?

1 A Similar as a type, yes.

2 Q So that when you prepared your chart,
3 before you prepared it, you knew --

4 A Which chart?

5 Q The chart comparing Middlesex with Union,
6 Hudson --

7 A Gradient.

8 Q -- and Essex. You knew that it would
9 show Middlesex County to be the least urbanized of the
10 four counties. Correct?

11 A Yes.

12 Q And couldn't one have also prepared a
13 chart comparing Middlesex County with the outer ring,
14 which would have showed Middlesex County to be the most
15 urbanized of the counties in the study?

16 A I don't think so. I don't know what in the outer
17 ring you could compare it to.

18 Q Well, Middlesex County is in the
19 intermediate ring. Correct?

20 A Yes.

21 Q If we compared Middlesex with those
22 counties in a less built up area than Middlesex County,
23 that would have shown us the most urbanized. Correct?

24 A I could have added Ocean County or Hunterdon
25 County to the gradient and it would have taken one step

1 down further beyond Middlesex, yes.

2 Q So that Middlesex in that test would have
3 been the most urbanized and the counties in the outer ring
4 would have been lesser urbanized than Middlesex. Correct?

5 A No. If I had five counties and added Ocean and/or
6 Hunterdon to the list of four, then Middlesex would have
7 been fourth and they would have been fifth in that gradient.

8 Q I don't think -- I don't think you
9 understand my question.

10 Assume that we compared Middlesex County, which is
11 in the intermediate ring, with those counties solely in the
12 outer ring.

13 MR. SLOANE: Your Honor, objection. He's
14 asking Mr. Erber to testify on something that he
15 did not do.

16 MR. BERNSTEIN: I think that the answer
17 that Mr. Erber --

18 THE COURT: I think that the answer is
19 obvious. The outer ring is lesser urbanized than
20 the intermediate ring.

21 Is that true, Mr. Erber?

22 THE WITNESS: That's true.

23 Q That's what I wanted to have established.

24 A Well, you should have asked me.

25 I'm sorry.

1 Q Well, now, you made no determination of
2 the urbanization of Middlesex County, which is in the
3 intermediate ring, with the other counties in the inter-
4 mediate ring. Correct?

5 A Correct.

6 MR. BERNSTEIN: I'm showing Mr. Erber
7 what's been marked DP-10 and DP-11 for
8 identification.

9 Q These are the Job and Housing studies
10 and I believe you testified that you had authored these.

11 A Yes.

12 Q And, in general, you would agree with
13 the conclusions of these reports. Correct?

14 A In general, yes.

15 Q Would you agree with the conclusion from
16 DP-10 for identification, on Page 5, where it indicates
17 that the biggest constraint to the construction of low and
18 moderate income families is the exclusion of subsidized
19 housing from the suburban municipalities?

20 A Affecting that class of income yes.

21 Q Would you agree with the conclusion found
22 on Page 9 of that same study that the growth of housing
23 opportunity is governed by many factors, among which the
24 principal ones are the mortgage rates, land and construction
25 costs, effective consumer demand and local land use, zoning

1 controls and building regulations?

2 A Yes.

3 Q And would you admit, sir, that mortgage
4 rates which are high at the present time and land and
5 construction costs, which are high, are an impediment
6 to the construction of low and moderate income housing?

7 A Yes.

8 Q Would you agree with the statement found
9 on Page 12 of that report which says in part the decline
10 in housing starts that began in the middle 60's is usually
11 attributed to the drying up of money for construction loans
12 and mortgages as a consequence of more attractive earnings
13 in other investments?

14 A It's attributed to that, too, yes, but --

15 Q Would you agree with the statement it's
16 attributed by others to that factor?

17 A Yes.

18 Q Do you feel that's one reason for the
19 decline in housing starts?

20 A It's a reason.

21 Q And do you also feel that a reason is a
22 fact that consumers now have to pay 8 3/4 or nine per cent
23 for home mortgages whereas in the 60's rates were six
24 per cent and less?

25 A Yes, a contributing factor, yes.

1 Q Would you agree with the statement found
2 on Page 14 of the report that if you had a piece of
3 property that was zoned for one acre that it would not in
4 most situations be worth twice as much as two adjacent
5 half acre parcels?

6 A That's what our economists found.

7 Q That prices don't go down in direct
8 proportion as the size of the lot becomes smaller.

9 A That's right.

10 Q Would you agree with the conclusion
11 found on Page 16 of the report? "In the New Jersey counties
12 Bergen, Essex and Middlesex, lot sizes are generally smaller
13 than those in West Chester, Fairfield or Suffolk Counties."

14 MR. SLOANE: Objection, your Honor.

15 THE COURT: That objection is sustained.

16 MR. BERNSTEIN: Well, for the record,
17 I would like to note that the plaintiffs have been
18 allowed to go into this area.

19 MR. SLOANE: Your Honor, I would remind
20 the Court that we attempted to compare Middlesex
21 with other counties with regard to industrial use
22 and there was an objection by the defendants,
23 which was sustained by the Court.

24 MR. BERNSTEIN: Well, I would like to
25 remind the Court that there's a ream of data in

1 detail comparing Middlesex County with Essex,
2 Hudson and Union, and I wonder why we have to make
3 comparisons to the east, to counties that aren't
4 even contiguous, other than Union, rather than those
5 on our borders.

6 THE COURT: The case will not be decided
7 on comparisons to any other counties. I think
8 you would understand that. Nor are we dealing
9 with the proofs as to the zoning or housing
10 situation in any other county.

11 MR. BERNSTEIN: Could I ask your Honor
12 in view of this ruling that all of the information
13 which has been prepared by the plaintiff and all
14 those exhibits which compared Middlesex County
15 with other counties be stricken because I feel as
16 representing a defendant community I'm in the
17 difficult position of we have a number of documents
18 in evidence, a number of studies, plus Mr. Erber's
19 studies on comparisons of Middlesex County, and if
20 I cannot cross-examine on this data yet it remains
21 in evidence I'm afraid what will happen when the
22 decision is ultimately made?

23 THE COURT: I should think you would have
24 reliance on what I said a minute ago.

25 CONTINUED CROSS-EXAMINATION BY MR. BERNSTEIN:

1 Q Mr. Erber, would you agree with the
2 statement found on Page 19 of the Housing Study that the
3 cost of building materials did not reflect the lessening
4 demand due to declining housing starts in the 60's?

5 A That the cost of building materials --

6 Q Did not reflect the lessening demand
7 due to the declining housing starts in the 60's.

8 A That's true.

9 Q Would you agree with the statement
10 found on Page 23 of that report that multi-family units
11 in Middlesex County from 1960 to 1964 were forty-six per
12 cent of all building starts, that's residential building
13 starts, and for 1965 to 1969 multi-family structures
14 were 57.7 per cent of all residential building starts?

15 A If that's what it says there, yes.

16 Q I just ask you if I correctly gave those
17 statistics.

18 A Well, I'm sure that you did.

19 Q No, sir. I would like you to compare.

20 A Yes.

21 Q Sir, with regard to P-56, that's a
22 comparison of various factors between Hudson, Essex, Union
23 and Middlesex Counties. Is that correct?

24 A Yes.

25 Q And it indicates that there are more

1 dwelling units per square mile in the three other counties
2 than there are in Middlesex. Correct?

3 A Yes.

4 Q Now, isn't it a fact, sir, that most of
5 Middlesex is vacant?

6 A Yes.

7 Q I'd ask you to turn to Page 59 in P-37.

8 A I'm sorry. Which page?

9 Q 59.

10 A Well, this doesn't have a 59.

11 Q Maybe 5A.

12 A Yes. There's a 5A.

13 Q My writing always isn't clear.

14 I believe that indicates the net land supply in
15 various counties.

16 A Yes.

17 Q It doesn't show Hudson County for some
18 inexplicable reason. Is that correct?

19 A Yes.

20 Q You don't know why Hudson County is not
21 in this book, do you?

22 A As I recall, the State did not think that this was
23 a significant county on the subject of available land supply.

24 Q Doesn't this chart on Page 37 show that
25 only eleven per cent of Essex County is vacant and developable?

1 A Yes.

2 Q And only 9.6 per cent of Union County is
3 vacant and developable?

4 A Yes.

5 Q Whereas in Middlesex County the figure
6 is 52.5 per cent. Is that correct?

7 A Yes.

8 Q So that in comparing the three counties
9 you are comparing three counties which are largely developed
10 with one county that was half vacant.

11 A That was exactly my point, yes.

12 Q Now, if you wanted to compare densities,
13 wouldn't it have been fairer to have compared the densities
14 of the built up residential areas, in other words, the net
15 densities of the developed residential lands? Wouldn't that
16 have been a more meaningful figure?

17 A I wasn't -- I was only demonstrating that there is
18 a gradient of development and I could have started with
19 Manhattan and ended with Ocean County to demonstrate that the
20 gradient goes down. I was simply trying to locate where
21 Middlesex was on the gradient.

22 Q Well, that has nothing to do with the
23 density of the developed areas in Middlesex County, does it?

24 MR. SLOANE: Objection, your Honor. Mr.
25 Erber has taken countless time in explaining what

1 that is and yet the questions go on and on.

2 THE COURT: I'll allow that.

3 A It does not deal with the densities of developed
4 urban areas in Middlesex County, no. It's only a county
5 total.

6 Q In fact, it doesn't even deal with the
7 density of the suburban areas in Middlesex County which are
8 built up, does it?

9 A Yes. They are included in the County total. All
10 of them are.

11 Q But what I'm talking about, ~~sir~~, with this
12 chart you could not tell whether or not development which
13 has taken place in Middlesex County is either more dense or
14 less dense than the development which has already taken
15 place in Hudson, Essex or Union Counties. Is that correct?

16 A On a smaller basis, no.

17 Q Now, I didn't ask for a smaller basis.
18 What I'm asking for is looking at column one can we tell
19 the residential development which has already taken place
20 is less dense than that which has already taken place in
21 the other three counties.

22 A You mean net residential densities?

23 Q Net residential density.

24 A No.

25 Q In fact, you made no comparisons with net

1 residential density. Correct?

2 A Correct.

3 Q Now, column two indicates the percentage
4 of multi-family dwelling units in the four counties.

5 A Yes.

6 Q Isn't it true, sir, that the cities
7 generally have had more multi-family dwellings than the
8 suburban areas?

9 A Yes.

10 Q And isn't it a fact, sir, that the cities
11 in Middlesex County have relatively small populations when
12 compared with the cities in Hudson, Essex and Union Counties?

13 A Yes.

14 Q So that one would expect the more urban-
15 ized counties to have more multi-family dwelling units as
16 a percentage of all dwelling units. Correct?

17 A Well, you shouldn't necessarily expect it but
18 that is a fact. Yes.

19 Q Well, isn't it a fact that --
20 strike that.

21 Now, in column three you mentioned median rents.
22 Correct?

23 A Yes.

24 Q Now, am I right that assuming a two or
25 three-bedroom apartment would rent for more than a one-

1 bedroom apartment, as a general rule?

2 A As a general rule, fairly general.

3 Q And am I right in assuming that new
4 apartments would rent for more as a general rule than old
5 apartments?

6 A Yes.

7 Q And would it be your assumption that more
8 of the apartments in Middlesex County are of more recent
9 vintage than those built in Hudson and Essex Counties?

10 A I would say that would be my assumption. I haven't
11 looked at the data though.

12 Q And you could probably make no comparison
13 as to the number of two and three-bedroom apartments in
14 Hudson and Essex Counties versus Middlesex County. Correct?

15 A Correct.

16 Q So that with regard to column three you're
17 not comparing one bedroom with one bedroom apartments or
18 new apartments with new apartments but you're comparing the
19 total stock of apartments. Is that correct?

20 A That's correct.

21 Q And if one county had more new apartments
22 you would expect the rents to be higher. Correct?

23 A Yes.

24 Q And if one county had more two and three-
25 bedrooms --

1 A I -- yes.

2 Q -- you would expect the rents to be higher
3 than the county that had more one-bedroom apartments.

4 Correct?

5 A Well, it wouldn't hold true everywhere.

6 Q Generally would that be a correct statement?

7 A I think that for instance one-bedroom apartments
8 in Manhattan are probably higher than three-bedroom apartments
9 in Middlesex.

10 Q But I'm asking you as a general rule.

11 A Well, it's a dangerous general rule to quote.

12 Q Well, regardless of the dangers, would you
13 agree that my statement --

14 MR. SLOANE: Your Honor, objection. Mr.
15 Erber has answered it.

16 MR. BERNSTEIN: He hasn't answered it,
17 your Honor.

18 THE COURT: I think he has.

19 Q Now, isn't it also true, sir, that where
20 apartments give amenities, such as, swimming pools, game
21 rooms, washing machines, the rents are higher?

22 A Yes, generally.

23 Q And you haven't compared the amenities
24 offered by the Middlesex County apartments with those in the
25 other areas, have you?

- 1 A No.
- 2 Q With regard to column four, building
3 permits per square mile, Middlesex County is a lot larger
4 county than either Essex, Hudson or Union. Isn't it?
- 5 A Yes.
- 6 Q So as a result Middlesex County would have
7 to absolutely have a greater deal more building permits
8 in order for it to have the same number as Hudson, Essex
9 and Union. Correct?
- 10 A Yes.
- 11 Q Column five deals with percentage of
12 population, nonwhite. Does this refer to Puerto Ricans?
- 13 A I believe in this context, no.
- 14 Q Does it refer to American Indians?
- 15 A Yes.
- 16 Q American Indians are considered non-
17 Caucasians?
- 18 A Yes.
- 19 Q They are considered Negroid?
- 20 A No. They are considered not Caucasian.
- 21 Q Does this refer to Aleuts?
- 22 A Yes.
- 23 Q Philipinos?
- 24 A Yes.
- 25 Q Spanish speaking persons?

1 A If they are of a nonwhite race, yes.

2 Q With regard to column five, does anyone
3 who has any nonwhite blood come within that percentage if
4 they appear to be white?

5 MR. SLOANE: Objection, your Honor. First
6 of all, objection to the nonwhite blood and also
7 to the vagueness of the question.

8 THE COURT: He may answer if he knows.

9 A Based on a Census definition of race.

10 Q Well, that's not the answer to the
11 question, sir. I'd like to know whether or not nonwhite
12 here refers to anyone with any per cent of nonwhite blood,
13 even though that person might appear to be white?

14 A Blood is unscientific and it only goes by blood
15 type, and all races have different blood types.

16 Q And when I refer to blood, I was
17 referring to one-eighth or one-sixteenth blood percentage.
18 Would that person be considered nonwhite, for that column,
19 if you know?

20 A Yes.

21 Q Number six refers to population density
22 per square mile. Correct?

23 A Yes.

24 Q Wouldn't you expect a County like
25 Middlesex, which is over half vacant, to have a lower

1 population density than counties like Union, Hudson and
2 Essex, that are over ninety per cent developed?

3 A Yes.

4 Q And this doesn't refer to net population
5 density, does it?

6 A What?

7 Q This does not refer to the net population
8 density for developed areas, does it?

9 A No. This is gross population density.

10 Q And can you tell us, sir, looking at
11 column seven, which counties have had the greatest growth
12 in population density between 1960 and 1970?

13 A Middlesex.

14 Q Now, with regard to column ten, sir,
15 are you aware of the fact that Hudson and Essex Counties
16 are among the three lowest counties in the Metropolitan Area
17 in terms of median family income?

18 A I would assume they would be low, yes.

19 Q And are you aware of the fact that Middlesex
20 County has a lower median family income than over half the
21 counties in the Metropolitan Area?

22 A Perhaps.

23 MR. LEFKOWITZ: Excuse me, your Honor.

24 Was the answer correct or perhaps?

25 THE COURT: Perhaps.

1 Q You didn't feel it was relevant to
2 make studies of those other counties with Hudson, Essex
3 and Union when comparing them to Middlesex?

4 A I didn't think it was relevant to make that
5 comparison. I was comparing the socio-economic gradient
6 as to where they stood on the socio-economic profile.

7 Q But you didn't go into counties that
8 had lower amounts of urbanization than Middlesex. Correct?

9 A No, I didn't.

10 Q With regard to P-37, Mr. Erber, there's
11 a statement on Page 7, "There are no standards for
12 determining the amount of land that should be allocated
13 to industrial use in a municipality." Would you agree
14 with that statement?

15 A Yes.

16 Q Can you tell us how much land Middlesex
17 County should have zoned for all types of housing at the
18 present time? Can you give us a figure that you as a
19 planner would recommend for Middlesex County that it should
20 have X acres devoted to residential use?

21 A In proportion to housing need and to number of
22 jobs in the County but I couldn't give you an exact number.

23 Q Could you give us any number, any amount
24 of acreage?

25 A No.

1 Q Are you aware of the fact, sir, that in
2 the land use regulation, that is, P-37, the statement
3 appears on Page 25 "Although a pattern of industrial over-
4 zoning has been noted its affect has not been to reduce the
5 supply of residential land?"

6 A I'm aware that that's there, yes.

7 Q And, sir, can you tell us which county
8 has the highest percentage of developed land devoted to
9 industry?

10 MR. SLOANE: Objection, your Honor.

11 THE COURT: Which county has the highest
12 proportion?

13 All right. Objection overruled.

14 You may answer that.

15 Q Sir, let me tell you its on 7A. It's
16 only fair.

17 A Middlesex County.

18 Q And what percentage of its developed
19 land is devoted to industrial and Middlesex County?
20 Is it twenty-one per cent?

21 A Twenty-one per cent is correct.

22 Q Thank you, sir.

23 I'm referring to P-61A, which I believe was a
24 chart that was prepared by yourself. Correct?

25 A Yes.

1 Q And doesn't this indicate the amount
2 of land which is zoned for residential use in Middlesex
3 County?

4 A Yes.

5 Q And it indicates that 56,284 acres are
6 presently zoned residentially. Correct?

7 A Yes. Vacant land.

8 Q Vacant land. You would admit, sir,
9 that the construction of residences is allowed on more
10 acreage than the fifty-six thousand acres, would you not?

11 A Yes.

12 Q Do you know how many additional acres
13 one could build a residence on?

14 A I believe that's shown in --

15 Q P-37?

16 A P-37.

17 Q On Page 71.

18 A 6B, I believe.

19 Q You're right, yes.

20 A 6B.

21 Q And doesn't it show that 10,000 industrially
22 or commercially zoned acres in Middlesex County allow
23 residential construction, allow it by zoning?

24 A Yes.

25 Q That is, it's a permitted use along with

1 other uses.

2 A Yes.

3 Q That isn't shown anywhere on P-61A, is it?

4 A No.

5 Q Thank you.

6 I'm showing you copies of P-70 and P-71, which
7 have been supplied to me by your Counsel. These indicate
8 that there are more low rent apartments and subsidized
9 apartments in Perth Amboy and New Brunswick than there are
10 in the suburban communities in Middlesex County. Correct?

11 A Yes.

12 Q Isn't this true all over the State, that
13 there are more low income and subsidized apartments in the
14 cities and less in the suburban areas?

15 A Regrettably so, yes.

16 Q And isn't this true throughout the
17 eastern part of the country?

18 A Yes.

19 Q It's not unusual then in Middlesex County
20 as far as the eastern part of the country is concerned.

21 A Middlesex County has, follows, a usual pattern
22 in this respect, yes.

23 Q P-59 shows the traffic volumes on
24 different roads in Middlesex County. Correct?

25 A Yes.

1 Q Are you aware, sir, of traffic studies
2 that have been done on the origins and destinations of
3 people using certain roads?

4 A Generally, not specifically for Middlesex County.

5 Q And don't these studies indicate where
6 the traffic initially came from and where it went to?

7 A Yes.

8 Q And you don't know of any of these studies
9 that, as you testified, that have been done for any of the
10 roads in Middlesex County.

11 A No.

12 Q So that you couldn't tell us what
13 percentage of the traffic on any of the roads mentioned in
14 P-59 is intrastate and what percentage of the traffic is
15 interstate.

16 A No.

17 Q Is my statement correct?

18 A Yes.

19 Q In fact, isn't it true that Route 1 is
20 one of the major thoroughfares?

21 THE COURT: You're repeating cross-
22 examination of other attorneys on these points,
23 Mr. Bernstein.

24 MR. BERNSTEIN: Okay. I'll go on to
25 another area, your Honor.

1 Q Sir, do not exhibits P-67, 68, 69 and
2 72, which were prepared by yourself, indicate that New
3 Brunswick and Perth Amboy are losing their industry and
4 commerce to the more suburban areas?

5 A Yes.

6 Q And isn't that a common phenomenon in
7 the eastern part of the United States, where the cities
8 are losing business to suburban areas?

9 A Yes.

10 Q And you were here when Doctor Mann
11 testified?

12 A Partially.

13 Q Did you hear Doctor Mann say it was an
14 inevitable process of cities going financially downhill and
15 their industry and commerce going elsewhere?

16 A Given current governmental --

17 THE COURT: Did you hear that?

18 THE WITNESS: What's that?

19 THE COURT: The only question is: did
20 you hear him say that?

21 THE WITNESS: Did I hear him say that?

22 No. I didn't hear him say that.

23 Q Did you hear Doctor Mann say that this
24 was an inevitable process?

25 A I don't believe I heard him say that.

1 Q Do you agree that it is inevitable that
2 the cities will lose industry, commerce and will not be
3 able to attract upper income and middle income persons?

4 A Inevitable within the present context of Federal
5 and State policies presently, yes.

6 Q So do you believe it would be possible
7 for cities to attract industry and commerce and to bring
8 back wealthy individuals?

9 A Yes.

10 Q I'm showing you, sir, P-63, which I
11 believe you prepared.

12 A Yes.

13 Q And I believe P-63 indicates the total
14 number of building permits for residential dwelling units
15 in Middlesex County. Correct?

16 A For the years '51 to '74, yes.

17 Q And if there were multi-family structures
18 with three units, you would count three for the number of
19 permits issued, I would assume.

20 A Yes. One permit but it's totaled by dwelling units.

21 Q So that the figures given are dwelling
22 units rather than permits.

23 A Right.

24 Q I'm showing you, sir, P-30, which is a
25 copy of my own document. It was given to me by your Counsel

1 and I believe you identified this. Correct?

2 THE COURT: It's not in evidence.

3 MR. BERNSTEIN: It was for identification,
4 your Honor. This was the Tri-State report which
5 was identified by this witness, who testified as
6 an expert that he recognized it; however, it won't
7 be introduced into evidence until the Tri-State
8 man came back. I believe that was the status.

9 THE WITNESS: I didn't recognize this but
10 as far as -- I don't remember identifying it,
11 but --

12 MR. SLOANE: Your Honor, this isn't my
13 recollection, either.

14 MR. BERNSTEIN: Well, I would like to
15 know, your Honor. It was my understanding that
16 most of the Tri-State material was recognized by
17 Mr. Erber as an expert witness and would be
18 placed into evidence when a Tri-State representative
19 reappeared and identified it.

20 THE COURT: I don't believe so.

21 THE WITNESS: I don't believe so, either.

22 MR. BERNSTEIN: Well, can I continue cross-
23 examination based on P-30?

24 THE COURT: Well, an objection by one of
25 your fellow Counsel for a defendant -- by several

1 of them were sustained to it.

2 MR. BERNSTEIN: Wasn't that on the grounds
3 that it would have to be linked up with a Tri-State
4 man that would come back at a subsequent date or
5 was it an absolute objection that it wouldn't be
6 entered? If it were the latter, then, of course,
7 I won't cross-examine on it.

8 MR. SLOANE: Your Honor, it is my
9 recollection that it was the latter and several
10 of those exhibits for identification were excluded,
11 this being one of them.

12 THE COURT: I think that's the present
13 posture.

14 MR. BERNSTEIN: All right.

15 THE COURT: Of course, if it's later
16 admitted into evidence, you can have the
17 opportunity to cross-examine somebody about it,
18 I take it.

19 MR. BERNSTEIN: But not this witness.

20 THE COURT: Well, what is it you were about
21 to ask him?

22 MR. BERNSTEIN: Yes, sir. I would tell the
23 Court that the figures for building permits found
24 in P-63 are different from the figures on building
25 permits regarding the number of units found in P-30,

1 P-32 and P-42.

2 THE COURT: You plan to ask him to
3 explain that, if he could?

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: All right.

6 CONTINUED CROSS-EXAMINATION BY MR. BERNSTEIN:

7 Q Sir, I'm showing you figure two in P-30
8 and I'd like you to tell us the number of dwelling units
9 which were allowed by building permits for the year 1963
10 for Middlesex County.

11 A 4,003.

12 Q And could you give us that same figure
13 which is found on P-63?

14 A Yes. It's 3,915, but they relate to different
15 types of construction.

16 Q Well, when you say they relate to
17 different types of construction, doesn't figure two
18 indicate housing units authorized by building permits in
19 the Tri-State region?

20 A Yes, but the --

21 Q And wait a minute. Let me finish.

22 A I'm sorry.

23 Q And doesn't it say 1960, 1970, annual
24 summary, U.S. Bureau of Census?

25 A Yes.

1 Q And doesn't P-63 say number of dwelling
2 units authorized by building permits in Middlesex County?

3 A Yes.

4 Q Now, can you tell us what's the difference
5 in figures then?

6 A The difference in figures is attributable to the
7 fact that the footnote in the Tri-State documents says
8 "U.S. Bureau of the Census, Construction Reports, Housing
9 Authorized by Building Permits and Public Construction."

10 The exhibit, P-63, which is from the New Jersey
11 Residential Building Permits issued by the New Jersey
12 Department of Labor and Industry, does not include those
13 public contracts, namely, such dwellings constructed by
14 housing authorities other than that do not need public
15 contracts, usually.

16 Q Then it would be your testimony that the
17 figures found in P-30 would always be the same or larger
18 than the figures found in P-63, since in P-30 we're
19 including private construction as well as public contracts,
20 and in P-63 it's only private construction. Is that right?

21 A Yes. If that is what the difference is
22 attributable to.

23 Q Well, sir, is that the only difference?

24 A That's the only one I would know of unless there
25 were an error.

1 Q Okay. Okay. Let's look at 1970. What
2 are the figures first for the P-30 book?

3 THE COURT: Well, there having been an
4 explanation offered, why are you pursuing it?

5 MR. BERNSTEIN: I think it will become
6 evident, your Honor, without telegraphing my
7 purpose, so to speak.

8 A The figure for Middlesex, 1970, in P-30, is 1,773.

9 Q And could you tell us, sir, what was the
10 figure for P-63?

11 A It's 1,803.

12 Q So doesn't that indicate that P-63,
13 which only contains private construction, had more permits
14 issued than the number given in P-30, which contains
15 private plus public construction? Correct?

16 A Yes. There could be a date factor that at the end
17 of the year might account for that.

18 MR. SLOANE: Your Honor, I object to
19 further questions along this line. Mr. Erber has
20 offered two possible explanations.

21 THE COURT: His present answer will stand.
22 We'll take a recess at this time.

23 (A recess is taken at this time.)

24 CONTINUED CROSS-EXAMINATION OF ERNEST ERBER BY MR. BERNSTEIN:

25 Q Mr. Erber, wouldn't it be a fair statement

1 that you really aren't sure of the reasons for the
2 difference in the employment figures between P-63 and P-30?

3 A Employment figures?

4 Q I'm sorry. Between the building permits
5 figure for P-63 and P-30, and can only give hypotheses,
6 only with reference to public construction?

7 A Otherwise I wouldn't know.

8 Q But there are discrepancies other than
9 public construction. Correct?

10 A Yes.

11 Q And you can't explain those discrepancies.

12 With regard to P-21 and P-22, Mr. Erber, these
13 are the charts that you show the number of workers in a
14 county and the number of workers living in the county.

15 Correct?

16 A Yes.

17 Q Is it a relevant ratio to show the number
18 of workers working in the county to the number of workers
19 living in a county? Does that mean anything, those figures?

20 A Yes.

21 Q What does it mean in a general planning
22 concept?

23 A It could mean any number of things.

24 Q But the ratio showing the number of
25 workers working in the county to the number of workers

1 living in the county, does that ratio mean anything to you
2 as a planner?

3 A Yes.

4 Q And what does it mean to you as a planner?

5 A It's an indication of the socio-economic make-up
6 or profile of that county.

7 Q Well, how would it show the socio-economic
8 profile of the county, sir, if all you knew were the number
9 of workers working in the county and the number of workers
10 living in the county? How do you get a socio-economic
11 profile out of that ratio?

12 A Well, it would be an indication of significance
13 if one was of a greater magnitude than the other or they
14 both balanced.

15 Q Well, if one was a greater magnitude,
16 let's assume there were more workers working in a county
17 than there were workers living in a county, what would
18 that mean to you as a planner?

19 A I would have to understand where that count was
20 in a metropolitan relationship, and if it was a county that
21 was on the periphery of a metropolitan relationship then
22 I would expect one kind of a relationship between those two
23 factors.

24 Q Well, aren't all the counties that we've
25 spoken of, the eight counties from New Jersey in the New

1 York Metropolitan Area, aren't they all peripheral of the
2 Metropolitan Area?

3 A The eight in New Jersey? No. Hudson is in the core,
4 the others in the inner ring and Middlesex is in the
5 intermediate ring in that map.

6 Q Well, is what you're saying then that
7 the raw ratio itself doesn't mean anything without studying
8 other factors?

9 A It means something if you know where the County
10 is located geographically.

11 Q With regard to this map that I had
12 marked for identification, Mr. Erber, I'm showing you the
13 map that I had marked for identification, the regional
14 plan study of the area with the rings. Now, what would you
15 expect for the core area which includes Bergen, Essex and
16 Union as far as workers living and working in that area?

17 A As development takes place, employment grows and
18 less people are dependent upon employment outside the
19 county.

20 Q What would you expect for the ratio?
21 Would you expect more workers working there or more
22 workers living there?

23 A I could expect either, depending on the configura-
24 tion of that particular county. You can't generalize.

25 Q You can't generalize as to any of these

1 ratios as far as working and living? You can't give us a
2 general statement here today? Is that correct?

3 A I cannot give you a general statement, no.

4 Q Now, would it be a fair statement, Mr.
5 Erber, that in order to say something significant about the
6 ratio of workers working in the county and living in the
7 county you'd have to know what kind of jobs they were doing?

8 A Yes.

9 Q And did you make any study of the jobs
10 which were available in Middlesex County and the jobs that
11 the residents did, whether they are employed in this County
12 or employed outside?

13 A No.

14 Q Did you make an assumption that most of
15 the workers in Middlesex County were blue collar -- strike
16 that.

17 Did you make an assumption that most of the
18 residents living in Middlesex County had either a blue
19 collar or factory jobs?

20 A No. But it would be a very high percentage.

21 Q Did you take that into account when
22 making your study?

23 A It didn't play a statistical role, no.

24 Q And isn't that an important consideration
25 when one does an analysis of where workers live and where

1 workers work? Isn't that an important element?

2 A Yes, it is, if the data is available.

3 Q And you didn't study this particular
4 factor. Correct?

5 A No.

6 Q "No." Is my statement correct, that you
7 did not for this case?

8 A For this case I did not, no.

9 Q Now, just so I understand, P-21 and P-22,
10 they both show an excess of jobs in Middlesex County --
11 strike that.

12 Both P-21 and P-22 show that there are more workers
13 living in Middlesex County than there are jobs in Middlesex
14 County. Correct?

15 You can look at the charts if you wish to refresh
16 your recollection.

17 A There are more people employed in the county --

18 Q No, sir. Don't they show that there are
19 more workers living in the county than there are jobs in
20 the county?

21 A I believe that's true, yes.

22 Q Would you check it so that we can make
23 sure.

24 A I could do it easier with my exhibit.

25 Q Oh, is that P-66?

1 A Yes.

2 Q I don't want to supply you or fail to
3 supply you with the information that you need.

4 I'm sorry. This is my copy and this is the Court's
5 copy.

6 A Yes. The number resident labor force in Middlesex
7 County in both 1960 and in 1970 exceeds the number that
8 are employed in Middlesex County. 1970, the number --

9 Q No. I just wanted to know that it
10 exceeded it, sir. We can study the graphs ourselves to
11 determine --

12 A Well, I would have to add those that commute into
13 the county.

14 Do you want those, too?

15 Q What I want to know, sir: are there more
16 total jobs in Middlesex County or total workers living in
17 Middlesex County? That's all that I want to know, for 1960
18 and 1970. I understand that there are more workers --

19 THE COURT: Don't keep asking the same
20 thing.

21 MR. BERNSTEIN: I would like him to answer
22 it, your Honor.

23 A Yes.

24 Q My statement was true?

25 A Yes. That's true.

1 Q Now, sir, with regard to P-21, what was
2 the total number of workers living in Middlesex County?

3 Is that 128,000?

4 A Yes.

5 Q And the total number of jobs is 102,000.

6 A Yes.

7 Q Now, my question is, sir: does that
8 102,000 figure reflect all of the jobs in Middlesex County?

9 A All those reported in the Journey to Work, yes.

10 Q No, sir. What I'm concerned with, does
11 that include all of the jobs in Middlesex? Are there
12 some jobs that are excluded from the 102,000 figure?

13 A Well, it's based on the U.S. Census question, which
14 asks: "How do you travel to work and where?"

15 Q So, you assume that's a full figure for
16 all jobs in Middlesex County.

17 A I'd say reasonably so, yes.

18 Q Within how much deviation, if you can
19 give it to us?

20 A I wouldn't know that.

21 Q You would assume it would be a small
22 deviation?

23 A I don't think it would be very significant, no.

24 Q You mean it would be small?

25 A Relatively, yes.

1 Q Thank you.

2 I had marked for identification, sir, as DP-12
3 "Spread City." Is this a booklet that you helped work on?

4 A Yes.

5 Q And that, I assume, is the total booklet
6 since we had certain pages entered in evidence. Correct?

7 A Yes.

8 Q Now, on Table One, Page 8, it indicates
9 that Middlesex County had 152,000 jobs in 1960. Isn't that
10 right?

11 A That's what it says, yes.

12 Q Can you explain the difference between
13 the 102,000 found in I believe it's P-21 and the 152,000
14 found in, well, what's been marked for identification DP-12,
15 "Spread City?"

16 If you cannot explain it, sir --

17 A I'm sorry. I haven't found it.

18 Q I'm sorry. I don't want to rush you.
19 That would be unfair.

20 A I would have to go back through the methodology
21 by which this figure was arrived at. There's a difference
22 between totals and the employed labor force and the total
23 jobs. Total jobs is always greater than total in the
24 employed labor force because there are many people who hold
25 two or more jobs.

1 Q You would admit, sir, that the difference
2 between 102,000 and 152,000 is a significant difference,
3 wouldn't you?

4 A Yes.

5 Q And at the present time you can't
6 explain that difference.

7 A I cannot at this time, no.

8 Q Thank you.

9 Now, sir, we've numbered P-22 to be the 1960
10 Census Journey to Work. Correct?

11 A Yes.

12 Q I've been corrected by your Counsel.
13 That's P-21. Excuse me.

14 Referring to the 1960 figures, I have some
15 questions for you. First of all, if workers from Middlesex
16 County went out of the Metropolitan Area, or if workers
17 from out of the Metropolitan Area went into Middlesex County,
18 would they be included in the 1960 Census Journey to Work?
19 Yes or no?

20 A I do not see them in this compilation, no.

21 Q So you say they wouldn't be included.
22 Right? Or do you?

23 a I don't see them here, no, so they won't be
24 included.

25 Q Well, do you know if they are included?

1 They are either included, not included or you don't know.

2 A I would say they are not included.

3 Q Are they included for 1970 figures found
4 on P-22?

5 A Yes.

6 Q So here we have a difference between the
7 1970 and the 1960 figures in that the 1970 figures included
8 people from out of the Metropolitan Area and the 1960
9 figures didn't. Correct?

10 A That's right.

11 Q Now, with regard to the 1960 figures,
12 if a person was sick on the day that the Census takers
13 in the Tri-State made their inquiries or if the person was
14 on vacation, was he or she included in this table, which
15 we've labeled P-21, if you know?

16 A In the 1970 Census he would be. He or she is
17 likely to be included because it was done by mail to the
18 home of the person, every person in the United States,
19 every household in the United States.

20 Q Sir, my question was: in 1960 would that
21 person who was sick or on vacation be included if he or
22 she were on vacation or sick on the day the accounting took
23 place with regard to 1960?

24 A The answer is that in April, 1960, the enumerators
25 went from house to house and they had call back instructions,

1 I don't know over how many weeks, but I suppose essentially
2 there were some people that eventually never get recorded.

3 Q But is it your answer that most of the
4 people that were sick or on vacation were included in 1960,
5 that were sick when the interviewers contacted the employer?

6 MR. SLOANE: Objection, your Honor.

7 MR. BERNSTEIN: Your Honor, I haven't
8 received a straight answer, and that's why I'm
9 pursuing it.

10 THE WITNESS: I wouldn't know that.

11 THE COURT: Excuse me. Apparently he's
12 saying he doesn't know.

13 Q Your answer is you don't know.

14 A No.

15 Q But you do know that the sick or the
16 person that was on vacation was included in 1970?

17 A The mail questionnaire arrived at their home and
18 they had a rather lengthy period in which to fill it out
19 and send it back, so that probably most of them did. Any
20 member of the household, adult member, I think, is allowed
21 to fill it out.

22 Q Now, do you know if secondary work trips,
23 such as if a person were a babysitter going to the job,
24 as his or her principal job in 1960, would these secondary
25 work trips be included as employment in 1960?

1 A Well, they can't be both secondary and principal.
2 You said both. It has to be principal job.

3 Q Well, are you familiar with the term
4 secondary work trip?

5 A Yes. If the person has two jobs, the second one
6 is a secondary job.

7 Q Do you know if the secondary work trips
8 were included in 1960?

9 A No. Not to my knowledge.

10 Q Do you know, sir -- strike that.

11 P-21 does not show any Middlesex County workers
12 who were living in Middlesex County working in either
13 Monmouth or Somerset Counties. Correct?

14 A I already testified to that on cross-examination.
15 Yes.

16 Q Thank you. And P-21 also shows no Monmouth
17 or Somerset County workers coming into Middlesex County.
18 Correct?

19 A Correct.

20 Q Do you know why that is so, sir?

21 A I do not.

22 Q This would be presumably a distortion of
23 the 1960 figures?

24 MR. SLOANE: Objection, your Honor. He
25 said he didn't know.

1 THE COURT: I think that's so, Mr.
2 Bernstein.

3 MR. BERNSTEIN: All right. I'll accept
4 that, your Honor.

5 Q Now, I show you what I've marked DP-13
6 for identification. The title is "Journey to Work in the
7 Tri-State Region, June, 1964," and the last page is 1960
8 Census Journey to Work, and ask you if you can identify
9 this document as in fact being the same document that's
10 been marked P-22 -- P-21, excuse me, in evidence?

11 A Yes. P-21 is taken from this.

12 Q I'd like you to read for yourself the
13 last paragraph on Page 37 and after that tell me whether or
14 not in 1960 Census on jobs they included people who were
15 sick or on vacation for the week when the Census was being
16 compiled?

17 A It says he must have worked at least once that
18 week; therefore, if he was sick or on vacation for the week
19 he was not counted.

20 Q Now, doesn't it indicate on Page 37,
21 next to the last paragraph, that only those counties which
22 made up S.M.S.A. of over 250,000 showed work trips and
23 had Census data compiled on them?

24 Read it to yourself.

25 A Yes. It says six counties plus parts of three

1 other counties were outside areas for which complete data
2 were processed by the Bureau of Census for journey to work
3 between the areas being counted.

4 THE COURT: What does that S.M.S.A.
5 mean?

6 THE WITNESS: Standard Metropolitan
7 Statistical Areas.

8 Q Doesn't that mean, sir, and doesn't it
9 go on to say that with counties below that figure if you
10 had the figures for the big counties coming in and out
11 you could tell from the smaller counties what the work trips
12 were vis-a-vis the big counties by looking at the big
13 county statistics? Correct?

14 A No. I don't follow you.

15 Q All right. First I'd like to turn to
16 Page 1, and does that indicate that Middlesex County is a
17 S.M.S.A. with a population of less than 250,000 people?

18 A No. 1960 Middlesex County was not in any S.M.S.A.
19 and it was not a S.M.S.A.

20 Q It was not a S.M.S.A.?

21 A Right.

22 Q Union County was a S.M.S.A.?

23 A Union County was in the Newark S.M.S.A.

24 Q Somerset and Monmouth Counties were not
25 within S.M.S.A. correct?

1 A Right.

2 Q Now, in order to get the Middlesex County
3 journey to work figures for Union County, one could look
4 at Union County statistics and compile the inverse, which
5 would be Middlesex. Correct?

6 A As to where a Union County resident went to work,
7 yes.

8 Q And as to the Middlesex County workers
9 that worked in Union County. Correct?

10 A I believe so, yes.

11 Q Well, if we look at what we've marked
12 P-21, it indicates Middlesex County workers working in Union
13 County. Correct?

14 A Yes.

15 Q So that you could get for Middlesex and
16 Union a complete tabulation of the workers working in Union,
17 working in Middlesex, living in Middlesex and living in
18 Union. Right?

19 A Yes.

20 Q That's by looking at the Union County
21 figures. Correct?

22 A Yes.

23 Q Now, Somerset County or Monmouth County
24 did not have these figures available. Correct?

25 A Correct.

1 Q Therefore that would explain why it
2 shows no workers living in Middlesex and working in Somerset
3 and Monmouth Counties and vice versa. Correct?

4 A Yes.

5 Q This is something that was later refined
6 in the 1970 figures. Correct?

7 A Yes. 1970 figures went to the Census tapes.

8 Q So that if we look at P-22 we can find
9 workers from Middlesex County going to Somerset and Monmouth
10 and vice versa. Correct?

11 A Yes.

12 Q So it would be fair to say with regard
13 to 1960 and the 1970 figures, first, the 1960 figures did
14 not include people working outside the regional area.
15 Correct?

16 A We went over that, yes.

17 Q And I just want to summarize the differences.
18 The 1970 figures do not include people working outside the
19 regional area. Correct?

20 A Yes.

21 Q The 1960 figures do not include people
22 if they were sick or on vacation on the week when the
23 Census was taken. Correct?

24 A Yes.

25 Q The 1970 figures did include these people.

1 Yes?

2 A Yes.

3 Q Thirdly, the 1960 figures do not include
4 the movement between Somerset, Monmouth and Middlesex
5 Counties. Correct?

6 A Yes.

7 THE COURT: Why are you asking the same
8 questions over and over?

9 MR. BERNSTEIN: I just want to summarize
10 this last point, your Honor.

11 THE COURT: You don't need to do that.

12 MR. BERNSTEIN: All right.

13 Q Do you know where those workers who lived
14 in Middlesex and worked in Somerset were included on the
15 1960 figures, that is, P-21?

16 A They do not appear there.

17 Q Could they have lumped as all residing
18 in Middlesex County, all the Middlesex County residents?

19 A I doubt that.

20 Q They just weren't included?

21 A That's right.

22 Q So you would say that the total number of
23 jobs in Middlesex County is not shown on this chart, if it
24 does not include the Morris -- strike that -- the Monmouth
25 and Somerset County people coming in? Is the total number of

1 jobs in the county too small?

2 A 1970?

3 Q In 1960. I'm sorry. Is this understated
4 by the amount of Somerset and Monmouth County people coming
5 into Middlesex County?

6 A If they are not shown it would be, yes.

7 Q And would the total number of workers
8 from Middlesex County be understated because it didn't show
9 the workers who were working in Monmouth and Somerset
10 Counties for 1960?

11 A Yes.

12 Q So you would admit there are a number of
13 differences between the compilation of the 1960 and the 1970
14 figures. Correct?

15 A Yes.

16 Q Do you feel, sir, that P-66 shows meaningful
17 figures?

18 A Yes.

19 Q P-66 indicates that the number of workers
20 coming into the County increased more than the number of
21 workers going out of the county. Correct?

22 A Yes.

23 Q You will admit, however, sir, that the
24 1960 and the 1970 figures are not directly comparable.

25 A Not in exactitude, no.

1 Q Now, is the purpose of P-66 to show that
2 the number of incoming workers, that is in-commuters, has
3 grown at a faster rate than the number of out-commuters?
4 Isn't that the purpose of P-66?

5 A That, among other things.

6 Q Well, what is the principal purpose of
7 P-66, if you can tell me? I would like to know.

8 A That and the fact that there's a relationship
9 between the growth of these commuters and the supply of
10 housing.

11 Q Well, P-66 doesn't list housing, does it?

12 A No.

13 Q So that the principal thing that is shown
14 by P-66 is that the in-commuters have increased dramatically.
15 Right?

16 A Yes.

17 Q Sir, would it be more meaningful --
18 strike that.

19 And according to this table, the count -- strike
20 that.

21 From P-66, you would conclude that because more
22 in-commuters are coming in than out-commuters are leaving,
23 you would conclude that not enough housing is provided. Is
24 that your conclusion based on P-66?

25 A No. Because the growth of in-commuters with

1 reference to housing does not relate to the growth of people
2 who commute out.

3 Q Well, what conclusions can we make? I
4 would like to know if we can make any conclusions from
5 this P-66, and especially this figure of 291 per cent. Can
6 you give us any conclusions as to what P-66 means? If it's
7 not meaningful, then we should know that.

8 A Yes. If the total number of jobs grows and the
9 number of dwelling units does not, then the employers in
10 that area must draw from a greater distance to make up their
11 labor supply.

12 Q Well, isn't your conclusion then, sir,
13 that based on the fact that in-commuting has grown at a
14 faster rate than out-commuting from that you would conclude
15 insufficient housing stock in Middlesex County? Is that a
16 fair statement?

17 MR. SLOANE: Your Honor, he has already
18 given his conclusion in response to Counsel's
19 statement.

20 THE COURT: That seems to be so.

21 You can ask him this question, if you wish.

22 Q If you could just answer my last question.

23 A I repeat that you keep repeating out-commuters.
24 Out-commuters are not necessary to that conclusion.

25 Q In other words, you're saying that just

1 looking at the number of in-commuters without looking at
2 the number of out-commuters you can make that same
3 conclusion?

4 A In-commuters and the housing starts, yes.

5 Q But housing starts aren't listed on P-66,
6 are they?

7 A No.

8 Q So what can we conclude just from P-66?
9 I'll later ask you about P-62, which deals with housing.

10 MR. SLOANE: Objection, your Honor. The
11 same question. If Counsel has something
12 specifically in mind, he might ask him. He asked
13 him already what conclusion he can draw and Mr.
14 Erber has answered him twice.

15 MR. BERNSTEIN: Well, your Honor, my
16 problem is that I asked Mr. Erber and this is one
17 of the times that I asked him an open-ended
18 question and what does P-66 mean, and P-66, if I
19 can show my copy to your Honor, does not list
20 housing at all. It lists employment. I just want
21 to know what Mr. Erber has concluded from P-66.

22 THE COURT: You already asked him.

23 MR. BERNSTEIN: And I would like you to
24 answer not based on housing, since there's no
25 housing included in P-66.

1 THE COURT: He's given you an answer.

2 Have you completed your answer?

3 THE WITNESS: I can just say --

4 THE COURT: I just asked you if you
5 completed your answer.

6 THE WITNESS: Yes. I've completed my
7 answer.

8 MR. BERNSTEIN: I don't want to belabor
9 the point. I appreciate the Court's indulgence
10 but I don't understand what the witness' answer is,
11 since the witness has mentioned housing every time
12 that he's attempted to explain P-66, and I see no-
13 where, your Honor, in P-66 any listing of the
14 housing stock. It talks about resident labor
15 force, increase in jobs, workers who live in
16 county and increases in workers who commute outside
17 of the county and increase in workers who are
18 employed in county but commute from homes outside.
19 It doesn't mention homes and that's why I've been
20 trying to find out what P-66 means.

21 THE COURT: Well, you asked him his
22 conclusion. He gave it to you.

23 Q Would it make any difference, Mr. Erber,
24 if P-66 showed a greater increase in the number of out-
25 commuters than in-commuters? Would your conclusion have

1 changed with regard to P-66?

2 A My conclusion was not based solely on this exhibit.
3 This exhibit just shows data with reference to change and
4 demonstrates what the change was.

5 Q Well, isn't one criteria in your mind of
6 an insufficient housing stock the fact that there is a
7 greater growth in in-commuters than out-commuters?

8 A No.

9 Q That isn't a criteria?

10 A That by itself, no.

11 Q Okay. That along with what?

12 A I don't need to know how many out-commuters there
13 are. If there are a growing number of in-commuters that
14 is sufficient to relate to the question of housing.

15 Q Well, sir, you're aware of the fact that
16 jobs have grown dramatically in the Central Jersey area.

17 A Yes.

18 Q And you would assume that with the
19 dramatic growth in jobs there would be a growth in in-commuters
20 as well as out-commuters, wouldn't you?

21 A I testified at the beginning that there are both
22 suburbanizing people who come to Middlesex and jobs that
23 come to Middlesex.

24 Q And you would expect in the booming period
25 of the 60's that both would increase dramatically, wouldn't

1 you?

2 A Yes.

3 Q I'm going to show you, sir, what's been
4 marked DP-14 for identification, Interim Technical Report,
5 a Decade of Change in the Journey to Work, Tri-State Regional
6 Planning Commission, January, 1973.

7 I ask you if you understand what it shows by
8 table B-3, 1963 journey to work. Do you understand what
9 this table shows?

10 A Yes. It says it's a journey to work table, based
11 on a 1963 home interview survey by Tri-State.

12 Q And doesn't this study indicate all
13 vehicular modes, walk, work at home and did not report on
14 travel data?

15 A Yes.

16 MR. SLOANE: Your Honor, I object. There's
17 no indication that Mr. Erber is familiar with this
18 publication and Counsel is asking him a number of
19 questions without giving him an opportunity to
20 examine.

21 THE COURT: It seems proper. Objection
22 overruled.

23 Q And doesn't it, this 1963 study, show the
24 interplay between Middlesex, Somerset and Monmouth Counties?

25 A I'm not familiar with this study but it probably

1 does.

2 Q Well, look at the numbers. Look at the
3 Middlesex County resident work force and doesn't it indicate
4 that there's some Middlesex County residents working in
5 Monmouth County?

6 A Yes, twenty-six.

7 Q And doesn't it indicate there's some
8 Monmouth County residents working in Middlesex County?

9 A Yes, seventy.

10 Q So that in this sense there's more data
11 supplied on this 1963 study than there was in the 1960 study.
12 Correct?

13 A Yes.

14 Q And the fact that it shows workers who
15 were sick or on vacation is another indication that it
16 included some matters not in the 1960 study. Correct?

17 A Well, I don't see that here but --

18 Q Isn't there a notation that the workers who
19 were sick or on vacation or did not report to work were
20 included?

21 A No. That says it includes all vehicular modes,
22 walk, work at home and did not include travel data.

23 Q And that indicates that those that did
24 not work on the date the survey was taken was also included.
25 Is that correct?

1 A Yes.

2 Q Now, what I would like to know, sir,
3 using the format of the second page of P-66, and I'll give
4 you a piece of paper -- do you have a pen?

5 THE COURT: What are you asking?

6 MR. BERNSTEIN: I'd like to make some
7 comparisons I think will be very valid and will
8 show a 180 degree difference between what is shown
9 in 1963 and what is shown in 1960.

10 THE COURT: I will not allow him to do
11 calculations here on the witness stand. I don't
12 regard that as fair cross-examination.

13 MR. BERNSTEIN: Can I ask him about numbers,
14 your Honor? I have done the calculations myself.
15 If I can ask for verification on them. I represent
16 to the Court that they will show a 180 degree
17 opposite results from that which was obtained in
18 P-66. I'm not going on a fishing expedition.

19 MR. SLOANE: Your Honor, again, I object.
20 They're asking Mr. Erber to make comparisons on the
21 basis of a study that he has not examined before.

22 THE COURT: I have to sustain that
23 objection.

24 MR. BERNSTEIN: I'd just like to point
25 out to the Court and I understand -- I don't expect

1 to change the Court's view, but I expect when the
2 Tri-State man comes back he would have him properly
3 identify this study, which will go into evidence,
4 and the problem is that I won't be able to cross-
5 examine Mr. Erber based on that.

6 Can I represent to the Court that this
7 shows dramatically different things from the 1960
8 study?

9 CONTINUED CROSS-EXAMINATION BY MR. BERNSTEIN:

10 Q Now, Mr. Erber, you testified that the
11 figures shown in P-21 indicate total employment with the
12 exception of those working outside the region, with the
13 exception of those who were sick and not -- and on vacation
14 when the Census was made, and those working again Middlesex,
15 Monmouth and Somerset Counties. Is that correct?

16 A That's my understanding.

17 Q And could you make any estimate as to
18 the number of people who are in the three categories I just
19 mentioned?

20 A No, I could not.

21 Q Mr. Erber, I noticed that P-21 says on
22 its face "1960 Census Journey to Work, County to County
23 Trips by Auto and Transit." Does that include intercounty
24 travel -- intracounty travel, excuse me?

25 A No. It says county to county.

1 Q So that would mean it wouldn't include
2 trips that Middlesex County residents made within Middlesex
3 County. Is that correct?

4 THE COURT: You already had an answer to
5 that. You're tending to belabor one answer when
6 you already have it. He's given that to you.

7 MR. BERNSTEIN: Well, was the answer yes,
8 your Honor?

9 THE COURT: He said it was intercounty,
10 county to county.

11 Q And the 1970 figures included intercounty
12 as opposed to 1960, which included intracounty. Correct?

13 A They both show living and work in the county.

14 Q Doesn't the 1970 report, P-22, say,
15 "Preliminary 1970 Census, Journey to Work, including
16 outside the region"? Isn't that the title of P-22?

17 A Yes.

18 Q Doesn't that indicate to you that it
19 includes intracounty as well as intercounty?

20 A No.

21 Q It doesn't indicate that to you.

22 What does the title indicate to you as a planner?
23 Does P-22 indicate it only includes intercounty?

24 A It includes everyone that goes to work.

25 Q Right. Now, P-21 doesn't include everyone

1 that goes to work, does it?

2 A No.

3 Q It only includes intercounty.

4 A It shows 88,115 persons who live and work in
5 Middlesex County.

6 Q So it must show intracounty is your
7 testimony?

8 A In both cases --

9 MR. SLOANE: I object. This is a mis-
10 characterization of what Mr. Erber has been saying.

11 Q What did you say? I don't want to mis-
12 characterize what you said. I would like to understand it.

13 A I said that the 1960, on both P-21, shows 88,115
14 persons who both live and work in Middlesex County, and
15 obviously they didn't cross county lines. They are the same
16 figure as the same figure for that same category in 1970.

17 Q Well, doesn't it say for P-21 county to
18 county trips by auto and transit?

19 A Yes.

20 Q How about people who walk to work? Were
21 they included in P-21?

22 A I do not recall.

23 Q What is your belief as to that, if you
24 have one, Mr. Erber? Do you have any idea as to whether
25 or not walkers were included in P-21?

1 A They might not have been if it says by auto and
2 transit.

3 Q You're not sure.

4 How about people who worked at home? Were they
5 included in P-21 figures, if you know?

6 A I don't think they are ever included in the journey
7 to work data.

8 Q So it would be your testimony that you
9 couldn't determine those people who worked at home looking
10 at the journey to work reports. Correct?

11 A No.

12 Q Was my statement correct?

13 A Yes.

14 Q Referring, sir, to what I've marked DP-14
15 in evidence, which is the Tri-County's 1973 study, does that
16 indicate in 1960 there were 121,000 Middlesex County
17 employees who went to work by automobile?

18 A I gather that is what it is.

19 Q Doesn't it indicate in 1970 the figure
20 is 192?

21 A Yes.

22 Q And A2, subway rides to work, the figure
23 is approximately less than a hundred for 1960 and less than
24 and approximately 200 for 1970, minuscule figures?

25 A 159, yes.

1 Q The bus journey to work in 1960 were
2 approximately 11,000. Correct?

3 A Yes.

4 Q And I'm rounding off the thousands.
5 And in 1970 it was 12,800, or 13,000. Correct?

6 A Yes.

7 Q The railroad journey to work for 1960,
8 the figure is 6,000. Correct? -- rounding it off.

9 A Yes.

10 Q And 8,000 for 1970. Correct?

11 A Yes. Liberal rounding. Yes.

12 Q Well, I'm trying to round it to the
13 nearest thousand for the ease of addition.

14 A Well --

15 Q The other means journey to work,
16 approximately 2,000 in 1960 and approximately 4,000 in 1970.
17 Correct?

18 A Right.

19 MR. SLOANE: Your Honor, I object because
20 Counsel is doing exactly what the Court asked him
21 not to do, and he's doing exactly that,
22 calculating with Mr. Erber right on the stand in
23 the Courtroom.

24 THE COURT: I'll sustain the objection.

25 If you want to make an argument based on

1 any one of those statistics and they are in
2 evidence, at the appropriate time you can do so.

3 Q Mr. Erber, if in making the calculations
4 I were to show you that there were more journeys to work
5 in Middlesex County in 1960, as shown by DP-14 in evidence,
6 than the figures in DP-21, could you explain the difference?

7 A Yes.

8 THE COURT: DP-21?

9 MR. BERNSTEIN: I'm sorry. P-21.

10 Q How would you explain the difference?

11 A Because you misunderstood those. Those are
12 cumulative. If a man left his home in Middlesex County and
13 takes a local bus to the railroad station and takes a train
14 to New York and takes a subway and takes a bus after the
15 subway, those are all separate trips which would be added
16 consecutively.

17 Q And you're saying that the figure for
18 1970 are also cumulative figures. Correct?

19 A No, they are not. That's a different type of a
20 survey.

21 Q No. This survey goes to 1960 and 1970
22 figures.

23 Now, you testified in 1960 the 1960 figures are
24 cumulative. I would like to know if the 1970 figures are
25 also cumulative, as you put it.

1 A Journey to work data has many different facets.
2 One is to breakdown by mode of travel and that breaks it
3 down by mode of travel.

4 Q But I asked, sir --
5 you indicated the 1960 figures are cumulative. Are the
6 1970 figures contained in DP-14 also cumulative?

7 A In that report?

8 Q Yes.

9 A Yes.

10 Q So that there would be a similar bias
11 for both years. Correct?

12 A In a way, yes.

13 Q With regard to P-62, sir, you indicate
14 the total number of jobs in Middlesex County for 1960 and
15 1970. Correct?

16 A Yes.

17 Q These figures aren't directly comparable
18 since they had different components. Correct?

19 A Yes. As testified.

20 Q Now, isn't it a fact that every worker
21 doesn't need a separate dwelling unit?

22 A That is true.

23 Q And isn't it a fact that primarily --

24 A Every worker doesn't need a separate dwelling unit.

25 Q That was the question, sir.

1 A Well, every worker need not -- one dwelling unit
2 could contain more than one worker. Is that what you're
3 saying?

4 Q Yes.

5 A Right. Yes.

6 Q And we have a certain grouping, which
7 together needs a dwelling unit. Right?

8 A Yes.

9 Q And what do we call that grouping?

10 A A household.

11 Q A household. Right.

12 Now, P-62 indicates that the total housing units
13 in Middlesex County between 1960 and 1970 have increased
14 37 per cent. Correct, sir?

15 A Yes, sir.

16 Q Do you know the increase in the number
17 of households in Middlesex County between that period of
18 time?

19 A The number of households?

20 Q Yes. Do you know the increase in the
21 number of households?

22 A Between '60 and '70?

23 Q Yes.

24 A No. No. Only the number of dwelling units.

25 Q I'd ask you, sir, to turn to Page 39 of

1 P-36. Unfortunately these figures are only for 1960 through
2 1969.

3 What do they indicate is the increase in the number
4 of households in Middlesex County? What percentage increase?

5 A 34 per cent.

6 Q Which is approximately the same as the
7 number of housing units. Correct?

8 A Yes. This is for nine years and based on estimate.
9 Yes.

10 Q Right. Now, still with regard to P-36,
11 I'd like you to turn to Page 38.

12 Are you there, sir?

13 A Yes.

14 Q What does that indicate is the increase
15 in the population of Middlesex County between 1960 and 1969?

16 A As estimated for '69, the increase here is 33.5
17 per cent.

18 Q And, sir, I ask you to turn to Page 17,
19 and Page 17 deals with sound housing units. Correct?

20 A Yes.

21 Q And I assume as a planner you would regard
22 sound housing units as probably being even more important
23 than total housing units?

24 A Yes.

25 Q Now, can you tell us what has been the

1 increase in sound housing units -- strike that.

2 Can you tell us what were the number of sound
3 housing units in Middlesex County in 1960?

4 A As given here, 110,923.

5 Q And what is the number of sound housing
6 units in 1970?

7 A As given for 1968. For 1968, 1,000 -- 1,052.

8 Q Isn't that 152 --

9 A I'm sorry. 152,791.

10 Q That's for 1968, sir?

11 A For 1968.

12 Q And you wouldn't disagree with me if I
13 told you that that increase of 42,000 was an increase of
14 38 per cent, would you? It looks approximately right?

15 A Probably.

16 Q So that based upon these statistics can't
17 we say that during the period in question the number of
18 housing units and the number of sound housing units has
19 kept pace with the population increase and the increase in
20 households for Middlesex County?

21 A Yes. Every household roughly had one place to
22 live, yes.

23 Q And the figures for the increases are
24 approximately equal for all four of those variables,
25 population, household, homes and sound dwelling units.

1 Correct?

2 A Yes.

3 MR. BERNSTEIN: No further questions,
4 your Honor.

5 THE COURT: Mr. Stonaker.

6 MR. STONAKER: Yes, your Honor.

7 CROSS-EXAMINATION BY MR. STONAKER:

8 Q Mr. Erber, as a planner, are you an
9 advocate of the fair-share housing allocation plan?

10 A I favor it in principle, yes.

11 Q Do you remember your depositions being
12 taken on January 21, 1975?

13 A Yes.

14 Q '76, excuse me.

15 A Yes.

16 Q And do you remember answering questions
17 of Mr. Chernin at that time?

18 A I don't remember him by name but I would probably
19 recall the content.

20 Q Now, I direct your attention to --

21 A Yes. I remember Mr. Chernin. Yes. I'm sorry.

22 Q You remember Mr. Chernin now?

23 A Yes. I'm sorry.

24 Q I direct your attention to Page 77 of that
25 deposition, and the first sentence.

1 Do you recall saying that, sir?

2 A Yes. That deals with terminology regarding the
3 word allocation --

4 Q And do you recall saying that?

5 A Yes, sir.

6 Q And what does this sentence say?

7 A That says, "Let me say I'm not as a planner -- I'm
8 not an advocate of fair-share, if I may get that on the
9 record. The Courts have said that fair-share is a way that
10 it has to be done."

11 Q And aren't you an advocate of having a
12 county allocated housing plan?

13 MR. SLOANE: Objection, your Honor.
14 There's no direct testimony on fair-share or
15 housing allocation.

16 THE COURT: I'll allow it.

17 You may answer that.

18 Q Aren't you an advocate of having a county
19 allocated housing plan?

20 A I'm in favor of allocation plans in principle,
21 and if counties do it, I think that's great.

22 Q And do you recall again on the date of
23 that deposition saying that you were in favor of a county
24 allocated housing plan?

25 A Yes.

1 Q And as it relates to Middlesex County,
2 are you in favor of having the county make a study,
3 determine the number of units and telling where those units
4 should be?

5 A I would -- I would approve of that. I don't
6 know whether that would be the preferred way.

7 Q Isn't that what you said in your
8 deposition, sir? I refer you to the second paragraph, again
9 on Page 77.

10 A I said I would be for that, yes.

11 Q You would be for that.

12 Mr. Erber, are you familiar with the sun-belt
13 migration?

14 A Yes.

15 Q And did you take that into consideration
16 in computing any of your statistics?

17 MR. SLOANE: Objection, your Honor.

18 Getting into statistics on fair-share, which is
19 well beyond the scope of any direct testimony.

20 THE COURT: I'll sustain that objection.

21 Q Now, in the figures you computed regarding
22 building permits, Mr. Erber, you said that you took those
23 figures from the New Jersey Department of Labor and Industry.
24 Is that correct?

25 A Yes.

1 Q And those figures were based on reporting
2 from the local building inspector to the State. Is that
3 correct?

4 A That's correct.

5 Q Do you know whether that was a permissive
6 or a mandatory reporting system?

7 A I believe it's mandatory and those towns that do
8 not report are listed in the footnotes.

9 Q Those that do not are listed in the
10 footnotes?

11 A Yes.

12 Q And do you know whether Plainsboro
13 Township made such a reporting?

14 A To my knowledge they did.

15 Q They did?

16 A Yes. As I recall, I didn't see them excluded.

17 Q Now, Mr. Erber, I would like to know how
18 all the tables and numbers were arrived at? You testified
19 that you in January for a period of some three weeks,
20 together with one assistant, went to the library and went
21 to various sources and compiled these tables. Is that
22 correct?

23 MR. SLOANE: Objection, your Honor. That's
24 a mischaracterization of Mr. Erber's earlier
25 testimony.

1 THE COURT: There's already been cross-
2 examination on this, Mr. Stonaker.

3 MR. STONAKER: All I want to know is how
4 these numbers were arrived at and to check on the
5 accuracy of the numbers. I seem to remember that
6 he already testified on cross-examination that
7 some of these numbers are inaccurate and I would
8 like to know whether he can verify the accuracy of
9 the numbers.

10 THE COURT: You can ask him that, I guess.

11 A Yes. They are as accurate as I was able to make
12 them.

13 Q And what system did you use, sir?

14 A Copying from official reports.

15 Q You copied the numbers from the reports?

16 A Yes.

17 Q And how did you calculate the percentages,
18 sir?

19 A Usually with a hand calculator.

20 Q A hand calculator. Did anybody else
21 verify the calculations?

22 A Yes. We tried to double check as best we can.

23 Q You tried as best you could?

24 A Yes.

25 Q And who double checked the figures?

1 A Sometimes I double checked and sometimes my
2 assistant and sometimes we did them by longhand.

3 Q And who was your assistant who double
4 checked the figures?

5 A His name is Michael Hatfield.

6 Q And after these figures were typed up,
7 did anybody verify the accuracy of the figures at that time?

8 A No. We usually have a proofreading system, yes.

9 Q You did. Did you proofread them yourself,
10 sir?

11 A No, I did not.

12 Q Did your assistant proofread them?

13 A He proofread some of them.

14 Q Would you testify here today that all of
15 those figures are accurate?

16 A To the best of my knowledge, within human error,
17 yes.

18 Q Within human error?

19 A Yes.

20 MR. STONAKER: I have no further questions,
21 your Honor.

22 THE COURT: Mr. Baker, do you wish to
23 ask any questions?

24 MR. BAKER: No questions, your Honor.

25 THE COURT: Mr. Vail.

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MR. VAIL: I'll pass, your Honor.

THE COURT: All right. I think that
then we'll recess for lunch until 1:30.

(The luncheon recess is taken at this
time.)

1 FEBRUARY 18, 1976, AFTERNOON SESSION:

2 THE COURT: Mr. Gruber.

3 Oh, he's not here.

4 MR. SPRITZER: I'll see if he's outside,
5 your Honor.

6 THE COURT: What did he say? That he
7 did or did not have cross-examination?

8 What do you believe he stated, Mr. Busch?

9 MR. BUSCH: I believe he stated that he
10 did not have further cross-examination, your Honor.

11 THE COURT: He hasn't had any cross-
12 examination.

13 MR. BUSCH: I know. I believe he stated
14 that he did not have any.

15 MR. SPRITZER: I did not see him out
16 there, your Honor.

17 THE COURT: All right.

18 Mr. Chernin.

19 MR. CHERNIN: Just a couple of questions,
20 if I might, your Honor.

21 CROSS-EXAMINATION OF ERNEST ERBER BY MR. CHERNIN:

22 Q Mr. Erber, if my memory serves me
23 correctly, you included in this region that you proposed
24 the geographic boundaries of Middlesex County together with
25 Franklin Township. Is that a correct statement?

1 A No, it is not.

2 Q Did you include in your region Franklin
3 Township?

4 A Yes, Middlesex and Somerset County were in the New
5 York Region, yes.

6 Q The plans that you have formulated and
7 the testimony that you have been presenting here over the
8 past several days, are they based on a New York Region or
9 some sub-region of that area?

10 A At different scales, the New York Region, the
11 Northeastern New Jersey Region and Middlesex County.

12 Q In your, quote, Middlesex County Region,
13 do you include Franklin Township?

14 A No.

15 Q For what reason do you exclude Franklin
16 Township from that particular region?

17 A Because to include Franklin Township I would have
18 to use criteria which would cause me to examine other
19 bordering municipalities and have reason to include them,
20 and if I included them then there would be other additional
21 bordering regions, border municipalities, that could likewise
22 be added to the region, and I therefore, in my estimate of
23 the manageable level below the sub-region of Northeastern
24 New Jersey, would be a county.

25 Q Because if you were to consider another

1 municipality, which is just over the border of Middlesex
2 County in another county, that would require other compila-
3 tions, other data and other configurations of thinking?
4 Is that a reason to avoid that kind of a thought process?

5 A No.

6 Q Isn't the idea to put together some
7 feasible and reasonable area for a region which can be
8 properly and adequately handled for your purposes?

9 A I would say that the test would be workability,
10 yes.

11 Q And in computing or figuring the area
12 which should or could be workable, should you take into
13 account all reasonable areas of inclusion?

14 A Prior experience in looking at regions in New Jersey,
15 I concluded that the counties are the most reasonable,
16 most operable, workable and reasonable sub-region below the
17 Northeastern sub-region.

18 Q Did you not testify that county and
19 geographic lines are creatures of historical creation which
20 are basically archaic?

21 A Historical origin and might be considered archaic
22 in some respects for certain purposes, yes.

23 Q For your purposes, and that is the
24 purposes of creating a viable and reasonably functional
25 plan, do you adhere rigidly to the county geographic lines?

1 MR. SLOANE: Objection, your Honor.

2 There's been no direct testimony on any plan.

3 THE COURT: That he what?

4 MR. SLOANE: Your Honor, it's one thing
5 to talk about region, which Mr. Erber has testified
6 about, but now Mr. Chernin is going to region for
7 some sort of purposes for plan, which Mr. Erber
8 did not testify to on direct.

9 THE COURT: Well, he has on other cross-
10 examination as I recall.

11 All right. You may answer that.

12 A Sorry. I would --

13 THE COURT: Do you want to read back the
14 question, please, Mr. Reporter.

15 (The pending question was read back by
16 the Reporter.)

17 A I adhere to the county lines, yes.

18 Q In your concept, did you give any weight
19 or consideration to the influence of bordering municipalities
20 upon those municipalities in Middlesex County at all?

21 A I am aware of their existence and I have to take
22 bordering areas into account, yes.

23 Q Well, didn't you take into account the
24 fact that a lot of people reside in Middlesex County and
25 work in some other counties?

1 A Yes, and vice versa.

2 Q And vice versa.

3 A Right.

4 Q And isn't that one basis that you should
5 utilize for giving weight to the inclusion of municipalities
6 which are not in Middlesex County?

7 A No.

8 Q What would be your justification, Mr.
9 Erber, for the exclusion of Franklin Township from the
10 Middlesex County area?

11 A Simply that if they were -- if Franklin Township
12 were to be considered within Middlesex County, then Middlesex
13 County municipalities would have to be considered in Somerset
14 County, Union County and Monmouth County by the same logic.

15 Q What is wrong with that approach?

16 A Because the same municipalities would then be in
17 several different units and would become unworkable.

18 Q You mean units, you mean several different
19 counties, don't you?

20 THE COURT: No. He didn't mean that.

21 THE WITNESS: I meant planning units.

22 Q Well, what is wrong with that philosophy
23 or that theory of making several different planning units?

24 A Well, because to have several different larger
25 unit plans for the same local unit I think would not lead to

1 any fruitful results.

2 Q That's not my point, but let's pursue it.

3 Mr. Erber, is there anything wrong on a planning
4 basis of dividing Middlesex County up into several portions
5 and attributing those several divided portions into other
6 portions of other counties to which it happens to be
7 contiguous?

8 A Yes. If one wanted to reorganize the whole structure
9 of Northeastern New Jersey on some other basis than it
10 presently exists.

11 Q If it were to be established that a
12 particular municipality in Middlesex County was far greatly
13 influenced by an adjoining town, which happens to be
14 peculiarly enough in another county, should you not take that
15 into account?

16 A One should take it into account but that should
17 not result in it being added to another planning unit.

18 Q If in fact you were to establish, Mr.
19 Erber, that a given municipality serviced a great deal of
20 people from an adjoining town in the sense of taking those
21 people in the adjoining town who live in the adjoining town
22 and permitting them to work in its town -- do you follow me
23 so far?

24 A Yes.

25 Q -- should you not take that factor into

1 account in compiling or figuring your region?

2 A Not necessarily at this level, no.

3 Q Do I understand, Mr. Erber, one of your
4 plans is to permit people to work near, to live near where
5 they work?

6 A Yes.

7 Q This is one of your underlying assumptions
8 and premises, isn't it?

9 A Yes.

10 Q Now, if a great deal of people happen to
11 live in the City of Plainfield and happen to work in the
12 Borough of South Plainfield, an overabundance of people --
13 assume that an overabundance of people do this -- would you
14 not say this is a weighty factor to be given appropriate
15 consideration?

16 A Not at the level of Plainfield and South Plainfield
17 and two counties, no.

18 Q Are you aware of the common border that
19 exists between the two municipalities, that is, Plainfield
20 and South Plainfield?

21 A Yes, I am.

22 Q Are you aware that the only major arteries
23 that enter into South Plainfield go right in through
24 Plainfield itself?

25 A I'm not exactly aware of that but I've driven

1 through both of them. I guess one goes to the other, yes.

2 Q And are you aware of the mass migration
3 which exists during work hours of people who come in from
4 Plainfield and work in South Plainfield and vice versa?

5 A I assume there is such movement, yes.

6 THE COURT: The question is: are you
7 aware of it?

8 THE WITNESS: No. I'm not aware of it
9 literally, no.

10 Q Mr. Erber, do you accept the fact that
11 travel time, that thirty minutes of travel time, between
12 home and work, should be the reasonable amount of travel
13 time allocated?

14 A Yes.

15 Q Do you agree, Mr. Erber, that you operate
16 on the assumption that low income people live, desire to
17 live, near where they work?

18 A Yes. If housing is available and if the surroundings
19 are agreeable.

20 Q Isn't that fact a basic generalization
21 that you have come up with, namely, that low income people
22 wish to live near where they work?

23 MR. SLOANE: Your Honor, objection. This
24 is a repetition of a number of questions that
25 Mr. Lerner asked of Mr. Erber yesterday and drew a

1 response.

2 THE COURT: It certainly seems to be the
3 same subject matter.

4 MR. CHERNIN: It may be, your Honor, but
5 I'm forming a foundation for another area of
6 questioning. I will not delay too long in this
7 area.

8 THE COURT: All right. You may answer the
9 question.

10 A Where people desire to work or where people --
11 people desire to live with reference to work? Is that the
12 question?

13 Low income people desire to live near where they
14 work. Is that it?

15 Q Isn't it your basic generalization that
16 you have adopted and assumed that the pattern is that low
17 income people wish to live near where they work, near their
18 job?

19 A No. Not with preference to low income people. All
20 people wish to live near their job if that living is
21 agreeable.

22 MR. CHERNIN: At the risk of infecting the
23 witness, your Honor, I refer Mr. Erber to his
24 deposition on Page 156, and I commence at Line 18,
25 which is the answer.

1 Q "ANSWER: I go at the assumption that the
2 pattern is that low income people wish to live near the job.

3 "QUESTION: That's a basic generalization that you
4 have come up with?

5 "ANSWER: That's right."

6 Now, is that a correct reading of what you stated
7 in depositions?

8 A Yes. Yes. Yes. That's correct.

9 Q What I said a moment ago is accurate,
10 isn't it?

11 A Well, I assume you limited it to low income people.

12 Q That's all I did and that's all you did.

13 A No.

14 Q Am in inaccurate?

15 A No. Okay. You are accurate.

16 Q Now, do you have any data which supports
17 that basic assumption which you make, that low income
18 people wish to live near their job?

19 A I have data that all people wish to live near their
20 job and ~~that~~ low income people are included in all people.

21 Q Then are you saying that you have data
22 to support that low income people wish to live near their
23 job? And I'm not including all people; just low income
24 people.

25 A Not specifically.

1 Q As a matter of fact, that's what you said
2 further, isn't it?

3 A What's that?

4 Q On Line 23 of the same page.

5 "QUESTION: And you've got nothing to support it
6 in the form of data?

7 "ANSWER: I haven't now. I think I might find
8 data that -- I might find data but I haven't at present."

9 A That's right.

10 Q Is that right?

11 A That's right.

12 Q And these depositions were taken on
13 January 21, 1976.

14 A That's right.

15 Q And as of that point in time you didn't
16 have that data.

17 A That's right.

18 Q Where did you get, where did you come up
19 with, this basic assumption then, Mr. Erber?

20 A From all my experience as a planner.

21 Q Your personal experience?

22 A As a planner.

23 Q Your personal observations?

24 A Yes.

25 Q Reduced nowhere to a written form.

1 A I'm not sure.

2 Q At least none that you were able to
3 exhibit to me when you were asked these questions.

4 A That's true.

5 Q As of January 21, 1976.

6 A That's true.

7 Q And don't you feel, Mr. Erber, that the
8 only way that you can find out if your basic assumption
9 is correct is by first putting up the housing and then
10 let's see what happens afterwards?

11 A That's one way of finding out, yes.

12 Q So you find out -- you say that's one
13 way of finding out?

14 A Yes. The best one.

15 Q Is that your feeling?

16 A What's that?

17 Q Isn't that your feeling?

18 A Yes. I said that is my feeling, that that is one
19 way of finding out and maybe the best way.

20 Q And the way it should be done: let's
21 put up the housing and find out what occurs.

22 A That's the way the builders usually do it, yes.

23 Q And that's what you recommend.

24 A Yes.

25 Q Now, in putting up this housing, you're

1 talking about housing which is publicly owned, publicly
2 financed or publicly subsidized, are you not?

3 A Not necessarily but would include those.

4 Q In the major portion. Isn't that so?

5 A It would be a very significant portion, yes.

6 Q And that means that some place along the
7 line somebody's going to have to pay the price for all of
8 this subsidizing that is going to have to go on.

9 A Yes.

10 Q Now, doesn't your philosophy and theory
11 take on the form that it requires the infusion of large
12 sums of money from some form of government? Isn't that
13 your philosophy, Mr. Erber?

14 A Yes. In which it's always been done, yes.

15 Q But that's a basic element to your theory,
16 isn't it?

17 A Yes.

18 Q So that means you must, somebody must
19 look to, a, the Federal Government for additional subsidies
20 or the State Government or the Municipal Government for
21 those monies. Isn't that true?

22 A Not necessarily additional. It's a matter of
23 where they're located. There have always been houses
24 built with subsidies.

25 Q Well, on the bottom line your really

1 saying, are you not, that the taxpayer should provide
2 additional monies to subsidize these homes and houses?

3 MR. SLOANE: Objection, your Honor. Mr.
4 Erber just answered the question and Mr. Chernin
5 is attempting to characterize the question in a
6 different way.

7 THE COURT: I'll sustain the objection.

8 I don't think he said anything about the
9 taxpayer necessarily doing it. Obviously, if it's
10 public, the taxpayer would support it.

11 MR. CHERNIN: I know of no other source
12 of funds, your Honor, from my experience in paying
13 taxes.

14 Q Now, Mr. Erber, I ask you to assume for
15 a moment that for a municipality to provide the amounts
16 of housing in order to make up an accommodated fair-share,
17 that it would drive it into bankruptcy. Would you then
18 accept and still put forth the same proposition that you
19 have now pronounced?

20 A If it drove it into bankruptcy?

21 Q If it --

22 A Is that a hypothesis?

23 Q I say as a hypothesis, yes. Will you
24 still advance the same theory?

25 A I haven't considered that hypothesis, no.

1 Q If the county -- withdraw that.

2 Have you examined the county master plan pertaining
3 to the ability of municipalities to afford and to pay for
4 the additional housing?

5 A I've examined the county master plan, yes.

6 Q Now, are you aware of a statement in the
7 master plan to the effect that if there is a continued
8 increase in the amount of taxation and the rate of taxation
9 as previously existed between the years 1950 to 1970 that
10 the municipalities would go into a state of bankruptcy?

11 A I don't remember it in that form, no.

12 Q If that statement were in fact
13 established to your satisfaction, would you alter your
14 plan or change your plan?

15 A The municipalities are creatures of the State of
16 New Jersey and I would assume that there would be some
17 financial arrangement that would be workable to provide
18 public services.

19 THE COURT: You haven't really answered
20 the question.

21 A Whether I considered it?

22 Q If the statement which I've made to you
23 were established as true to your satisfaction --

24 A That they were going bankrupt?

25 Q That the effect of your plan would be

1 to drive them to the edge of or into bankruptcy, would you
2 change your plan or alter your plan in any material way?

3 A Well, I can't testify to any particular plan. I
4 favor the principle of allocation of housing and that
5 there will be a means, as with every such principle, the
6 principle has to relate to a reasonable way of carrying it
7 out, and there has to be a way of carrying it out
8 financially without causing the disasters.

9 Q Okay. The whole underlying theory is
10 that there has to be this infusion of public monies.

11 A Well, just as for schools or any other service,
12 if it's required as a public purpose --

13 Q Right.

14 A -- it has to have the money, yes.

15 Q Right. And in order to support the schools
16 and in order to support the public services and things of
17 that nature, where does the money come from?

18 A From the State and from the Federal Government and
19 from local taxpayers.

20 Q And are you aware of the fact that there
21 is a dis -- presently a disproportionate burden on the
22 single-family residential home owner for this tax burden
23 today?

24 A Yes. That's been before the Legislature for many
25 years.

1 obvious, Mr. Chernin. If we would have to agree
2 that if there's more money spent by some governmental
3 units, State, County or Municipal, there's more
4 of a burden on the real property taxpayer.

5 MR. CHERNIN: Fine, we agree.

6 MR. SLOANE: But, your Honor, Mr. Erber
7 testified it might involve the use of existing
8 infusion of money.

9 THE COURT: Well, he was just giving him
10 a hypothesis. If it involves public money, would
11 that mean more of a tax burden, and the answer is
12 an obvious one.

13 Q The purpose of all this planning and
14 allocation of fair-share and things of that sort, is it
15 not in your view to provide a greater sphere of election
16 and selection by the lower and middle income people as to
17 where they would like to live and in what kind of
18 accommodations they would like to live in?

19 A Yes, which carries the right to select housing,
20 yes.

21 Q And the major restriction, by the very
22 definition of your terms of low income and moderate income
23 people, is limiting in the terms of dollars, is it not?

24 A No.

25 Q By definition you have indicated that some

1 family earning \$5,500 more or less is included within the
2 category of low income people. Is that not true?

3 A Yes.

4 Q And some group with an income of no more
5 than say \$8,500 is in the moderate income group.

6 A Yes.

7 Q It's these two groups which have been
8 deprived of the opportunity to select in an open market
9 areas suitable to them within which they would like to live
10 in accommodations suitable that they would be contented to
11 live in.

12 A They can live in any communities in Middlesex
13 County which they choose to which has public or assisted
14 housing.

15 Q Are you now adding that these people should
16 be confined on a selectivity basis only to publicly assisted
17 housing?

18 A If that's all that their income permits them to
19 choose, yes.

20 Q I'm sorry. I missed you.

21 A If their income does not permit them to compete
22 in the conventional market, they would then be limited to
23 looking for housing that is subsidized in some way.

24 Q I'm saying, is that what you propose
25 by your plan?

1 A That is the only way that they could find housing
2 if they are under 5,000.

3 Q And how about under 8,500?

4 A Most of those, yes.

5 Q So what you're saying, I gather, is that
6 the people who come into the category of low and moderate
7 income should be confined in their selectivity to publicly
8 supported or subsidized housing?

9 A No.

10 Q Then I misunderstood you because I thought
11 that's exactly what you said.

12 A I'm not advocating they be confined.

13 Q Are you awarding that same group or same
14 groups the opportunity to look for the same type housing
15 in housing which is developed by the public building sector?

16 A Public, yes.

17 Q How about the private building sector?

18 A Yes. If there is enough private housing built,
19 then the competition will bring prices and rents down so
20 they may be able to find things in the private, and there
21 is also Federal rent supplement payments that are made for
22 people under Section 8 who rent in the private sector.

23 Q Mr. Erber, maybe we can^{get}right at it. Is
24 there any way that the people who form the categories of
25 low and moderate income can obtain the housing which you

1 described they should have a right to obtain in the areas
2 which you feel that they should have a right to obtain
3 without giving them additional monies.

4 A Depending on family size and the fact that the
5 8,500 of 1970 is considerably higher now, I would say that
6 there is a marginal chance that those in the moderate income
7 group might find private housing without subsidy, which
8 meet all the qualifications. As a matter of fact, there's
9 a lot of private housing available for -- which is sound
10 housing and which is available for less than twenty-five
11 per cent of the income of moderate people. They live
12 throughout Middlesex County. There isn't enough of it.

13 Q In the main, Mr. Erber, though, you can't --
14 you cannot accept the idea that these people in these
15 categories can find this type of housing without giving them
16 additional monies. Is that an accurate statement?

17 A No.

18 Q It's not. Can a family with an income
19 of five thousand, five hundred, \$5,500 or less, find
20 accommodations of their choosing within reason in an area
21 of their choosing within reason and be expected to pay for
22 it and afford it without paying more than twenty-five per
23 cent of their income for rentals?

24 A No.

25 Q Where are they going to get the rest of the

1 money to make up the difference, Mr. Erber?

2 A They just don't find it now. That's all.

3 Q But you would like to afford them the
4 opportunity of housing -- of having that housing, would you
5 not, Mr. Erber?

6 A Yes.

7 Q And the only way to do is to make their
8 area of selection broader.

9 A Yes.

10 Q And the only way to give them that
11 selectivity or that additional selectivity is to give them
12 more money with which to pay greater rentals.

13 A Yes.

14 Q And that's the only way, isn't it?

15 A Yes.

16 Q Now, does not the same philosophy and
17 logic apply to those that are in the group called the
18 moderate income group?

19 A No.

20 Q Well, I don't really mean maybe a hundred
21 per cent but how about ninety per cent of that second group?

22 A It would be hard to say, but you have to also look
23 at family size. If there is an elderly couple of low income,
24 the amount of space that they need and get by is far easily --
25 far more easily attained than that for a family that has

1 several children.

2 Q In newer areas or older areas?

3 A Easier in older areas but to some extent new areas.

4 Q Aren't you going to afford these older
5 people the same right of selection that you give to all the
6 others?

7 A Yes, by all means.

8 Q They should have the same right of
9 selection, shouldn't they?

10 A Yes.

11 Q Let's not narrow it to this small area.
12 By the basis of this same logic, the same extension of the
13 logic which you and I went through when covering the low
14 income group people, it pertains with equal force to moderate
15 income people. Isn't that true?

16 A No.

17 Q Could we not, if not totally, by a vast
18 majority, solve all of the selection problem by increasing
19 the families' income directly by way of giving a money
20 subsidization to the family?

21 A Yes.

22 Q And if we gave the money subsidization
23 to the family which permitted them to go out and select
24 housing of their choosing and in an area in which they
25 would like to choose, they would now fulfill their right of

1 selection, would they not?

2 A If they had enough money, yes.

3 Q I'm talking about enough money to complete
4 your criteria, that is, so they would not be obliged to
5 dig into their pockets and pay any more than twenty-five
6 per cent.

7 MR. SLOANE: I object. Mr. Chernin
8 characterizes his criteria along with Mr. Erber's
9 and says it's Mr. Erber's criteria and imposes it
10 on the witness for the sake of the question.

11 THE COURT: I think that's so. I sustain
12 the objection.

13 Q Mr. Erber, is there anything that I
14 proposed to you concerning the basis of selection and the
15 right of selection with which you disagree?

16 A Yes. In that insofar as it's not clear at all
17 times as to what context you're speaking in as to whether
18 we're speaking about what people are limited to under
19 given real conditions or under some hypothetical conditions.

20 Q I'm talking about the very conditions
21 which you yourself would like to see accomplished, and that
22 is, and if I'm wrong you can please stop me now, that a
23 family has a right to reasonable accommodations in a
24 reasonable living area and not be obliged to spend more than
25 twenty-five per cent of their income for rental and for

1 housing accommodations. Now, is that a basis on which we
2 can agree?

3 A Yes, that is.

4 Q Working from that basis on which you agree,
5 concerning which you agree, we find, however, do we not,
6 that people in the low income bracket can't afford to do
7 that and still have the right of selection?

8 A That's largely true.

9 Q You agree with that?

10 A If it's a single-family, if a single person, an
11 individual, or a couple. There's some possibility that
12 they might find what is considered standard housing, that
13 is, sound housing, without paying more than twenty-five
14 per cent of their five thousand dollars annual income, but
15 for anything larger than that family unit I would say it
16 would be very, very difficult.

17 Q If not impossible.

18 A Well, probably impossible, except by sheer luck.

19 Q And would you not accept the same element
20 that you and I have talked about when it pertains to the
21 moderate income family?

22 A No. It's different here in proportion as to the
23 chances that they might find something.

24 Q Are you saying, Mr. Erber, that a family
25 in this day and age, today, that has an income with a lid of

1 \$8,500 can go out and find accommodations, reasonable
2 accommodations, in areas of their choice, today, and still
3 not be called upon to pay more than twenty-five per cent of
4 the family's income for rental or housing accommodations?

5 A Very few of them could have with \$8,500 in 1970,
6 which is the date used by the State when it identified
7 unmet needs, and even today, if we were to increase that to
8 say \$12,000, it would still be only a minority who could
9 do that. The vast majority could not.

10 Q So if we deal with that vast majority who
11 are incapable of taking out the housing they would like in
12 the area they want within their means, we have to find some
13 way to permit them to do that, don't we?

14 A Yes.

15 Q And that way is to give them more money,
16 isn't it?

17 A That plus lowering the cost of private construction.

18 Q Isn't that another form of subsidizing?

19 A No. That can be done by removing impediments to
20 building.

21 Q Excuse me. By removing impediments?

22 A Yes. Regulatory impediments, yes.

23 Q You mean lot size requirements and things
24 of that size? Things --

25 A Well, building codes and othe types of items.

1 Q You mean quality control items in the
2 building code, safety regulations and things of that sort?

3 A Yes. All studies of building codes show that they
4 are -- that they have many excessive requirements which have
5 no relationship to health or safety.

6 Q Well, one of your suggestions then would
7 be to downgrade the present existing building codes and
8 safety standards. Is that it?

9 MR. SLOANE: Your Honor, I object. That's
10 unfair.

11 THE COURT: I sustain the objection to that,
12 the wording of it.

13 Q Would you alter the existing safety codes,
14 health codes and building codes?

15 A To the extent that there were factors in those
16 codes or requirements in those codes that were unrelated
17 to safety and health factors, yes.

18 Q And you feel that would be one way to
19 cut down the cost?

20 A Yes.

21 Q And would that be -- do you know what the
22 single largest factor in the construction of a home is,
23 Mr. Erber?

24 A Do I?

25 Q Do you know what the single largest factor

1 in the construction of a building is, home, industrial or
2 any way?

3 A Probably the money that is paid for building and
4 materials.

5 Q Could I suggest to you that labor is it?

6 A Yes.

7 Q Would you accept that?

8 A Building -- I meant labor, building it.

9 Q How do you suggest you cut down the cost
10 of labor, Mr. Erber?

11 A I don't suggest we do.

12 Q How do you suggest we cut down the cost
13 of lumber and bricks and electrical wiring and plumbing?

14 A There might be ways of cutting it down but then
15 I'm no authority in this area.

16 Q Seeing as how we don't have a formula
17 to reduce all of this cost, the only available avenue that
18 we're back to, I gather, Mr. Erber, is to provide more
19 input of money. Is that it?

20 MR. SLOANE: Objection, your Honor. Unfair
21 characterization of what Mr. Erber testified to.

22 THE COURT: I sustain that.

23 Q Mr. Erber, if it were established to your
24 satisfaction that by giving money directly or indirectly to
25 the families that come into the low income or moderate income

1 group would afford them the opportunity that you want to see
2 them have, and that is the right of selection which we've
3 talked about, I ask that you assume that if that can be
4 established, that it can be done, would not that satisfy
5 the general complaint and the general problem about the
6 absence of available housing in your view?

7 A No.

8 Q Even if you gave them all the money that
9 were needed to give them the right of selection, that
10 wouldn't do it?

11 A No.

12 Q But I do gather, and if I'm wrong correct
13 me, that you feel that the right way to approach the test
14 would be used -- to see whether or not the plan would work,
15 is to first build the housing and then see what happens
16 to the housing.

17 A No. First initiate a project and advertise it and
18 get a waiting list and put up the houses.

19 Q Did you not say that you feel that the
20 test of this formula is by putting up the housing and then
21 see what they will do?

22 A That was a shorthand way of saying that, yes.

23 Q But first put up the housing.

24 A No.

25 MR. CHERNIN: I have no other questions,

1 your Honor.

2 THE COURT: Mr. Rafano.

3 MR. RAFANO: I have no questions, your
4 Honor.

5 THE COURT: Mr. Shapiro.

6 CROSS-EXAMINATION BY MR. SHAPIRO:

7 Q Mr. Erber, in regard to an acceptable
8 ratio of dwelling units to jobs in a particular municipality,
9 is it your opinion that one hundred dwelling units for each
10 111 jobs is acceptable?

11 A I could not respond on the basis of within a
12 municipality because municipalities are all sizes. So each
13 municipality cannot be expected to have an exact balance.

14 Q Can you respond on the basis of a region?

15 A Yes.

16 Q Would that be an acceptable or an
17 appropriate ratio for a region?

18 A It would almost have to be, yes.

19 And can you tell me why if it's
20 appropriate for a region why it would not be appropriate
21 for a municipality within that region?

22 THE COURT: He seems to have already
23 answered that, Mr. Shapiro.

24 Q What factors would you need to know as
25 far as the particular municipality is concerned before you

1 could answer a question like that?

2 A I think the municipality, except for major cities,
3 and there there are problems, too, is not the proper unit
4 but rather a common housing and common labor market. That
5 is the unit in which there ought to be balance.

6 Q Would the need for balance in a common
7 labor market extend also to the need for balance as far as
8 any housing allocations might be concerned?

9 A Yes.

10 Q Is it your contention, Mr. Erber, that
11 people want to live and work in the same municipality?

12 A No.

13 Q Can you tell me what constitutes in your
14 opinion an overbalance of industrial and research land uses
15 in a municipality?

16 A I think I had that question before. I cannot
17 speak to overbalance in a particular municipality.

18 Q Only on a regional basis?

19 A Yes.

20 Q Do you contend that one of the major
21 obstacles to housing for low and moderate income families
22 is that -- is the amount of vacant land in a particular
23 municipality?

24 A That the --

25 Q One, do you contend that one of the major

1 obstacles to housing for low and moderate income families
2 is the amount of vacant land?

3 A Not an obstacle. It would be an opportunity.

4 Q Would that vacant land have to be zoned
5 in any particular way for it to be an opportunity?

6 A Well, vacant land is an opportunity and the zoning
7 would have to be arranged, yes.

8 Q If municipalities do not have extensive
9 tracts of vacant land, would there then not be the opportunity?

10 A The opportunity would be lesser.

11 Q Do you know, Mr. Erber, the Census Bureau's
12 definition of S.M.S.A.?

13 A Generally speaking is -- generally speaking, yes.

14 Q Specifically speaking do you know?

15 A Well, it requires that there be a central city and
16 related counties or parts of counties and municipalities
17 that relate to it in the terms of movement between homes
18 and jobs. That's a broad definition, as I understand it.

19 Q Would you agree with the following
20 definition: a standard metropolitan statistical area is
21 generally a county or group of counties containing at least
22 one city or perhaps twin cities, having a population of
23 50,000 or more, plus adjacent jurisdictions which are
24 metropolitan in character and are economically and socially
25 integrated with the central cities?

1 A Yes.

2 Q And you agree, specifically, with the
3 economic and social integration as a part of the definition
4 for S.M.S.A.?

5 A In the sense which I understand the use of the
6 word integration, yes.

7 Q Is Middlesex County a part of any
8 particular S.M.S.A.?

9 A Yes.

10 Q What S.M.S.A. is it a part of?

11 A New Brunswick, Sayreville and Perth Amboy is an
12 S.M.S.A.

13 Q As an expert in planning, Mr. Erber, can
14 you tell me what area in square footage would be an
15 appropriate lot size that is suitable for moderate income
16 single-family dwellings, and affordable by a moderate income
17 family?

18 A Square footage?

19 Q Yes. What size lot?

20 A Lot?

21 Well, I'd say twenty-five by a hundred for a town-
22 house.

23 Q I'm talking about a single-family dwelling,
24 detached.

25 A A townhouse is a single-family dwelling.

1 Q Well, let me ask you for a detached
2 single-family dwelling.

3 A I take a dim view of putting them on small lots
4 but I would say that in my planning experience I advise
5 local planning boards not to accept subdivisions into lots
6 of less than sixty by a hundred.

7 Q Why is that, that you object to less than
8 sixty by a hundred?

9 A Because if it's a free standing house on a lot of
10 sixty feet wide, the distance between the houses is usually
11 wasted land. It's of no purpose. It's a dark or relatively
12 dark area, not even good for planting, usually, and there
13 is a problem of privacy of people looking into each other's
14 windows.

15 Q And would townhouses obviate that privacy
16 problem?

17 A Yes. I live in one.

18 Q And you can't see anyone else's windows?

19 A No.

20 Q Is it your belief, Mr. Erber, that moderate
21 income families can afford a detached home on a lot of
22 sixty by a hundred or larger?

23 A Within our definition of moderate income it would
24 be very difficult.

25 Q You mean a newly built house? A newly constructed

1 house or an old house?

2 Q Give me the answer for both, if you can.

3 A Well, I would say even for an existing structure,
4 if it's in sound condition, it would probably be there
5 would be very few around that would be available.

6 Q And for a new house?

7 A Almost impossible.

8 Q And then, if I understand you correctly,
9 it becomes from difficult to almost impossible for a moderate
10 income family to find any detached housing, whether new or
11 existing housing.

12 A Existing housing --

13 Q New or existing.

14 A Oh, yes.

15 Q Do you believe it is within the realm
16 of possibility for a low income family to have or to find
17 a single-family detached dwelling?

18 A Without subsidy, yes.

19 Q That is impossible.

20 A Yes.

21 Q Mr. Erber, if it were determined that
22 there existed in a particular municipality a substantial
23 need for housing rehabilitation as well as an alleged unmet
24 need for a regional deficit, would you choose to deal with
25 any particular one of those problems first?

1 A I couldn't answer that without knowing more about
2 it, but certainly the substandard units should be
3 rehabilitated. Whether they should be rehabilitated first
4 I couldn't say that.

5 Q What else would you need to know?

6 A I'd need to know the total amount of money available
7 for rehabilitation and new construction and the relative
8 costs of each in a particular situation as well as availability
9 and location of land.

10 Q And if you had that information would you
11 compute some sort of balancing test to figure or would you
12 by just whichever would be the cheaper method?

13 A I would take the less expensive very heavily into
14 consideration but would have to weigh it against such factors
15 and where the housing would be located with reference to
16 schools and transportation and other factors.

17 Q Are you familiar with the concept of
18 filtering down housing?

19 A Yes, I am.

20 Q Can you explain what that means?

21 A That means that housing has traditionally been
22 occupied successively by households of lesser income, so
23 that as one household vacates over a long period of time
24 there is a tendency for new, for successive households that
25 occupy it, to be on a relatively lower income level, so that

1 the housing is passed on down.

2 Q With that theory in mind, is it not a
3 fact that if there were more dwelling units constructed for
4 middle and upper income families there would be more
5 dwelling units available for moderate income families?

6 A Yes.

7 MR. SHAPIRO: I have no further questions.

8 THE COURT: That appears to conclude the
9 cross-examination.

10 MR. SLOANE: Your Honor, we have no
11 redirect. We would like to reserve the right to
12 call Mr. Erber at a later time.

13 MR. BERNSTEIN: I would like to make a
14 motion, if I could at this time, your Honor.

15 THE COURT: Well, we're determining
16 whether there's any cross-examination of Mr. Erber.

17 All right. Now you're through, Mr. Erber.

18 THE WITNESS: Thank you.

19 THE COURT: Subject to be recalled by
20 Mr. Sloane or Mr. Searing.

21 (The witness leaves the witness stand.)

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY
Docket No. C-4122-73

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URBAN LEAGUE OF GREATER :
NEW BRUNSWICK, et al, :

Plaintiffs, :

vs. :

CERTIFICATION

MAYOR AND COUNCIL OF THE :
BOROUGH OF CARTERET, et al, :

Defendants. :

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