

~~HE~~ ~~Exhibit~~ ~~3~~ Zirinsky v. Cranbury ~~3~~

1984

- Transcript of Direct Examination of Alan Mallach

Pgs. 31 (31 double side sheets)

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APPEARANCES, CONT'd

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For Cranbury Twp.

JOSEPH L. STONACKER, ESQ.,
For Plainsboro Township.

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For Piscataway Twp.

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(9:25 A. M.)

THE COURT: All right. As counsel were all notified, Ms. Lerman had a problem develop, she could not be here today, and Mr. Gelber was asked to have Mr. Mallach ready to proceed. The understanding is, of course, that he will -- may be recalled by the plaintiff, but -- to supplement his testimony.

All right. Ready?

MR. GELBER: Thank you, your Honor.

A L A N M A L L A C H, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GELBER:

THE COURT: All right, Mr. Gelber.

MR. GELBER: Thank you.

Q Mr. Mallach, have you been retained as a planning and housing expert by the Urban League plaintiffs in this case?

A Yes, sir.

MR. GELBER: Your Honor, if I may, I'd like to have the following resume marked for identification as PUL-1.

(PUL-1 marked for identification.)

Q Mr. Mallach, could you identify what has

1 been marked as PUL-1 for identification?

2 A Yes, sir. This is my resume.

3 MR. GELBER: Your Honor, I'd like to offer
4 the resume into evidence.

5 THE COURT: Any objection?

6 MR. GELBER: Your Honor, based on the --

7 THE COURT: Excuse me. PUL-1 in evidence.
8 (PUL-1 marked in evidence.)

9 MR. GELBER: Based on the information
10 contained in the resume, I'd like at this time,
11 your Honor, to move that Mr. Mallach be
12 qualified as a housing and planning expert with
13 particular expertise in the area of fair share
14 methodology and affordable housing, planning and
15 development.

16 THE COURT: Any objection, or any voir
17 dire?

18 MR. MORAN: I would like some voir dire,
19 your Honor, if I may.

20 THE COURT: Mr. Moran.

21 MR. MORAN: In particular, in light of the
22 fact that the resume that was just marked was
23 just handed out to plaintiff's counsel about 15
24 minutes ago.

25 THE COURT: I thought you'd seen it. I

1 heard no objection. Okay. Go ahead.

2 CROSS-EXAMINATION ON VOIR DIRE BY MR. MORAN:

3 Q Mr. Mallach, you're being offered as an
4 expert today, apparently, as an expert in housing and
5 planning, is that correct?

6 A Yes, sir.

7 Q Can you tell us what your educational
8 background is?

9 A I have a B.A. degree from Yale College in
10 sociology.

11 Q Do you have any other degrees? ←

12 A No, sir.

13 Q Did you take any courses at Yale in
14 planning?

15 A Yes. One.

16 Q What course was that?

17 A It was the under -- only undergraduate planning
18 course offered. It was a general course on planning.

19 Q A survey kind of a course?

20 A I guess so.

21 Q Have you had any continuing legal
22 education in the planning field, specifically, without
23 reference to housing?

24 A Continuing legal education?

25 Q I'm sorry. Continuing education. I --

1 A In the sense of --

2 Q I'm addicted to the term.

3 A In the sense of course -- formal courses?

4 Q Yes.

5 A No, sir.

6 Q Are you a licensed planner of the State of
7 New Jersey?

8 A No, sir.

9 Q Are you a licensed planner in any state?

10 A No.

11 Q Are you a member of any
12 professional planner in any state?

13 A No.

14 Q Are you a member of any professional
15 planning associations?

16 A No.

17 MR. MORAN: Your Honor, based on Mr.
18 Mallach's testimony, I think his resume speaks
19 for itself in the field of housing. However, I
20 would object to his testimony as a planner or as
21 an expert in planning, considering that his
22 background apparently is limited to one general
23 undergraduate survey course while he was in
24 college.

25 MR. GELBER: Your Honor, I believe

1 plaintiffs have the right to -- for redirect
2 examination of Mr. Mallach before there's any
3 ruling on that question.

4 THE COURT: Okay. Anyone else want a voir
5 dire before we get back to that?

6 All right. Mr. Gelber.

7

8 CONTINUED DIRECT EXAMINATION BY MR. GELBER:

9 Q Mr. Mallach, have you testified in any
10 prior litigation, including the earlier proceedings in
11 this case concerning planning issues?

12 A Yes. I was qualified as an expert on planning
13 in the earlier Urban League versus Borough of Carteret
14 case, as well as in a number of other cases, including
15 the Mount Laurel case, the Bedminster case, and the
16 Mahwah case, which was also part of the Mount Laurel II
17 package, if you will.

18 Q And did your qualifications as an expert
19 relate to planning issues in those cases?

20 A Yes, sir.

21 Q Mr. Mallach, have you ever taught any
22 courses that involved planning issues or planning
23 concepts?

24 A Yes. I've taught planning courses at the
25 graduate level at the New Jersey School of Architecture

1 and the Antioch College Graduate Center in
2 Philadelphia. I've taught planning courses at the
3 undergraduate level at Rutgers University and Stockton
4 State College.

5 Q Now, Mr. Mallach, in your professional
6 career, have you engaged in planning as a profession?

7 A I have not engaged in professional planning in
8 the meaning of the New Jersey Professional Planning
9 License Act, since I'm not a professional planner. I
10 have engaged and have been recognized as being engaged
11 in planning on a professional level by a variety of
12 people, organizations and entities, by virtue of my
13 work dealing with housing, land use, development and
14 related matters.

15 Q In your capacity as Executive Director of
16 the Atlantic County Improvement Authority, or in any
17 other official capacity or employment positions you
18 have held, have your responsibilities included planning
19 responsibilities?

20 A Well, again, it's a question of precisely how
21 you define the word planning to some degree. They have
22 certainly involved planning responsibilities in a broad
23 meaning of that term.

24 With regard to the work that I did at Atlantic
25 County, I was responsible for a great deal of forward

1 planning for public facilities, community facilities,
2 infrastructure and housing in a substantial part of
3 Atlantic County. While technically that may not be
4 considered planning in the narrow definition as what
5 the, you know, Municipal Planning Director might be
6 doing, it certainly is planning in a broad definition,
7 by any reasonable light.

8 Q Mr. Mallach, are you familiar with the
9 concept of fair share methodology?

10 A Yes, I am.

11 Q Have you ever prepared any -- in addition
12 to the report prepared in this case, have you prepared
13 any other fair share methodology reports?

14 A Yes, I have.

15 Q Could you briefly describe those?

16 A I've prepared fair share analyses in a number of
17 cases --

18 THE COURT: In the interest of time, the
19 testimony of Mr. Mallach will relate to the fair
20 share methodology in this case. At least that's
21 going to be his preliminary testimony.

22 MR. GELBER: Yes, sir.

23 THE COURT: Will it go beyond that in any
24 other areas?

25 MR. GELBER: Not today, your Honor.

1 THE COURT: Not on his -- on his first
2 direct.

3 MR. GELBER: That's correct.

4 THE COURT: For that purpose, I find him
5 qualified as a housing expert. He can do that.
6 We don't have to get hung up in titles or
7 whatever. I'll find him qualified to testify to
8 that. He's obviously had training and
9 experience sufficient to permit him to do that.

10 MR. MORAN: Your Honor --

11 THE COURT: Yes.

12 MR. MORAN: May defendants reserve their
13 right to make an appropriate objection if we
14 feel the testimony goes beyond that point?

15 THE COURT: Sure. Of course.

16 MR. GELBER: Thank you, your Honor.

17 Q Mr. Mallach, did you prepare an expert
18 report in this case at the request of the Urban League
19 plaintiffs?

20 A Yes, I did.

21 MR. GELBER: I would like to have the
22 following document marked as PUL-2 for
23 identification.

24 (PUL-2 marked for identification.)

25 THE COURT: It's identification. All

1 right. Go ahead.

2 Q Now, Mr. Mallach, I show you what's been
3 marked as P -- PUL-2 for identification. Would you
4 please identify that?

5 A That is a copy of the report that I prepared for
6 the Urban League, the plaintiffs in this litigation.

7 Q And that report is entitled Expert Report
8 on Mount Laurel II Issues in Urban League of Greater
9 New Brunswick versus Borough of Carteret, dated
10 December, 1983?

11 A That's correct.

12 MR. GELBER: Okay. Your Honor, I offer
13 this into evidence.

14 THE COURT: Any objection? The reporter
15 will mark it PUL-2 in evidence.

16 (PUL-2 marked in evidence.)

17 Q Mr. Mallach, did you also participate in a
18 series of meetings with a planners' group in connection
19 with this case?

20 A Yes, I did.

21 Q Are you familiar with a report that has
22 been admitted into evidence as J-5, a fair share report
23 prepared by Miss Carla Lerman, dated April 2d, 1984?

24 A Yes, I am.

25 Q And you're familiar with the contents of

1 the report?

2 A Yes.

3 Q With respect to the question of region,
4 what was your approach to region in your December, 1983
5 report?

6 A I recommended that a single region comprising
7 eight northeastern counties be used for purposes of
8 both present and prospective need allocation.

9 Q Now, was that approach different from the
10 approach taken by Ms. Lerman in her report of April 2d?

11 A Yes, it is.

12 Q In your opinion, which approach is
13 preferable?

14 A I believe that the single region approach is
15 fundamentally preferable, one that would contain at
16 least the eight counties that I included in my region
17 and could include up to the 13 counties that were
18 included in the region delineated by Ms. Lerman in her
19 November, 1983 report.

20 Q And what's the basis for your opinion?

21 A The basis is that in the final analysis, the
22 interrelationship within northeastern New Jersey in
23 terms of commuting patterns, transportation patterns,
24 housing market overlaps and so forth are so great that
25 it's really impossible for any smaller region to

1 accurately reflect both the broad nature of the
2 interrelationships within that region, as well as the
3 extent to which all of the suburban counties in that
4 region share a common set of ties to a single core area
5 that is made up of Hudson County, eastern Essex County
6 and parts of Union and Passaic, perhaps even Bergen
7 County.

8 Q Now, Mr. Mallach, in your opinion, is the
9 approach advocated in Miss Lerman's report of April 2d,
10 regarding region, a reasonable approach?

11 A Yes, it is. I think -- although I consider the
12 earlier approach to be preferable, the approach in the
13 Lerman report is a reasonable one. The principal
14 reason is that it deals with one major deficiency of a
15 large region approach, which is despite the network of
16 overlapping relationships. If you will, the fact
17 remains in a large region that the -- as you get to the
18 edges of the region, those relationships become more
19 and more tenuous.

20 The relationship between say Bergen County and
21 Middlesex, or Mercer Counties is not a strong one. So
22 that problem is overcome by the use of smaller regions
23 such as commuter shed regions for the allocation
24 process of -- for the prospective need allocation
25 process.

1 Q In your opinion, is it reasonable to apply
2 two different regions to the two types of need?

3 A Yes.

4 Q In particular, present and prospective
5 need?

6 A Yes, it's a reasonable exercise of judgment.

7 Q And on what do you base that opinion?

8 A That -- I think the rationale that was adopted
9 in the April report is legitimate, that there is a
10 measurable difference between the geographic spread of
11 the prospective need growth and the present need
12 growth.

13 Q Mr. Mallach, on the question of
14 determining present need, what is your position with
15 regard to the approach taken in Miss Lerman's April 2d
16 report?

17 A I think it is basically a reasonable approach.
18 It was quite similar to the approach that I originally
19 took in my report.

20 Q Do you -- do you find any fault with that
21 approach?

22 A I wouldn't characterize it necessarily as a
23 fault. I think that it has a conservative effect on
24 the fair share formula for two reasons, basically.

25 Although all of the people who are measured in

1 that need admittedly have a need, there are people who
2 do not fit into any of the defined need categories who
3 represent existing households who are likely to take up
4 a substantial part of the Mount Laurel housing
5 production that would result from the -- this or any
6 other litigation, or from voluntary compliance with
7 Mount Laurel II.

8 And I think there are two significant
9 categories. One which has been dealt with is the
10 financial need category. And I agree conceptually with
11 Ms. Lerman's position that the nature of the housing
12 problem represented by financial need is not one that
13 is necessarily from a policy standpoint best addressed
14 by the production of new housing. But the fact is, to
15 the degree that new Mount Laurel housing is produced, a
16 significant part of that housing is likely to be filled
17 up by families who are in conditions of financial
18 housing need.

19 Q Could you please explain what you mean by
20 conditions of financial need?

21 A Financial need is defined, in this case, as
22 families spending over 25 percent, or 30 percent as the
23 case may be, of their gross income for shelter.

24 Q Woud you say it would be appropriate to
25 address the needs of those families through

1 development, or at least a portion of those families,
2 through development of Mount Laurel-type housing?

3 A I think you can't help it, and I think there's a
4 significant distinction here between what might be a
5 sound overall housing policy approach in the abstract
6 and the realities of development under Mount Laurel II.

7 To the degree that Mount Laurel II housing is
8 built, some part of that housing will become occupied
9 by families whose need at present falls into the
10 financial need housing category, therefore, reducing
11 the number of units that will be available for people
12 in the measured need categories in either my report or
13 Ms. Lerman's report.

14 Q Now, does the approach described in Miss
15 Lerman's report now, account for that type of need?

16 A No, it does not.

17 Q Is there any overlap between that type of
18 need and the type of need identified in Miss Lerman's
19 report?

20 A Clearly, some of the families living in
21 physically substandard or overcrowded conditions also
22 spend more than 25 percent of income for shelter, but
23 there's no recognition of the families for whom that is
24 the only component of housing need.

25 Q If one were to attempt -- if one were to

1 desire to take into account that type of need and
2 incorporate it into a formula, is the data available to
3 enable one to do that?

4 A There is data on the number of families who are
5 in the financial need category. It is a very large
6 number. I believe in the northeastern region that I
7 used in my report, it represented over a quarter of a
8 million households.

9 So, I think practical considerations work
10 against incorporating that entire amount into the fair
11 share formula.

12 Q Earlier you mentioned there was a second
13 category of need that was not accounted for in Miss
14 Lerman's approach.

15 A Yes. And again, it's not clear precisely how to
16 treat it, but the fact is, it will affect the
17 availability of housing, which is the category that's
18 referred to in community development planning as
19 expected to reside or ETR, in the trade.

20 And the term refers to families living in urban
21 core areas, who may not necessarily have any housing
22 deficiency as such, but either are working in the
23 suburban communities that are at issue for fair share
24 purposes and would like to live closer to their work,
25 or are seeking work in those communities.

1 Now, again, there is, in fact, a formula that's
2 been developed by HUD, which is used in community
3 development planning specifically to add a number for
4 this factor to communities' housing needs as defined
5 for the purpose of the community in the Block
6 Development Grant Program.

7 And again, while I'm not necessarily advocating
8 use of that formula, this should be given some
9 consideration, if only because this is a population
10 that is aware of housing opportunities being created in
11 these suburban areas and is a population that will take
12 up a substantial, perhaps a significant, part of the
13 units being made available through Mount Laurel II
14 programs.

15 Q In your opinion, is this type of need that
16 you've just described relevant for Mount Laurel
17 purposes?

18 A Yes.

19 Q Why?

20 A I think as one reads Mount Laurel I and II, an
21 underlying thrust throughout these decisions is the
22 acknowledgment of the enormous economic and social
23 disparity between the urban core areas and the suburban
24 communities, and the fact that this is a widening gap,
25 and that the job opportunities are being provided in

1 the suburbs.

2 So that to the extent that people in the core
3 cities are seeking to take advantage of suburban job
4 opportunities for purposes of upward mobility and
5 opportunity, over and above remedying specific housing
6 deficiencies, that is clearly very central to the
7 entire Mount Laurel idea.

8 THE COURT: I'm not sure I'm clear on this
9 one.

10 These are people in the urban core areas
11 who are expected to reside in the suburban
12 areas.

13 THE WITNESS: Right.

14 THE COURT: But they're not in overcrowded
15 or dilapidated housing, or they're not within
16 the financial need category.

17 THE WITNESS: Right. But they are
18 commuting substantial distances to jobs, or
19 seeking jobs in those communities.

20 THE COURT: I understand.

21 Why would they not qualify for the housing
22 that will be built for Mount Laurel housing?

23 THE WITNESS: In many cases their incomes
24 might not be sufficient.

25 THE COURT: So, while they're not in the

1 Mount Laurel definition, they may not be able to
2 still buy a house.

3 THE WITNESS: Exactly.

4 THE COURT: Is it your position that Mount
5 Laurel intended to deal with that group of
6 people?

7 THE WITNESS: I -- to some degree, yes.

8 THE COURT: Okay. go ahead.

9 Q Are these necessarily families that have
10 financial need, as you've defined it?

11 A Some -- clearly, among families who are now
12 living in urban areas and working in the suburbs, or
13 seeking to work in the suburbs, there are many who have
14 the sorts of housing deficiencies that put them in the
15 present need categories. There are others who would
16 fall into the financial need category. However, there
17 are undoubtedly still others, particularly in the
18 moderate income category, who would not fall to either
19 category --

20 Q Because they are --

21 A One thing -- because they are living -- they
22 would be living, let's say, in Newark or Jersey City,
23 in housing that is not dilapidated, nor are they paying
24 more than 30 percent of their income for shelter, but
25 they are, nonetheless, commuting to work in suburban

1 locations.

2 Q Are there any other categories of need
3 that are not identified in Miss Lerman's approach?

4 A Strictly speaking, there are other housing
5 deficiencies, other aspects of substandard housing,
6 structural deficiencies and the like --

7 Q Can you give me some examples?

8 A Well, if a unit is structurally unsound, for
9 example, but nonetheless, would have all plumbing and
10 heating facilities, that would not be counted in the
11 analysis. Unfortunately, as I believe Miss Lerman⁴
12 said, that data is not available, especially for small
13 areas.

14 Q Do you have an opinion as to whether the
15 approach contained in Miss Lerman's April 2d report
16 identifies the full extent of present need in the
17 relevant region?

18 A No. It's a very conservative approach.

19 Q Now, Mr. Mallach, what is your opinion as
20 to the formula and factors used by Miss Lerman in her
21 April 2d report for allocating --

22 THE COURT: Just a second, now. I thought
23 you were going to ask him why.

24 Why is it -- you mean, other than the
25 reasons you've given, is there -- are there

1 other reasons?

2 THE WITNESS: No. I think --

3 THE COURT: For the reasons --

4 THE WITNESS: For the reasons that I've
5 given, I'll say.

6 THE COURT: Oh, okay. Okay.

7 THE WITNESS: By way of wrapping up the
8 subject, rather than introducing it.

9 MR. GELBER: See, I knew he had already
10 answered it.

11 Q Mr. Mallach, what is your opinion as to
12 the formula and the factors presented by Miss Lerman in
13 her April 2d report for allocating the excess present
14 need?

15 A I believe they're basically reasonable ones.

16 Q Mr. Mallach, is it appropriate to include
17 in a -- an allocation formula, some factor relating to
18 land?

19 A I believe it's not only appropriate, but
20 extremely important.

21 Q Assuming the data were available, what
22 factor would you propose in your opinion, what factor
23 would be appropriate to use in that context?

24 A The factor that I believe would be most
25 appropriate, in the light of the approach in Mount

1 Laurel II, as I understand it, would be data on vacant,
2 developable land within the growth area, as defined by
3 the State Development Guide Plan.

4 Q And why?

5 A That -- because the principal purpose of having
6 a vacant land, or a land factor in the allocation
7 process, is to build a measure of capacity, or that
8 relates to the physical capacity to accomodate
9 additional housing development into the allocation
10 process.

11 In other words, if one were to ignore it in ^{the}the
12 allocation process and simply go through the process,
13 say, based on employment and income factors, and then
14 subtract, based on demonstrated capacities on a
15 case-by-case basis, what you would end up doing would
16 be allocating such enormous amounts to communities where
17 you would then have to subtract the overwhelming
18 majority of the units that you'd just allocated, that
19 you would create essentially an unworkable formula,
20 especially, given the fact that using the commuter shed
21 approach - and this is a problem with that approach -
22 there is no systematic reallocation possible under that
23 approach of those units.

24 So, in order to provide some measure of balance
25 of some relationship to physical capacity in the

1 allocation process, so you don't end up with a wildly
2 skewed set of initial allocation numbers, it's
3 essential to have the capacity factor.

4 Now, the key indicator of capacity is the vacant
5 land available for development. While some housing
6 will undoubtedly be provided through rehab or reuse or
7 in-fill on the sites, that are no -- that will be
8 cleared subsequent to the date of the study, the
9 overwhelming majority of new housing is produced on
10 land that has never been developed. So, that's the
11 central theme.

12 Q But you testified that you would propose
13 using vacant land in growth areas?

14 A Yes.

15 Q Would you explain the basis for that
16 statement?

17 A Yes.

18 It's my understanding that the thrust of the
19 Mount Laurel II decision in this regard, at least for
20 the end of 1984, is that development should be
21 encouraged to remain within the growth areas. It's not
22 forbidden outside the growth areas, but that there
23 should clearly be some preference to meeting Mount
24 Laurel housing needs within the growth area, as defined
25 by the State Development Guide Plan.

1 Q What approach did you use in your
2 December, 1983 report?

3 A I used vacant land in the municipality as a
4 whole, or rather, vacant developable land as measured
5 by D.C.A. -- reported in the D.C.A. Housing Allocation
6 Report of 1978.

7 Q Okay. Were there any problems with that
8 approach?

9 A Yes. There were two problems. One was that it
10 did not single out which of the land was in the growth
11 area and which was not; although it did exclude a
12 variety of land use categories, including agricultural
13 lands, steep slope land, wetlands, and so forth. So it
14 was not simply a promiscuous county of all land that
15 did not have houses on it.

16 Secondly, it is unfortunately very old data.
17 The actual data is ten, and in some cases more, years
18 old today.

19 Q Even assuming the data were available,
20 could you take that data, and then apply it or
21 transport it onto a growth area map, and limit the
22 factor to vacant land and growth area?

23 A It would be theoretically possible if the data
24 maps from which the statistical tables in the D.C.A.
25 Report were still available to the degree that I've

1 made inquiries, they're not available.

2 Q What is your opinion as to the approach
3 recommended in Miss Lerman's April 2d report?

4 A I think it represents a reasonable effort to
5 come up with a compromise factor that can be
6 mathematically incorporated into a fair share formula
7 with precision.

8 Q And on what do you base that opinion?

9 A It -- what that factor is, of course, is the
10 percentage of growth area acreage in each municipality
11 as a percentage of the regional total, and it does not
12 distinguish between developed and undeveloped land,
13 which, of course, is its most significant weakness.
14 Since it does, however, reflect the acreage in the
15 growth area, it has some measure of comparability from
16 one community to the next.

17 Secondly, interestingly, although it does not
18 make that distinction when one looks at its practical
19 effect on the formula, and I would say that it's really
20 impossible to separate out the analysis of the fair
21 share formula from its practical implications - because
22 in the final analysis, the purpose is to come up with
23 something that makes reasonable sense rather than
24 abstract truth - the formula, basically, would in
25 the -- the factor works in the direction that common

1 sense suggests it should work.

2 In other words, when one knows from a variety of
3 other data sources, roughly speaking, which of the
4 communities in this litigation have proportionately
5 more vacant land availability, and where the -- which
6 communities are readily more heavily developed.

7 Now, to be consistent with the underlying logic
8 of having a capacity factor, the capacity measure, when
9 combined with employment factors, should have the
10 effect of increasing the allocation in communities
11 which have substantial resources of vacant land, ⁷⁶
12 relative to what it would be with a pure employment
13 factor; and decreasing it in communities that have very
14 little vacant land, again, relative to applying the
15 pure employment factor. That is the logic of a
16 capacity factor.

17 Q So, in other words, even if a municipality
18 had substantial employment, substantial employment
19 growth, and even though it were entirely in a growth
20 area, what you're suggesting is that by use of the
21 growth area factor, relatively speaking, you are
22 bringing the fair share of that municipality down --

23 A That --

24 Q -- which is consistent with the likelihood
25 that it would have a limit on the amount of vacant

1 land?

2 A That's correct. And that is exactly how the
3 factor works, when applied to the communities.

4 Q And did you actually look at the data
5 available, in light of that approach?

6 A Yes.

7 Q And that's what you found?

8 A Yes.

9 Q Now, Mr. Mallach, you've already explained
10 that there are problems in using what is available in
11 terms of vacant developable land from the original
12 D.C.A. work. And you've explained that there are some
13 problems in using just simply a growth factor, a growth
14 area factor. In light of these problems, would it be
15 appropriate to eliminate any factor relating to land
16 from the formula?

17 A No.

18 Q And why is that?

19 A Because, again, as I stated earlier, it is very
20 important to have a factor that reflects in some
21 fashion the physical capacity of the community to
22 accomodate development.

23 Again, if you don't have that factor, the
24 results are to skew the fair share allocation very
25 widely and to allocate -- especially if you restrict

1 yourself to the other factors that are used in the
2 April, 1984 report, is essentially, to allocate the
3 overwhelming majority of the fair share to the
4 communities that have substantial employment.

5 By its nature -- given the fact that in
6 communities where substantial employment is located
7 also often have substantial population, also tend to be
8 proportionately more developed than communities that
9 have less employment or population, what you end up
10 doing, without a capacity factor, is essentially having
11 a formula that directs the fair share allocations to
12 the existing centers of population, and that is, in
13 itself, patently unreasonable.

14 However, when you combine that with the fact
15 that you're using a commuter shed region, so a
16 systematic technique of allocating excess on a larger
17 scale is no longer available, you've created a
18 fundamentally workable formula.

19 Q Mr. Mallach, were data available to
20 include a factor relating to municipalities' percent of
21 vacant available land in growth area, would you also
22 recommend including an additional factor relating to
23 simply percent of growth area contained in the
24 municipality?

25 A Absolutely not. No.

1 Q And why not?

2 A The percent of growth area, really, in my mind
3 is a -- shall I say, minimally adequate surrogate for
4 vacant developable land in growth area, which is the
5 key indicator. The amount of developed land in the
6 growth area, while it may have some modest bearing in
7 terms of rehabilitation and reuse, is so much less
8 significant as a capacity indicator than the amount of
9 developable vacant land, that I would not use those
10 factors.

11 Q Okay. Now, Miss Lerman's report includes
12 in her formula a factor related to income. Did your
13 original December, 1983 report include such a factor?

14 A No, it did not.

15 Q What is your position with respect to the
16 reasonableness of that factor?

17 A I think: (a) It is a reasonable factor, and (b)
18 Including it represents an improvement over the fact
19 that it was not included in my report.

20 Q Why?

21 A Because I think, on reflection, that it is
22 germane. It is very germane to the fundamental Mount
23 Laurel issues which have to do with income in two
24 regards. One is the underlying issues of redressing
25 the economic disparities between wealth and poverty,

1 poor and wealthy, and so on, and so forth.

2 Secondly, and this is a much less important
3 secondly, is that the affluence of the community, as
4 measured by income, can stand in also as a reflection
5 of physical capability to accomodate additional
6 development.

7 Q Okay. Do you believe that the technique
8 that was actually used for incorporating that factor is
9 a reasonable technique?

10 A Yes.

11 Q Now, Miss Lerman's April 2d report
12 recommends a procedure whereby you add 20 percent onto
13 both the present and prospective need figures for each
14 municipality in order to account for the lack of vacant
15 developable land in certain municipalities, which would
16 necessitate reallocation of cetain need. Correct?

17 A Yes.

18 Q In your opinion, is this element of the
19 formula an appropriate one?

20 A Absolutely.

21 Q And why?

22 A I think it's essential, you see, and it goes
23 back to the nature of the commuter shed region, which
24 since in a commuter shed region, each community has its
25 own unique region and unique allocation process, there

1 is no way to reallocate excess on a systematic basis.

2 Now, for example, if you go back to the original
3 D.C.A. Housing Allocation Report, what they did, for
4 example, is they took the entire region in the case of
5 northeastern New Jersey, eight county region,
6 elsewhere, other regions, allocated the need on the
7 basis of the formula which included employment, income,
8 and vacant land, to all of the municipalities in that
9 region.

10 Then they went down all those municipalities to
11 determine whether the allocation number they had come
12 up with was in excess of what they characterized as a
13 development limit, which in this case, they used a
14 figure of four times the number of vacant acres as
15 being a reasonable number of what the community could
16 reasonably be expected to accommodate in the way of low
17 and moderate income housing.

18 They then, for each community where the
19 allocation was in excess of that limit, they identified
20 the number, they added up all the numbers of those
21 communities, put it into a pool to reallocate.

22 Now, that is clearly -- that, or something
23 essentially similar to that, has to be done in a
24 regional allocation formula, because the fact is:
25 (1) Certain communities physically are not going to be

1 able to accommodate whatever allocation the formula
2 gets, no matter how sophisticated you develop the
3 capacity analysis. (2) Having identified those
4 communities and the number of units they can't
5 accommodate, it would be fundamentally unreasonable
6 simply to throw away those units and not make sure that
7 they get reallocated to communities where they can be
8 accommodated, because each one of those units, of
9 course, is reflective of actual housing need. So, you
10 need to do something of that sort.

11 Now, clearly, when you have a commuter shed,⁴ you
12 cannot adopt the D.C.A. procedure. So, you have to
13 adopt something that will substitute for it; and that
14 is precisely where the 20 percent figure comes in.

15 Now, it so happens in the D.C.A. analysis that
16 the sum of the excess over the development limit
17 identified after the initial allocation was made under
18 the D.C.A. formula happened to be 23 percent of the
19 total number of units allocated.

20 -- When I did my own initial regional analysis for
21 the eight county region and used a -- the same
22 fundamental approach, but with some major technical
23 differences from the D.C.A. approach, in other words, I
24 used an 80 to 90 need analysis, rather than the 70 to
25 90, and I reduced the development limit from four times

1 the acreage to 22 times the acreage, in view of the
2 recognition that most low and moderate income units
3 would be built through an inclusionary program rather
4 than as freestanding lower income housing projects. I
5 ended up coming up with a number for reallocation of
6 approximately 18 percent of the total.

7 So, my feeling was, as this issue was discussed
8 in the various planners' meetings: First, that it was
9 essential to have such a factor; and secondly, that a
10 20 percent factor represented a reasonable judgment as
11 to what the amount would have to be reallocated might
12 have to be.

13 Q If you were to run a reallocation based on
14 excess above the development limit and you were to do
15 that with currently accurate vacant developable land
16 figures, what would you expect the percentage of
17 reallocated need to be?

18 A It would certainly be a higher percentage than
19 if you'd run it with the 1970's D.C.A. data, for the
20 simple reason that the odds are pretty overwhelming
21 that in most communities, the amount of vacant land
22 available in 1984 is less than was available say in
23 1976 or 1975 when the study was done.

24 So that what that would mean is, if I did
25 exactly what I did, but simply substituted current

1 vacant land data, especially vacant land in the growth
2 area which would limit it further, odds are, more
3 municipalities would hit their development limit at a
4 lowere level, meaning there would be more to be
5 reallocated.

6 Q More than the 18 percent that resulted
7 from your December, '83 reallocation?

8 A That's correct.

9 Q Okay. If the Court were to adopt the
10 system of fixed regions, as opposed to a changeable
11 commuter shed system of regions, would this factor be
12 necessary?

13 A Absolutely.

14 Q It would still be necessary?

15 A No, I'm sorry. No. Then the process of
16 reallocation would still be necessary.

17 Q I see.

18 A The particular use of a multiplier in this way
19 might not be necessary, because then you could build in
20 a factor somewhat analogous to the D.C.A. factor,
21 except, I might add, that because of the crudeness of
22 the growth area factor as a surrogate for vacant
23 developable land data, it would be very difficult to be
24 precise with this factor, even on a large region basis.

25 Q I see.

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THE COURT: It is applied in the fixed region, as well, in the report. Is that right?

THE WITNESS: Yes.

THE COURT: Do you find any fault with that? You've been talking as to the commuter shed. It's applied in the same method as it's applied to the commuter shed.

THE WITNESS: Well, basically, there, it's a -- it's a convenience, I think first, because using the growth factor makes it difficult to apply a development limit approach on D.C.A.† and secondly, just from the standpoint of the mechanics of the fair share allocation process that I don't think anybody really wants to go through the process of reiterations for 200 or 500 communities.

THE COURT: Would you expect, if -- if that was done, that we would end up faced with essentially the same sort of numbers?

In other words, if the 20 percent is an accurate figure, whether you do it through a reallocation approach, or do it in the method the report has done it, will it end up in about the same place?

THE WITNESS: I think so. I think the 20

1 percent is a workable substitute plugged into
2 this approach for the kind of thing D.C.A. did
3 with the development limit.

4 Q In order to apply the methodology used in
5 your December, '83 report, you really need two things,
6 is that correct? You need a system of fixed regions,
7 as well as a fairly accurate vacant land data?

8 A Three things. You also need a lot of time.

9 Q A lot of time.
10 Now, Mr. Mallach, one last question on present
11 need.

12 In Miss Lerman's April 2d report, she recommends
13 staging the addressing of the excess or reallocated
14 present need over a -- three six-year periods. And the
15 formula, that results in a reduction of the present
16 need -- reallocated present need figure for each
17 municipality of two-thirds. Do you believe that is a
18 reasonable element of her formula?

19 A I have some serious reservations about that
20 element.

21 Q Could you please explain?

22 A Yes.

23 I think -- again, as I understand the approach
24 that's promoted in the Mount Laurel II decision,
25 they're basically saying a fairly straightforward

1 thing, is that you allocate a fair share, based on the
2 full range of need. And then on a case-by-case basis,
3 the trial judge can make adjustments, based on evidence
4 that to accomodate the full fair share need in a
5 particular community is physically impossible or
6 impossibility burdensome for other than physical reasons.

7 And I think the staging of the present need, up
8 front in the formula, essentially, does not do that.
9 It locks off a chunk of need which may or may not be
10 met down the road. And I think there are certain
11 questions that arise when you put things off into that
12 far in the future, and removes an element of discretion
13 from the trial judge operating on a case-by-case basis.

14 And I think the eventual outcome is basically
15 wrong, for a reason that I consider quite important,
16 because I think it's clearly acknowledged that once
17 you've allocated the full fair share that all of the
18 communities within a region, or New Jersey, or
19 participating in litigation, not all of those
20 communities will realistically be able to accommodate
21 their fair share, either at all, or between now and
22 1990.

23 So, the eventual outcome you get will inevitably
24 be somewhat less than the goal. However, in any given
25 region, there are likely to be a few communities that

1 can accommodate their full fair share, calculated
2 including the entire present need factor, as well as
3 prospective and so forth.

4 If you arbitrarily limit what need you're
5 allocated below that full factor, what you end up doing
6 is reducing the number of units that you could get
7 overall still further below the fair share goal than
8 the capacity and impact and burden issues would end up,
9 resulting in the final analysis, in any event.

10 Q How would you address the concern
11 underlying Miss Lerman's inclusion of this element into
12 her formula?

13 A I think the principal concern which deals with
14 the capability of communities to accommodate fair share
15 goals without unreasonable burden is something that
16 essentially has to be addressed on a municipality-
17 by-municipality basis.

18 I mean, I think it's clear that the fact that
19 that formula adjustment was put into the April, 1984
20 report is not constraining any of the defendant
21 attorneys from planning to make a case that the fair
22 share should be further reduced, based on whatever
23 specific factors they consider to remain germane to
24 their community.

25 Q But --

1 A So --

2 Q I'm sorry.

3 A So, in the final analysis, I really think, well,
4 that concern is a legitimate one. It's misapplied in
5 this particular circumstance.

6 Q Okay. In your opinion, is there any
7 support for your position for addressing this concern
8 as opposed to the position taken in Miss Lerman's April
9 2d report?

10 A I believe that what I've enunciated just now
11 is -- at least it's my best understanding of the
12 relevant language in the Mount Laurel decision.

13 Q Now, Mr. Mallach, on the question of
14 determining prospective need, Miss Lerman's April 2d
15 report uses a population projection that is an average
16 of the two O.D.E.A. population projection models. Is
17 that right?

18 A Yes.

19 Q In your opinion, is this a sensible
20 approach for determining prospective housing need?

21 A Yes. I believe it is.

22 Q Why is that?

23 A Prospective housing need is fundamentally the
24 increase in the number of households from point A to
25 point B. And in establishing that increase, one has to

1 use the most reasonable set of numbers.

2 Now, the average of the two projections, in my
3 judgment, most closely reflects the most reasonable
4 estimates of where New Jersey's population is going,
5 what household increase can realistically be expected
6 during the decade of the 1980's, substantially better
7 than either of the two projections that is an average
8 of.

9 Q Why is that the result? Is there a reason
10 for that?

11 A There are a couple of reasons for that.

12 The first one I'd like to cite is the most
13 recent is data on population estimates. The United
14 States Bureau of the Census does an annual estimate of
15 the current population by state.

16 The most recent data which has, in fact, just
17 been accomplished in the last couple of months is for
18 1983, and it shows in 1983 estimated population for New
19 Jersey -- unfortunately, it is not broken down any
20 further, but for New Jersey, of seven million four
21 hundred sixty-eight thousand. This represents increase
22 of one hundred and three thousand over the 1980 census
23 figure of seven million three hundred and sixty-five
24 thousand. These are rounded off to the nearest
25 thousand. That represents, in turn, an average annual

1 growth rate of oh point four six four percent per year.

2 THE COURT: Can I have that again?

3 A Oh point four six four, or slightly less than
4 one-half of one percent a year.

5 This yields an extrapolative -- and I'm not sure
6 I would dignify it by the word projected, because what
7 I'm talking about is simply going from 1980 to 1983,
8 based on the current estimates up to that point, and
9 extrapolating it on out to 1990 in a straight-line
10 fashion.

11 Q Straight line?

12 A Straight line, yes. Of seven million seven
13 hundred and fourteen thousand population. The average
14 of the two O.D.E.A. projections yields a 1990
15 population of seven million seven hundred thirty-five
16 thousand.

17 This is much closer, therefore, to the current
18 rate of population increase since the 1980 Census, much
19 closer than the results of either of the two O.D.E.A.
20 projections used separately.

21 So this is -- again, this is not scientific
22 proof, because when dealing with projections, there's
23 no such thing as scientific proof, but this is my
24 opinion, we have three years since the 1980 Census,
25 three years of consistent house -- population increase

1 roughly in the one-half of one percent per year range,
2 which represents very strong empirical validation of
3 the projection methodology recommended in the April,
4 1984 report.

5 Furthermore, when applied to the headship rate
6 analysis used in the B-U-R-C-H-E-L-L and
7 L-I-S-T-O-K-I-N Report, the formula, again, using the
8 average of the two population projections yields an
9 approximate total household increase from 1980 to 1990
10 of 401,000 households.

11 This happens to be almost identical to the
12 average household increase per decade in New Jersey of
13 the last three decades which has remained remarkably
14 constant.

15 Population increase has fluctuated widely in
16 different decades. Household increase has tended to
17 stay very much the same, in the general range of
18 400,000 per decade or 40,000 per year.

19 Q Mr. Mallach, could you give -- give us the
20 figures for those decades? Do you have those?

21 A I just wanted to make one more point.

22 Q Certainly.

23 A Was that, again, the fact that you have a
24 particular historical pattern does not prove,
25 obviously, that that historical pattern will be

1 extended, because there's no way of proving that it
2 either will or will not be. What it is, again, is a
3 test of the general reasonableness of the assumptions.
4 The actual numbers are approximately 450,000 in the
5 '50's, 412,000 in the '60's, and 332,000 in the '70's.

6 Q Now, by your testimony, you're not
7 suggesting either of these systems of extrapolation to
8 substitute for the O.D.E.A. models, is that correct?

9 A Oh, no. What -- all I'm doing is saying: Let
10 us look at the sum of the available data to evaluate
11 whether the outcome that's predicted by the O.D.E.A.⁴
12 model average and the application of the headship rate
13 analysis is reasonable, and in fact, more so than using
14 either of the two projections separately.

15 Q Okay. Before we go on, could you just
16 explain the difference between an extrapolation and a
17 projection?

18 A Okay. A projection is an effort to look into
19 the future, using a particular analytical method that
20 bears some relationship to an analysis of change in
21 trends and realities.

22 Demographic cohort approach tries to look at the
23 future by looking at the changes in age distribution in
24 the population, reproduction, births, deaths and so
25 forth. So, projection implies an analytical method

1 that is believed to have some ability, better than
2 sheer guesswork, to look into the future. An
3 extrapolation is simply -- it's a synonym, basically,
4 for what's sometimes called the straight-line
5 projection.

6 In other words, you just see what happened
7 during some period in the past, and extend that to
8 future, without regard to the reasons as to why
9 something may have happened, or may not happen in the
10 future.

11 Q Now --

12 A It's frowned upon.

13 Q Excuse me?

14 A It's frowned upon.

15 Q Okay.

16 A It's not considered a serious method of doing
17 projection.

18 Q Okay. But is it useful to test the --
19 empirically test the validity of the results of the
20 projection?

21 A When you have data within the projection period,
22 in other words, if you're looking at 1980 to 1990
23 projection, that projection represents a line in the
24 future.

25 Q Um-hum.

1 A It would not be useful to look, shall we say, at
2 the numbers from '75 to '78 --

3 Q Um-hum.

4 A -- to validate that projection. Those would be
5 irrelevant.

6 If the projection extended the curve from '75 to
7 '78, that would be meaningless. However, if you have
8 data that takes you some part of the way into the
9 projection period, that is relevant, because that deals
10 with the same time frame as the projection, itself.

11 Q Now, with respect to the allocation of⁴
12 prospective need, in your opinion, is the approach
13 recommended by Miss Lerman's April 2d report a
14 reasonable approach?

15 A Yes.

16 Q Now, that approach includes an employment
17 growth factor, is that correct?

18 A That's correct.

19 Q And in -- in determining employment
20 growth, Ms. Lerman in most instances uses a linear
21 regression?

22 A That's correct.

23 Q Is that correct?

24 Could you please explain what a linear
25 regression is?

1 THE COURT: Slowly.

2 A I am referring to Social Statistics by Blalock.
3 This is a standard text in the field. And, in fact,
4 it's the text with which I studied statistics nearly 20
5 years ago, but I don't think this has changed.

6 Okay. I'd like to just read the definition, and
7 I would like to expand, if you want me to expand on it.
8 It it may be appropriate. It's not very time consuming
9 to actually do a linear regression analysis on the
10 easel.

11 Q By all means.

12 A But the definition is to find the unique
13 straight line which has the property that the sum of
14 the squares of the deviations of the actual Y values
15 from this line is a minimum.

16 THE COURT: You don't have to go any
17 further. I've got it.

18 Q Now that you've clarified that, could you
19 explain, in layman's terms, what the purpose of using
20 the linear regression is?

21 A Okay. And I'd like to do this on the easel,
22 because -- so I -- okay.

23 The --

24 Q If you wish, you can use the chart already
25 up there.

1 A I'd like to make a new chart, because I believe
2 it will -- I can . . .

3 What -- what this chart is --

4 Q Why don't you make the dots a little bit
5 darker so we can all see them?

6 A (Indicating.)

7 The technical term for this chart is a
8 scattergram. And it shows the scatter, or
9 distribution, of a series of discreet points between
10 two variables.

11 In the case of the variables that we are looking
12 at today, the two variables are years, which is the X
13 axis, from 1972, which represents one, for analytical
14 purposes; to 1982, which represents 11. Years from one
15 to 11, and the Y axis represents jobs, in theory at
16 least, from zero to infinity; though, in practice, the
17 actual values would fall somewhere in between.

18 The purpose of -- of doing the linear
19 regression -- and this is basically somewhat different
20 language. What the definition that I just read is to
21 find a line. In fact, the purpose of regression
22 analysis is to make it possible to extend a line into
23 the future from a series of discreet variables, is to
24 find a line, that when you plug that line into your
25 scattergram, the sum of these vertical deviations

1 squared is the smallest possible value. And that is
2 what it is.

3 And by finding the line where some of the
4 deviations is the smallest possible value, you have
5 found the line that most precisely reflects the actual
6 trend that is hidden in the scatter of the different
7 individual variables.

8 Now, the line, itself, from a mathematical
9 standpoint, is a property of two variables which are
10 known as A and B.

11 A -- A is the point -- is the distance from zero
12 to the point at which the line intersects with the X
13 axis. B, which is what we're concerned with year.

14 MR. PALEY: Y. Y.

15 A Y axis, sorry.

16 B is -- let's say if this is zero, one, two,
17 three, and so forth, if you take the axis of the line
18 and you make that the hypotenuse of a triangle, and you
19 extend a hypothetical line parallel to the Y axis from
20 point number one, B is the measure that is the distance
21 between A and the point which the line has reached,
22 going one unit along the X axis.

23 The reason this is significant is that what the
24 annual -- that is what goes into the fair share
25 formula, B. Because this represents, in this case, the

1 increase in jobs in one year in the average is B.

2 Okay.

3 Q Okay. Now, could you please describe what
4 the results would be if you were to use arithmetic
5 average, or what's been referred to as the straight
6 line approach?

7 A Okay. Here -- now, here -- here is your last
8 point, here is your first point. Now, let's say,
9 hypothetically, that this is the line that is created
10 through the linear regression analysis.

11 If you did an arithmetical average analysis,⁺
12 your line would be basically just a -- it would take
13 the first point and the last point, and connect them.
14 Now, you could then go down to hear. Okay.

15 So, this is the linear regression line, this is
16 the arithmetical.

17 Now, from a mathematical standpoint, the
18 significance to the arithmetical line creates a B
19 value, as well. That B value is here.

20 -- If we call this the B -- B sub L for the linear
21 progression B value, and this B sub A for the
22 arithmetical regression B value, the difference between
23 the annual increase in employment, using the linear
24 regression, versus the linear increase in employment,
25 using the arithmetical regression, will be the

1 difference between B sub L and B sub A.

2 There will be a test on this in the morning.

3 Q To try to clarify the practical result of
4 using one approach as opposed to the other, what would
5 the difference be if you had a hypothetical
6 municipality that had enormous employment growth in one
7 year, because a new plant were located there, but in
8 the remaining ten years of the period you're looking
9 at, the growth was at a substantially reduced level --

10 A The --

11 Q -- what would the result be if you used^{ed}
12 the arithmetic versus the linear regression --

13 A The linear regression method tends to compress
14 wide swings either up or down in job growth.

15 Now -- so -- for example, if you look at this
16 one, and this corresponds to a fair -- fairly closely
17 to an actual analysis that I did, and I have the
18 numbers for, is -- you can see in this case where there
19 were wide swings. The linear regression annual average
20 is a substantially smaller number than the arithmetical
21 annual average.

22 In fact, let me -- perhaps I could turn to a
23 turn to an actual.

24 Q Before you do, why don't we have that page
25 marked for identification as PUL-3.

1 THE COURT: We'll mark it in evidence if
2 there would be no objection. PUL-3 in evidence.

3 (PUL-3 marked in evidence.)

4 A Okay.

5 MR. GELBER: What -- your Honor, if I may,
6 why don't we mark this into evidence, as well,
7 or at least mark it for identification?

8 THE COURT: Well, let him go ahead, and
9 then when he finishes, we'll see what it's going
10 to show.

11 A (Indicating.)

12 Q Mr. Mallach, could you please explain what
13 you've just put up on the easel?

14 A Yes. And unfortunately, I'm not a good enough
15 mathematician to explain precisely why a particular
16 complex mathematical formula actually does what I
17 described it as having done in the previous example.
18 But essentially, this is the linear regression formula.

19 What I have done is, I've taken a hypothetical
20 municipality. Unfortunately, I don't have at hand the
21 actual data for the municipalities here, because I
22 didn't do the linear regression runs that were done in
23 the model; but this is a hypothetical community.

24 What I did is, I came up with a community that
25 grew a substantial amount in employment, but did so

1 with very wild fluctuations up and down during the
2 period.

3 Now, the arithmetical average, which is $B \text{ sub } A$,
4 if you recall, is simply 2,500 minus 500 over 11 equals
5 2,000 over 11 equals 182. And that's fairly
6 straightforward.

7 The -- for the linear regression equation,
8 basically, what you're doing is you're combining
9 various sums of these values. This sign, which is
10 known as sigma, represents the sum of all of the values
11 of X .

12 So 66 represents one plus two plus three plus
13 four, to 11. This represents the sum of those same
14 values squared (Indicating). This represents the sum
15 of the employment values, and this represents the sum
16 of the employment values multiplied by the year values
17 (Indicating).

18 In other words, each employment value is given
19 progressively more weight, the further along it goes on
20 the chart. So it's 500 times one, plus 1,000 times
21 two, plus 1,900 times three, and so forth. The
22 summation of $X Y$. So, when you solve this value to get
23 $B \text{ sub } L$, you get in the first round (Indicating.)

24 So that solving for this sequence of numbers,
25 the average for the linear regression is 132, while the

1 average for the arithmetical process is 182.

2 And this -- okay. Going back to this chart,
3 which roughly shows the values that were on the table,
4 you can see how it is a substantially smaller number in
5 here. What the linear regression is showing in this
6 particular case is that the curve that's reflected by
7 these particular groups of values -- and the word curve
8 is a technical term here, even though this curve
9 happens to be a straight line.

10 The curve is not the same as the curve you would
11 achieve if you just simply take the first and the last
12 values and run it on through, because the trend
13 reflected by this particular group of values is
14 following a different curve than the first and last
15 values among them.

16 Q Now, having explained this --

17 THE COURT: Just a second, Mr. Paley?

18 MR. PALEY: Your Honor, may I ask one or
19 two question for clarification of this
20 analysis at this point?

21 THE COURT: Go ahead.

22

23 CROSS-EXAMINATION ON VOIR DIRE BY MR. PALEY:

24 Q Mr. Mallach, the numbers in the Y column
25 on the chart that is right in front of you, do they

1 represent the annual increases in employment, or the
2 absolute numbers of jobs in a community in each of the
3 11 years?

4 A Absolute numbers, not annual increases.

5 Q So that in that -- in that community, you
6 start out with 500 jobs, and you end up with 2,000 --

7 A 500.

8 Q 500?

9 A 2,500. Yes.

10 Q And in order to develop the average of
11 that, you subtracted your one from your 11 and divided
12 by the number of years. Right?

13 A To get -- right.

14 Q To get the arithmetical average?

15 A Right.

16 Q Okay. Do I understand, from your use of
17 the linear regression analysis, that you are saying
18 that in every instance where the linear regression
19 analysis is used, there would be a more conservative
20 number than where an arithmetical average is used?

21 A Absolutely not. There -- some cases it will be
22 lower, some cases it will be higher. And quite often,
23 where the trend has been a relatively straightforward
24 one, it will be virtually identical.

25 Q Are you saying that in terms of employment

1 data in the municipalities here, that the use of the
2 linear regression model or technique, if you will, will
3 produce more conservative numbers?

4 A No. It varies. It would produce numbers that
5 are more accurately reflective of the employment trends
6 taking place in that community. They may be lower, or
7 higher, or the same. They will be more accurate.

8 MR. GELBER: Just one or two other
9 questions, your Honor.

10 Q Have you performed comparative analyses of
11 each of the municipalities in this case to determine⁺
12 what numbers are produced through linear regression and
13 what numbers are produced through arithmetical
14 averages?

15 A No, sir.

16 Q Do you know whether Miss Lerman has, in
17 speaking with her?

18 A I don't know.

19 MR. PALEY: Thank you.

20 THE COURT: But what it does was
21 graphically depicted in the Warren case, because
22 while we did not have the 1983 data in Warren,
23 we had 1982, and they had a dramatic job loss in
24 1982. A plant closed for that town, and
25 they lost six hundred and some employees.

1 In the following year apparently had a
2 very dramatic job gain, because of the opening
3 of the Chubb Insurance facility there. So one
4 year they lost close to 700 employees, the
5 next year they picked up 1,500. And depending
6 on the end year of the straight line average, it
7 dramatically affected the percentage.

8
9 CONTINUED DIRECT EXAMINATION BY MR. GELBER:

10 Q Mr. Mallach, between the arithmetic
11 approach and the linear regression in your approach,⁴
12 which, in your opinion, is the preferable approach?

13 A I believe the linear regression is preferable.

14 Q On what basis?

15 A Because I think the -- the annual average figure
16 that it yields, again, the B value, is a more accurate
17 reflection of what is truly taking place over time in
18 the municipality with regard to employment growth than
19 is the value derived from an annual straight line
20 average.

21 Q So, it addresses the type of situation
22 that the Judge just described?

23 A Precisely.

24 MR. GELBER: Your Honor, I'd like to offer
25 the second sheet into evidence, as well.

1 THE COURT: All right. If there's no
2 objection, we'll mark that in evidence. PUL-4.

3 (PUL-4 marked in evidence.)

4 THE COURT: Are you going to go on to a
5 new subject?

6 MR. GELBER: Yes.

7 THE COURT: There was -- during the last
8 litigation these kinds of charts were useful for
9 lighting my fireplace, but with the heat now I
10 don't know what I'm going to do with them.

11 THE WITNESS: Paper airplanes.

12 MR. GELBER: I only have one more
13 question.

14 THE COURT: On this -- oh, one more
15 question.

16 MR. GELBER: On direct examination.

17 THE COURT: Try to finish it up.

18 Q Going back to the expected to reside
19 households, do those expected to reside households
20 include Mount Laurel households?

21 A Definitely. If we define a Mount Laurel
22 household as initially any household falling within the
23 low and moderate income population, includes a
24 substantial number.

25 Q Do you know if the HUD formula for

1 determining the number of expected to reside households
2 is limited to low and moderate income households?

3 A I believe it is. Yes.

4 Q Okay.

5 MR. GELBER: Now, your Honor, I have no
6 further questions.

7 THE COURT: Did the group, the consensus
8 group, consider this expected to reside?

9 THE WITNESS: I don't recall specifically
10 that it came up. No. I don't believe I raised
11 it.

12 THE COURT: All right.

13 MR. GELBER: Your Honor, one additional
14 question.

15 THE COURT: Go ahead.

16 Q Mr. Mallach, do you know if there was some
17 discussion of this type of need in the original
18 litigation in this matter?

19 A I believe so. I believe at least part of the
20 initial litigation focused very much on this whole
21 issue and the relationship between Middlesex County as
22 a job growth center and the core cities and the whole
23 idea of creating job opportunities for people who lived
24 in the core cities. This is the initial Urban League
25 litigation.

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MR. GELBER: Yes.

THE COURT: All right. Let's take a 20
minute recess.

(Recess at 10:55 A.M.)

(End of requested excerpt.)

* * *

C E R T I F I C A T E

I certify the foregoing to be a true and
accurate transcript of the proceedings in the above
entitled cause.

Date: 6-22-84


DAYETTE J. ZAMROLIN, C.S.R.

