

~~A~~ ML2 - Round Valley, Inc.

7/14/77

v.
Twp of Clinton

Stenographic record - volume III

witness

- Alan Mallach

P 142

ML 000436 S

1 9 4 SEP 1979

SEP 1980 OPINION FILED
MAR 5 1980

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION- HUNTERDON COUNTY
DOCKET NO. L 29710-74 P.W.
APPELLATE DOCKET NO. A-2963-77

A 37

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4 ROUND VALLEY INC.,
a corporation of the State
of New Jersey,

5
6 Plaintiff,

7 v.

8 TOWNSHIP OF CLINTON, a
municipal corporation of the
State of New Jersey, TOWNSHIP
9 COUNCIL OF CLINTON, and PLANNING
BOARD OF CLINTON,

10 Defendants.

STENOGRAPHIC
RECORD

F I L I VOLUME III

SUPREME COURT

APR 2 1980

Stephen W. Townsend

VI Clerk

Thursday, July 14, 1977
Courthouse
Flemington, New Jersey

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14 TRANSCRIPT ORDERED BY:

15 ROGER M. CAIN, ESQ.

16 B E F O R E :

17 HON. THOMAS J. BEETEL

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

19 STERNS, HERBERT & WEINROTH, ESQS.,
20 By: JOEL H. STERNS, ESQ. and
MICHAEL J. HERBERT, ESQ.,
21 Attorneys for Plaintiff.

22 FRANCIS P. SUTTON, ESQ.,
Attorney for Defendant Planning Board.

23 FELTER & CAIN, ESQS.,
24 By: ROGER M. CAIN, ESQ.,
Attorneys for Defendants Township and Council.

25 MELVIN WEINER, C.S.R.
Official Court Reporter.

FIRST COPY OF

JUL 19 1978

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I N D E X

WITNESS

DIRECT

CROSS

REDIRECT

RECROSS

For the Plaintiff:

ALAN MALLACH

By Mr. Sterns 3,20

(V.D.-Sutton- 10)

(V.D.-Cain - 14)

By Mr. Sutton 49

EXHIBIT

DESCRIPTION

IDENT.

EVIDENCE

P-116" Document 7 --

P-117 N.J.S. Development Guide
Plan 31 --

P-118 An amendment 37 --

P-119 Letter - March 16, 1977 48 --

DPB-1 Letter - 5/26/77 120 --

1 THE COURT: Let*s see if we can dispose of
2 the witness in the time that we have today.

3 MR. STERNS: Mr. Pearson will return on Tues-
4 day morning₅ so we will proceed with Mr. Mallach at
5 this point.

6 SHE COURT: Bring Mr. Mallach up and we will
7 swear him in.

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1 A·L·A·N M H L A C H , having been first duly sworn,
2 testified as follows:

3

4 DIRECT EXAMINATION BY MR. STERNS:

5 Q Mr. Mallach, what is your present position
6 and occupation?

7 A I am president of the firm of Alan Mallach Asso-
8 ciates, a housing and research consulting firm in Trenton,
9 New Jersey.

10 And, generally speaking, what type of work
11 does this firm undertake?

12 A We do a wide variety of work. Most of our work is
13 in the area of housing which includes development of low
14 and moderate-income housing, market analysis, research,
15 zoning, feasibility studies, economic and social impact
16 analysis, and the like.

17 In addition, the firm does social research projects,
18 including survey research, economic studies and general
19 urban problem studies, if you will.

20 Q Now, would you briefly outline for us your
21 academic background.

22 A Yes, sir. I am a graduate of Yale College with a
23 Bachelor's degree in sociology. I have taken some graduate
24 courses at Yale and Princeton.

25 Q Would you outline briefly your occupational

1 experience, highlighting, if you will, that which is par-
2 ticularly relevant to the work that you have been asked to
3 do in this trial..

4 A Yes, sir. After graduation from college, from 1966
5 to 1967, I was director of evaluation for the City Man-
6 power Job Training and Placement Program in New Haven,
7 Connecticut.

8 In the fall of 1967 to the winter of 1971 I was
9 employed by the New Jersey Department of Community Affairs,
10 initially as special assistant to the executive director
11 of the New Jersey Housing Finance Agency, and assisted in
12 setting up that agency, and subsequently as chief of the
13 Community Development Planning Program in the Division of
14 State and Regional Planning, in which capacity I was in
15 charge of statewide planning for the areas of housing,
16 economic development, urban development, and related areas.

17 TSis including writing and publishing the report
18 entitled "The Housing Crisis in New Jersey," which was pub-
19 lished by the State in 1970. Subsequently, also in the de-
20 partment, I became director of the Office of Program De-
21 velopment.

22 Between 1971 and 1973 I was assistant dean of aca-
23 demic affairs at Livingston College, a division of Rutgers
24 University.

25 In 1973 to mid-1975, I worked for the County Municipal

1 Government Study Commission, a legislative agency in Trenton,
2 as director of research.

3 In that capacity I wrote the book entitled "Housing
4 in Suburbs - Fiscal and Social Impact of Multi-Family
5 Housing,* which was published by the Commission and by the
6 United States Department of Housing and Urban Development.

7 I conducted studies of land use planning, county
8 planning, of neighborhood preservation, and other areas.

9 In 1975 I formed the firm of Alan Mallach Associates
10 and have been working there until the present day.

11 In addition, during 1974 and 1975* I was also on
12 the faculty of Stockton State College as assistant professor
13 of administrative studies.

14 Q Mr. Mallach, the County Municipal Government
15 Study Commission, that is a state legislative agency; is
16 that correct?

17 A That's correct.

18 Q And the study that you referred to, then,
19 would you repeat the name of it?

20 A Housing and suburbs, fiscal and social impact of
21 multi-family development.

22 Q, Now, is that the article or publication that
23 was cited by the Courts in the Madison case and in the
24 Mount Laurel case?

25 A It was cited at some length, I believe, in the Mount

1 Laurel decision, and cited as well in the Madison decision.

2 Q Turning to the Madison decision, let me just
3 ask you, and I note that at seven different places in the
4 Madison decision the name Alan Mallach associated with
5 articles appears, and I just want to establish that you
6 are the Alan Mallach in each case, first Madison, 472, 496,
7 at 72 N.J. 496; Mallach, "Do lawsuits build housing?, the
8 implications of exclusionary zoning litigation." Is that
9 an article written by you? Are you the Alan Mallach re-
10 ferred "to?

11 A ttia^s correct.

12 Q Additionally, at Page 519, in Footnote 29
13 of the same case, "Exclusionary zoning and managed growth,
14 some unresolved issues," 6 Camden Law Review, is that
15 article by you?

16 A Well, the article, the title is not correct because
17 the substance indicates there^fs a reference to the same
18 article as the previous one, but I think they got the
19 title transposed. This was another article that appeared
20 in the same issue of the Law Journal.

21 Q Going on to Page 535 of that decision, Foot-
22 note 42, I assume that*s the same thing that you just tes-
23 tified to, 6 Rutgers Camden, at 677?

24 A That's correct.

25 Q And I also note, without going into further

1 detail, but it is you, that there is a Mallach mentioned
2 at Page 550 in the text of the decision, at the end of the
3 first paragraph, "Hie implications of exclusionary zoning
4 litigation,¹¹ and that would again____

5 A Yes.

6 Q, And in the concurring opinion at Page 557*
7 and at Pages 560 and 61, that's Footnote 3 of that case,
8 and then 571, Footnote 10.

9 In each of those cases are you the Mallach
10 or is that your publication that is referred to?

11 A That's correct.

12 Q Now, let me ask you if you can identify the
13 item I hand you headed "Alan Mallach Associates resume -"

14 A This is my resume.

15 MR. STERNS: Shank you. May we have this
16 marked.

17 OHE COURT: P-116.

18 (P-116, the document referred to, is marked
19 for Identification.)

20 Q Have you testified as an expert witness in
21 New Jersey cases involving exclusionary zoning?

22 A Yes, sir.

23 Q Please indicate what cases or what your ex-
24 perience has been in that regard.

25 A Yes. I have testified in a number of cases, including

1 the original Mount Laurel case, as well as the re-hearing
2 of the Mount Laurel case which Just ended two weeks ago.

3 I testified in the case of Allen Deane, D-e-a-n-e,
4 versus Bedminster, in the case of Urban League vs. The
5 Borough of Carteret, which involved all of the municipali-
6 ties in Middlesex County except New Brunswick and Perth
7 Amboy.

8 I also testified in a case involving the Township
9 of Cinmaminson, Camden National Realty vs. The Township of
10 Cinmaminson.

11 Q Now, additionally, is that completed - have
12 I cut you off?

13 A Actually, there are a couple of more, There is
14 Lorenc_a et al. vs. Pie Township of Bernards, which was a
15 case which was heard last fall, and a decision hasn't come
16 down yet. Biat^fs it.

17 Q Additionally, have you undertaken any fair
18 share studies or analysis in addition to those that we
19 have talked about in the State government, or that may be
20 recorded in your resume? Is there anything that you would
21 add to update your resume in that regard?

22 A Yes. I^fve done a great deal of work in the last
23 couple of years on the fair share issue.

24 I am at present working for the Township of Medford,
25 in Burlington County, to compile a fair share study for

1 that Township in support of their land use planning.

2 In addition, I prepared fair share plans as part of
3 plaintiff's submissions to the Court in the Mount Laurel
4 case and in the Middlesex County case.

5 I prepared a fair share study of Mercer County as
6 part of a project that I'm working on on behalf of a de-
7 velopment in that county, and I've just completed preparing
8 fair share studies for the municipalities in Camden County
9 for forthcoming litigation in that area.

10 I am in the midst of doing a fair share analysis
11 for Bernards Township and Bedminster Township in response
12 to the post-trial activity, rather, the implementing of
13 the order in the Bedminster case which was recently de-
14 cided.

15 Q Now, with regard to these, can you tell us
16 very briefly in your opinion what you mean by fair share
17 study, what factors you look into.

18 A A fair share study is a kind of regional study.
19 The idea is to arrive at a fair and reasonable goal of
20 either low and moderate income, or at least low-cost hous-
21 ing units for a municipality or for the municipalities
22 within a region based on the factors which take into ac-
23 count principally the suitability and appropriateness of
24 each municipality for development of this kind of housing.

25 MR. STERNS: At this point, your Honor, I

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1. would offer Mr. Mallach as a housing expert with
2. particular emphasis in his expertise on fair share
3. housing allocation pursuant to Rule 8.

4. MR, SUTTON: I would like to ask Mr. Sterns
5. whether Mr, Mallach is going to attempt to fix a
6. region for Clinton Township, to set fair share housing,

7. MR. STERNS: I would say he would certainly
8. be addressing himself to that in the same context
9. he did at depositions.

10. I don't think he will go much beyond what
11. was covered in depositions.

12. MR. SUTTON: I would like to question Mr.
13. Mallach.

14. THE COURT: All right.

15.
16. VOIR DIRE CROSS-EXAMINATION BY MR. SUTTON:

17. Q Mr. Mallach, you have a degree in sociology;
18. is that correct?

19. A That's correct.

20. Q And what year did you obtain the degree?

21. A 1966.

22. Q What courses relevant to your testimony did
23. you take at Yale?

24. A I would say the courses that I took relevant to
25. this testimony would include a course in city planning

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1 • that I took, a course in statistics that I took, a course
2 in social research methods that I took at that time.

3 There were no courses specifically in the housing
4 area or in fair share allocation offered.

5 Q The course that you took in city planning,
6 will you tell me how many credit hours you obtained for
7 that?

8 A I three.

9 Q That was supposed to be a one-semester course,
10 three hours a week; would that be about correct?

11 A That's correct.

12 Q Now, most of the work that you have done has
13 been administrative work, is that not correct, until the
14 time you formed your own firm?

15 A I would not characterize it as such, no, sir.

16 THE COURT: How would you characterize it?

17 THE WITNESS: I would say more actual re-
18 search and analysis.

19 Q Are you a licensed New Jersey planner?

20 A No.

21 Q You are not a planner?

22 A I am not a licensed professional planner under the
23 State of New Jersey, no, sir.

24 Q Have you ever prepared a master plan or a
25 complete zoning ordinance for any municipality?

1 A Certainly not.

2 Q Are you familiar with a study entitled "A
3 Statewide Housing Allocation Plan for the State of New
4 Jersey"?

5 A Yes, sir.

6 Q And are you familiar with the participating
7 staff on that study?

8 A I am personally acquainted with some of them, not
9 with all of them.

10 Q Do you have the study?

11 A I have a copy, yes.

12 Q Would you look at the names of the partici-
13 pants?

14 MR. STERNS: I would like to ask where this
15 is going. Obviously this study will play a role in
16 Mr. Mallach's testimony substantively and obviously
17 I would expect him to cross-examine on it, but I
18 don't know where he is going, and certainly if he
19 is into substantive —

20 MR. SUTTON: I would be glad to state that.
21 My contention is that in order to testify and set
22 a region you have, to have the experience of a full
23 planner.

24 Mr. Mallach has, I believe, knowledge so far
25 as housing needs; he has made studies; he has done

1 • probably some fine research papers; but he does not
2 have sufficiently broad experience to set a region
3 and to fix fair share.

4 MR. STERNS: Your Honor, I certainly —

5 THE COURT: The question was, do you know
6 the names of these people.

7 MR. SUTTGN: I wanted to point out how many
8 participated in that they were each designated as
9 senior planners, every one of the planners.

10 " THE COURT: This man seems to have done,
11 since 1966, most of his work and time was spent on
12 problems that are addressed by the Supreme Court.

13 Now, if the Supreme Court is willing to cite
14 him, I should be willing to hear it.

15 MR. STERNS: I would not object to Mr. Sutton
16 asking him who prepared the report on qualifications,
17 but I don't know in the context of his qualifica-
18 tions that that is the question I was asking.

19 THE COURT: That^fs the statewide housing
20 study in New Jersey, which was written by other
21 people who are well qualified, and they were senior
22 planners; but what you are talking about, Mr. Sutton,
23 is not so much his testimony being admissible, you
24 are talking about the weight of it.

25 I grant you, it has given you a lot of mileage,

1 the sociology degree, but he seems to be able to
2 do it.

3 MR. SUTTON: My contention is that there are
4 some aspects of that Mr. Mallach is qualified to
5 testify on, but I do not believe he has the back-
6 ground to fix a region. I think you have to have a
7 planner or to be a planner to do that, and that is
8 my contention.

9 THE COURT: Well, I suppose on cross-examina-
10 " tion you can bring that out somewhere along the line.
11 I am willing to listen to it.

12 MR. SUTTON: I would be glad to withhold if
13 I would be given the opportunity during my cross-
14 examination to go into these articles and what these
15 articles that were quoted by the Supreme Court per-
16 tain to. I would be willing to withhold that until
17 my cross-examination.

18 THE COURT: Mr. Cain.

19 MR. CAIN: All right.

20

21 VOIR DIRE CROSS-EXAMINATION BY MR. CAIN:

22 Q You indicated, Mr. Mallach, that you had
23 been at Livingston College.

24 A That's correct.

25 Q Then you probably know Professor Jerome Rose?

1 A Yes.

2 Q Are you familiar with the article that he
3 wrote in the New Jersey Municipalities Magazine, May 19,
4 1977?

5 A I think it would take a full-time librarian to keep
6 track of all of Jerry Rose's articles, so I don't know a
7 specific one -

8 Q It is on Page 16, May, 1977.

9 MR. STERNS: Read the title.

10 Q Professor Rose wrote an article entitled,
11 after the recent New Jersey Supreme Court cases, "What is
12 the status of suburban zoning?" Have you read the article?

13 A I am not sure I read that specific article,

14 Q I was going to ask you if you tend to agree
15 or disagree with Professor Rose.

16 A In general?

17 Q With respect to suburban zoning.

18 MR. STERNS: I am trying to clarify this.
19 Are you asking him if he agrees with him on that
20 article?

21 MR. CAIN: Suppose I read a portion.

22 THE COURT: Would you?

23 MR. CAIN: Then we can be very specific.

24 THE COURT: Does he have an answer?

25 MR. CAIN: Yes, he has an answer. Maybe we

1 • would all like to hear it.

2 MR. SEERNS: I was just wondering, I don't
3 doubt the relevance of this testimony at some point,
4 but on qualifications, to ask him if he agrees or
5 disagrees with a man who is not here and whose
6 credentials are not here, do not seem to me to be
7 relevant to his qualifications. At some point in
8 the examination it certainly may be relevant to
9 his opinions.

10 THE COURT: We are talking about qualifica-
11 tions.

12 MR. CAIN: Let me direct the question to
13 Mr. Mallach, since we are discussing one's qualifi-
14 cations.

15 BY MR. CAIN:

16 Q What position does Professor Rose hold at
17 Livingston College? Is it assistant dean?

18 A Professor Rose was and is, to the best of my know-
19 ledge, a member of the faculty of the Urban Planning and
20 Policy Department.

21 Q He teaches urban planning?

22 A He teaches, I believe, land use law and environ-
23 mental law in that department.

24 Q And many courses in zoning and planning?

25 A He teaches courses in law relevant to planning

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1 rather than a course in planning. It's a distinction.

2 Q You know hi» to be an authority in the field?

3 A In the field of planning law?

4 Q Yes, sir.

5 A Within reason, yes.

6 Q On Page 34, under the portion marked "Con-
7 clusion," Professor Rose states, and I quote —

8 THE COURT: What does this have to do with
9 his qualifications? He knows Professor Rose, that
10 he was a professor there. How does his qualifica-
11 tions have to do with his conclusion?

12 I don't get the nexis. I think it is a
13 perfectly proper question on cross-examination as
14 to the substance of his testimony, but now we are
15 trying to decide whether or not there is any reason
16 he should not be accepted by the Court as an expert
17 on qualifications in his resume.

18 MR. CAIN: I will lay some groundwork.

19 Q Mr. Mallach, do you believe that the Court
20 should demarcate a region?

21 A I believe that the Court has to respond to the sub-
22 stance of the cases that come before it. There are no
23 hard and fast rules in this area, Counselor.

24 Q Do you believe that the Court should calcu-
25 late fair share of housing?

1 . MR. STERNS: Your Honor, I have to object,
2 not because the question would not be relevant at
3 another time, but I think we are trying to determine,
4 I believe, whether he has a valid opinion on the
5 issues, and by asking him his opinion you are only
6 deciding whether or not you agree with it, or I dis-
7 agree, and vice versa, and in the circumstances of
8 his being my witness, I will agree and you will
9 disagree. That is not relevant.

10 "" The question is whether he can state an
11 opinion. At that point I think the question would
12 be perfectly proper.

13 THE COURT: Does he have the background, the
14 academic training; does he have the work experience
15 to qualify to give an opinion, like a geologist.
16 He taps a rock and this may have oil, and then once
17 you get the oil, then you decide the quality of it.
18 You tap the rock to see if it is the kind of rock
19 that can give oil.

20 I MR. CAIN: I am attempting to tap the rock.

21 THE COURT: I have had that experience right
22 all through the case.

23 MR. CAIN: If you believe that that question
24 goes to cross-examination, I can defer it. I thought
25 we were discussing qualifications, and I believe

1 Counsel had pointed this witness out to be one who
2 was quoted in the Mount Laurel decision.

3 | Apparently he has prepared papers relevant
4 to various court decisions and I was getting to his
5 interpretation of his role in the light of Mount
6 Laurel and Madison, If you do not believe that that
7 has to do with qualifications, I will defer cross-
8 examination.

9 THE COURT: I think any agreement or dis-
10 agreement as to his ultimate theory can be cross-
11 examined on ad nauseum.

12 MR. CAIN: I do not intend to go that far.

13 THE COURT: Well, it would appear that he
14 is being offered as an housing expert based on
15 his academic training, post-graduate training,
16 experience, the positions that he has held. I
17 have no difficulty in this respect.

18 MR. SUTTON: The only thing I want the re-
19 cord to show is that I have indicated that I ob-
20 jected to Mr. Mallach attempting to set a region.

21 It is my opinion that he is not a planner,
22 he has not prepared a master plan, that his train-
23 ing is not broad enough to give him experience to
24 fix a region, and so to set fair share.

25 MR. CAIN: I will join in that objection.

1 THE COURT: Subject to all of that, let us
2 start with the substance.

3
4 DIRECT EXAMINATION BY MR. STERNS (CONTINUED):

5 Q Mr. Mallach, will you tell us in some detail
6 what, if anything, you did during your public employment
7 with regard to the setting of regions for housing allo-
8 cation.

9 I am talking now of both your employment
10 with the State Housing Finance Agency, the Division of
11 State Planning, the County Municipal Government Study Com-
12 mission, if you would tell us.

13 Did you do any work in setting regions in
14 housing allocation?

15 A A limited amount. I might point out, by the way,
16 in that context, when I worked for the Division of State
17 and Regional Planning, my title was that of a supervising
18 planner, and subsequent that of a chief program head or
19 supervisor.

20 Q In that regard, do you know and did you work
21 with and what was your relationship with the people who
22 wrote that report, those that you know?

23 A The individuals who I knew at that time and who
24 worked on this report were all at that time junior to me,
25 they were either under my supervision directly in the

1 practice of planning on behalf of the State of New Jersey,
2 or under the supervision of other people at my bureaucratic
3 level.

4 Q Now, getting back, at our request did you
5 undertake a study of fair share in regional and housing
6 issues as they relate to Clinton Township?

7 A Yes, sir.

8 Q Well, as part of that study what did you re-
9 view? What did you look at?

10 A As part of the study I reviewed a number of reports
11 that were provided to me or otherwise available. These
12 included the report prepared by Mr. Akahoshi on behalf of
13 the plaintiffs, the census data, the State of New Jersey
14 Housing Allocation Plan for New Jersey, a report prepared
15 by the Hunterdon County Planning Board entitled "Economic
16 base study," and probably other material, but these are
17 the ones that I remember.

18 Q Now, Akahoshi*s report is P-9^» I assume
19 that^fs what you are referring to.

20 Do you have a copy? Yes, you are referring ----

21 A It's entitled "Study of Housing Needs in the Beaver
22 Brook PUD, March 10, 1977."

23 Q You are referring to what has been marked
24 P-9⁴ in this case.

25 Turning then directly to the housing market

1 region, is there an authoritative region?

2 A There's no authoritative region, per se, in any
3 situation: in terms of precise boundaries.

4 However, in any situation there are a set of reason-
5 able standards or criteria which define what one might
6 consider a reasonable region. In other words, there are
7 reasonable regions and there are unreasonable ones.

8 Q What would be some of the criteria of a
9 reasonable region?

10 A ~ The principal criteria for a reasonable region, and
11 if I could refer to some of the language in the Madison
12 decision --

13 THE COURT: Give us the page.

14 THE WITNESS: This is on Page 540, your
15 Honor, in the Footnote 44.

16 THE COURT: Give me the citation.

17 THE WITNESS: 72 N.J. 540.

18 THE COURT: Do you have it, Mr. Cain? Just
19 wait a minute.

20 MR. CAIN: Yes, we have it.

21 THE COURT: Okay.

22 A (Continuing.) There are a number of references
23 here. First I quote the following: "However, suggestions
24 do emerge from fair share discussions as to the criteria
25 for determining the appropriate region. The most mentioned

Mallach-pl-direct

1 is that of journey to work,"

2 Then there is a series of citations and then
3 that: "The Federal Housing Authority has defined a hi
4 market region as the geographic entity within which nt
5 farm dwelling units are in mutual competition."

6 Then skip the direct citation and continue, "And
7 hence the location of actual and prospective business
8 centers and the availability of transportation facilities
9 are important.

10 "Rabinowitz has suggested that the relevant region
11 should be the area in which development and movement are
12 or will be taking place* places where middle-income families
13 have already exercised the option to move and which would
14 be desirable to low and moderate income groups if housing
15 were available."

16 These give some of the indications as to what
17 reasonable criteria for defining a housing region would
18 be,

19 Q Is that a general list or is that substan-
20 tively —

21 A I think that substantively covers it. We are talk-
22 ing about the relationship of employment and housing and
23 transportation that works.

24 Q Now, based on those criterias, can you de-
25 fine or suggest an appropriate region for Clinton Township?

1 A- Yes, sir. Again, I would qualify that by saying
2 that there's no perfect region.

3 The main considerations in looking at Clinton Town-
4 ship are that Clinton Township is clearly linked to the
5 northeastern New Jersey-metropolitan area in terms of trans-
6 portation and journey-to-work patterns.

7 Thus, the region that Clinton Township would be in
8 would have to encompass all or part of that northeastern
9 New Jersey-metropolitan area.

10 Now, I think there are a number of differences that
n are legitimate.

12 For example, authorities differ as to the exact
13 size of that northeastern region, and this would affect
14 Clinton Township's region, whether one would include
15 Clinton Township in a region that encompassed everything
16 from, say, Bergen to Ocean County, or within a sub-part
17 of this overall region, such as a five or six-county area.

18 A secondary where people might differ is whether
19 the entirety of Hunterdon County should be considered
20 part of that same northeastern New Jersey-metropolitan
21 region or only, say, the northeastern third or so of the
22 county.

23 I think you can make an argument that Hunterdon
24 County is in a kind of in between situation where the north-
25 eastern part of the county is clearly linked to the north-

1 east New Jersey area, but the southwestern part of Hunter-
2 don County is equally clearly linked to the Trenton area;
3 so that with these qualifications the fact remains that the
4 specific region that Clinton Township belongs in must en-
5 compass all or part of the northeastern New Jersey-metro-
6 politan area.

7 Q Now, you have stated that you reviewed the
8 Akahoshi report which I think we identified as P-94.

9 How does what you have just stated relate to
10 that report?

11 A Mr. Akahoshi in his report indicates that Clinton
12 Township is part of a five-county region which includes
13 the counties of Hunterdon, Somerset, Mercer - I am sorry,
14 not Mercer - Morris, Essex and Union. I think this is a
15 reasonable region.

16 I think the only question comes up whether one
17 should consider this a region in the purest sense or,
18 rather, a sub-region of the larger New York-metropolitan
19 region which would include an additional, at least, half-
20 dozen more counties in New Jersey.

21 Q Mr. Mallach, you have indicated that you
22 were employed with or acquainted with the Department of
23 Community Affairs and Counsel has referred to a Department
24 of Community of Affairs report which has been marked as
25 Exhibit P-99* State-wide allocation plan for New Jersey.

1 You picked up a document before and is that
2 what you gave Mr. Sutton?

3 A I believe this is the same document. This is my
4 copy,

5 Q I think we can agree that this is the same
6 document that has already been marked. Have you read and
7 examined that document?

8 A Yes, sir.

9 Q What were its regions and what is your
10 opinion of its regions, that report, and its status?

11 A This report delineated regions for the State of
12 New Jersey as follows: they identified two multi-county
13 regions, one in the northeastern part of the state and one
14 in the southwestern part of the state around the City of
15 Camden, and I believe they included eight counties in the
16 northeastern region and three counties in the Camden region.,

17 The remaining ten counties in the state, the con-
18 sidered each one of them to be a self-contained housing
19 region,

20 Q And what is your opinion of that approach?

21 A I think it doesn't make sense.

22 Q Tell us why it doesn't make sense.

23 A Well, I think they've over-simplified regional con-
24 siderations to the point, where they no longer are logical;
25 specifically, the northeastern New Jersey region does not

1 conform to their description of it in terms of housing
2 market and journey-to-work considerations.

3 Hunterdon County is not the only county which is
4 misrepresented in this regard. Hunterdon County or part
5 of Hunterdon County should be considered part of the north-
6 eastern New Jersey-New York region.

7 Monmouth County is part of this region and is not
8 treated as such by the report. Indeed, most of central
9 Monmouth County is developed as a very strongly New York
10 and northeast, New York-New Jersey commuting region.

11 Finally, the northern half of Ocean County is
12 equally clearly linked to the New York-New Jersey metro-
13 politan area and is treated as a separate region by these
14 planners.

15 Q I am sorry.

16 A Well, there are other similar problems with their
17 regional delineation which affect, for example, Atlantic
18 and Cape May Counties which are probably legitimately a
19 single region.

20 The main problem, I believe, is, to begin with, they
21 felt locked into the requirement that they could not cut
22 across county boundaries in setting their regions. I think
23 this is an arbitrary requirement that they set for them-
24 selves.

25 Q Who is "they"? Is this an official publication

1* of the Department of Community Affairs? What is the status
2 of it?

3 A This is not an official publication. We are refer-
4 ring to a report prepared by a number of staff members.
5 It has not been accorded official status by any higher body.

6 Q Have public hearings been held on it, planned,
7 or is the report being developed, if you know? What is the
8 status in that regard?

9 A At the time the report was produced by the staff in
10 the Division of State and Regional Planning, they had ex-
11 pectations that it would be the subject of public hear-
12 ings and eventually adopted.

13 The Governors Office and the Office of the Com-
14 mission of Community Affairs rejected this, cancelled the
15 public hearings that had been tentatively scheduled and
16 ordered the report completely rewritten and re-analyzed.

17 Q Have you in the course of your work with
18 D.C.A. or your other functions that you have outlined for
19 us, have you examined any studies or charts or research
20 in the Department of Community Affairs, other than what
21 you just described, which would be relevant to the setting
22 of a region?

23 A There is a recent report by the Division of State
24 and Regional Planning which I believe is entitled "The de-
25,.: velopmentGuide Plan for New Jersey," which is an effort

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Mallach-pl-direct

1 by that Division on the basis of infrastructure
2 portation at works and the like to delineate wh.
3 refer to, as I believe growth regions or developm
4 regions.

5 THE COURT: What was the first term?

6 THE "WITNESS: Growth region around the
7 of New Jersey.

8 Q What does that guide indicate with partic
9 lar reference to Clinton Township and the subject of thi.
10 suit?

11 A The guide indicates what might broadly be called -

12 THE COURT: Mr, Cain, Mr. Sutton, do you
13 have access to these articles he is referring to?
14 Have you seen it? Have you heard of it?

15 MR. SUTTON: I have not seen it. This is the
16 first I have heard of it.

17 MR. STERNS: Mr. Rahenkamp testified to it.

18 THE COURT: Was it marked for identification?

19 MR. STERNS: I believe he indicated that he
20 relied on it in his preparation.

21 THE COURT: If it slipped by me once, I will
22 try not to let it slip by me twice.

23 MR. STERNS: I know he testified to it. Mr.
24 Dishner assures me that there is a copy.

25 THE COURT: I would like them to at least

1 " look at it. He may testify to something that th
2 disagree with and by that time the harm is already
3 done. If one of these articles are referred to,
4 bring it to my attention. Don't let me bring it
5 to yours. If he is referring to articles and you
6 . are not familiar with them, please speak up.

7 It is called the Development Guide Plan for
8 New Jersey; is that correct?

9 THE WITNESS: That's correct.

10 THE COURT: That's the latest publication
11 from the Department of Community Affairs?

12 THE WITNESS: Right.

13 MR. STERNS: Here is a copy of the guide,
14 your Honor,

15 THE COURT: Show it to him.

16
17 BY MR. STERNS:

18 Q Is that what you are talking about?

19 A That's correct. I should slightly correct my title.
20 It is the New Jersey State Development Guide Plan.

21 THE COURT: Take a few minutes and look at
22 it.

23 (Short recess.)

24

25

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1 ALAN MALLACH, resumes the stand.

2 BY MR. STERNS:

3 Q Mr. Mallach, we had been discussing the
4 Department of Community Affairs Housing Allocation Study,
5 and then I asked you if you knew of other studies, I be-
6 lieve, within the Department of Community Affairs, and you
7 had discussed the New Jersey State Development Guide Plan,
8 and the New Jersey Development Guide Plan we then got from
9 the files, and it has been distributed but has not been
10 marked.

11 MR. STERNS: I will ask that be marked for
12 identification.

13 THE COURT: P-117.

14 (P-117, the New Jersey State Development
15 Guide Plan, is marked for Identification.)

16 Q Mr. Mallach, if you can, please tell us what
17 the State Development Guide Plan is and what the status of
18 it is.

19 Let us start with what the status of it is,
20 if you know. You describe it.

21 A The State Development Guide Plan was prepared by
22 the staff of the Division of State and Regional Planning
23 under a mandate to prepare such a plan which exists generally
24 in state law and specifically in the regulations governing
25 the Federal 701 program from which the Division receives a

1 great deal of their financial support.

2 It is described to be a broad plan to guide develop-
3 ment, in New Jersey and, more specifically, to guide the
4 location of State investment and to concentrate development
5 in those areas that are considered most appropriate for
6 development in terms of existing infrastructure, proposed
7 infrastructure, particularly highways and sewer and water
8 systems, and a logical expansion of the growth from areas
9 already developed.

10 Q What is the status in terms of the weight of
11 this report?

12 A Well, it's a staff report.

13 Q So is it similar then to the housing alloca-
14 tion report?

15 A Well, I would say it's slightly ahead of the housing
16 allocation report in the sense that although neither of
17 them have been adopted by a higher authority as of yet,
18 the housing allocation report has been formally repudiated
19 by higher authority, while this report is neutral in that
20 sense.

21 Q Who has repudiated the housing allocation
22 report?

23 A The Governor.

24 Q Incidentally, in that regard, the housing
25 allocation report, was that addressed to the Madison

1 Township case?

2 A It came down before the Madison Township decision
3 was handed down. It was addressed, I guess, generally
4 speaking, to the language of the Mount Laurel decision.

5 Q No. I am asking you, did the concept of
6 the housing allocation plan, or was it addressed by the
7 Court in the Madison decision?

8 A I am sorry, sir. Yes, it was.

9 Q What did they say about it?

10 A Excuse me. I am referring to the decision 72 N.J.
11 538, Footnote 43, and the accompanying text.

12 The accompanying text says: "We conceivably might
13 regard a region so constructed and the independent fair
14 share allocation thereby arrived at as meriting prima facie
15 judicial acceptance."

16 This is in reference to official fair share studies
17 and the footnote then continues to say: "We do not fully
18 accord such status to the preliminary statewide housing
19 allocation plan of the Division of State and Regional
20 Planning as it is only tentative and subject to further
21 public hearing and review."

22 Q Going further, just to close up the sub-
23 ject, did the Court also address itself to a county as a
24 region in Madison?

25 A Yes.

1 Q . And what did they say about that?

2 A jWell, again, this is on 72 N.J. 537, Justice Hall's
3 decision in the Mount Laurel case, "The concept of a
4 county per se is the appropriate region was thought not
5 to be 'realistic' by Justice Hall in writing Mount Laurel,"
6 and then they quote him at great length.

7 Q Now, at the point at which we diverge back,
8 I was asking you about the relative weight to be given to
9 the development guide, the New Jersey State Development
10 Guide Plan, and I think we had covered that.

11 Now, let me ask you, what does the Develop-
12 ment Guide Plan have to say with regard to Clinton Town-
13 ship and the area that is the subject of this litigation?

14 A In this regard, if you turn to Page 2 of P-117,
15 a concept map is on that page which shows the growth areas
16 in a kind of polka dot pattern.

17 !Die growth areas, and I quote from the following
18 page, "contain major transportation facilities and energy
19 supplies and are the location of many of New Jersey resi-
20 dents, major businesses and industrial facilities."

21 . lHE COURT: What paragraph are you reading
22 from?

23 THE WITNESS: This is from the top of Page 3.

24 A (Continuing.) "Within the suburban areas and around
25 the rural centers, and I might say parenthetically and

1 • within the growth areas, much vacant land still remain

2 "These areas are particularly suitable for devel
3 ment because of their accessibility to employment and
4 services."

5 Turning back to Page 2, if one superimposes this
6 map showing the growth areas on county boundaries, it be-
7 comes apparent that a proposed development guide plan
8 provides for what one might call a growth finger extending
9 along the Interstate 78 corridor into Hunterdon County and
10 widening out, as one might be called in planning terms, a
11 node of development around the Interstate 78 and Highway
12 31 interchange in the vicinity of Clinton.

13 Again, the map, and I think it is deliberately de-
14 signed to be somewhat general in the sense of not providing
15 a precise demarcation of where the growth center ends and
16 the rural areas begin, but generally speaking it conforms
17 to the Route 78 corridor up to the general area of Clinton.

18 Q Now, when they used the word "growth," and
19 I refer you particularly to Page 3, what kind of growth
20 do they refer to? Are they referring to only industrial
21 growth?

22 A They are referring to all types of growth, resi-
23 dential, business and industrial.

24 Q Well, going on, then - well, let's leave
25 that subject. That report will speak for itself.

1 I would like to ask you, Mr. Mallach, if you
2 are familiar with the Hunterdon County Planning Board's
3 studies of population and growth of Hunterdon County.

4 A Yes, sir,

5 Q In what context would you be familiar with
6 that?

7 A Well, I have read a number of reports of the County
8 Planning Board. As part of my work with the County Municipal
9 Government Study Commission in 1975* I believe it was,
10 I directed a study of the County Planning Boards which in-
11 volved interviews and reviews of the activities of all
12 21 County Planning Boards for a report which, for a variety
13 of reasons, was not published.

14 In addition, I have had personal contact with the
15 Hunterdon County Planning Board and appeared on at least
16 one panel discussion sponsored by that Planning Board on
17 the subject of housing.

18 Q Can you tell us what the County Planning
19 Board data would indicate relevant to the subject of a
20 region for —

21 A I believe the most relevant document in that re-
22 gard is the Economic Base Study prepared by the County
23 Planning Board. I assume this has been introduced.

24 MR. STERNS: It is. We will find the number.

25 Q Go ahead. It is an exhibit and I will give

1 you the number.

2 A I believe most of the points that are relevant are
3 summarized on Page 1 of this report under the heading
4 "Precis," and if I can quote from that Point 1, "From 1950
5 to 1970 much of Hunterdon's growth was concentrated in
6 the northeast quadrant due to the desire for better ac-
7 cess to employment areas. This pattern should continue
8 in the future."

9 Q I am sorry to interrupt you, Mr. Mallach,
10 but hurriedly I want to be sure that we are all together.

11 It was marked at depositions D-7 for iden-
12 tification, and I am quite sure that it has been marked.
13 If not, I can't find it hurriedly there.

14 THE COURT: Could you show it to the clerk?

15 Perhaps she can recognize it.

16 MR. STERNS: This is an amendment to Master
17 Plan No. 5.

18 It was D-7 at depositions on April 20, 1977.
19 I will ask that it be marked.

20 (P-118, an amendment, is marked for Identi-
21 fication.)

22 Q I was asking you what I believe the County
23 Planning Board's data would show relative to the de-
24 lineation of a region.

25 A Yes, sir. I believe I quoted one point already.

1 I will continue also from Page 1, Point No. 4,

2 Q. I am sorry. I lost the train of that.

3 A Point No. 1 was, from 1950 to 1970 much of Hunter-
4 don's growth was concentrated in the northeast quadrant
5 due to the desire for better access to employment areas.
6 This pattern should continue in the future.

7 Point No. 4, with the change in the composition of
8 the labor force, one notices a distinct increase in the
9 number and length of commuter trips.

10 ~ Point No. 5, retail sales have not increased as
11 fast as gains in the net effect of incoming Hunterdon
12 residents.

13 To amplify these points, we turn to Page 43 of this
14 report "By 1970 influence by growth and shifting em-
15 ployment opportunities over 40 per cent of all Hunterdon
16 County residents in the work force are out of the county.
17 Approximately 11,600 people were living in Hunterdon
18 County and working elsewhere compared to approximately 57,000
19 people who reversed this commuting pattern."

20 The conclusion that one draws from this report and
21 the conclusion that the County Planning Board draws is that
22 Hunterdon County is becoming firmly linked to the north-
23 eastern New Jersey-metropolitan area in terms of journey
24 to work patterns, and furthermore the two statistics that
25 I cited, well, the greater number of out-commuters than

1 in-commuters, and secondly the greater increase in income
2 relative to retail sales in the county are indicative of
3 a second related phenomenon, namely, that Hunterdon
4 County's connection to the northeastern New York-New
5 Jersey metropolitan area is that of a residential center
6 rather than that of an employment center.

7 It is becoming a county, particularly the north-
8 eastern part, as the report recites, in which large numbers
9 of people work in the northeastern New Jersey-metropolitan
10 area live, but not a county which is apparently attractive
11 to industrial development and employment growth.

12 You could characterize it to a large degree as a
13 bedroom community.

14 This report, in fact, devotes a chapter, it is en-
15 titled "Rural Development,"¹¹ beginning on Page 62, to an
16 evaluation of this problem, particularly, the reasons why
17 Hunterdon County is not getting industrial development.

18 Q Now, I would like to direct your attention
19 now to the question of fair share housing allocation and
20 ask you, is there any criteria set forth in the Madison
21 decision, first-off, for that kind of a determination?

22 A Yes, there are, and I turn to 72, J-^42 here,
23 particularly Footnote 4-5, and I will paraphrase the first
24 part which is rather lengthy, that this footnote first
25 describes four general areas in which criteria have been

1 developed, and this refers to equal share criteria regard-
2 ing the idea of equal distribution of low and moderate-
3 income housing around a region, need criteria relating to
4 the location of housing need, distribution criteria, the
5 goal of achieving a greater income and racial mix and
6 suitability criteria, dealing with suitability in terms
7 of physical and fiscal capacity.

8 Then, and I quote verbatim, the memo, the foot-
9 note, rather, continues: "The most important single
10 criteria emerging from fair share literature is the amount
11 of vacant developable land."¹¹

12 Skipping the citation and continuing, "Other basic
13 criteria include employment opportunity, fiscal measures
14 and existing housing or population density."

15 Q And is that definition the criteria that
16 you would utilize in assessing these factors?

17 A Generally speaking, yes. I would qualify it to
18 some degree. I can't see how one could other than vacant
19 developable land, which is the central criteria.

20 I think the question of employment is important,
21 as they cite it, and some form of fiscal measure framed
22 either in terms of municipal fiscal capacity or municipal
23 wealth in terms of the economic condition of the residents
24 is also significant.

25 One other point. The Court, I think, quote aptly

1 criticizes the use of need criteria, existing need criteria,
2 and quote from this footnote as "perpetuating slums."

3 Q Looking at that No. 1 designation of vacant
4 developable land, in your opinion, is all vacant develop-
5 able land of the same value for fair share housing?

6 A No, sir.

7 Q How would you differentiate?

8 A The location of the vacant land as a significant
9 factor as its physical quality within a region, particu-
10 larly a large region such as the northeastern New Jersey
11 region or the Camden-Philadelphia region. The variation
12 in terms of accessibility of different parts of the re-
13 gion is extreme; so that it becomes necessary to look at
14 the location of communities within that region to assess
15 the significance of their vacant land availability.

16 For example, in the fair share study that I worked
17 on in the Philadelphia region, as part of the Mount Laurel
18 litigation, we developed a formula that adjusted the vacant
19 land factor on the basis of the distance and accessibility
20 of the municipality relative to the center of the region
21 and the regional transportation network.

22 Q Do you accept Mr. Akahoshi's fair share
23 figures as delineated in that report, P-94?

24 A I think they are reasonable figures, yes.

25 Q What were the Akahoshi figures based on,

Mallach-pl-direct

1 from your studies?

2 A Mr. Akahoshi's figures were derived first by
3 utilizing a five-county region or sub-region, which in-
4 cluded Hunterdon, Somerset, Morris, Essex and Union
5 Counties, need analyses prepared by the Department of
6 Community Affairs.

7 I might parenthetically mention that one element
8 of a fair share plan that I didn't mention earlier is the
9 existence of some kind of housing need figure to begin
10 with which you allocate and, finally, that need and
11 analysis or that need figure was broken down by Mr.
12 Akahoshi, first to the five counties in the sub-region
13 which appears on Page VI-4 of P-94.

14 On that same page it presents Clinton Township's
15 percentage of the Hunterdon County allocation which is
16 either 2,833 units or 3,457 units, depending on which of
17 the two need figures are used as a starting point.

18 THE COURT: What was that?

19 THE WITNESS: 3,457, sir, depending on which
20 need figure you use to start out with.

21 Q j Now, at that point Mr. Akahoshi's report
22 VT-4, Chart 36, that's where you are?

23 A That's correct.

24 Q He also deals with vacant developable land
25 in the counties that he has designated as part of the

1 region. I believe it's five counties, is it not?

2 A Yes.

3 Q There are large amounts of developable vacant
4 land in Somerset and Morris?

5 A That's correct.

6 Q Now, what do you think of their allocation
7 of fair share housing on their vacant developable land
8 relative to Hunterdon County, relative to Clinton Township?
9 What is the relationship?

10 Is there any credence to the thought that
11 since they are closer they should develop their land first,
12 or how do you look at that?

13 A Again, it's not really an issue of being closer in,
14 as such. The more significant issue is the nature of the
15 transportation network, I believe, if I could refer to the
16 map here.

17 Q Identify it by the number.

18 A I am referring to P-95. Within the 50-mile radius
19 of New York, delineated on this map, the areas vary signi-
20 ficantly in terms of their effective accessibility.

21 Within each of the three counties reference is
22 made, Somerset County and Hunterdon County areas that are
23 extremely accessible principally because of the location
24 of the Interstate 78, Interstate 80 and Interstate 287.

25 On the other hand, there are areas that are sub-

v stahtially less accessible. For example, in Morris County
2 there are areas in the general vicinity of, say, Mendham,
3 Chester and the like, that are relatively less accessible,
4 such as Parsippany or Montville, Boonton, which are par-
5 ticularly accessible because of the highway network; the
6 same is true of Somerset County.

7 You have towns of Clinton and Readington which are
8 highly accessible and towns farther out, townships such
9 as, I guess, even within the 5^o-niile radius. You have
10 areas such as Glen Gardner, Hampton, and the like, the
11 Amwells which are substantially less accessible for com-
12 mutation from northeast New Jersey.

13 So it would certainly not be fair to say that
14 counties taken as such should be filled up before other
15 counties that are on balance farther away from the center
16 which should be developed, in fact, for a variety of
17 reasons, and I will try not to get into this too much.

18 The economics of housing development often argues
19 that-it^fs more efficient, particularly in terms of lower-
20 cost housing, to build farther out than it is theoretically
21 possible to do so because of the lower costs that can be
22 obtained.

23 Q Well, one last question on that.

24 Referring again to Akahoshi^fs chart on
25 Page 64, how would you analyze the housing need that he

1 has allocated to Morris County as compared to Hunterdon
2 County? Do you think those are fair allocations?

3 A Again looking at it in a general sense* without
4 having analyzed this in detail, the relationship seems
5 reasonable. I see that Morris County is allocated and it
6 is a little more than half again on housing units as
7 Hunterdon County, and I think that seems to be a reasonable
8 relationship.

9 Q Turning to one last subject, Mr. Mallach,
10 what, if you know, is the median income in this region,
11 the region that we have?

12 A Today I would say it's in the area of 17 to \$18,000.

13 Q Is there a formula that you have utilized
14 for establishing the price of housing?

15 A Yes, sir.

16 Q What would that formula be that you would
17 use?

18 A The starting point is that people should not pay
19 substantially more than 25 per cent of their income for
20 shelter. Translating that into the price of housing, it
21 means that people cannot afford to pay for a house that
22 costs more than roughly twice their gross income, perhaps
23 slightly less than that.

24 Q So, therefore, taking that formula into con-
25 sideration, what would be the cost of housing for the median

1 • income in this region, the region that you have been des-
2 cribing?

3 A To me people earning at the median or below housing
4 needs, the cost of housing should be certainly no more
5 than in the mid-thirty range, say 34 to \$35*000 and pre-
6 ferably less.

7 Q, What housing needs category?

8 A People at or below the median, referring generally
9 to the moderate income population,

10 Q Are you familiar with the concept, and I
11 guess it has been generally described as trickling down,
12 what does that mean? Where does it come from in terms of
13 housing?

14 A The concept of trickling down or filtering down is
15 another name for it based on an analogy with the auto-
16 motive industry.

17 As new housing at a given price level is constructed
18 or as new cars are given a price level or sold, people at
19 a higher income bracket buy those cars or houses and free
20 up older housing which then becomes available to people at
21 an income level slightly below them to upgrade their hous-
22 ing conditions.

23 There's a kind of chain of moves down the ladder
24 as people at every income level get to upgrade their hous-
25 ing conditions as new housing gets constructed.

1 Q, Has that concept, as you described it, found
2 any support in recent judicial actions?

3 A Yes. I guess you might call it intellectual under-
4 pinning of the Madison decision.

5 Q, And just briefly vihere does it refer to—

6 A On Page 72, N.J, 513, and I quote from the text,
7 the beginning of the last paragraph,

8 "Nothing less than zoning for least cost housing
9 •will in the indicated circumstances satisfy the mandate
10 of Mount Laurel. \While compliance with that direction may
11 not provide newly constructed, it's the Court's emphasis,
12 housing for all in the lower-income categories are men-
13 tioned, it will nevertheless through the filtering down
14 process' referred to by the defendant tend to augment the
15 total supply of available housing in such manner as will
16 indirectly provide additional and better housing for the
17 insufficiently and the inadequately housed of the region's
18 lower income population."

19 Q, All right, Mr. Mallach, the subjects that
20 we have been discussing for the most part this morning,
21 were you asked .and did you prepare a report in the form
22 of a letter dated March 16, 1977?

23 A That's correct.

24 Q, I ask you if this is a copy of that.

25 A Yes, it is.

1 . MR. STERNS: I would ask that this be marked
2 for identification.

3 (P-119, a letter dated March 16, 1977, is
4 marked for Identification.)

5 Q Mr. Mallach, is there anything that we have
6 not touched upon that is included in your report? Is
7 there anything you wish to add?

8 A There's one minor point, if I might, and referring
9 again back to Chart 36 in P-94, I did note that in my
10 judgment of the two need analyses that Mr. Akahoshi re-
11 ferred to in his report and which he presented alternative
12 figures for, I considered that need analysis presented in
13 the allocation plan to be more appropriate for these pur-
14 poses than the other, since the need analysis in the
15 allocation plan, which happens to be the lower of the two
16 figures, is a need analysis which screens out all housing
17 needs that can be met through rehabilitation of existing
18 units; so it deals only with housing needs that require
19 new units to meet those needs.

20 The other need analysis is fuzzier on this point
21 and most likely includes some housing needs that could be
22 met through rehabilitation, so I did make that point as
23 well.

24 Q Other than that, we've covered the points
25 that you made for the most part?

1 A Yes, sir.

2 MR. STERNS: Your Honor, I have no further
3 questions.

4

5 CROSS-EXAMINATION BY MR. SUTTON:

6 Q Mr. Mallach, I would like to go further into
7 your background and possibly we can hurry this matter
8 along if you can tell me the specific jobs you had and
9 the years you did this work that you feel is important
10 to your testimony today.

11 A The specific jobs that I would consider relevant
12 would be first my work in the Department of Community
13 Affairs which took place from October, 1967 through Janu-
14 ary, 1971.

15 I would say that includes all of the jobs that I
16 held in that agency, specifically, the work I did in the
17 Housing Finance Agency, which was through the summer of
18 1968, and in the Division of State and Regional Planning
19 through the summer of 1970, and in program development
20 until early 1971.

21 The work I did at Livingston College was not
22 directly relevant except that in addition to acting as
23 a Dean, I was an instructor in the community development
24 program, taught courses on urban problems and housing, and
25 as part of that study the literature - in addition, I

1 wrote on the subject of housing during that period. My
2 work at the County Municipal Government Study Commission
3 is certainly relevant to this, the work on —

4 Q Would you give us the periods again, please.

5 A I am sorry. As I believe I mentioned earlier, I
6 was at Livingston College from the beginning of 1971 to
7 the beginning of 1973.

8 I was with the County Municipal Government Study
9 Commission through 1975* and I should say that even after
10 I began my business in 1975, I continued to work on a
n part-time basis for the County Municipal Government Study
12 Commission, and continue to work for them today as a
13 consultant. So that relationship has been from early
14 1973 through the present.

15 The term of my work at Stockton State College,
16 which included teaching courses on housing, PUD^f's land
17 use planning, architecture and behavior, local zoning and
18 local finance was from the fall of 1973 until early 1975.
19 I was there altogether for a year-and-a-half.

20 Going back, at the County Municipal Government
21 Study Commission, my work certainly was relevant to that
22 in that the work on the report Housing on Suburbs, as I
23 mentioned, included detail analyses of a wide range of
24 multi-family developments around the state in terms of
25 their fiscal characteristics, in terms of their social

1 characteristics, and it included separate studies of
2 municipal zoning practices with particular references to
3 multi-family development.

4 It included a separate study of the attitudes of
5 local government officials relative to all multi-family
6 development.

7 In addition, as an outgrowth of that study, I
8 directed a second study on behalf of the Commission spe-
9 cifically on these issues as they relate to PUD's, and
10 in that process undertook an exhaustive study of four
H PUD's in the State of New Jersey.

12 Subsequently, I conducted the study of county
13 planning activities that I believe I mentioned and, more
14 general study of what might be generally termed innovative
15 and creative land use planning tools and techniques rang-
16 ing from tools specifically referring to housing develop-
17 ment, but also such things as growth phasing, transfer
18 of development rights, sketch plan zoning, and a variety
19 of techniques designed to improve local planning activities,
20 This was all in the context of the County Municipal Govern-
21 ment Commission.

22 Subsequently, which I believe is also relevant,
23 since the beginning of 1975 to the present I have been
24 acting on an ongoing basis as an advisor to the Commission
25 and to the New Jersey Department of Community Affairs on

1 the area of urban housing and neighborhood preservation
2 and have recently finished a book on that subject of
3 neighborhood preservation which will hopefully be pub-
4 lished before the end of the year.

5 In my private consulting capacity, in addition to
6 the fair share studies that I have mentioned, I have also
7 done a variety of specific studies having to do with
8 housing, low and moderate-income housing, worked with
9 non-profit organizations, civic groups, and governmental
10 entities on housing matters, as well as on other related
11 issues, such as zoning. So I would say all of this is
12 relevant to the matter at hand.

13 Q I would like to move back to the time when
14 you were with the Department of Community Affairs between
15 1967 and 1971.

16 You said you had a variety of jobs. Would
17 you tell me what the jobs were and during what period
18 you held each job.

19 A Yes. From the fall of 1967 to the summer of 1968,
20 I was employed as a special assistant to the Executive
21 Director of the New Jersey Housing Finance Agency.

22 Q What does that work entail?

23 A What that work entailed? The Housing Finance
24 Agency was created by the State Legislature in 1967 and
25 my immediate superior was the first full-time executive

1 director who was hired for that position some six months
2 after the statute had been adopted; so my work essentially
3 was assisting him in all of the many things that had to
4 be done to establish a working on-going housing agency.

5 These included, let us say, my major responsibilities
6 which were developing standards, procedures, guidelines,
7 forms, and the like, for the agency ranging from minimum
8 room sizes to framing application forms and, secondly,
9 during the six months between the enactment of the legi-
10 lation and the appointment of a full-time staff, there
11 had been a large number of development applications,
12 letters generally that had been submitted to this agency.

13 My second responsibility was clearing up the back-
14 log.

15 In effect, what this meant was tracking down these
16 applications, finding out if they were still legitimate,
17 visiting the sites that were proposed for development,
18 interviewing the would-be developers or housing sponsors,
19 evaluating the appropriateness of their proposals and
20 make preliminary recommendations or whether to pursue
21 these developments further.

22 Q Now, during the next period, what did you
23 do?

24 A Subsequently, I went to work for the Division of
25 State and Regional Planning, and I was chief of the

1 Jersey was being compromised by the activities of the
2 political appointees who had been appointed to positions
3 above me, and I felt that there was very little point in
4 my continuing to work there because I could not work as
5 a conscientious civil servant under those circumstances.

6 Q You then were appointed to Assistant Dean
7 of Livingston College; is that correct?

8 A That's correct.

9 Q Was that a full-time job, Assistant Dean?

10 A " Yes.

11 Q What are the duties of an Assistant Dean?

12 A Well, it varies, of course. There are a usual
13 number of Assistant Deans that have different responsi-
14 bilities.

15 The college was organized so that there was one
16 Dean and two what you might call Deputy Deans under him,
17 one for an area of academic affairs which had to do with
18 all matters of curriculum courses, grading and faculty,
19 and another for student affairs.

20 I was the Assistant Dean of academic affairs. My
21 responsibilities were in the area of curriculum courses
22 and grading. My particular responsibilities dealt with
23 what may be called unconventional programs.

24 In other words, I had little to do with the daily
25 run of ordinary courses and faculty matters. I dealt with

1 . such things as off-campus learning, internships, field
2. education, and particularly with the area of trying to
3 bring what you might call non-traditional students onto
4 the college campus.

5 I developed a program whereby people who were work-
6 ing in urban areas and urban community organizations,
7 poverty programs and the like, could come onto campus on
8 a part-time basis and obtain a formal education that was
9 linked to their career and personal interests.

10 Another program whereby such students, as well as
11 other students, applying to the college could go through
12 an evaluation procedure and under some circumstances ob-
13 tain academic credit for work experience that they had
14 had prior to coming to college where it was shown to be
15 relevant to academic courses. So these were the sorts of
16 things I did.

17 I also taught courses myself.

18 Q What courses did you teach?

19 A I taught at that time principally courses having
20 to do with urban studies.

21 I taught courses on urban politics, urban economic
22 and political systems, research techniques and research
23 methods for studying social problems.

24 I also participated in and directed a studio in
25 the graduate college of urban planning.

1. Q You were Assistant Dean until 1973. What
.2 month of 1973?

3 A The end of the fall semester, which would put it,
4 I guess, around February.

5 Q And again, what was your reason for leaving?

6 A My reason for leaving was that I had been at that
7 time - the County Municipal Government Study Commission
8 had received a large-scale project grant from the Depart-
9 ment of Housing and Urban Development, which is a study
10 that eventually led to the publication of the book "Hous-
11 ing in Suburbs," and I was offered the position of direct-
12 ing that study.

13 Q This was a study group; is that correct?

14 A \ .The County Municipal Government Study Commission
15 is a permanent body of the New Jersey legislature jointly
16 with the executive.

17 It is a rather complicated creature, but it has
18 legislative representation and executive representation,
19 as well as representation from the League of Municipalities
20 and the Association of Freeholders on it.

21 Its chairman is Sen. William Musto. It has been
22 in existence since 1966, I think, and is a body dedicated
23 to studying problems of concern to county municipal govern-
24 ment and to framing legislative remedies to those problems;
25 so it's both a study and a legislative organization.

1 Q You say county municipal government; that
2 does not involve only planning, does it not?

3 A Oh, no. It involves any issue of municipal concern.

4 Q Can you mention some of the other issues?

5 A Yes. Some of the other issues that I worked on
6 to a greater or lesser degree were the bus transportation
7 and the role of county government in that area, a study
8 of law enforcement with particular reference to whether
9 there's a need for and, if so, in what form, for regional
10 support services for small town police departments.

11 THE COURT: County police force?

12 THE WITNESS: They have one in Bergen now.

13 THE COURT: And Hudson, too?

14 THE WITNESS: Yes.

15 A (Continuing.) And so we studied this and each of
16 these resulted in a published report and some legislative
17 proposals, a study of local financial constraints.

18 Those were studies that I worked on directly, a
19 study which has not been published yet, which I worked on,
20 which has to do with the whole delivery of social services,
21 county welfare boards, family service agencies, and the
22 like.

23 Particularly, the whole relationship between the
24 public services, the welfare boards, and the voluntary
25 agencies which are becoming more and more part of the

1 public sector because of the public funds they receive,
2 and then studies that I did not work on but they were
3 also published by the Commission over past years, studies
4 of solid waste disposal, studies of sewers, study of
5 water quality.

6 • I might add I worked on a study on behalf of a
7 special investigating commission dealing with the Hacken-
8 sack Meadowlands and the quality of planning and develop-
9 ment taking place in that area, and have recently finished
10 writing a report which will be most probably released in
H the next few months by this Senate commission.

12 Q You gathered information and then you wrote
13 reports. Is that about what you did?

14 A Well, that's part of it but, in addition, I think
15 it's important if we are going to talk about the County
16 Municipal Government Study Commission, to stress the
17 legislative aspect of it.

18 We went to great lengths not to come up with a
19 report that would just be an academic report that goes
20 on the shelf and is read by a few scholars.

21 The purpose of the report was to identify areas,
22 if there were any, where legislation was desirable or
23 necessary and to write a report in a way that it would
24 lead into the process of developing legislation, and a
25 lot of the reports from the Commission have resulted in

1 • a lot of, in my judgment, very significant legislation.

2 THE COURT: The county police, they amended
3 the statute? They took them out from under the
4 Sheriff and set them up independently?

5 THE WITNESS: Yes, that was -

6 THE COURT: The Park Police situation.

7 THE WITNESS: In fact, not many munici-
8 palities had actually done it, but a few munici-
9 palities have contracted with the county police
10 to provide direct police services. I think one
11 town in Bergen actually takes advantage of that.

12 THE COURT: Hunterdon County, we are getting
13 the elimination of some of our state police bar-
14 racks and we have a large regional --

15 TAB WITNESS: This is one of the things
16 that came out. The state police is very eager to
17 get out of the local patrol business and they're
18 very eager for something to come into being at
19 the local police level.

20 THE COURT: It would create a vacuum. Is
21 there anything further that you want to know?
22 It is getting broader and deeper as you go.

23 MR. SUTTON: Pardon?

24 THE COURT: I should be thankful to you.
25 Is there anything further that you think in the

1 way of background that would lead you to think
2 that he is not qualified, at least on all his
3 studies?

4 MR. SUTTON: Well, I take a different in-
5 terpretation, but I would like to continue the
6 train up to date.

7

8 BY MR. SUTTON:

9 Q Then you formed your own firm; is that
10 correct?

11 A That's correct. '

12 Q And your firm does a variety of work; is
13 that correct?

14 A That's correct.

15 Q Will you tell us the variety of work your
16 firm does?

17 A Okay. I can't be sure to cover everything because
18 it is quite a mixed bag, but one area is actually develop-
19 ing low and moderate-income housing.

20 We have been certified by the New Jersey Housing
21 Finance Agency as an approved loan consultant and project
22 planner for low and moderate-income housing, which means
23 we can present applications for mortgage financing and
24 subsidies on behalf of clients to that agency.

25 At present we are in the midst - we are working

1 on three actual development proposals that are concrete,
2 specific proposals, as well as have a number of others
3 that are more glints in the eye at the moment.

4 We do a great deal of work in the area of exclu-
5 sionary zoning and fair-share housing.

6 As I mentioned, we have participated in a great
7 deal of litigation. We also act as general consultants
8 and advisers on matters of planning and zoning to the New
9 Jersey Department of the Public Advocate and without
10 wanting to brag excessively, I wrote a great deal of the
11 amicus brief for the Public Advocate that appears for
12 the Madison case.

13 In fact, there's a quote in here from that brief
14 which deals specifically with the justification for the
15 least cost housing concept, which I was largely respon-
16 sible, together with the attorneys in the case, I might
17 add, for framing. I specifically refer to the quotation
18 at the bottom of 72 N.J. 512.

19 Q Your experience actually was more so far
20 as least-cost housing is concerned than fixing of regions;
21 is that not correct?

22 A Well, least-cost housing is one of many areas. I
23 don't think it is an either/or proposition.

24 You know, one of the things I have done in every
25 fair-share study that I have worked on is, either the

1 • evaluation of a proposal coming from somewhere else in
2 terms of the region or the delineation of the region our-
3 selves; so I have certainly done a great deal of work on
4 that issue.

5 Q I am looking at your publications now,
6 "Housing in New Jersey - Needs and Programs."

7 You were dealing there with the housing
8 needs, were you not?

9 A Kiat was a publication that made an effort to
10 quantify for the first time the scope of the housing need
H in New Jersey and to present the statistical justifica-
12 tion for the 1968 housing bond issue in which I was active
13 in preparing materials for in my capacity with the Housing
14 Finance Agency.

15 Q And then the next is, "The Housing Crisis
16 in New Jersey," again that there was need for housing;
17 is that not correct?

18 A Well, that report is a much more exhaustive study.
19 In fact, it deals with housing and needs, it deals
20 with housing trends, development generally of housing in
21 the state over time.

22 It deals with the obstacles to meeting housing
23 needs, including back in 1970, exclusionary zoning, and
24 it also deals with an evaluation of the effectiveness up
25 to that point of the various programs ranging from public

1 'I am sorry- multi-family housing and how that affects
2 their decisions and their zoning practices.

3 Finally, the actual zoning practices that are used
4 by municipalities in dealing with multi-family housing,
5 and particularly a discussion of the manner in which
6 municipalities use the Section (d) variance, either to
7 encourage or discourage apartments; but, in either case,
8 to put apartments outside of the realm of the official
9 zoning ordinance and zoning map and to deal with their on
10 an ad hoc informal basis.

11 In fact, I might add that that part of the report
12 was singled out for comment in the Mount Laurel decision
13 and was also used by Justice Conford in a more recent case
14 in Phoebe Associates vs. Demarest.

15 Q Then you wrote on multi-family development
16 for local government; is that correct?

17 A That was an article for the New Jersey Municipali-
18 ties Magazine, which is published by the League of Munici-
19 palities, which I wrote to an audience of local officials
20 on some of the major findings about multi-family housing
21 from our study.

22 Q The next was on exclusionary zoning, the
23 Rutgers Law Journal?

24 A The was the article that was cited principally in
25 the Madison decision.

1 I work with the community fairly actively. I am
2 on the Board of the Jewish day school in Trenton, and one
3 of the things that we have used the study for, in fact,
4 was to plot future trends around the region of Jewish
5 family formation and Jewish child-bearing, so that we
6 could find out where our clientele is because we are plan-
7 ning to build a new school building and we want to locate
8 it optimally in terms of where the children will be. We
9 are on West State Street.

10 THE COURT: On Belleville Avenue?

11 THE WITNESS: Just past the park.

12 THE COURT: Yes.

13 THE WITNESS: But we are getting an in-
14 creasing number of students now from the Twin
15 Rivers Development. We have nearly a third of
16 our enrollment that comes all the way from Twin
17 Rivers into Trenton.

18 THE COURT: The opposite side?

19 THE WITNESS: Yes. So the trick is to find
20 a- location that would be attractive to Twin Rivers
21 people but also attractive to people from Yardley
22 and Morrisville, which is our other big segment.
23 It's a kind of regional planning program.

24 Q You are working on a study relative to un-
25 resolved issues in the wake of Mount Laurel?

1 * Q That was referred to before?

2 A Yes, sir.

3 Q, The next, changing community, a study of
4 the Jewish community in the greater Trenton area. What
5 did that consist of?

6 A That was a study that is representative of a whole
7 other aspect of our work which I hadn't had a chance to
8 get into before when you were asking me about my firm's
9 activities.

10 We do a great deal of survey research on social
11 problems and needs, sort of "a la Gallup" but on a much
12 smaller scale, and this was a study based on an exhaustive
13 series of interviews which we conducted over a three-
14 month period with residents of the Jewish community of
15 the greater Trenton area, which includes all of Mercer
16 County and a number of communities on the Pennsylvania
17 side of the river and elsewhere to do a series of things.

18 First, to do a census of the community, how many
19 people, their characteristics and the like, and, secondly,
20 to do a detailed analysis of their attitudes, values,
21 needs, concerns and the like, and to prepare a report
22 that would be both a respectable and scholarly publica-
23 tion and would also serve as an effective guide to the
24 various communal agencies in the Jewish community to plan
25 future programs for the community.

ttmmmm?

Mallach-pl-cross

68,

1 A I finished the article. Well, the article has
2 been accepted for publication as part of an anthology
3 that will be published by Rutgers University and it is
4 supposed to appear before the end of the summer, I have
5 been told, but it has not yet appeared.

6 Q And your last was the local government in
7 New Jersey -- beyond the bicentennial. What does that
8 deal with?

9 A That was another article for New Jersey Public
10 Municipalities Magazine, The New Jersey League of
11 Municipalities had a special issue of Municipalities
12 Magazine on the bicentennial, appropriate enough, of
13 July of 1976, and I wrote an article.

1 expected to deliver their inhabitants which require pro-
2 gressively greater measure of regional cooperation and
3 inter-municipal cooperation.

4 I cited what I see as a Etrong trend in the State
5 Legislature to pull responsibilities up to the level from
6 the municipal level, such as, solid waste, public health
7 services, and the like, and suggested that this is a
8 particularly opportune point for municipalities to ex-
9 plore the possibilities for regional arrangements arrived
10 at voluntarily between municipalities in order to fill
11 service gaps and improve the efficiency with which munici-
12 pal services were delivered and hopefully also increase
13 their ability to cope with fiscal pressures on them.

14 Q Most of these articles relate to your back-
15 ground in sociology?

16 A I would say not.

17 Q That is what you were trained for in college,
18 was it not, to be a sociologist?

19 A No, sir. I had a liberal arts training but my
20 major was sociology, but I think that my professor? at
21 school would have been very offended if you characterize
22 a liberal arts B.A. as being specific training for a spe-
23 cific professional field.

24 I was given a general education and trained in f
25 variety of analytical tools in a sens** of being able to

1 read intelligently, understand and interpret numbers and
2 statistics and mathematics, understand the dynamics of
3 research and analysis and the like.

4 So I received what I would characterize a very
5 good foundation for going into almost any field other
6 than a very specific technical one, let us say, like
7 physics or chemistry, rather than a specific vocational
8 training.

9 Q Well, over the years you have done a con-
10 siderable variety of work but much of it has been re-
11 search and writing; is that not correct?

12 A That's correct.

13 Q Now, you have mentioned that you had tes-
14 tified in certain court cases. Will you tell me the
15 court cases you have testified in and whom you repre-
16 sented?

17 A The first case in which I appeared was in the
18 Southern Burlington NAACP vs. The Township of Mount
19 Laurel, and I testified on housing matters. I was ac-
20 cepted as a housing expert and was representing the
21 plaintiffs.

22 In the second case that I was involved in was not
23 a zoning case. It was, if memory serves, entitled Welfare
24 Rights of New Jersey vs. William T. Cahill, and dealt
25 with the "reforms" of the Welfare Statute that was enacted,

1 - I believe, in 1969 and 1970, and had to do with principally
2 changing the welfare allocations from specific amounts
3 keyed to individual needs, to the formula amounts based
4 on averages.

5 It was an administrative measure and this was a
6 challenge to that statute and it was in the Federal court,
7 and I testified also on behalf of the plaintiffs.

8 I testified subsequently in zoning cases, in the
9 case of Allen Deane vs. Medminster. I testified on behalf
10 of the class action plaintiffs. That was two consolidated
11 cases; one was Allen Deane vs. Bedminster, and the other
12 was Cieswick vs. Bedminster, which was a class action
13 brought on behalf of a group of people by the ACLU, and
14 I testified on behalf of the ACLU plaintiffs in that case
15 as an expert on planning and housing.

16 Q In the Mount Laurel case, were you the one
17 who fixed the region at a 20-mile radius?

18 A I believe Justice Hall fixed the region at a 20-
19 mile radius, sir.

20 Q That was not your testimony that that was
21 the proper region? Is that correct?

22 A No. I did not testify to that effect in the
23 original Mount Laurel decision. I testified on region
24 in the second Mount Laurel trial, however.

25 Q This is still going on, the trial?

1 A No, it's finally ended a week ago.

2 Q At the trial level?

3 A Yes.

4 Q, What region did you fix for Mount Laurel?

5 THE COURT: Do you mean miles in circumfer-
6 ence?

7 A I followed Justice Hall's directions implicitly.
8 I evaluated, what I did for Mount Laurel was, in essence,
9 the 20-mile radius and the circumference created by that
10 is a way of depicting the three-county region radiating
11 outward from the City of Camden, which includes Gloucester,
12 Camden and Burlington Counties, but excluding those ex-
13 treme parts of the region, specifically, the most outly-
14 ing parts of the Pine Barrens which are clearly inde-
15 pendent of the Camden influence.

16 So basically the 20-mile region, with that one
17 qualification, the 20-mile radius, is equal to the three-
18 county region and, in that sense, interchangeable.

19 Q Well, I don't quite understand your testi-
20 mony that a 20-mile radius is equal to a three-county
21 region. Three counties contain more than a radius of 20
22 miles, do they not?

23 A No, not appreciably. If you take a compass and
24 set it for 20 miles and superimpose it on a map of that
25 part of New Jersey, you will find that with the exception

1 of the outlying Pine Barrens, that quite closely cor-
2 responds to the three counties.

3 Q Well, Justice Hall has set that region and
4 since the Supreme Court has set the region, I can't see
5 how anyone else can interfere with the region set by the
6 Supreme Court.

7 MR. STERNS: Is there a question? Are you
8 asking why?

9 Q Were you actually setting the region? Was
10 that the issue before the Court?

11 A Well, the purpose was to establish a fair share
12 for Mount Laurel and in that sense you have to operation-
13 alize Justice Hall's region.

14 It's clearly not practicable to use a precise 20-
15 mile delineation because that cuts through different parts
16 of municipalities and cuts over bits and pieces; so in
17 order to delineate a region you have to limit yourself to
18 something for which data is available. So you have to
19 take Justice Hall's directive, the 20-mile radius, and
20 operationalize that in terms of translating it into actual
21 governmental entities that you could then obtain data
22 about housing needs and land availability, and the like.

23 So you have to follow Justice Hall's directive but
24 you have to make technical modifications within the spirit
25 of his directive.

1 • Q Now, I want to move more directly into this
2 case.

3 How many hours have you spent in prepara-
4 tion of this case?

5 A Well, I think altogether I would say over the last
6 while, perhaps three or four days.

7 Q Now, do you recall testifying at deposi-
8 tions?

9 A Yes. I testified of the preparation of the report
10 which was introduced as P-118, I believe, 119. It took
11 me, I think, a half a day to a day.

12 Q I believe you testified that you spent one-
13 half a day to a day in all your work; is that not correct?

14 A I forget the exact phrasing.

15 MR. STERNS: What page?

16 MR. SUTTON: Well, I got so many papers, it's
17 hard to locate it except by memory. It is Page 69.

18 Q Will you tell us the length of time you
19 spent working on this matter thus far, not including to-
20 day»

21 MR. STERNS: It starts down here.

22 THE WITNESS: I am sorry. What is the ques-
23 tion?

24 Q I am reading from Page 69 of your deposi-
25 tion, to Page 70.

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THE COURT: Read the question and answer,

Mr. Sutton, and see if he agrees with it.

Q, "Tell us the length of time you spent working on this matter thus far not including today?

"Answer: I would say a half a day to a day of work."

A That's correct.

THE COURT: He agrees.

Q, Now, what work did you do; what reports did you study before the deposition?

A Before the deposition I principally studied Mr. Akahoshi's report and gave a cursory check of some of Mr. Akahoshi's sources, such as the census reports.

Subsequent to the depositions I went into greater detail on some of these reports and reviewed more recently the Hunterdon County economic base study which I had not done at the time.

Q, Have you done any work in preparation -

A Well, I've reviewed a number of additional documents. I haven't prepared any additional reports.

Q Have you studied the Clinton Township ordinances?

A No, I have not.

Q Have you studied the land use plan of Clinton Township?

1 • A No, I have not.

2 Q Have you studied the ordinance that is now
3 pending¹ before the Township council, the new zoning ordi-
4 nance?

5 A No, I have not.

6 Q You are not familiar with the high density
7 areas in the new proposed zoning ordinance?

8 MR. STERNS: Your Honor, that is the third
9 time. I let it go two times. I object to the
10 third time.

11 This is the third time that he asked if he
12 is familiar with the ordinance. I think two times
13 is enough to get the answer and I object.

14 MR. SUTTON: I will withdraw the question,

15 Q Do you know how many acres Clinton Township
16 consists of, or the area of Clinton Township?

17 A Not offhand, no.

18 Q Would it be correct to say that your prin-
19 cipal familiarity with Clinton Township is the statistics
20 prepared by Mr. Akahoshi?

21 A That certainly is one source. I have been to Clinton
22 Township. I have visited it; I have that familiarity,,

23 Q When you visited it, where did you go and
24 what did you do? How long were you there?

25 A I have probably been in or about Clinton Township

1 any number of times just on a casual basis. I have never
2 done a specific visual study of the Township, I have
3 visited the site in question on a couple of occasions.

4 Q Do you know what the present population is
5 of Clinton Township?

6 A It is my understanding that it is in the area of
7 7,000.

8 Q Are you familiar with Montgomery Township
9 and Somerset County?

10 A Yes.

11 Q Is Montgomery Township quite similar to
12 Clinton Township?

13 MR. STERNS: Well, your Honor, I would like
14 to ask for an offer of proof of what the relevance
15 is or in what direction he is going.

16 MRo SUTTON: This is cross-examination. It
17 will come. I think it is very important.

18 THE COURT: It is pretty broad. Go ahead.
19 If you are able to draw an analysis, similar in what
20 way, houses, septic tanks, highways, fire plugs?
21 What are you talking about?

22 THE WITNESS: They're both large townships;
23 they both have roughly the same population, between
24 the five and 10,000 range; they both have developed
25 principally through single-family homes of a

1 relatively expensive character.

2 Clinton Township surrounds Clinton Town
3 which, of course, Montgomery Township has no com-
4 parable town in the middle, although Rocky Hill
5 is immediately adjacent.

6 THE COURT: On the periphery.

7 THE WITNESS: Yes, it's peripheral, not
8 central.

9 THE COURT: That is not a big shopping
10 center?

11 THE WITNESS: Right, though Princeton,
12 which is the shopping center linked to Montgomery
13 Township, is some removed, clearly within reason-
14 able travel distance but it's not centralized in
15 the same way.

16 THE COURT: And the other side feeds
17 Somerville.

18 THE WITNESS: Well, you have Hillsborough
19 between them, so it's certainly more linked to
20 Princeton than it is to Somerville.

21 BY MR. SUTTON:

22 Q Would you include Montgomery in the same
23 region as Clinton Township?

24 A Again, as I mentioned before, you know, region is
25 not one of these things that you can say with absolute

1 certainty; that this one goes here, this one goes here,
2 in many cases.

3 I think you could make a reasonable argument to
4 include Montgomery Township in the same region as Clinton
5 Township, though I recognize that there are points about
6 Montgomery Township's location relative to Princeton and
7 southward which could also be used to argue the contrary.

8 I would say on balance it would probably be con-
9 sidered in the same region, yes.

10 Q Are you familiar with a recent case involv-
11 ing Montgomery Township?

12 A I am familiar with one case involving Montgomery
13 Township. I believe there are some others that I have
14 heard references to, but I am not familiar with it.

15 The one I am familiar with is the one of Tabema
16 vso Montgomery Township.

17 Q Are you familiar with the case of Montgomery
18 Associates, plaintiff, versus the Township of Montgomery?

19 A Only by name. I haven't had a chance to look at
20 the decision.

21 THE COURT: The citations?

22 MR. SUTTON: This was the last one, 42 N.J.

23 Law 536, this last advance sheet.

24 THE COURT: What is it again?

25 MR. SUTTON: 140 N.J. Super. 536. 149, I

1 am sorry.

2 • THE COURT:- 1^9 N.J. Super. 536?

3 MR. SUTTON: Yes.

4 Q Do you know how much vacant developable
5 land there is in Montgomery Township?

6 A I can look it up in the allocation report. Accord-
7 ing to the Department of Community Affairs study, there
8 were approximately 6200 acres of vacant developable land
9 in Montgomery Township.

10 Q And how does that compare with the vacant
11 developable land in Clinton Township?

12 A Very slightly larger but roughly comparable.

13 THE COURT: How many developable acres?

14 THE WITNESS: 6200.

15 MR. CAIN: In Montgomery.

16 Q Now, there was testimony in that particular
17 case that it would take approximately 1700 units to meet
18 the prospective need over the next 20 years. You are not
19 familiar with this case; is that correct?

20 A I am familiar, as I say, with a case that deals
21 with similar points, but it's a preceding case. I can
22 give you a cite on that one.

23 I am referring specifically to Taberna Corporation
24 vs. Township of Montgomery, which I believe is an unpub-
25 lished opinion, No. L-699-73 P.W.. It was decided July 29,

1 1975. I deal with it extensively in my forthcoming
2 article.

3 THE COURT: Who wrote the opinion?

4 THE WITNESS: Judge Meridith.

5 MR. SUTTON: Well, this opinion is by Judge
6 Meridith.

7 MR. STERNS: The one you are referring to
8 or the one that he is referring to?

9 MR. SUTTON: The one I am referring to.

10 Q The planner referred to a certain criterion
11 in fixing a region. I would like you to read this cri-
12 terion and tell me which items you agree with, which items
13 you disagree with.

14 A Okay. I am quoting from the bottom of Page 1⁹,
15 New Jersey Super. 5⁰. "Additionally of the eight criteria
16 enumerated by Kauker ..." - I assume that's the planner
17 - "... as important from a planning viewpoint, one,
18 employment availability; two, commercial availability;
19 three, vehicular access; four, compatibility with sur-
20 rounding land uses; five, sewage and water availability;
21 six, physical appropriateness of land; seven, housing need;
22 eight, dispersal of apartment units throughout the Town-
23 ship."

24 Did you want me to comment on each one in turn?

25 Q I would like you to comment where you dis-

1 agreed with those various items to be used in determining
2 a region,; and if you disagree tell me the reason why you
3 disagree.

4 A I think most of them are utterly irrelevant in
5 determining a region. I think most of them are specific
6 siting criteria dealing with identifying specific sites
7 for development within a municipality and have no bearing
8 on region.

9 Q Which ones do you feel have no bearing on
10 fixing of a region?

11 A Employment - well, employment availability is a
12 factor; housing and employment do relate in a region.

13 Commercial availability is not a significant
14 factor in delineating a region. In practice, from a
15 practical standpoint, any region that has large centers
16 of employment is likely to have also large centers of
17 employment activity.

18 The existence of population will generate com-
19 mercial activity rather than vice versa. Vehicular
20 access, which is a third point which I assume refers to
21 the existence of transportation networks and connections
22 is significant.

23 Compatibility with surrounding land uses is a con-
24 sideration that deals specifically with a site or a tract
25 of land and not with a region.

1. Sewage and water availability is again principally
2. a siting characteristic and as I believe Justice Hall
3. stressed in the Mount Laurel decision, the existence of
4. sewer and water is not a bar to development or the absence
5. of it is not an ultimate bar because the governmental
6. entities are in a position to extend sewer and water lines
7. as needed; though certainly when you are looking at a
8. municipality and you are trying to pick sites for high
9. density development, the feasibility of serving those
10. sites with sewer and water is certainly a consideration.
11. So, again, it is a siting factor.

12. Physical appropriateness of land, again, is a
13. specific siting factor. You have to look at each indi-
14. vidual tract to determine whether it's appropriate for
15. certain kinds of uses, and furthermore since most tracts
16. are at least in theory appropriate for a very wide range
17. of possible uses, you have to look at the specific design
18. and engineering considerations that would affect develop-
19. ment of a particular type on a particular site.

20. Seven, housing need is a consideration, and eight,
21. dispersal of apartment units throughout the Township is
22. again a specific siting consideration. So on balance, I
23. would say that most of these are not so much regional as
24. site specific.

25. Q You don't feel it is necessary to disperse

1 . . the units throughout the Township; is that correct?

2 A Throughout the Township?

3 Q Yes.

4 A I think it's a consideration. I don't think it
5 has anything to do with region.

6 If you're sitting down to try to design the loca-
7 tion of multi-family housing in a township, dispersal
8 may be one consideration you think of as a specific de-
9 sign and planning step.

10 On the other hand, you have to weigh it against
11 other factors. If you have a particular transportation.
12 system, for example, that emphasizes a small number of
13 places, you may feel that meeting the vehicular access
14 criterion is more important than meeting the dispersal
15 criterion if the two are not compatible. So these are
16 planning decisions that you have to make in the indi-
17 vidual municipality.

18 Q It is in the discretion of the Planning
19 Board, in other words; is that not correct?

20 A To the degree that the Planning Board is acting
21 in the context of Mount Laurel and Madison and not un-
22 reasonably.

23 Q Again, this was the plaintiff's planner
24 who set forth these categories, and Judge Meredith did
25 not reject it.

1 **MR. SUTTON: Your Honor undoubtedly will**
2 **read the case.**

3 THE COURT: I read it. He dismissed the
4 case. He said dispersal was not necessary. He
5 concentrated on one place. The Planning Board^f's
6 decision was perfectly acceptable.

7 MR. SUTTON: He said it could have been
8 dispersed.

9 THE COURT: But having provided for its
10 " fair share, which I gather is not admitted in this
11 case but was admitted in that case, he found that
12 they had not acted arbitrarily and capriciously
13 and dismissed the case on the basis of involuntary
14 dismissal.

15 It is interesting to note in this case that
16 it has been argued against concentration. In that
17 case concentration was fine if the Planning Board
18 decides it is fine. Very interesting.

19 THE WITNESS: This was a similar issue in
20 the Taberna case. The Planning Board defined one
21 area which happened to be in the southeastern
22 corner of the Township as being particularly well
23 located, particularly relative to Rocky Hill and
24 Princeton as being a multi-family zone.

25 THE COURT: Exactly. Identified it with

1 Princeton, a distance from Princeton, and border-
2 ing on Rocky Hill, and if that canal was cut
3 through the zone it provided unlimited recreational
4 facilities.

5 MR. SUTTON: There are three quotes here
6 from the Supreme Court cases and I would like to
7 know whether you agree or disagree with these
8 three quotes.

9 THE COURT: What are you referring to?

10 MR. SUTTON: The same case by Judge
11 Meredith, but he has quoted from, I believe, the
12 Madison Township case.

13 " BY MR. SUTTON:

14 Q Would you read it out loud, please?

15 A The three quotes?

16 Q Yes.

17 A The first quote is from 72 N.J. 5^5. "It is not
18 an answer to say that there is ample other land capable
19 of being deployed for lower-income housing.

20 "The municipality has the option of zoning areas
21 for such housing anywhere within its borders consistent
22 with all relevant considerations as to suitability.

23 "There are proponents of scattering lower-income
24 housing widely throughout a municipality as well as ad-
25 herence of segregating such housing in limited areas.

1 "The municipal fathers should have the widest
2 latitude of judgment in that regard."

3 The second quote is from Mount Laurel.

4 Q Do you agree or disagree with that quote?

5 A I think in the context of the overall Madison de-
6 cision I agree with that decision, certainly.

7 Q The second quote.

8 A This is from 67 N.J. 190.

9 "There is no reason why developing municipalities
10 like Mount Laurel require by this opinion to afford the
11 opportunity for all types of housing to meet the needs of
12 various categories of people, may not become and remain
13 attractive, viable communities providing good living and
14 adequate services for all their residents in the kind of
15 atmosphere which a democracy and free institutions demand.

16 "They can have industrial sections, commercial
17 sections and sections for every kind of housing, from low-
18 cost and multi-family to lots of more than an acre with
19 very expensive homes.

20 "Proper planning and governmental cooperation can
21 prevent over-expensive and too sudden development, insure
22 against future suburban sprawls and slums and assure the
23 preservation of open space and local beauty."

24 Q Do you agree with that particular part of
25 preventing over-expensive too sudden development?

I A I agree with the statement, including that section,
2 yes.

3 Q Fine. Read the last paragraph.

4 A The third quote is, and this is from 6j N.J. at
5 213.

6 "The affirmative duty to plan and provide for
7 regional needs does not require the municipality to make
8 any specific piece of property available for low or
9 moderate-income housing, absent a showing that there are
10 inadequate alternative sites realistically available for
11 that type of development. A municipality must zone in
12 accordance with a comprehensive plan."

13 Q Do you agree with that?

14 A I agree entirely. I think the qualification that
15 the quote includes is absolutely essential, however.

16 Q Now, I would like to go back to the Madison
17 Township case, and I would like you to read the quote on
18 Page 537, where it starts with "Justice Hall." Do you
19 have the case?

20 A Yes.

21 Q Where it starts with "Justice Hall."

22 A "Justice Hall defined the region applicable there
23 as 'the outer ring of the south Jersey metropolitan area,¹
24 which area we define as those portions of the Camden,
25 Burlington and Gloucester Counties within a semi-circle

1 having a radius of 20 miles or so from the heart of Camden
2 City.¹

3 Should I continue?

4 Q Yes.

5 A "What was material to that determination was the
6 proximity of Mount Laurel to the highly organized Camden
7 area, its residential development due to the influx of
8 new residents from nearby central cities and the existing
9 and projected employment pattern^ the highway network
10 linking Mount Laurel with all parts of the Camden area,
11 and the contrast of its vacant acreage with the land
12 supply situations in those nearby central cities,"

13 Q One of the things stressed in the Madison
14 Township case is the proximity of this vacant land to a
15 highly organized area; is that not correct?

16 A I shouldn't say stressed.

17 Q, Well, the case uses the words "what was
18 material to the determination."

19 A Then it lists a series of points. I don't think
20 the fact that one occurs first is meant to give it greater
21 emphasis than the others, however.

22 THE COURT: Is is an ingredient?

23 THE WITNESS: It is certainly not at issue,
24 sir.

25 Q And the existing and projected employment

1 patterns, what does that mean to you?

2 A Again, it goes back to the regional point. Hous-
3 ing should be within reasonable commuting distance of
4 present and future employment growth, both present em-
5 ployment and future growth in employment. Needless to
6 say, since people do use their cars and are not going to
7 walk to work, in any case, the equivalency between housing
8 and employment is not really at issue. The point is a
9 reasonable relationship between the two.

10 Q So what was emphasized for the two items,
11 one, that this vacant land was close to a highly populated
12 urban area- and, two, that there was employment for the
13 people who live close by; is that not correct?

14 A Well, I think it's all part of the piece. The
15 vacant land is in this case close to the highly urbanized
16 Camden area, but also, and I think it's of equal import-
17 ance, that the vacant land was located accessible to the
18 "highway network" linking Mount Laurel with the rest of
19 the area which is of equal stress and that it was located
20 within what I would say reasonable commuting distance of
21 present and future employment opportunities.

22 Of course, there was an ample amount of vacant land,
23 to begin with. Yes, these factors are all part of the
24 picture.

25 Q And in fixing that region, no one would

1 have to drive farther than 20 miles; is that not correct?

.2 A Oh, no. If you take an area with a 20-mile radius,
3 as the crow flies distance, the longest distance would
4 be 40 miles, and in terms of driving distances it could
5 be more because the longest possible distance is the dia-
6 meter which is twice the radius,

7 Q Was not Mount Laurel the diameter?

8 A No. Mount Laurel is located within one side -
9 not in the middle but within a semi-circle, of which
10 Camden is the center. If there's an easel with some
11 white paper, I could explain the relationship here.
12 This will lead us to a very crude representation of the
13 region.

14 Q I would like you to draw in Mount Laurel
15 Township and then - well, to make a drawing of it.

16 A This is the Delaware River. I have to build it
17 outward, if you will; and this is the City of Camden,
18 and let us say that this represents the 20-mile radius.

19 Q Where is Mount Laurel?

20 A It is roughly there. That's approximate, but it's
21 a reasonable representation.

22 THE COURT: This would be just illustrative
23 of what a radius would be, and then the diameter
24 would be twice the radius, and so forth?

25 THE WITNESS: The point being that if you go

1 from here, it is *kO* miles as the crow, flies, as
2 the circumference.

3 Q That's correct, but from Mount Laurel?

4 A It's about ten miles,

5 Q In most areas it would be within this
6 radius. It would not be over 20 miles; is that not
7 correct?

8 A Most people would not commute over 20 miles, cer-
9 tainly not, but it is certainly theoretically possible to
10 commute much more than that and remain entirely within
11 the region.

12 Q Most commute less than 20. Very few would
13 commute over 20 miles; is that not correct?

14 A That's correct.

15 THE COURT: From New York City there are
16 commuters all over the platforms, all the way from
17 Philadelphia, and someplace in Connecticut. Mayor
18 Beame is on the radio telling people not to come
19 into New York City, and people live in Philadelphia
20 "that work in New York.

21 MR. SUTTON: Well, I think there are spe-
22 cial situations. Anybody can do that by choice but
23 it is what -.

24 THE COURT: I always thought we lived by
25 choice. We haven't reached 1984 yet.

1 MR. CAIN: Until this case.

2 THE COURT: Is is now 12:28, Mr. Sutton.

3 Before you begin the next salvo which will take a
4 couple of minutes, I think we are ready for a
5 lunch break.

6 MR. SUTTON: Are we going to work all day?

7 SHE COURT: I think so. I have a good
8 opportunity because the motion to suppress that I
9 had which was scheduled for 2:30 has collapsed.

10 MR. STERNS: I have one problem. With
11 your indulgence, I would have to leave exactly at
12 4:00.

13 (Luncheon recess.)

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AFTERNOON SESSION

1
2
3 THE COURT: Are we off qualifications yet,
4 Mr. Sutton?

5 MR. SUTTON: The witness has sheets of
6 qualifications. It is not my fault.

7 SHE COURT: You are still not ready to talk
8 about substance and you are still on qualifications?

9 MR. SUTTON: I am on the Madison Township
10 case.

U THE COURT: That is a help.

12
13 ALAN MALLACH, resumes the stand.

14 CROSS-EXAMINATION BY MR. SUTTON (CONTINUED):

15 Q Mr. Mallach, did the Madison Township case
16 fix a region?

17 A In general terms, yes.

18 Q What region was fixed?

19 A To the degree that a region was fixed, I think the
20 Madison Township decision clearly indicates that Madison
21 Township is part of the greater northeastern New Jersey-
22 metropolitan area.

23 It specifically rules out the notion of fixing a
24 single county, in this case Middlesex County, as being a
25 Madison Township region.

1 Q Would you show me the part of the opinion
2 that fixes the region?

3 SHE COURT: It is Item 8; 531, fair share
4 and region.

5 THE WITNESS: Okay.

6 THE COURT: 0.8.

7 MR. STERNS: The top of 537.

8 THE COURT: Criteria for fixing region in
9 the footnote on 532.

10 A - I think the point here is not that the Court
11 specifies a region and explicitly the Court sets a series
12 of standards that would be used to delineate the region,
13 so that they deal with this as in the footnote on 532 and
14 on the top of Page 537, the thing is significant where
15 it reads:

16 "In broad principle we believe Judge Furman was
17 correct in conceiving the appropriate region for Madison
18 Township as 'the area from which, in view of available
19 employment and transportation,^f the population of the
20 township would be drawn absent invalidly exclusionary
21 zoning," and then there's a cite from the Trial Court
22 opinion.

23 Now, in the Trial Court opinion, I think it's quite
24 explicit that the region referred to encompasses the
25 entire northeastern New York-New Jersey metropolitan area.

1 Q And the two things that Judge Furman
2 stressed was employment for the people and available
3 transportation; is that not correct?

4 A That's correct.

5 THE COURT: Well, there is a third thing,
6 the population which will be drawn to the Town-
7 ship absent their being walled out.

8 MR, SUTTON: That is correct, yes.

9 THE COURT: But the 20-mile thing, if you
10 want to look at it, is at 537. Do you want to
11 look at it? "Camden, Burlington, Gloucester,
12 a semi-circle having a radius of 20 miles or so
13 from the heart of the City of Camden." They
14 quoted here.

15 I think up above they say, at 537, "The
16 concept of a county per se as the appropriate
17 region was thought not to be realistic."

18 MR. SUTTON: That is correct.

19 THE COURT: So you got that.

20 Q Now, Mr. Mallach, the Court stated, and I
21 believe this is on the bottom of 541, "The fixing of
22 fair share is primarily legislative and administrative;"
23 is that not correct?

24 A On Page 531?

25 Q The bottom of the page.

1 A It carries over to the second page,

2 Q And 5^2?

3 A Yes, that's the language.

4 Q And on 541, so far as fair share was con-
5 cerned, the Court said that Mount Laurel devised no formula
6 for estimating fair share, but the matter was left for the
7 municipalities to apply the expertise of the municipal
8 planning advisor, their County Planning Board, and the
9 State Planning Agency; is that not correct?

10 A That's what the decision says.

11 Q So the decision seems to indicate that the
12 people who fixed the region would be planners; is that
13 not correct?

14 A You are referring to fair share here, sir, not to
15 region.

16 Q Well, don't the two go together? You can
17 fix a region before you can determine fair share?

18 A Yes.

19 Q And the Court refers to planners fixing
20 the region; is that not correct?

21 A Well, I think you're drawing a distinction or you
22 are failing to draw a distinction, rather, between the
23 technical work involved in arriving at a fair share report
24 or a plan or a scheme, and the jurisdiction responsible
25 for adopting that plan.

1 Obviously, a planner - well, I shouldn't say
2 "obviously" because there are exceptions, but as a general
3 rule a planner or a housing expert or some such person
4 would be called upon to prepare the plan, but that planner
5 would not be the individual who adopts the plan. That
6 would be a Court or a municipal governing body, or some
7 other appropriate body as was appropriate to the case,

8 Q What I am getting at is that the Court seems
9 to feel that a planner would advise the municipality as
10 to the formula for a fair share.

11 Now, the planner might get advice from the
12 sociologist or from a housing expert to use statistics,
13 but ultimately someone who would be a skilled planner
14 would be the person who would say this would work out the
15 formula; is that not correct?

16 A Somebody who has the necessary expertise to pre-
17 pare a fair share formula. The term "planner" is not a
18 magic word, sir.

19 Q But the Madison Township case, quoting from
20 Mount Laurel, says, "municipal planning adviser, the
21 County Planning Boards and the State Planning Agency."

22 In each instance, they feel it is a planning
23 agency who should make the determination; is that not
24 correct?

25 A That^fs correct.

1 THE COURT: But not everyone on the Plan-
2 ning Board is a planner. On your Planning Board
3 is there a planner other than the one you hire?

4 MR. SUTTON: Well, it says municipal plan-
5 ning adviser.

6 THE COURT: The matter was left for the
7 municipality to apply the expertise; it is up to
8 the municipality. The municipality does the
9 planning.

10 " As far as I know, constituent members of
11 your Planning Board, none of them are a planner.

12 . M R . SUTTON: I think there may be a number
13 who had planning courses, but be that as it may,
14 as I interpret it, to apply the expertise —

15 THE COURT: We are just getting argumenta-
16 tive. Let us go on.

17 Q Now, the initial Oakwood case or the
18 Madison Township case refers to the statewide housing
19 allocation plan for New Jersey; is that not correct?

20 A That's correct..

21 . 0, There is a long footnote relative to this
22 allocation plan, is there not?

23 A Yes.

24 THE COURT: What page is that?

25 THE WITNESS: 531, sir.

1 MR. SUTTON: 531; it begins at 531 and goes
2 through 532.

3 Q Now, the reason apparently' that the Court
4 did not apply this plan is because it was preliminary; is
5 that not correct?

6 A I can't judge as to the reason why they chose not
7 to apply it. I think there are many possible reasons.

8 Q Now, this footnote indicates what Gov.
9 Byrne's directive was to this agency, the formula to
10 follow. Do you see the formula?

11 A You mean in Footnote No. 37?

12 Q. Yes.

13 A Yes, I believe so.

14 'THE COURT: You mean right in the middle of
15 the page, in allocating the region goals?

16 MR. SUTTON: Yes.

17 THE COURT: 532, other factors as may be
18 necessary and appropriate.

19 Q Now, would you read those various items. I
20 would like to question you as to a number of them.

21 A This is 472 N.J. 532, second paragraph?

22 Q Yes.

23 A "in allocating regional goals the division was
24 directed to take into account one, the extent of housing
25 needs in the region;

1 "Two, the extent of employment growth or decline;

2 "Three, fiscal capacity to absorb the housing goal;

3 "Four, availability of appropriate sites for the
4 housing goal;

5 "Five, other factors as may be necessary and ap-
6 propriate."

7 Q Now, one of the items mentioned by the
8 Governor was fiscal capacity to absorb the housing goal;
9 is that not correct?

10 A "" That's correct.

11 Q Do you consider that essential?

12 A No.

13 Q Now, the housing allocation plan was not
14 abandoned; is that not correct?

15 A Well, it's a semantic quibble. It was withdrawn
16 and as part of the Governor's order the Division of
17 Regional Planning was directed to re-write it thoroughly
18 and reappraise it; so that I think you could argue that
19 it was substantively abandoned although perhaps not in
20 the strictest technical sense.

21 Q Mr. Mallach, this footnote indicates, does
22 it not, that Gov. Byrne ordered postponement of hearings
23 and final review of the preliminary study until after
24 November 1977?

25 A That's what the footnote reads, yes.

1 Q So that apparently was the situation as the
2 Court knew it at the time of the Madison Township case?

3 A It's not necessarily the case. This is not untrue,
4 but this does not reflect additional information that was
5 presumably available to the Court, but they chose not to
6 put it in the footnote. It was a matter of public record.

7 Q Now, this statewide Housing Allocation Plan
8 dealt specifically with municipalities; is that not
9 correct?

10 A ~ That's correct.

11 Q And it dealt specifically with Clinton
12 Township, did it not?

13 A Yes, it does.

14 (i) Q Now, would you go to the section that deals
15 with - that's 1-4, Region 4, 1-5.

16 THE COURT: What exhibit is that?

17 MR. STERNS: 99. You are talking about
18 statewide allocation, P-99.

19 MR. SUTTON: It says "Region 4, 1-5," and ---

20 THE COURT: 1-5?

21 MR. CAIN: Halfway through.

22 THE COURT: 1-5.

23 MR. SUTTON: I think if we go to Appendix 1,
24 two pages.

25 THE COURT: Okay. This is the one you mean,

1 Mr. Sutton?

2 MR. SUTTON: Yes.

3 THE COURT: All right.

4 Q What was the housing need fixed for the
5 Township?

6 A You mean the housing allocation?

7 Q Yes.

8 A The housing allocation for Clinton Township, accord-
9 ing to this report, was 518 units.

10 Q Now, can you tell us how this number of
11 units was reached?

12 A Yes. It was reached through a rather elaborate
13 process which I'll try to summarize and need do justice
14 to.

15 The first step in the process was the delineation
16 of regions. As I believe I mentioned, the State, in my
17 judgment, erroneously delineated Hunterdon County as a
18 separate housing region for this purpose of the study,
19 so that was the first step.

20 The second step was to determine housing need up
21 to the year 2,000 - I am sorry - up to the year 1990 for
22 each of these reasons.

23 **This** was done by adding together two types of hous-
24 ing need; one was present need, reflecting the sum total
25 of the dilapidated units, overcrowded units, and the de-

1 ficiency of housing vacancies in each region; and the
2 second was a prospective housing need which represents
3 the State's projection of the number of additional low
4 and moderate-income households that would be found in each
5 region between 1970 and 1990.

6 The sum total of these two figures yielded a figure
7 that they use as regional need.

8 Needless to say, the concentrations, particularly
9 of the form of the present need, are to be found largely
10 in the urban counties.

11 The second general step, or I guess the third step
12 after the first, being the delineation of regions, and
13 the second being the estimation of need. What the State
14 did was to come up with an allocation formula and this
15 took place in a series of four different values.

16 First they took the present need, in other words
17 the existing dilapidated units, overcrowded units and de-
18 ficiency of vacant units, and allocated that, as I said,
19 in place.

20 In other words, they took the number in each
21 municipality and said that that would be the first element
22 of the municipality's allocation.

23 This, by the way, is very unsound technically be-
24 cause what it means is that a city like Newark, and if
25 you turn to Page 1-20, which is four pages beyond that,

1 you discover that according to this formula the City of
2 Newark starts out with a fair share obligation of 12,840
3 new housing units to be built in the City of Newark, which
4 is, to say the least, unrealistic.

5 So having allocated the present need in place as
6 the first step of allocation, they then took four criteria.
7 One was vacant developable land -

8 Q Excuse me. When we were discussing each
9 criteria, it might be well to go to Page 13 where they
10 are discussed, 13 and 14.

11 A I will paraphrase these descriptions.

12 The first criteria is vacant developable land,
13 which is vacant land less land of steep slope, wetlands,
14 qualified farm land and public land.

15 The second —

16 Q Excuse me. While on vacant developable
17 land, it seems to be that there is a comment on farm
18 land qualified for farm land assessment. This was in-
19 dicated in the vacant developable land in accordance with
20 State policy.

21 Is it not possible that maybe the State
22 policy is that it is important to preserve certain rural
23 areas?

24 A You didn't mention the second sentence. This
25 could not be construed as a prohibition against the use

•1 of any farm land for any housing development*

2 Q Of course not,, if anyone wants to sell
3 their farm for development they can do that, but there
4 is still the State policy, is there not, to preserve the
5 rural areas to a certain extent?

6 A Are you asking me whether there is such a policy?

7 Q Well, this report indicates that there is
8 such a policy, does it not?

9 A The report makes that assertion.

10 Q Yes. You disagree with that?

11 THE COURT: This cannot be construed as a
12 prohibition against the use of any farm land for
13 housing development; so there is no prohibition.
14 If there is no prohibition, there is no policy
15 . except no prohibition.

16 Q What I believe, Mr. Mallach, is that what
17 this committee had in mind was that they would not use
18 farm land in fixing the quota for a municipality because
19 they did not want to force a municipality in having a
20 high housing need where there was considerable farm land,
21 in that way to encourage the continuous of farm land.
22 Would that be correct?

23 A Yes, sir.

24 Q Would you continue with the other?

25 A The second factor was employment growth. In this

1 case, the State used the net employment growth based on
2 covered employment between 1969^{and}* 1975 •

3 This strikes me as being also somewhat inadequate
4 because it gives no reflection of the existing employment
5 base or of the total employment availability in the com-
6 munity.

7 The third factor —

8 Q Excuse me. Could you define employment
9 growth further in your own words?

10 Does that mean how much industry is coming
11 into a municipality, how much more opportunity there is
12 for jobs within a municipality?

13 A The term "employment growth" as used here means a
14 very specific thing, mainly, the increase in the number
15 of covered jobs recorded by the Department of Labor and
16 Industry between 1969 and 1975.

17 Q That would mean that there is more industry
18 coming in or other employers coming in, making jobs avail-
19 able?

20 A Either that or additional employment provided by
21 the existing body of employers through growth.

22 Q You don't agree with that?

23 A Well, I think it's only of limited value. First
24 there are a couple of problems.

25 There are some technical problems which I won't

1 go into in using covered employment as a measure because
2 the fact is that the definition of covered employment
3 changed rather substantially between the two years they
4 used as their end points.

5 Secondly, it leaves out certain sectors of employ-
6 ment, particularly government employment, which is a very
7 major growth sector, but I think the main objection to
8 this type of measurement is that we are talking about a
9 long-term large-scale set of housing goals.

10 We are talking about through the year 1990, We're
11 talking about a statewide prospective and the real em-
12 ployment measurement that's relevant to overall housing
13 goals is the total employment picture in the community
14 and not a short-term growth trend.

15 So we are talking about trying to match total
16 population with a total employment picture so that the
17 degree to which a town either had an increase or not in
18 jobs during the five, six-year period is really a very
19 minor factor. It can be affected by all sorts of things.

20 In fact, if you look at the second appendix of
21 this report, it provides for the raw data that is used
22 as the basis for this study. You will notice that there
23 are many municipalities which one knows as fairly sub-
24 stantial employment centers but which for a variety of
25 reasons score a zero or a negative value in this study

1 because something particular happened during the first
2 half of the '70's that threw their employment picture
3 downward on a temporary basis; so the short-term changes
4 distort this criterion rather drastically.

5 Q Would you call the six-year period a short
6 term?

7 A In terms of economic trends, absolutely,

8 Q Have not all the important cases, the Mount
9 Laurel case and the Madison Township case, stressed that
10 there would be jobs for people living in the area?

11 A Certainly.

12 Q Isn't that what this committee had in mind
13 when they were talking about employment growth?

14 A Yes, but you misstate my objection to this. I am
15 certainly not questioning that an employment measure be
16 used.

17 All I'm saying is that they used an inadequate
18 measurement to reflect employment in their analysis.

19 I am trying to think of an analogy that is on
20 pointj but, for example, if one were to try to get some-
21 place from some other place and wanted to use a car, the
22 issue would not be whether or not you wanted to use a
23 car but the quality of the car that you wanted to use,
24 and in this case they are using a vehicle, as it were, a
25 tool which does not get them where they are trying to

1 get to. It does not reflect employment in the sense that
2 employment should be reflected for a fair-share plan.

3 | THE COURT: Because there is employment
4 there?

5 THE WITNESS: It's not reflected here.

6 • THE COURT: And those houses are deteriorated.
7 On Page 13, only those municipalities, where hous-
8 ing is deteriorated, you don't get any allocation —

9 THE WITNESS: But yet those jobs are there.

10 Q, Isn't it very possible that they assume any
11 jobs in the area are taken up and that it is the new jobs
12 that will bring in new people?

13 A Well, that's not the case, though. Jobs, you know,
14 employment, labor force, labor movement, is completely in
15 a state of constant change.

16 When jobs are added to a community, when new jobs
17 come in, they're added to the existing pot, as it were,
18 of job availability which reflects the combination of job
19 growth, job changes among the existing population, people
20 retiring, and so on and so forth.

21 There is never a point in the labor market where
22 those jobs that have resulted from growth, net growth,
23 are singled out as a separate part of the picture. It
24 doesn't work that way.

25 Q But all the cases do stress, Madison

1 Township, Mount Laurel, proximity of employment?

2 A Yes.

3 - Q Now, the next point is, or, would you go
4 on to the next point, please.

5 A The next point is municipal fiscal capability and
6 this, to measure or to approximate this criterion, the
7 Division of State and Regional Planning selected the
8 growth of dollar value of non-residential ratables between
9 1968 and 1974.

10 This is an equally debatable factor because, for
11 one thing, reassessments which take place in many munici-
12 palities tend to rather drastically change the dollar
13 value of non-residential ratables on paper without usually
14 changing the fiscal capacity of the municipality at all.

15 It also has the same problem in terms of reflecting
16 very short-term trends and not having anything to do with
17 the previous non-residential ratable base.

18 Even if you assume non-residential ratables are
19 the best measure of fiscal capacity, which is a link,
20 a debatable assumption, you would have to argue be-
21 lieve, that the size of the non-residential ratable base
22 is the most important fiscal criterion, amount
23 of growth from that is less important than size of
24 the base itself.

25 Q And the final item was 1

1 A The final item is personal income and they have
2 used aggregate personal income.

3 Q Do you agree with that?

4 A I think again on a technical ground it may make
5 more sense to use the proportion of low and moderate-
6 income households as the measure rather than aggregate
7 personal income, but on general principles I agree with
8 this.

9 Q Now, most of these items, this committee
10 was directed by this executive order from Gov. Byrne to
11 consider housing need, employment growth or decline,
12 fiscal capacity to absorb the housing goal, and avail-
13 ability of appropriate sites; is that not correct?

14 A That's, correct.

15 Q Do you know who prepared this executive
16 order for Gov. Byrne?

17 A A man named Bruce Ackerman.

18 Q What is his expertise?

19 A He's an attorney.

20 Q Now, Mr. Mallach, your principal preparation
21 for this case was the study of Mr. Akahoshi's statistics;
22 is that not correct?

23 A That is one of them, yes.

24 Q Now, Mr. Akahoshi included Clinton Township
25 in a five-county region, Hunterdon County, Somerset County,

1 Morris County, Union County and Essex County; is that
2, not correct?

3 A That's correct,

4 Q And when he fixed what he termed to be
5 fair share, what was his formula, do you know?

6 A Well, the first step was to determine the region
7 which he did,

8 The second step was to determine the housing need
9 within the region, in which he provided two alternative
10 formulations of that housing need, and then using those
11 alternative formulations he allocated that need first to
12 the five counties in the region and then to individual
13 municipalities within the counties as a proportion of
14 their vacant land availability.

15 Q He used one test only, is that not correct,
16 vacant developable land?

17 He figured what, the housing need was in
18 the five counties and then he-determined the vacant de-
19 velopable land in each of these areas, and in proportion
20 he assigned housing units; is that not correct?

21 A That is correct.

22 Q Would you agree using a formula of only
23 vacant developable land that Mr. Akahoshi had used?

24 A I think it gives you a reasonable general picture.

25 THE COURT: As the Madison decision says,

V this is the single most important criteria.

2 THE WITNESS: As such, it is a reasonable
3 proximation, as I believe I pointed out in my
4 report that I prepared and was admitted earlier.
5 There are ways in which this approach can be im-
6 proved upon and I have no qualms about stating
7 that.

8 Q But in using this formula you have to affix
9 a region in proximity to employment as an important
10 factor in fixing a region; is that not correct?

11 A No. Proximity to employment would be a factor in
12 allocating a fair share within a region. The overall re-
13 lationship of housing and employment is the basis for
14 defining the region.

15 Q Do you know the distance between Clinton
16 Township and Newark?

17 A Not precisely. I believe there's some reference
18 to it in Mr. Akahoshi's report. Yes, in 50 road miles,
19 roughly.

20 Q Now, using Mr. Akahoshi's formula, most of
21 the people who would live in Clinton Township would be
22 from the Essex County area because they have the greatest
23 housing need; is that not correct?

24 A That's not necessarily the case at all.

25 Q How do you come to that conclusion that that

1 is not the case?

2 A As you recall -

3 Q You have the exhibit that indicates housing
4 need of the municipalities.

5 THE COURT: Do you mean state-wide?

6 MR. STERNS: Are you referring to Mr.
7 Akahoshi?

8 MR. SUTTON: Yes.

9 A..... I am not sure where the data appears in Mr.
10 Akahoshi's report. I have the data that appears in the
11 housing allocation plan, to begin with.

12 I think the housing needs that we are talking
13 about in this region are twofold.

14 There are present housing needs, which refer to
15 people who are already located in a particular part of
16 the region but need new housing, and there are prospec-
17 tive housing needs which deal with people who have not
18 been landed in any place in the region and are merely on
19 Page 8 of the state-wide housing allocation plan, P-99>
20 allocated to counties on the basis of growth projections.

21 Now, within a region the floating households, if
22 you will, are likely, as they come into being, to try to
23 locate themselves relative to housing availability and
24 job availability and transportation.

25 They will locate themselves anywhere within the .

1 region that meets those criteria. So, in other words,
2 these are not people who are already in Essex and are
3 going to pick up and move to Clinton Township and com-
4 mute back to Essex,

5 They are people who will come into being anywhere
6 in the region who will be looking wherever the employ-
7 ment is growing in the region, wherever jobs are avail-
8 able and will move wherever housing is available.

9 Now, if you look at this five-county region, one
10 thing that becomes apparent is that the employment avail-
11 ability, the future employment availability, in the region
12 is going to be proportionately more and more in Somerset
13 and Morris Counties, particularly Somerset County and less
14 and less in Essex, Union Counties, which means that pro-
15 portionately more and more families coming into being,
16 new households, new wage earners, new couples, are going
17 to orient themselves to live in areas that relate to em-
18 ployment in Somerset and Morris Counties, not in Essex
19 and Union Counties, dere is a very strong shift taking
20 place.

21 Q There has been a shift also to Hunterdon
22 County, has there not? Are you familiar with New York
23 Life in Clinton Township?

24 A There certainly has. As I said before, I don't
25 think for a variety of reasons that the employment shift

1 to Hunterdon County is going to be of the same magnitude
2 in the immediate future as that to Somerset and Morris.

3 , Q ; Are you familiar with A.M. Best in Redding-
4 ton Township? Are you familiar with that company?

5 A I know that there is such - I am not familiar with
6 it in detail. I think the more_____

7 Q Will you tell me what companies have moved
8 from Essex County to Somerset County?

9 A I am not talking about specific movements of a
10 company picking up in one place and that same company
11 landing somewhere else.

12 I am talking about a general shift in the distribu-
13 tion of jobs.

14 For example, in Somerset County, in recent years,
15 we have seen such things as A.T.&T. build two major
16 facilities; we have seen expansion of facilities, such as
17 American Hoecht, and other facilities in Bridgewater Town-
18 ship, and the like. This represents a substantial job
19 growth in Somerset County.

20 At the same time, we have seen factories close
21 down in Newark and companies leave Newark and the Essex
22 County municipalities. As a result, there has been a drop
23 in Essex and a shift upward in Somerset.

24 It really is immaterial whether they are the same
25 or different companies.

1 Q Now, you are a sociologist. Why are these
2 companies leaving Essex?

3 They had a good reason to settle there at
4 one time. You have the water, the railroads, you have the
5 shore area, you have everything there which at one time
6 brought these companies over there. Why are they leaving?

7 A That's a very complicated question. If you look
8 at the kind of industries that are leaving Essex County,
9 we are talking most substantially about manufacturing
10 industries.

11 Now, the manufacturing industries generally that
12 are closing down in urban centers in the northeast are
13 not the same companies that are moving to the suburbs of
14 those same urban centers.

15 They are companies that in many cases are just plain
16 closing down, period, because there is a general decline
17 of manufacturing industry taking place in this country, or
18 companies like, for example, the garment industry which is
19 moving either to the south of the United States or in
20 many cases moving operations overseas.

21 Q Will you specifically name companies in
22 Essex County?

23 A I have not done specific research of companies in
24 Essex County.

25 Q How can you make a statement like that

1 without making a study?

2 • A Because over the past roughly ten years I have

3 worked actively in studying the economic, social and de-
4 velopment trends and picture in the State of New Jersey.
5 I have not made a specific study of specific industries
6 by name.

7 The data that provides you with good information
8 about trends in industries and trends in employment is
9 not data that identifies industries by name. It is
10 statistical information.

11 • When you look for information about broad trends,
12 you use statistical data which has no bearing on the names
13 of the individual companies.

14 Q Are you familiar with County Manpower Offices?

15 A In what sense?

16 Q What their job is.

17 A In a general sense, yes.

18 Q What are the duties of these offices?

19 A Well, there are a number of different agencies in
20 counties that deal with manpower. They are offices of
21 the Division of Employment Security which maintain records
22 on job availability and refer people to work.

23 There are manpower training programs which provide
24 vocational training for people related to job needs. There
25 are a variety of such programs.

1 Q The people in charge of the Manpower offices
2 of the county should be quite familiar with what the em-
3 ploymen-f; situation is in the county; is' that not correct?

4 A Should be, yes.

5 MR. SUTTON: Could I have this report marked?
6 It is a report of Robert M. Cox, Director of the
7 Hunterdon County Manpower Office.

8 MR. STERNS: I assume Mr. Cox will be tes-
9 tifying in the trial.

10 MR. SUTTON: I plan to have Mr. Cox testify.

11 MR. STERNS: Then I have no objection.

12 MR, CAIN: He is on the list of witnesses.

13 MR. STERNS: As long as he will testify,

14 THE COURT: I heard recently that he is
15 resigning.

16 MR, SUTTON: I was planning to try to get
17 him in before next week,

18 THE COURT: If he leaves the area, I would
19 like to get him.

20 (DPB-1, a letter dated 5/26/77, is marked
21 for Identification.)

22 MR. STERNS: Is that material that we were
23 furnished prior to depositions?

24 Q Mr. Mallach, will you please read the short
25 report.

1 THE COURT: Aloud, please,

2 A This is dated May 26, 1977. "To Whom It May
3 Concern: This statement is prepared in response to a
4 request from Mr. Francis P. Sutton, dated May 24, 1977.

5 "It is in lieu of a 'report'¹ which is requested.
6 Immediate pressing responsibilities in this office pre-
7 vent me from preparing the data requested on this short
8 notice.

9 "I can reaffirm the information which was given in
10 written form on the day of the deposition. It shows the
11 unemployment rates in Clinton Township and Hunterdon
12 County.

13 "Inasmuch as it was read with the record of the
14 deposition, I am not repeating it in this 'report.'¹ I
15 also reaffirm the need for greater employment opportuni-
16 ties in this county in order to meet the economic needs
17 of its residents and to minimize the commuting miles
IB currently required.

19 "It is impossible for me at this time to research
20 and produce specific statistics beyond those already pro-
21 vided.

22 "Sincerely, Robert M. Cox, Director."

23 Q Now, Mr, Mallach, you are asking or you are
24 stating Clinton Township to meet its fair share should
25 provide for people who are largely residing in Essex

Mallach-pl-cross

1 County and Union County?

2. A I said nothing of the sort,

3 THE COURT: What was his answer?

4 THE WITNESS: I said nothing of the sort.

5 Q What did you say, then?

6 A I said that Clinton Township should provide a fair
7 share of the households coming into being in a region
8 which admittedly includes Essex and Union Counties and
9 who will be working in this region, and it will be my
10 judgment that most of these people will be working in
11 Somerset and Morris Counties and not in Essex or Union
12 Counties.

13 Q Well, is it not correct that the need is
14 in Essex County and Union County and not Hunterdon, not
15 in Somerset and not in Morris County?

16 A There are two different kinds of need. There is
17 present need, referring to people presently inhabiting
18 dilapidated or overcrowded housing which is, I grant,
19 proportionately substantially more in Essex and Union
20 Counties than in the other three.

21 There is in addition prospective need, in which
22 we are talking about households which are coming into
23 being but who do not exist at present, and those people
24 are not fixed for a particular county but will locate
25 largely on the basis of where the jobs exist and the

1 housing availability within reasonable commuting distance;
2 so it would be a misrepresentation to suggest that over-
3 all theⁱ need is in Essex or in Union in' that sense,

'4 Q Now, did you in any way contact Hunterdon
5 County Manpower Office and obtain any statistics before
6 making your judgment?

7 A On what?

8 Q On the need for jobs in Hunterdon County,
9 on the fact that people are commuting farther and farther
10 from Hunterdon County to their places of employment.

11 A The data on commuting from Hunterdon County to
12 their places of employment was already provided in the
13 economic base of study of the Hunterdon County Planning
14 Board.

15 As far as data on jobs in Hunterdon County is con-
16 cerned, I have made no assertions on jobs in Hunterdon
17 County.

18 Q Do you disagree with the Director of Manpower
19 about his concern about the people having to commute
20 farther and farther because there are not jobs available
21 in Hunterdon County?

22 MR. STERNS: Where is that concern? What
23 are you referring to? Is that something in the
24 letter that you just read?

25 MR. SUTTON: I think it says it. "I also

1 reaffirm the need for greater employment oppor-
2 tunities in this category to meet the economic
3 needs of its residents to minimize the commuting
4 miles currently required."

5 A. Well, in terms of an aspiration, I have no diffi-
6 culty sharing his aspiration for more jobs in Hunterdon
7 County.

8 In terms of economic realities, again, my assess-
9 ment of the economic trends is such that I see the pros-
10 pect "for a rapid increase in the number of jobs in Hunter-
11 don County as relatively remote.

12 As far as commutation is concerned, I think this
13 was discussed sometime earlier. This is largely a matter
14 of choice.

15 If you have jobs in one area, people will choose
16 to live in whatever relationship they want to those jobs
17 to the degree that housing opportunities are available,
18 or as the Madison decision reads, absent exclusionary
19 zoning.

20 Now, for example, the commute between Hunterdon
21 County, particularly northern Hunterdon County and most
22 of the job centers in Somerset County, for example, is
23 not one but I believe most people will characterize as
24 an onerous commute^ so in that sense, while I share his
25 concern in general principle, I have seen no evidence to

1 suggest it as a major problem confronting the residents
2 of Hunterdon County at present,

3 Q, I Well, this letter certainly indicates con-
4 cern by the Director of Manpower, does it not?

5 A That's correct,

6 Q And would not the Director of Manpower have
7 more information in this respect of Hunterdon County than
8 anyone else in Hunterdon County?

9 A The only information about journey-to-work pat-
10 terns for residents of Hunterdon County is that derived
11 from a special analysis of the 1970 census data which
12 happens to be presented in the economic base study.
13 There is no other data on this point.

14 Q Well, let us examine, I believe that is,
15 Chart 6 on Section 3_s Page 12 of Mr. Akahoshi's report.

16 A That's correct.

17 Q This report indicates that there are a
18 substantial number of people who are commuting farther
19 than Somerset County, does it not?

20 A That's correct.

21 Q That there are people that commute as far
22 as Essex County and Union County?

23 A That's correct.

24 Q And Middlesex County?

25 A That's correct.

1 Q So we cannot say that they would be em-
2 ployed in Somerset County of certainty?

3 A Well, we can say with certainty where the people
4 are employed, and you will note that certainly the largest
5 share of out-of-county commuters do work in Somerset
6 County,

7 Now, equally obviously some workers commute to
8 work in Essex County, Union County, New York City,
9 Philadelphia, and the like.

10 This is a matter that has to do with their ernploy-
11 ment and housing arrangements, and as to whether it is
12 onerous or not is a matter that is impossible to de-
13 termine from this table.

14 Nobody has conducted interviews with these people,
15 who has conducted research to indicate they dislike this
16 or enjoy it, whether it is financially burdensome beyond
17 their means, or anything of the sort.

18 THE COURT: Interviews conducted at Hopewell
19 Station where people coming over from Doylestown
20 and park their car and go into New York and commute
21 by trains, it was done in West Trenton and also
22 done in Hopewell.

23 I do recall seeing something about the
24 interviews, "widening commute" was the article.

25 IHE WITNESS: Do you recall what conclusions

1 they reached?

2 THE COURT: No, I don't. It shows that they
3 have had a personal preference but they had skills
4 and a job market that was in New York and desired
5 to live outside the metropolitan area and were
6 willing to commute and they didn't consider it
7 onerous.

8 THE WITNESS: Such studies that I have seen
9 generally indicate on the average that the long-
10 "distance commuters tend to be highly affluent
11 people who have made particular choices, wanting
12 a particular environment or location for their
13 residence.

14 BY MR. SUTTON:

15 Q They are highly affluent people?

16 A Yes.

17 Q The people that travel farthest?

18 A On the average. Now, there are clearly exceptions.

19 When you discover with regard to a particular in-
20 dustry or particular area that that trend is reversed,
21 then I would argue that you have a pretty good, almost
22 prima facie case, that exclusionary zoning is operating
23 in the region in which you have taken the data from.

24 THE COURT: How does that follow?

25 THE WITNESS: Well, if, for example, let's

1 say, you look at a plant, hypothetically New York
2 Life, which I actually do not have data on, and
3 you discover all of the low-paid, low-income
4 workers commute 30 miles on the average, and the
5 well-paid workers commute five miles on the
6 average, then I would argue from that because
7 economically the low-paid workers are relatively
8 less able to do the long commute, and the presence
9 of high-paid workers in close proximity indicates
10 that there are attractive environments in close
11 proximity to the plant or the office.

12 So then the fact that the low-paid workers
13 commute long distances indicate that there is not
14 adequate housing choice for people of lower eco-
15 nomic levels close by.

16 THE COURT: That is the converse of what
17 you said. Most affluent people travel farthest

18 THE WITNESS: Because generally this is some-
19 what speculative. The most affluent who travel
20 farthest and who tend to work in urban centers,
21 the real attractive residential environments tend
22 to be fairly far removed from the job sites, so
23 that if you live in New York and unless you are
24 incredibly affluent and live in New York City and
25 want to live in a relatively rural community, you

1 have to commute 50, 60 miles because the cost of
2 buying a rural environment closer than that to
3 New York City is out of the region'of all but a
4 handful of people.

5 BY MR. SUTTON:

6 Q, Would it not be correct, Mr. Mallach, that
7 the relatively affluent people who commute this distance
8 are people who usually want single-family dwellings or
9 larger acreage so long as they are out here?

10 A - That*s probably a reasonable assumption.

11 Q Now, I would like to bring your attention
12 to Mr« Akahoshi's report, Section 6, Page 2.

13 He indicates there the vacant developable
14 land in acres. Morris County has substantially more
15 vacant developable land than Hunterdon County, does it
16 not?

17 A That's correct.

18 Q And Somerset County also has substantial
19 vacant developable land?

20 A Yes.

21 Q Now, when we are talking about housing for
22 lower-income people, high-density housing, and you men-
23 tioned jobs in Somerset County, isn't it advantageous to
24 these people that these high-density areas be located in
25 Somerset County, as close as possible to their place of

1 employment?

2 A It's advantageous that they be located conveniently
3 with good access to the places of employment.

4 Those places that have good access to the places
5 of employment in Somerset County may or may not be in
6 Somerset County. Some of them are, some of them are not.

7 For example, to return to the scene of one of the
8 earlier discussions, it would be, I venture to say, more
9 difficult, more time-consuming to get to the employment
10 centers in Somerset County from Montgomery Township, for
11 example, than it would be from Clinton Township.

12 Q Do you know all the employment centers in
13 Somerset County?

14 A Not all of them.

15 Q Pardon me?

16 A Not all of them.

17 Q Now, Readington Township is closer than
18 Clinton Township, is it not?

19 A Yes.

20 Q Now, of the 67,711 acres of vacant develop-
21 able land, we go now to Section 6, Page 5, which indicates
22 that vacant developable land in the various townships,
23 Readington Township has more vacant developable land than
24 Clinton Township, does it not?

25 A That's correct.

1 Q It has how many acres?

2 A Approximately 10,100.

3 Q And that of course would be closer to the
4 Somerville area and it would be more desirable, would it
5 not, for high-density housing to be built in Readington
6 Township than so far as lower-income people are con-
7 cerned than Clinton Township, would it not?

8 A Well, the difference in distance is not such that
9 it would necessarily be more desirable, but certainly as
10 desirable, at least, to the degree that you have access
11 to I-78, which is a significant consideration.

12 Q Were you in court yesterday when Mr. Pearson
13 was testifying?

14 A Part of the time, yes.

15 Q And did you hear a statement by Mr. Pearson
16 that there seemed to be less traffic today than in 1973
17 because of the increased cost of gasoline? Did you hear
18 him make that statement?

19 A I heard a number of statements on that point. With
20 regard to I-78, I recall him saying the traffic has re-
21 mained relatively level since 1973.

22 Q But he did say something about the cost of
23 gasoline having gone up and the cost of insurance having
24 gone up, the cost of maintaining a car having gone up?
25 There has been a trend off ____

1 A Certainly the curve, whether or not in a particu-
2 lar situation, is declining or not, certainly the curve
3 has gotten flatter, at a minimum.

4 Q It is important, then, that the lower-
5 income housing be as close, especially today with the
6 higher prices of gasoline and energy shortage, to the
7 places of employment than even in earlier years; isn't
8 that correct?

9 A It's much more complicated than that. When we
10 are talking about low and moderate-income housing and
11 the relation to jobs, first it is important to remember
12 that a lot of the low and moderate-income population is
13 not part of the labor market at all.

14 Talking about senior citizens, women with small
15 children who don't work, and the like, this is one con-
16 sideration.

17 Secondly, in terms of those people who do par-
18 ticipate in the labor market, there are a series of con-
19 siderations that are important.

20 First, in terms of commuting to work and saving
21 gasoline mileage, I think there is some evidence that
22 the most efficient trips in terms of gasoline efficiency
23 are trips on limited access highways to work; so it is
24 arguable that a given number of road miles by limited-
25 access highway is substantially less in terms of gasoline

1 impact and cost than the same number of road miles taken
2 in a more stop-and-go fashion.

3 The other factor is the question of the distinc-
4 tions of how much distance. Certainly if you are talking
5 about drawing the distinction between 40 miles versus
6 10 miles, I don't think there is any question about it.

7 Certainly for those low and moderate-income fami-
8 lies that are part of the labor force, the 10-mile com-
9 mute would be far preferable. If you are talking about
10 12 miles versus 14 miles, 10 miles versus 12 miles, dif-
11 ferences of this sort, 10 miles versus 11 miles, I would
12 say that has very little significance if weighed against
13 other factors.

U If all other things were equal, then perhaps it
15 would be a factor worth giving consideration to, but
16 those distinctions are not important.

17 Q Would you say that a 10-mile difference
18 would be important?

19 A It would be a consideration. It would have to be
20 weighed among other factors.

21 Q Now, when you mentioned that people would
22 be driving on these fine highways, do not many of these
23 people who are driving to work drive on 22? Are you
24 familiar with 22?

25 A Generally.

1 Q Where there is very heavy traffic, where
2 • there is continuing stop-and-go, have you observed that
3 on Route 22?

4 A I have not done a study of that.

5 Q And even if they do go onto Route 78 and
6 287 to get to the place of employment, very often they
7 have to eventually pull off the highway and for a certain
8 distance they are in heavy traffic again, stop-and-go;
9 is that not correct?

10 A Well, presumably so. You know, the perfect situ-
11 ation in this regard is available to very few people.
12 Not everybody can work at the A.T.&T. Basking Ridge com-
13 plex where you can go right off the highway and into the
14 plant. Those are rare.

15 Q Are you familiar on how population projec-
16 tions are reached?

17 A Yes.

18 Q Will you tell us how they are reached?

19 A Well, there are many different techniques that
20 are employed to get population projections.

21 A lot of it depends on the nature of the universe
22 that you are trying to project, whether you are talking
23 about the world, a country, a state, an individual munici-
24 pality, a special demographic group.

25 Q I am talking about municipalities.

1 A Municipal population projections are a very specu-
2 • lative proposition.

3 The traditional population projection techniques
4 are not always very effective for municipalities because
5 they are based on trend line projections of different
6 kinds and in a small area such as a municipality, short-
7 term factors can substantially throw off anything that is
8 based on a trend.

9 The only way that you can really project a munici-
10 pality's population with any reliability, and even then
11 there are serious problems if you go more than a relatively
12 short time frame, but if you do a specific study of that
13 municipality's location relative to the housing market,
14 housing demand, development approvals, development ap-
15 provals in process, the timing of developments and the
16 like, and even then, for example, if, let us say hypo-
17 thetically, there is a major political change in the
18 municipality and a substantially more development-oriented
19 Township committee comes into power, which is rare but it
20 does happen, then that can be thrown off by a change in
21 the volume of development approvals.

22 An example was Parsippany-Troy Hills where cer-
23 tainly in 1970 they had —

24 MR. SUTTON: I have no objection to this,
25 your Honor, but it is going very far afield.

1 THE COURT: Your question was so broad,
2 though, that it led to this type of answer. Ask
3 him a specific question.

4 Q What is the purpose of population projec-
5 tions of municipalities?

6 THE COURT: What is the purpose?

7 MR, SUTTON: Yes, of a population pro-
8 jection study.

9 A For a municipality?

10 Q For a municipality, that's what I am talk-
11 ing about.

12 A Eiere are occasions when such population projec-
13 tions are used by government agencies for such things as
14 developing a sewer system, for example, and they use some
15 kind of a projection technique to calculate how much
16 additional capacity to build into a sewer system, or the
17 like.

18 They certainly serve no general planning purpose
19 because they are not reliable enough for that.

20 Q You don't think that Planning Boards of
21 municipalities rely on population projections?

22 A Oh, I don't doubt that they do.

23 Q And both the State and county makes popula-
24 tion projections for all municipalities; is that not
25 correct?

1 A That's correct. Let's say it's a convenience.

2 It's used for purposes of intra-structure planning.

3 Q Now, you said that you agreed substantially
4 with Mr. Akahoshi's fixing of fair share for various
5 municipalities; is that correct?

6 A I said that I think the outcomes he arrived at
7 appear to be reasonable ones.

8 Q, Did you ever take the trouble to compute
9 "what increase, not just for Clinton Township but every
10 municipality in Hunterdon County, that would be in popu-
11 lation, using these fair-share studies in 20 years and
12 the population projections to see how close they were?

13 A No.

14 Q Now, do you know what the population pro-
15 jection is for Clinton Township in 1990?

16 A Not offhand.

17 THE COURT: Well, the United States census,
18 the County Board, Akahoshi's?

19 Q I am referring to Mr. Akahoshi's report,
20 Appendix (g). Is it Appendix (g) to Mr. Akahoshi's
21 report.

22 A For which year? .

23 Q 1990.

24 A According to the Hunterdon County Planning Board,
25 which I believe this report is taken from, they project

1 a population of 10,250 in Clinton Township by 1990.

2 . Q And if Clinton Township's fair share of
3 housing units, according to Mr. Akahoshi and yourself,
4 were selected for Clinton Township, how many people would
5 there be in 1990?

6 A It would have to be a very rough guess because he
7 is talking about households rather than people; but if
8 we assume for argument sake somewhere in the area of be-
9 tween two-and-a-half and three people per household, then
10 we would be talking about an increase of somewhere in the
11 area of 7500 to 8,000 people, which would give us a total,
12 if we assumed that today's population is about 7,000,
13 then that would give us a total of about 15,000 by 1990.

14 THE COURT: Would you go through that again?
15 I missed the math. I had 10,250 divided by three.

16 THE WITNESS: No, I am sorry. That's the
17 projection.

18 Mr. Akahoshi's fair share proposed a number
19 of, I think it was, roughly 2900 additional house-
20 holds; so if you multiply that, 2900 times three
21 is 8700, 2900 times 2.5 is 17250; so it would be
22 roughly halfway between those two. Let us say
23 about 8,000 additional people; so if the present
24 population is about 7,000 —

25 THE COURT: 7,000; right.

1 THE WITNESS: _____ and we added ,8,000 people
2 to it, the total would be 15,000.

3 THE COURT: Where did you get the 8,000?

4 THE WITNESS: The 8,000, you see, I am esti-
5 mating,

6 THE COURT: 2900 times three.

7 THE WITNESS: I figured the number would be
8 halfway between two-and-a-half people and three
9 people per household; so it's like 2.75. It should
10 be somewhere around 8,000.

11 THE COURT: 7975.

12 BY MR. SUTTON:

13 Q That would be housing throughout the Town-
14 ship. Is that not correct, up until 1990?

15 A The 15,000 would be the total population of Clinton
16 Township by 1990.

17 Q That would include all building in Clinton
18 Township; is that correct?

19 A That's correct.

20 Q Now, under the Mount Laurel and Madison
21 Township cases, the Township's duty is limited to its fair
22 share; is that not correct?

23 A That seems to be the case.

24 Q And the Mount Laurel case makes it clear,
25 does it not, that a municipality, if it meets its fair

1 share, does not have to be overwhelmed by large-scale
2 speculative building; is that not correct?

3 A I believe there's language to that' effect.

4 Q And the Mount Laurel case says also that
5 so long as an appropriate area is zoned to permit low and
6 moderate-income housing, if a developer comes in and their
7 land is zoned otherwise, the developer does not have to
8 change the zoning of their land to provide for low and
9 moderate-income housing if it zones other appropriate
10 areas for low and moderate-income housing; is that not
11 correct?

12 SHE COURT: The municipality does not
13 change their zoning. You say the developer.

14 MR. SUTTON: The municipality.

15 Q Is that correct?

16 A I believe that is correct, that if the municipality,
17 it is shown, has zoned other appropriate areas for the
18 development of low and moderate-income housing, I think
19 the emphasis there is that there has to be a showing that
20 the Township has indeed made realistically feasible their
21 housing opportunities that the Mount Laurel decision
22 speaks of.

23 OHE COURT: That would be the case of Judge
24 Meredith's, wouldn't it, the case of Judge Mededith?

25 MR. SUTTON: I think that that is mentioned

1 in that case. It is also in the Mount Laurel case.

2 THE COURT: What you are talking about there
3 is something which I don't think is in our case.

4 Where a Township zoning ordinance provided
5 for its fair share of regional housing needs of
6 low and moderate-income families by designating a
7 single area of the Township for multi-unit dwell-
8 ings, and area designated for multi-unit dwellings
9 met criteria of employment availability, commercial
10 availability, vehicular access, compatibility with
11 surrounding land uses, sewage and water avail-
12 ability, physical appropriateness of land and
13 housing needs, such zoning ordinance was not arbi-
14 trary or capricious and would be upheld.

15 But I think in this case we are talking
16 about least-cost housing which I think is a little
17 different concept.

18 MR. SUTTON: As I understand in Judge
19 Meredith¹'s case, a certain area was set aside for
20 least-cost housing and it was one area only, but
21 it provided for sufficient least-cost housing and
22 Judge Meredith said you did not have to scatter,
23 that it was in the option of the municipality.

24 The municipality could have different areas
25 but as long as it supplied its fair share and the

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municipality complied with the other necessary
criteria, that's all that was necessary.

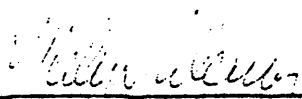
THE COURT: I think they are talking about
fair share there as opposed to least cost, and
least cost may be part of the fair share or fair
share part of the least cost.

Okay, gentlemen, we will adjourn for today.

(Court adjourns,)

* * *

I hereby certify that the foregoing
is a true and accurate transcript of
the proceedings as taken by and before
me at the time and place and on the
date hereinbefore noted.



MELVIN WEINER, C.S.R.