

12 - Morris County Fair Housing Council  
v. Boonton

April 23, 1979

Transcript of Alan Mallach's Deposition (by Goldsmith)

pg. 25

ML0008815

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MORRIS COUNTY  
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL,  
MORRIS COUNTY BRANCH OF THE NATIONAL  
ASSOCIATION FOR THE ADVANCEMENT OF  
COLORED PEOPLE and STANLEY C. VAN  
NESS, PUBLIC ADVOCATE OF THE STATE  
OF NEW JERSEY,

CIVIL ACTION  
NOTICE TO TAKE  
ORAL DEPOSITIONS

Plaintiffs,

v.

BOONTON TOWNSHIP, CHATHAM TOWNSHIP,  
CHESTER TOWNSHIP, DENVILLE TOWNSHIP,  
EAST HANOVER TOWNSHIP, FLORHAM PARK  
BOROUGH, HANOVER TOWNSHIP, HARDING  
TOWNSHIP, JEFFERSON TOWNSHIP, KINNELON  
BOROUGH, LINCOLN PARK BOROUGH, MADISON  
BOROUGH, MENDHAM BOROUGH, MENDHAM TOWN-  
SHIP, MONTVILLE TOWNSHIP, MORRIS TOWN-  
SHIP, MORRIS PLAINS BOROUGH, MOUNTAIN  
LAKES BOROUGH, MOUNT OLIVE TOWNSHIP,  
PARSIPPANY-TROY HILLS TOWNSHIP,  
PASSAIC TOWNSHIP, PEQUANNOCK TOWNSHIP,  
RANDOLPH TOWNSHIP, RIVERDALE BOROUGH,  
ROCKAWAY TOWNSHIP, ROXBURY TOWNSHIP,  
and WASHINGTON TOWNSHIP,

Defendants.

B E F O R E:

VICTOR SELVAGGI, JR., a Notary Public  
and Certified Shorthand Reporter of the State of New  
Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING,  
Morris Township, New Jersey, on Monday, April 23,  
1979, commencing at 9:30 a.m.

**KNARR - RICHARDS, ASSOCIATES**

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18  
19 VICTOR SELVAGGI, JR.  
20 Certified Shorthand Reporter  
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WITNESS

DIRECT

ALAN MALLACH  
By Mr. Goldsmith

2

1 A L A N M A L L A C H, previously sworn, recalled;  
2 DIRECT EXAMINATION BY MR. GOLDSMITH:

3 Q Mr. Mallach, my name is Robert Goldsmith.  
4 I'll be asking you some questions about Rockaway Town-  
5 ship. We are the attorneys for Rockaway Township and  
6 as was indicated before, you have already been sworn.

7 A Yes, sir.

8 Q How many times have you been to Rockaway  
9 Township? A Well, specifically on this  
10 litigation, I've been to Rockaway Township once.

11 Q Have you been there before for reasons  
12 unrelated to this litigation?

13 A I may have passed through it, but never in any  
14 great detail.

15 Q Do you know when the time was that you  
16 were in Rockaway Township before this litigation?

17 A This was the second trip, which was the April  
18 4th field trip.

19 Q Just for my purposes, I think I wasn't  
20 there the afternoon when you said what you would be  
21 testifying about specifically with respect to the

22 individual defendant municipalities. What areas are  
23 they? A I will be testifying to the

24 feature characteristics of their zoning ordinance and  
25 the use of land in the Township with particular regard

1 to areas that appear on the ordinances to be zoned for  
2 multi family housing or other uses that may be close to  
3 least cost.

4 Q Okay. How much time did you spend in  
5 Rockaway Township the time you were there on April 4th?

6 A Perhaps an hour.

7 Q How did you get there?

8 A Drove.

9 Q Do you know what areas of Rockaway you  
10 saw or what streets you were on?

11 A Yes. I can't give you the street names. Perhaps  
12 I could. The areas that I studied were those parts of  
13 the Township where multi family zoning is found which  
14 generally is the southern part of the Township around  
15 Mount Hope Avenue and Mount Pleasant Avenue.

16 Q What specific areas did you go to?

17 A I went particularly to look at the two areas that  
18 are zoned R-5 and appear as such on the zoning map.

19 Q Did you go to any other areas of the  
20 Township?

21 A Well, I drove around  
22 generally in that part of the Township up to Interstate  
23 80, roughly.

24 Q How would you describe what you saw in  
25 the municipality, the housing stock, the topography?

A The areas I saw were rolling, in some cases

1 hilly topography. The housing stock immediately north  
2 of the Dover town line is older housing. It appears  
3 to be an extension of development in Dover proper.  
4 Then it becomes post World War II suburban housing with  
5 interspersed commercial activities along the major road,  
6 largely subdivision tract housing and, of course,  
7 Interstate 80 is Rockaway Town Square Mall.

8 Q Would you say comparatively large or  
9 small lots? A I would say it's a mixture.

10 Q What would be the smallest lots that you  
11 saw? A I really can't say with any  
12 precision. I wasn't looking at the lots particularly  
13 to ascertain that. There may have been quarter acre  
14 lots in some areas.

15 Q Do you think any smaller?

16 A That I wouldn't know.

17 Q Did you see any existing least cost  
18 housing? A Well, least cost housing  
19 by definition is a hard term to apply to existing housing  
20 stock. There is really no way to answer that question.

21 Q Could you expound on why it's hard to  
22 with respect to it? A Least cost  
23 housing which, as I recall the court defined it, was  
24 defined as least cost consistent with health and safety  
25 or words to that effect, with particular reference to

1 future development.

2 Now, when you look at existing housing, which  
3 in this case includes some housing mostly post World War  
4 II housing, but also housing that probably dates from  
5 the 1910's or 1920's, it's very hard to tell whether  
6 that was constructed as least cost housing. It may be  
7 expensive today and may be inexpensive today, but as  
8 to how it was constructed is certainly a historical  
9 phenomenon.

10 Q How about in the modern context to say  
11 look at the current existing housing and given the  
12 aspects of the particular home and the particular lot,  
13 could you say whether it would be likely to be least  
14 cost housing? A Well, I can't say  
15 that anything struck me as such, but then again I was  
16 not focusing specifically on that question.

17 Q You said that you looked at two, specifi-  
18 cally looked at two areas which were in the R-5 zones.  
19 How would you describe those areas?

20 A The first area is actually a multi family develop-  
21 ment site, the site of the Rustic Ridge Apartment  
22 complex. It's on a very steep and irregular sloped  
23 site.

24 Q Would you say that much of Rockaway  
25 Township in what you saw could be characterized as



1 sloped? A Not as steep as the Rustic  
2 Ridge site. I would say within the part of Rockaway  
3 Township that I saw, the Rustic Ridge site was on a  
4 significantly steeper slope than most of the rest of  
5 the developments.

6 Q Would you say unreasonably steep?

7 A Well, the fact it's there means that it can be  
8 done, but there is no question for the developer to  
9 have built on that site would result in greater costs  
10 or alternatively environmental damage than if the  
11 similar housing were built on a less steep site.

12 Q Okay. Assuming that everything else was  
13 least cost, would you feel it is fair to say that  
14 certain housing could still be qualified as least cost  
15 housing even if it is on steeper slopes than it might  
16 be in other areas of the municipality?

17 A Well, I think it would depend on what the avail-  
18 able or alternatives were. I think if you have a  
19 municipality where literally there is no land that does  
20 not have some slope problems and nonetheless that  
21 municipality with reference to its location and so on  
22 is an appropriate area for least cost housing, then  
23 obviously there could be no housing that did not have  
24 slopes and that would be considered least cost housing.  
25 In a community where there are alternatives, for example,

1 some land had a steep slope and other land does not  
2 have a steep slope, then, of course, the zoning land  
3 on the steep slopes as distinct from the flater land  
4 would be inconsistent with least cost.

5 Q Could you envision a **situation where one**  
6 **municipality would fall into the former category where**  
7 **there would be very little land that did not have steep**  
8 **slopes? Could you envision a situation where you would**  
9 **not require them to have any least cost housing if**  
10 **other municipalities in the area were supplying an**  
11 **adequate share?**

12 A Well, most  
13 probably not. Whether rightly or wrongly the court  
14 in Mount Laurel made it very clear that the provision  
15 of fair share was a municipality by municipality  
16 responsibility and so long as each town individually  
17 has a responsibility for zoning and land use and so on,  
18 each town, if it's a location really appropriate, if  
19 you will in terms of the "developing municipality"  
20 criteria should be obligated to provide some fair share  
21 of its regional housing need.

22 Q Is there a hierachy of least cost housing  
23 or by definition, is there a rock bottom of least cost  
24 housing?

25 A I'm not sure I follow.

Q Okay. Can there be only one phenomenon  
which is, in fact, least cost housing in a given area

1 or can there be compromise? A Well, least  
2 cost housing is, by definition, the least cost housing  
3 that can be built within the area, not less cost  
4 housing. Now, clearly there are different types of  
5 housing that are least cost and some of them may be  
6 more appropriate to particular sites than others in  
7 terms of single family versus townhouses versus  
8 apartments, but within each type there is a least cost  
9 standard.

10 Q Going back to the case law, would you say  
11 that Rockaway Township is <sup>a</sup> developing municipality?

12 A Yes.

13 Q About how much time did you spend at the  
14 Rustic Ridge complex? A Well, I don't  
15 know exactly. Initially I approached it from one  
16 direction and found that the access that appeared to  
17 exist on the map was not the actual site access and  
18 then drove around and found the access coming off  
19 Mount Hope Avenue some ways down. I drove up into the  
20 project, up in the sense is quite literal because the  
21 access road is on a fairly pronounced slope itself. I  
22 drove around, looked at it perhaps altogether 15 to 30  
23 minutes.

24 Q About how large is the project?

25 A It's very hard to say. The site is about, in my

1 estimation, 20 acres or so, so it could be, I would  
2 guess between 100, 150 units, but that's just a guess.

3 Q 10 to 15 units per acre?

4 A The ordinance allows up to slightly more than  
5 10 units per acre. I believe that **because of the slope**  
6 **problems this particular development is on a lower**  
7 **density than that. Perhaps substantially so.**

8 Q Do you know what the bedroom breakdown is  
9 for those? A No.

10 Q Do you know what the parking breakdown is  
11 per unit? A No. I would assume it  
12 would have to be at least two per unit because that's  
13 what the ordinance requires, but whether it's more than  
14 that, I don't know.

15 I should also add that the ordinance does specify  
16 a prescribed bedroom mix. Whether the development  
17 adheres to that, I have no firsthand knowledge.

18 Q From viewing the development, what factors  
19 come to mind as being inconsistent with least cost  
20 construction? A Well, many of the ones  
21 which appear in the ordinance are not necessarily  
22 visible from a windshield view of **the development**, so  
23 the key factors are those that **appear in the ordinance.**

24 Q So you would object to a **minimum five**  
25 **acre lot?** A Yes.

1           Q           Is there any minimum that you would find  
2 reasonable?           A           Actually there is no  
3 intrinsic minimum. I think from a practical standpoint,  
4 if you had a unit of six or eight units, I mean a  
5 structure of six or eight units smaller than that,  
6 which would be unlikely, then anybody would want to  
7 build a garden apartment structure that would require  
8 something in the area of .4, .5 acres, so you can  
9 argue something in the area of half an acre is kind of  
10 a defacto minimum from a practical standpoint.

11           Q           Is there any cost efficiency on a larger  
12 scale and is there enough to require some minimum in  
13 order to insure least cost garden apartments?

14           A           The cost efficiency is not great.

15           Q           There is some?

16           A           Well, it would depend. If you are building on  
17 a large scale, on a very straight forward site.

18           Q           Level?           A           Level, no  
19 serious drainage problems, then there are efficiencies  
20 to be achieved. If you are building on a complex site,  
21 that factor tends to cancel out any efficiencies you  
22 might achieve from volume.

23                    Like for example, in the Rustic Ridge development,  
24 because of the nature of the site, each of its structures  
25 had to be separately situated in a fairly complex fashion

1 in order to play with the slope and so the site prepara-  
2 tion, the site and construction of the infrastructure  
3 and so on almost likely resulted in costs being higher  
4 than a little development without economies at scale.  
5 Also, the advantage of the small development, again  
6 like a large development, you have to construct a  
7 large amount of interior roads. This is hypothetical.  
8 A six or eight unit structure can probably be constructed  
9 using road frontage and sidewalks as principal circula-  
10 tion systems.

11 Q Going back to site plan, that would be  
12 fairly level and noncomplex, at what point or percentage  
13 of cost efficiency would come into play?

14 A I really haven't calculated.

15 Q Nonnegligible?

16 A That I don't know.

17 Q What was the nature of the other site  
18 that you went to? A The other site is  
19 difficult to find the exact location because the zoning  
20 map was largely illegible, but it's located on -- let  
21 me tell you the name of the street. It appears that  
22 it's located on Fleetwood Street which, in turn, is  
23 more or less at right angles to Mount Hope Avenue and  
24 this is a site that has not been developed and is  
25 thickly wooded and appears to have some slope, but

1 distinctly less than the slope of the first site.

2 Q Could you give me a maximum, minimum  
3 grade for both the Rustic Ridge and the Fleetwood  
4 Street site?

5 A This is a rough guess,  
6 but I believe Rustic Ridge is running 15 to 20 percent  
7 slope and the Fleetwood site, in my estimation, this  
8 is even rougher because I only looked at it from the  
9 road and it's not clear, but it would probably be no  
10 more than 10 percent.

11 Q Is that a reasonable slope for least cost  
12 housing, least cost apartments?

13 A Generally speaking, yes. There again, to qualify  
14 that, you have to look at each site as a separate  
15 entity, but there are no inherent problems so long as  
16 you are below a 8 or 10 percent slope.

17 Q Generally driving through the areas of  
18 the municipality, would you say there are many areas  
19 which don't have much slope?

20 A By the standards of the second site, yes. I  
21 would say the second site was reasonably typical of  
22 the terrain in that area.

23 Q Do you know whether any development is  
24 planned for the second site?

25 A At this point I don't. I do hope to find out.

Q Just based on the site itself, not

ing the zoning ordinance related to the second

you say least cost housing could be

re?

A I can't say with

a closer look, but the look that I

no inherent obstacles to construct the

housing on such a site.

Q Do you know what sewerage or water

facilities would be available on that site?

A No.

Q Okay. Did you get to any other areas of

the municipality?

A No.

Q Are you familiar with the industry of

Rockaway Township past or present?

A No, I'm not.

Q Do you know what affect mining has on

development of property for residential use?

A Well, there are cases, it varies again, but there

are cases where mining can limit the reuse of a site

or make it more expensive because if a mine has been

excavated and then simply plugged rather than filled,

you have a problem.

Q From what you know, which is the more

desirable method of making the land usable?

A Well, filling rather than plugging.

Q Is that substantially more expensive?

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, that's exactly the problem.

And would you say that it would make, it's any development nonleast cost?

in relative to similar sites, where you expense, yes.

Would you say it's a significant cost

or?

A

That would depend on the extent of the mining works that were under a site. They could be a nominal thing or it could be quite considerable.

10

Q Okay. From what little knowledge I have

11

of mining, the older mines, I believe some of the mines

12

in Rockaway Township are fairly old, rather poor records

13

were kept in which case often the extent of the mining

14

is not known, so they go down and come up again, so you

15

can't just know about the holes at ground level. In

16

that context of old mines, would you say it would be

17

a fairly expensive phenomenon?

18

A It could be. It would mean that you would really

19

have to look very closely at any site before you could

20

make any judgment as to what was a feasible use, what

21

the cost would be again because the records are inadequate

22

and that would mean you would have no way of evaluating

23

it beforehand.

24

Q Right. Did you get up to the White

25

Meadow Lake area?

A

No.

1 Q Okay. Concerning the zoning ordinance  
2 of Rockaway Township, would you say that any of the  
3 currently existing residential zones provided for  
4 least cost housing? A No.

5 Q Did any come near **providing for least**  
6 cost housing? A No.

7 Q What would you say comes **closest** to least  
8 cost housing? A Seriously that ques-  
9 tion cannot be answered. I mean, obviously in theory  
10 you could say that because a lot in one zone is a  
11 somewhat smaller lot than the lot in the other, that  
12 therefore that comes closer to providing least cost  
13 housing, but in each case the gap between what the  
14 ordinance provides and the least cost standards is so  
15 large that the difference between the different zones  
16 is insignificant.

17 Q And for single family residences on  
18 individual lots, what would be the area that you would  
19 want for least cost houses?

20 A 5,000 square feet.

21 Q And I believe you said at some other  
22 depositions that currently existing **housing does not**  
23 get credit for least cost housing?

24 A That's correct.

25 Q Okay. Are you familiar with the mobile

1 home park in Rockaway Township?

2 A No.

3 Q You haven't seen it?

4 A That's correct.

5 Q Okay. Do you know that there is one?

6 A I inferred from your question that there was, but  
7 I did not know about it prior to that. It must be a  
8 non-conforming use.

9 Q Are you familiar with transportation,  
10 the transportation network of Rockaway Township?

11 A In terms of public transportation or transporta-  
12 tion generally?

13 Q Well, first public and then private  
14 transportation. A The principal  
15 vehicular access to Rockaway Township is Interstate 80.  
16 Rockaway Township is extensively served by buses with  
17 the Rockaway Town Square Mall being a principal center  
18 location for bus routes in that part of Morris County.  
19 There is also a spur bus that serves Picatinny Arsenal.

20 Q Do you know whether there are any other  
21 routes going through Rockaway Township?

22 A Well, there are other roads.

23 Q Bus routes? A Well, not  
24 that I know of. There is also train service from Dover  
25 which is very close to the Township.

1 Q The southern portion of the Township?

2 A Yes.

3 Q Okay. Do you think it's a reasonable  
4 commute from Rockaway Township to Newark?

5 A Yes.

6 Q For any economic class?

7 A Well, it's a reasonable commute, in that it's  
8 a commute that is typical of what large parts of the  
9 population in New Jersey and the United States do.

10 Q Is it desirable?

11 A Obviously a shorter commute would be preferable  
12 and that goes for people of all social and economic  
13 classes, but it's for better or for worse within the  
14 normal range and since there is public transportation,  
15 that it's a better commute than say to many other places.

16 Q Generally, what would you say the cost  
17 factor for commuting from Rockaway Township to Newark  
18 would be? What would be the impact of that cost  
19 factor on a low income family?

20 A Well, it would depend on how. I'm not familiar  
21 with what the bus and train fares are and that would  
22 really be the most important factor.

23 Q If I told you it was say \$40 a month,  
24 \$40 to \$50 a month for train fare from Dover to Newark,  
25 do you think that's a cost that a low cost family could

1 bear? A Low income family.

2 Q Low income family.

3 A They could bear that, yes.

4 Q Would you take that into account when you  
5 determine least cost housing?

6 A Well, one thing you take into account is in  
7 calculating a fair share, for example, and I think this  
8 is true of almost everybody who has worked with the  
9 fair share concept, is the question of employment,  
10 either employment within the municipality or employment  
11 within the more immediate area of the municipality or  
12 both. So certainly with fair share allocations for  
13 municipalities, would very definitely take the existence  
14 of employment and reasonable proximity into account.

15 Q Returning to the Rockaway Township zoning  
16 ordinance, are you aware of the specific existing  
17 environmental constraints for the various residential  
18 districts? A No.

19 Q You have made no study of it?

20 A That's correct.

21 Q Would you say that the R-1 zone, single  
22 family zone of 80,000 square feet, 88,000 square feet,  
23 about two acres, two and a half acres, could that be  
24 reasonable given certain environmental constraints?

25 A The lot size of approximately two acres taken

1 in itself could be justified under some circumstances  
2 by environmental conditions and the absence of public  
3 water and sewer.

4 Q Would you say that the constraints would  
5 have to be moderate or extreme in order to have a lot  
6 size of say two to two and a half acres?

7 MR. BISGAIER: Could you read that  
8 question back?

9 (The Reporter reads back the last  
10 question.)

11 THE WITNESS: Extreme.

12 Q How would you characterize extreme  
13 constraints, absence of water?

14 A The combination of absence of water and sewer  
15 and the existence of a variety of environmental features  
16 such as steep slopes and what amounts to rock virtually  
17 rather than conventional soil in order to require lot  
18 size of this sort.

19 Q If there were sufficient least cost  
20 housing in the Township, would any of the existing  
21 zones, would you find any of the existing zones to be  
22 reasonable? A If there were existing  
23 provisions for future least cost housing in the Township,  
24 as well as whatever they may be at the present time,  
25 I think it's possible that some of these zones might be

direct

20

or certainly would be legally acceptable.

Earlier I believe in your testimony  
endham Township was it?

You mentioned the parts of Rockaway  
urban. That's correct.

Q Could you give me some idea of what parts?

A This is not based on firsthand knowledge, but on  
9 impression, looking at the map, photographs, talking to  
10 people, that large parts of Rockaway Township north of  
11 Interstate 80 are developed in what one might characterize  
12 as a scattered fashion. This is Rockaway Township.  
13 This here below Interstate 80 is the most densely  
14 developed relatively inner suburban area. To the north  
15 of Interstate 80 you have a mixture of what appears to  
16 be semi-resort of at least lake oriented development  
17 around White Meadow Lake and Lake Telemark.

Q Is that necessarily exurban or how would  
18 you characterize that area?  
19

A Well, it varies. Physically, this is lake  
20 oriented development. What has happened typically in  
21 Morris County with regard to this kind of development  
22 and I don't have specific knowledge with regard to  
23 Rockaway Township, is that over recent decades this  
24 has been converted to year round occupancy so it is a  
25

1 kind of exurban development. It may have come into  
2 being originally for resort purposes, but now it's  
3 part of the suburban network, if you will.

4 Q Does that qualify as exurban?

5 A It's a version. I tried to guess before these  
6 are not scientific terms. It's a general concept.

7 Q From either one, your own personal or  
8 looking at the map or from other sources of information,  
9 do you know whether any portions of Rockaway Township  
10 are modest, kind of modest housing, modest community?

11 A Well, from my own personal knowledge, some of the  
12 areas immediately adjacent to the Dover town line could  
13 be considered modest and it's possible that some of  
14 the lake areas are. They often are, but again I have  
15 no specific knowledge of Rockaway in that regard.

16 Q For my own personal knowledge, is there a  
17 term for below modest, a term of art for housing below  
18 modest?

19 A Bad. There is nothing  
20 specifically that comes to mind. Substandard, that  
21 clearly implies, of course, that it is inadequate in  
22 certain regards.

23 Q Okay. Would you say that any of the  
24 north portion of Rockaway Township, just in terms of  
25 location, is desirable for least cost housing?

A Quite possibly, yes.



1 Q Would you say it would be an unreasonable  
2 commute to Newark from north Rockaway Township?

3 A From north Rockaway Township you have direct  
4 access to Route 23 which is a fairly fast road into,  
5 certainly the Wayne-Paterson area.

6 Q But you would need a car, though?

7 A That I'm not certain. There may be a bus route  
8 along there.

9 Q Do you think it would be a fair commute  
10 from north Rockaway Township to say the urban areas of  
11 Morris County, Dover, Morristown?

12 A I think it would be not unreasonable. You would  
13 need a car for that at the moment. I think it's  
14 important that if, for example, a large amount of  
15 development took place say in north Rockaway Township  
16 or similar areas, that the Morris County Metro people  
17 could probably be convinced to extend bus service to  
18 such an area.

19 MR. GOLDSMITH: I have no further  
20 questions.

21 \* \* \*

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MORRIS COUNTY  
DOCKET NO. L-6001-78 P.W.

MORRIS COUNTY FAIR HOUSING COUNCIL, :  
et als, :

Plaintiffs, :

-vs- :

CERTIFICATE

BOONTON TOWNSHIP, et als, :

Defendants. :

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I, VICTOR SELVAGGI, JR., a Certified Shorthand  
Reporter and Notary Public of the State of New Jersey  
certify that the foregoing is a true and accurate  
transcript of the deposition of ALAN MALLACH who was  
first duly sworn by me at the place and on the date  
hereinbefore set forth.

I further certify that I am neither attorney nor  
counsel for, nor related to or employed by, any of the  
parties to this action in which this deposition was  
taken and further that I am not a relative or employee  
in this case, nor am I financially interested in this  
action.

*Victor Selvaggi, Jr.*  
A Notary Public of the State of New Jersey

Dated: 11/27/79

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