

ML - Morris County Fair Housing Council
v. Benton Twp

5/10/79

Deposition upon oral examination of Mary E.
Brooks

p 165

ML000886S

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

ML000886S

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,

Plaintiffs,

vs.

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
TOWNSHIP, MONTVILLE TOWNSHIP, MORRIS
TOWNSHIP, MORRIS PLANIS BOROUGH, MOUNTAIN
LAKES BOROUGH, MOUNT OLIVE TOWNSHIP,
PARSIPPANY-TROY HILLS TOWNSHIP, PASSAIC
TOWNSHIP, PEQUANNOCK TOWNSHIP, RANDOLPH
TOWNSHIP, RIVERDALE BOROUGH, ROCKAWAY
TOWNSHIP and WASHINGTON TOWNSHIP,

Defendants.

.....
B E F O R E:

MICHELE HEADD, a Certified Shorthand Reporter and
Notary Public of the State of New Jersey, at the MORRIS
TOWNSHIP MUNICIPAL BUILDING, 50 Woodland Avenue, Morristown,
New Jersey, on Thursday, May 10, 1979, commencing at
9:00 A.M. in the morning.

KNARR - RICHARDS, ASSOCIATES

CERTIFIED SHORTHAND REPORTERS
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A P P E A R A N C E S:

MESSRS. WILEY, MALEHORN & SIROTA,
BY: FREDERIC J. SIROTA, ESQ.,
Attorneys for Defendant, Township of Rockaway
and the Common Defense Committee.

THE PUBLIC ADVOCATE,
BY: CARL C. BISGAIER, ESQ.,
For the Plaintiffs.

MICHELE HEADD

Certified Shorthand Reporter

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WITNESS

DIRECT

CROSS

Mary E. Brooks

By Mr. Sirota

2

1 M A R Y E. B R O O K S, having been previously
2 duly sworn, resumed the stand and testified
3 as follows:

4 THE WITNESS: All right. Two things
5 that I thought of in response to questions
6 you asked me yesterday that I'd like to add
7 to, if this is an appropriate time.

8 MR. SIROTA: That's fine.

9 THE WITNESS: You asked -- I'm sorry,
10 one thing. You asked me about the consulting
11 contracts that I was or had worked on. And
12 in addition to those listed on that resume,
13 although I believe it's at the bottom of that
14 resume, I am currently working on a cooperative
15 agreement from the United States Department
16 of Housing and Urban Development with Suburban
17 Action Institute.

18 I'm Project Director for that project
19 and the general objective for that contract
20 is to identify and demonstrate programs and
21 activities to expand housing opportunities
22 for low and moderate income persons in suburban
23 areas, and to work with public agencies and
24 other organizations in doing so.

25 CONTINUED DIRECT EXAMINATION BY MR. SIROTA:

1 Q With respect to the first consultancy
2 mentioned in your resume; that is, United States
3 Department of Housing and Urban Development with the
4 American Society of Planning Officials in 1970, did
5 that involve or relate in any way to a fair share plan?

6 A I don't believe so.

7 Q Did it relate to selecting a region or
8 identifying a region in which certain areas were
9 located in the sense of Madison or Mt. Laurel?

10 A With respect to Madison or --

11 Q Not with respect to, in the sense of
12 Madison or Mt. Laurel. A No.

13 Q Would you once again describe generally
14 that consultancy? A The very
15 first one?

16 Q Yes. A While I
17 was with the American Society of Planning Officials?

18 Q It's the first one on your resume.
19 If you'd like to at any time look at a document,
20 just mention it to me, including your resume.

21 Thank you. The contract was with the American
22 Society of Planning Officials to evaluate and develop
23 some training documents for the Comprehensive Planning
24 Assistance Program, commonly referred to as the
25 701 Program.

1 Q Would you generally describe the
2 consultancy relating to the Pennsylvania State Department
3 of Community Affairs with the Suburban Action Institute?

4 MR. BISGAIER: Didn't we do this yesterday?

5 We did.

6 MR. SIROTA: Well, we did do this yesterday
7 and yesterday I told you that I'd want to go
8 through each individually. You suggested that
9 we go through all of them --

10 MR. BISGAIER: Never accept my suggestions
11 if they're going to result in doubling or
12 tripling what we're here for.

13 A The contract with the Department of Community
14 Affairs for the State of Pennsylvania was with
15 Suburban Action Institute to identify the term and
16 practice of exclusionary zoning, a way of identifying
17 the existence of exclusionary zoning, and conducting,
18 I believe, six case studies in the four particular
19 jurisdictions in the State of Pennsylvania.

20 Q And what was the method for identifying
21 exclusionary zoning that was arrived at in the report?

22 A In the report, the method used was to evaluate
23 the zoning ordinances of the jurisdictions and a
24 variety of demographic data for those jurisdictions.

25 Q Did I understand your answer to suggest

1 that one purpose of the report was to arrive at a
2 methodology of determining exclusionary zoning?

3 A The extent to which the exclusionary zoning
4 was, or existed in a particular jurisdiction, yes.

5 Q So that was a general purpose separate
6 and apart from the six case studies?

7 A The case studies demonstrated the use of that
8 method.

9 Q What was the method?

10 A I think I just explained it to you in that
11 the method consisted of evaluating the zoning ordinances
12 and a variety of demographic data for the jurisdictions.

13 Q What concerns were relevant when you
14 evaluated the zoning ordinance?

15 A We looked at the -- and I may not be able
16 to remember all of these -- the type of housing permitted
17 in zoning ordinances, the varying restrictions placed
18 on the construction of that housing, including such
19 things as the minimum house size; bedroom restrictions;
20 accessory buildings.

21 I looked at minimal lot size, other bulk
22 requirements in the sense of frontage. I believe those
23 were the major ones.

24 Q And the demographic characteristics
25 that were relevant in your determination of whether --

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1 strike that -- in your methodology utilized to determine
2 whether exclusionary zoning existed?

3 A In each instance for the jurisdiction a variety
4 of population, income and housing data were analyzed.

5 Q And were there objective standards set
6 up pursuant to which a determination would be made
7 as to whether a particular zoning ordinance was
8 exclusionary? A Not specifically.

9 Q What non-specific standards were
10 established? A In the report
11 there were some guidelines indicated from generally
12 available published documents. Those are presented
13 in the report.

14 Q Could you describe those guidelines
15 generally? A Not without
16 looking through the report.

17 Q Is this the report entitled A Study
18 of Exclusion? A Yes.

19 Q Volumes 1 and 2?
20 Yes.

21 Q Could you take a look at it now.
22 Refamiliarize yourself with it.

23 A For what purpose?

24 Q For purposes of answering my questions
25 as to the guidelines.

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1 MR. BISGAIER: You know, of course,
2 that Ms. Brooks is not going to be testifying
3 as to zoning control, zoning ordinances or
4 anything of the sort.

5 Of course, when Alan Mallach testified
6 he was deposed on fair share, although he's
7 not going to testify on fair share. Do you
8 see the relevance of that somewhere?

9 MR. SIROTA: I don't think it's necessary
10 to get into a debate about it. It's obviously
11 within the breath of discovery.

12 You advised me as to the limits of this
13 witness's testimony, and that's good. And I
14 hope that's the case.

15 But certainly I want to go in to this
16 witness's entire background and certainly and
17 specifically with respect to anything relating
18 to zoning of the subject matter of this lawsuit,
19 whether or not you advised me this witness will
20 testify on that particular area.

21 MR. BISGAIER: You've just asked Ms.
22 Brooks to familiarize herself with a four hundred
23 page document for purposes of a deposition.

24 MR. SIROTA: No, I asked her to re-
25 familiarize herself with her own work with respect

1 to a finite area. And that's the guidelines that
2 she was discussing which may form somewhat
3 of an objective standard for determining whether
4 zoning is exclusionary.

5 A In the first volume, there are a series of
6 notes ranging from Page 100 -- I'm sorry -- 193 to
7 202, that identify a series of documents which identify
8 the relevant standards for the construction of housing.

9 Q And when did this report -- did you
10 synthesize those documents to which you just referred
11 to arrive at a standard, be it specific or non-specific,
12 for determining whether zoning is exclusionary?

13 A Those documents were included as guidelines.

14 Q And are each of the six case studies
15 compared against those guidelines?

16 A No.

17 Q How were the documents or guidelines
18 utilized?

19 A As I indicated,
20 they were included as a suggestion of guidelines.

21 The documents are considered and were prepared for
22 the Department of Community Affairs for the State of
23 Pennsylvania as part of their efforts to inform the
24 public about the disadvantages of exclusionary
25 zoning, and to inform them of ways in which zoning
ordinances could be revised that would be consistent

1 with acceptable standards.

2 Q And in your consideration of the six
3 case studies, did you reach any conclusions with
4 respect to each or any as to whether they had exclusionary
5 zoning? A Yes.

6 Q Did you determine that all of them
7 had exclusionary zoning? A No.

8 Q Which were the six case studies?
9 A Edgmont Township in Pennsylvania; Emmaus
10 Borough in Pennsylvania; Lower Paxton Township in
11 Pennsylvania; Millcreek Township in Pennsylvania;
12 Springettsbury Township in Pennsylvania.--

13 Q Excuse me, I didn't --
14 A S-P-R-I-N-G-E-T-T-S-B-U-R-Y Township in
15 Pennsylvania; and Upper St. Clare Township in
16 Pennsylvania.

17 Q With respect to Edgmont Township,
18 could you generally describe that municipality?

19 A Not at this time.

20 Q What information do you recall about
21 that municipality? A None.

22 Q None whatsoever?

23 A No. I did the report many years ago and
24 I, I don't remember anything that I would consider
25 accurate enough to report here on that township.

1 Q Did you determine whether their zoning
2 ordinance was exclusionary?

3 Yes.

4 Q And did you compare their zoning ordinance
5 to standards, for example, with respect to density
6 for multi-family housing? A I
7 don't remember.

8 MR. BISGAIER: Doesn't this document
9 speak for itself on those issues as to what --

10 MR. SIROTA: It certainly speaks --

11 MR. BISGAIER: For itself.

12 MR. SIROTA: I would like to ask the
13 witness questions on the document.

14 MR. BISGAIER: Why? If all you are
15 asking her is what she did and the document
16 speaks for itself as to what she did, why
17 are we going through this hour after hour when
18 the document is here in front of you.

19 MR. SIROTA: I appreciate the presence
20 of the document, but I also appreciate the
21 presence of the author of the document which
22 enables me to ask questions.

23 MR. BISGAIER: Why don't you try to
24 learn something that's not contained in the
25 document itself if you have the author here.

1 MR. SIROTA: Is that an objection, Mr.
2 Bisgaier?

3 MR. BISGAIER: Yes.

4 MR. SIROTA: Okay. I understood you
5 were going to make your objections at a later
6 time.

7 MR. BISGAIER: I'll make it now.
8 Objection. You want to keep asking
9 the questions, go ask questions.

10 BY MR. SIROTA:

11 Q What is your memory of Emmaus Borough --
12 is that the correct pronunciation?

13 A As I recall it is the correct pronunciation.
14 I do not recall any specifics on any of the six
15 jurisdictions that were studied in this document.

16 Q Before Mr. Bisgaier raised an objection,
17 there was an unanswered question.

18 MR. SIROTA: May we go back to that,
19 please.

20 (At which time the requested information was
21 read back by the Reporter.)

22 BY MR. SIROTA:

23 Q With respect to the documents which
24 you've testified were the guidelines, do you recall
25 those documents established standards for density with

1 respect to multi-family housing?

2 A I believe so.

BOOK

Q Do you recall what they were?

No.

Q And the documents were guidelines that you referred to, those are publications of the Pennsylvania State Department of Community Affairs?

8 A I don't believe so.

9 Q You made a reference, I believe, to certain pages where these documents were contained or listed. Could you mention those again, please?

12 Thank you. A They begin on Page 193 and they go to 202.

14 Q Thank you. On Page 193, a publication entitled Planning the Neighborhood is mentioned. It is apparently a publication of the American Public Health Association, Committee on the Hygiene of Housing.

19 Are you familiar with that document?

20 A I know of the document. I'm not familiar with specifics contained in the document.

22 Q That was published in 1960. Has that been updated, do you know?

24 A The intention was that it be updated.

25 I'm not sure.

1 Q And did that document establish minimum
2 net residential areas for various kinds of development?

3 **TABLE**
4 **CONTENTS** You're looking at the pages. If it says that,
5 did there then. Yes, it did.

6 Q Well, would you like to look at it?

7 A I am reading the caption.

8 A The quotes that are here as it mentions are
9 taken from Pages 37 and 38 in that report.

10 Q Do you agree with the conclusions;
11 that is, for example, that one-family detached requires
12 six thousand square feet for minimum health standards?

13 A As I indicated, I didn't intend to include
14 these because they represent what I agreed with. They
15 were included as guidelines available from public
16 reports prepared by generally national or public
17 agencies. And I have not formed an opinion about
18 whether or not I agree with them.

19 Q Do you have any opinion as to the minimum
20 residential area necessary for a family to maintain
21 minimum health standards? A I'm

22 **shred** Could you repeat that question?

23 (At which time the requested information
24 was read back by the Reporter.)

25 A I'm sorry. Do you mean minimum house size?

Q "Minimum square foot net residential area

1 per family." And that phrase is quoted from Page 194
2 of Volume 1 of A Study of Exclusion, which in itself
3 is apparently a quote from the publication entitled
4 ~~Planning~~ the Neighborhood.

5 A My opinion at this time would not be more
6 specific than that those standards ought to be
7 consistent with minimum standards to maintain health
8 and safety.

9 Q Do you have any opinion as to whether
10 the standards set forth in Planning the Neighborhood
11 are such standards? A No.

12 MR. SIROTA: Off the record.

13 (At which time a discussion was held off
14 the record.)

15 Q Do you recall which, if any, of these
16 six municipalities were determined to have exclusionary
17 zoning? A No.

18 Q Did any part of this report require
19 that you determine a region in which these municipalities
20 were located? A For what purposes?

21 Q For any purpose.

22 A No.

23 Q And did the report or the consultancy
24 require that you make a determination of a fair share
25 plan, fair share allocation, with respect to these

1 communities? A No.

2 Q Is there any general involvement
3 with fair share plans or regions in the report, other
4 than with respect to the six case studies?

5 A I just indicated that I didn't make any
6 assessment of fair share with respect to the report
7 so --

8 Q Whether that be with respect to the
9 six case studies or it's simply nothing at all done
10 with respect to fair share or a region in the report;
11 is that accurate? A I don't remember.

12 Q Would you describe generally the
13 work you did with the City of Hartford in Suburban
14 Action Institute in 1975?

15 A As I recall, the work involved evaluating
16 the Community Development Block Grant Applications
17 from suburban jurisdictions.

18 Q Around or abutting Hartford?

19 A Yes.

20 Q And did that involve a determination
21 as to whether these suburban jurisdictions were
22 fulfilling a fair share responsibility with respect
23 to low or moderate income housing?

24 A No, it did not.

25 Q Did it relate to a determination of

1 whether these municipalities had in any sense exclusionary
2 zoning? A I don't remember
3 but I don't think so.

4 Q The comments that were made with respect
5 to the Block Grants, these were Block Grant Applications
6 by the suburban municipalities?

7 A Yes, they were.

8 Q And were you or are your entities'
9 comments directed to the specific requests for
10 Block Grant aid, or did you relate to the zoning
11 in housing stock of the relative municipality more
12 generally? A As I understand
13 those two options, the former.

14 Q That is, you confined -- is it the case
15 that you confined your comments to the purposes for
16 which the suburban municipalities wanted Block Grants;
17 that is, what they wanted to use the money for?

18 A No, that's not precisely accurate. It was
19 more directed to the, to whether or not the preparation
20 of these applications conformed to requirements set
21 forth by the United States Department of Housing and
22 Urban Development for applications for Block Grant
23 funds.

24 Q Did those requirements then or do they
25 now require that the applicant municipality make a

1 fair share allocation or provide for a fair share
2 of low or moderate income housing or not have
3 exclusionary zoning? A That's
4 a very complicated question. And there are several
5 answers. The requirements of, as I indicated yesterday,
6 the requirements themselves are lengthy and detailed.

7 There are, and this is paraphrasing, I believe,
8 two instances in the regulations where the United
9 States Department of Housing and Urban Development,
10 which I'll refer to as HUD, if I may, H-U-D, make
11 reference to the existence of either an area wide
12 housing opportunity plan or the equivalent in terms
13 of a housing allocation plan. And that a jurisdiction
14 applying for Community Development Block Grant funds
15 should indicate in the identification of its housing
16 goals a consistency with that plan.

17 Q And did you make a judgment as to
18 whether that was accurate or was it purely mechanical?
19 For example, if a suburban municipality in Hartford
20 said we recognize the goal of some regional plan,
21 did you determine -- strike that.

22 Was it the fact that they simply said
23 that sufficient in your consideration of their
24 application, or did you make a determination as to
25 whether they actually did comply or in other ways

1 had directed themselves to reach the goal of the
2 regional plan? A There are
3 two answers to that. One, no determination was made.
4 Secondly, those regulations were not in existence
5 at the time of the analysis of the applications we're
6 talking about.

7 Q So that -- A The second
8 answer to the question you asked me before you asked
9 me these questions is that there are a number of places
10 in the regulations where the United States Department
11 of Housing and Urban Development make either direct
12 -- and I'm not sure about direct -- at least indirect
13 references to the desirability of jurisdictions removing
14 barriers to the construction of low and moderate
15 income housing as appropriate actions to take, to
16 implement their housing assistance plans.

17 Q And in Hartford, did you make comments
18 on the municipalities addressing those criteria?

19 A Again, no, comments were not made. Secondly,
20 those regulations were not in existence at that time.

21 Q Were there any regulations with
22 similar objectives in existence at that time?

23 A I don't remember precisely. I do know that
24 at that time jurisdictions were required to sign a
25 series of assurances that they would conform to a

1 variety of Federal laws, including certain civil rights
 2 laws which would have included their commitment to
 3 pursue fair housing in an affirmative manner.

4 Q And with respect to Hartford, did you
 5 address yourself as to whether these municipalities
 6 were complying with that requirement?

7 A I suspect that reference was made to it,
 8 although I don't recall.

9 Q Do you recall whether you determined
 10 that any of the municipalities were not, in fact,
 11 complying with the, what you categorized as civil
 12 rights requirements? A I would
 13 believe that it is likely that that indication was
 14 made for all of those jurisdictions.

15 Q And do you recall the basis for their
 16 failure to comply? A No, I
 17 do not.

18 Q Are these comments available?

19 A The work that was done in the City of Hartford
 20 was used in a court case.

21 Q What was the name of that case?

22 A I'm not sure I remember. It's probably
 23 The City of Hartford versus Hills.

24 MR. BISGAIER: Right.

25 A H-I-L-L-S, who was at that point Secretary of

1 the Department of Housing and Urban Development.

2 Q That would mean it's a relatively
3 recent case.

4 A It was a, I believe
it was brought in 1975.

5 Q Were you a witness in that case?

6 A No.

7 Q Any one from SAI a witness in that
8 case?

9 A Mr. Paul Davidoff,
D-A-V-I-D-O-F-F.

10 Q And to the best of your knowledge,
11 what was the result of that case?

12 MR. BISGAIER: It won on the merits
13 at the trial level and lost on the issue of
14 standing at the Appellate Level.

15 MR. SIROTA: I do appreciate Mr.
16 Bisgaier --

17 A I agree with him. I'm really not qualified
18 to summarize the results of that case. And as I
19 recall, what Mr. Bisgaier just stated is correct.

20 Q Do you know whether Mr. Davidoff
21 formulated a fair share plan for utilization in
22 that case?

23 A No, he did not.

24 Q Did he establish a region for utilization
25 in that case or study the situation generally?

A I don't remember.

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1 Q Did he assign allocations, fair share
2 allocations, to any of the defendant municipalities
3 in that case? A I don't
4 believe so.

5 Q Your consultancy with the Potomac
6 Institute resulted, did it not, in the chapter you
7 prepared for In-Zoning, A Guide for Policy-Makers
8 on Inclusionary Land Use Programs?

9 A Yes, in part.

10 Q What else, what other work did you
11 do for the Potomac Institute in general?

12 A I have been a consultant to them in preparing
13 some materials on the relationship between the movement
14 of Federal facilities and the availability of low and
15 moderate income housing for those employees.

16 Q Did that result in a publication?

17 A No, it did not.

18 Q What is the relationship?

19 A The concern with that consultancy was that
20 the certain Federal facilities would move to suburban
21 jurisdictions where the availability of housing at
22 a cost for employees was not available. And, therefore,
23 the facilities were moving and jeopardizing the job
24 opportunities for, in particular, low and moderate
25 income persons. And in some instances -- I'm sorry --

1 low and moderate income persons and in some instances
2 minority persons.

3 Q And did you make any suggestions as
4 to remedies for that problem?

5 A I don't remember, but I don't think so.

6 Q Your study was then directed towards
7 whether the problem, in fact, existed?

8 A No. It was an assessment of the existence
9 of the problem, a review of a variety of either
10 executive orders or legislation that was relevant
11 to that issue and I believe a few case studies.

12 Q Did you address yourself -- strike
13 that.

14 Did you reach a conclusion whether
15 the problem existed and/or as to the seriousness
16 of the problem? A Yes. Well,

17 I'm not sure that I can say I reached a conclusion.

18 Q Well -- A The study began
19 because of a belief that the problem did exist,
20 and the study confirmed that.

21 Q Let me state a problem up front to you.
22 I'm a lawyer. I don't have any special training
23 as a City Planner or a Planner at all. So I may
24 use a term which is inappropriate. Perhaps conclusion
25 is one of those terms. Any time you feel I ask a

1 question which is tied to a word that you feel un-
2 comfortable with, just tell me.

3 A I do do that. Thank you.

4 Q Yes, you do. I just wanted to make
5 it clear.

6 Did you have any suggestions as to
7 with respect to lessening the problem; that is,
8 to providing housing for low and moderate income
9 persons when Federal operations moved to suburban
10 areas?

11 A I don't believe
12 so. As I recall, the material was directed to
13 conformance with regulations and legislations that
14 already were on the books.

15 Q And did that study in any way relate
16 to regional needs for housing?

17 A Not outside the general scope of the relationship
18 between employment and low and moderate income housing.
19 There was no attempt in that report to identify the
20 region or make that relationship specific.

21 Q And what do you see as the relationship
22 between employment and low and moderate income housing?

23 A There's a relationship, in my opinion, between
24 the availability of job opportunities in an area
25 and the availability of housing at a cost suitable
for those employees.

1 And there's a relationship between the extent
2 to which a jurisdiction or an area encourages employment
3 opportunities and encourages the provision of housing
4 at a low price suitable for those employees.

5 Q Then is it the case that the amount of
6 fair share allocation relating to any particular
7 municipality is affected by the amount of employment
8 that municipality or neighboring municipalities have
9 suitable for low and moderate income persons?

10 A I'm sorry. You'll have to repeat the question.

11 MR. SIROTA: Would you repeat the
12 question.

13 (At which time the requested information was
14 read back by the Reporter.)

15 A As I indicated, I think that's a consideration.
16 I also indicated that the extent to which a jurisdiction
17 encourages the possibility of employment opportunities
18 is also related to the extent to which they encourage
19 the provision of low and moderate income housing.

20 Your question --

21 Q What do you mean by the possibility of
22 employment? A The extent to which

23 they zone, for instance, for industrial and commercial
24 development.

25 Q So then is it the case that the greater

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amount of zoning for commercial or industrial would have a proportionate or similar -- strike the question.

BOOK

Is it the case that a municipality, in your opinion, that the more a municipality zones for commercial and industrial the greater their fair share allocation for low and moderate income housing?

A I believe there's a relationship. I can't say that their share would be greater in the sense that fair share plans are a bit more complex than you're indicating.

Q What is the relationship?

A I believe there's a relationship between the extent to which a jurisdiction makes available or has employment availabilities and the extent to which they have or encourage the provision of low and moderate income housing. And that that, that relationship moves in the same direction, if that's what you're asking me.

Q And is the converse also the case;

that is, that a municipality that zones for little commercial or industrial uses would have a smaller fair share allocation than another municipality exactly the same but with greater areas zoned for commercial and industrial uses?

A That's

not necessarily the case.

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CONTENT

Q What factors could affect that?

A The way in which most fair share plans have developed involve a variety of factors --

Q Yes. A -- that interrelate with one another.

Q My question is assuming included that all other things being equal; that is, we are now comparing, no doubt, two fictional municipalities that are exactly the same in every way except one has zoned half its area for industrial/commercial and the other has zoned no industrial and commercial.

Again, everything else being equal, would that result in a lower share, fair share allocation, for the municipality which zoned none of its area industrial and commercial?

MR. BISGAIER: Are you asking her opinion or are you asking as with regard to a particular fair share plan?

MR. SIROTA: I'm asking her opinion.

MR. BISGAIER: Whether it should accept it or opposed to whether a particular fair share plan --

MR. SIROTA: I'm sorry.

Q The question relates to the fair share plan that you've presented and your criticism of the

1 Department of Community Affairs concept.

2 A Excuse me. I've not presented a fair share
3 plan.

4 Q All right. Your criticism of the
5 Department of Community Affairs concept -- strike that.

6 With respect to the Department of
7 Community Affairs fair share allocation plan, you
8 addressed yourself to that plan, have you not?

9 A Yes, I have.

10 Q With respect to that plan, would a
11 municipality exactly the same as its neighboring
12 municipality in every way except that it is not
13 zoned for any commercial or industrial while its
14 neighbor has, have a lower fair share allocation?

15 A That plan does not consider zoning for
16 industrial and commercial development.

17 Q Have you ever done a fair share
18 plan that did? A No.

19 Q Do you know of a fair share plan that
20 does consider such? A An

21 adopted official fair share plan, is that what you
22 mean?

23 Q I didn't hear what you said.

24 A An adopted official fair share plan by a
25 municipality?

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1 Q No, not necessarily adopted. One
2 proposed. Let me ask the question another way.

3 As you understand the concept of a fair
4 share allocation plan, does it take into consideration
5 the relationship between availability of employment
6 and housing needs for low and moderate income persons?

7 A The availability of employment --

8 Q Yes. A -- opportunities

9 Is that the question?

10 Q The question first is employment.
11 Well, if you'd rather address it and include opportunities.

12 - A May I answer that question?

13 I think it is incorrect to characterize in the way
14 you're attempting to do fair share plans. I would
15 answer it given that caveat that it is a consideration
16 in a number of plans.

17 Q Why is it incorrect to characterize
18 in the way I'm attempting to, as you say, fair share
19 plans? A "Fair share plans,"

20 is a term that is used in a variety of
21 ways and by a number of agencies. And it is very
22 difficult to characterize all of those documents
23 characterized by a variety of people as fair share
24 plans.

25 Q Other than your work relating to the

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1 concern about the movement of Federal facilities in
2 an area resulting in the article in the Franklin
3 publication, what other work did you do for the
4 Potomac Institute? A I did
5 one other small consulting that dealt with advising
6 them as to what their program or approach might be
7 to citizen participation, I think.

8 Q Is the book In-Zoning, A Guide for
9 Policy-Makers on Inclusionary Land Use Plans available
10 generally? A Yes.

11 Q How does one obtain a copy?
12 A One could, I believe, obtain it from the
13 Potomac Institute, Washington, D.C. It is widely
14 available in planning libraries and other libraries.

15 Q Could you generally describe the chapter
16 that you wrote for that book? The chapter is entitled
17 The Regional Housing Allocation Plan, is it not?

18 A I don't recall what the name of the chapter is.

19 Q That is the phrase in your resume.

20 Then I would say that's correct. The chapter,
21 as I recall, gave some general discussion of the
22 nature of fair share plans, some indication of the
23 state of the art. It describes a variety of components
24 of fair share plans and, I believe, makes an assessment
25 of the success of, excuse me, two or three fair share

1 plans that were in existence at that time.

2 Q Do you recall which plans were assessed?

3 A The two that I recall were the Housing Allocation
4 Plan produced by the Miami Valley Regional Planning
5 Commission in Dayton, D-A-Y-T-O-N, Ohio. And the
6 plan produced by the Metropolitan Council in St.
7 Paul, Minneapolis, Minnesota.

8 Q The article discussed manner of
9 determining a region in which a particular jurisdiction
10 lay?

11 A I believe there's a
12 discussion about region. I'm not sure how specific
13 it was in the manner of determining the region.

14 Q Did you also say that the article
15 discusses the components of the fair share plan?

16 A It discusses some components of fair share
17 plans, yes.

18 Q What did the article say with respect
19 to determining a region in which a municipality lay?

20 A I don't remember.

21 Q Did the article discuss the effect
22 of environmental concerns on fair share plans or
23 fair share allocations?

24 A I don't
25 think so.

26 Q Did it discuss the effect of transportation
27 on determination of region or fair share plans or

1 fair share allocations?

A I.

2 don't think so.

3 Q Generally were the components discussed

4 in that article of fair share plans -- strike that.

5 By components, do you mean the tools
6 utilized to create a fair share plan, the information
7 necessary to create the plan, the information upon
8 which the plan is based?

9 A No.

10 Q What do you mean by components?

11 A That the elements that might make up a fair
12 share plan.

13 Q Could you give me an example of elements?

14 A The way in which the housing, the housing
15 units are allocated to various jurisdictions.

16 Q Existing housing units or proposed
17 housing units?

A If that's
18 the question it has to be rephrased differently.

19 Q You said that one element is how

20 housing units are allocated. Is that in reference
21 to housing units that are in existence at the time
22 that the plan is being formulated; that is, "presently
23 allocated" amongst the relevant municipalities, or
24 those which it is proposed in the plan to be allocated?

25 A I'm not sure that reference was made to one

1 or the other.

2 Q Do you recall the article well enough
3 to say whether your views of fair share planning have
4 changed in substance since that article?

5 MR. BISGAIER: I'm not going to permit
6 her to answer that question unless she has
7 an opportunity to read the article.

8 MR. SIROTA: Would you please read
9 the question.

10 (At which time the requested information
11 was read back by the Reporter.)

12 Q My question is obviously based on your
13 recollection. And I'm appreciative of Mr. Bisgaier's
14 calling it to your attention again, but certainly
15 I wouldn't ask you any question that didn't relate to
16 the level of your knowledge or recollection.

17 A Well, I really don't remember the article
18 specifically enough to be able to answer that question.

19 Q Could you generally describe the work
20 you did with the American Bar Association?

21 A The American Bar Association set up a commission
22 to develop a report, housing and land use, and asked
23 me to participate in the development of portions of
24 that study directed to housing planning.

25 Q Was that study eventually published?

1 A Yes, it was.

2 Q And is that listed on your list of
3 publications?

4 A No, it is
not.

5 Q Do you recall the name of the publication?

6 A It is something like Housing and Land Use Under
7 Law.

8 Q Did that have a number of different
9 authors?

A Oh, yes.

10 Q Is there one particular section or
11 chapter of which you are the author or an author?

12 A No.

13 Q If one reads the publication, can
14 your contribution be identified, segregated and
15 identified?

A I don't believe

16 so.

17 Q Did the publication or your involvement
18 in it or the study relate to fair share planning?

19 A Yes.

20 Q In what way?

21 The portion of it that deals with housing
22 planning directs itself to the issue of fair share
23 plans in part.

24 Q And did you participate in that section
25 of the publication? A Yes, I did.

1 Q And what conclusion or statements
2 are made with respect to fair share plans?

3 A I don't remember.

4 Q Did your study or did the publication
5 relate to a determination of region? And, by the
6 way, as I mentioned before, when I say region I'm
7 referring to region in the sense as utilized in the
8 Mt. Laurel and even more particularly in the Madison
9 case. A I don't remember.

10 Q Could you generally describe the work
11 you did for the Urban League of Oklahoma City in
12 connection with the Suburban Action Institute?
13 I believe that was 1976. A The
14 Urban League of Oklahoma City asked me to participate
15 with their staff in evaluating Community Development
16 Block Grant Applications from a variety of jurisdictions
17 in the area, and to provide some training for their
18 staff in the evaluation of those applications.

19 Q Did that involve fair share planning?

20 A Not that I recall.

21 Q Establishment of a region?

22 A Not that I recall.

23 Q Provision of low and moderate income
24 housing? A Yes.

25 Q How was it, did it relate to provision

1 of low and moderate income housing in the sense that
2 that was the goal of persons you consulted with?

3 A It related to low and moderate income housing
4 in that that is a major concern of HUD in the Community
5 Development Block Grant Program. And in evaluating
6 those applications that would have to be a component
7 of that evaluation.

8 Q How precisely did the -- strike that.
9 How precisely did provision for low
10 and moderate income housing fit in as a component
11 of consideration of a Block Grant?

12 A I believe we talked about this yesterday.
13 But as a part of their requirements for an application
14 of a Community Development Block Grant, an applicant
15 must prepare what is called a Housing Assistance
16 Plan. And in that Housing Assistance Plan, they must
17 identify needs for low and moderate income housing
18 and goals to meet those needs.

19 Q If I recall correctly, I believe yesterday
20 we discussed it in a temporal respect; that is, that
21 concept changed over the years. And has that been
22 constantly the place of low and moderate income housing
23 vis a vis the Block Grant Program?

24 A I'm not sure I understand your question.
25 If you mean has the requirement for housing assistance

1 plans been always a component of the requirement
2 for an application for a Community Development Block
3 Grant Program, the answer is, yes.

4 Q Thank you.

5 With respect to the consultancy you
6 did with the United States Department of Housing
7 and Urban Development, would you generally describe
8 that work? A I was asked

9 to be a consultant to a special assistant to the
10 Secretary of the Office of Community Planning and
11 Development of the United States Department of
12 Housing and Urban Development to assist him in
13 evaluation of various housing issues.

14 Q Which housing issues did you assist
15 him in evaluating? A There

16 were really a number of them. Many of them were
17 very brief kinds of conversations with respect to
18 proposed regulations and reevaluation of the urban
19 counties as a part of their Community Block Grant
20 Program, and a number of other items.

21 Q Any of them relate specifically to the
22 provision of low and moderate income housing in
23 suburban areas? A I would say

24 most of them did.

25 Q Did they relate to fairshare planning

1 or fair share plans? A There were
 2 so many things that I worked with him on, I don't
 3 remember all of them.

4 I do recall representing him or at least
 5 sitting in to report to him on the G-E-A-U-T-R-E-A-U-
 6 S -- I may have two U's in there where there should only
 7 be one. And they discussed during that task force
 8 regional approaches to the provision of housing
 9 for low and moderate income persons.

10 Q Did any publications come out of the
 11 work you did? A No.

12 Q I'm sorry, I couldn't hear you.
 13 You said, no? A No.

14 Q Or none. Was a determination of
 15 region involved in any of the work you did?

16 A I don't believe so.

17 Q Was there a publication of the work
 18 you did for the Connecticut State Commission on
 19 Human Rights and Opportunities?

20 A Yes.

21 Q And what's the title of that publication?

22 A I don't remember.

23 Q Was it published by the Connecticut
 24 State Commission on Human Rights?

25 A There were two publications. One of them

1 has been published. The other one has not yet been
2 published.

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Q The one that has been published,
was it published by a governmental entity or a private

5 entity? A It was published
6 by the Commission.

7 Q And the one that's not published, that's
8 a report that's been filed with the Commission?

9 A It's been submitted to the Commission.

10 Q Could you explain to me the, what
11 the meaning of submission is? You mailed it in?
12 Is that what submission means? Or does it indicate
13 a completion of the project?

14 A Both.

15 Q And did that work encompass or include
16 a fair share plan or fair share planning?

17 A No.

18 Q Did it include a definition of region
19 or regional needs for low and moderate income housing?

20 No.

21 Q Would you again generally describe
22 the work you did? A The Commission,

23 Connecticut Commission on Human Rights and Opportunities
24 asked Suburban Action Institute to prepare materials
25 for them describing the nature of exclusionary zoning

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1 and evaluating the extent to which the exclusionary
2 practices existed in the 269 municipalities throughout
3 the state; to conduct some public education efforts
4 and to make some recommendations.

5 Q In that report, did you establish or
6 refer to standards pursuant to which one could determine
7 whether a particular zoning ordinance was exclusionary?

8 A Not specifically.

9 Q How non-specifically did you do so?

10 A We compared the municipalities to one another.

11 Q On what basis?

12 A A variety of characteristics of their zoning
13 ordinances and demographic characteristics.

14 Q Such as?

15 A Such as for which?

16 Q What characteristics of their zoning
17 ordinances and what demographic characteristics did
18 you compare? A I believe we

19 looked at the extent to which multi-family units
20 were permitted as a right; the extent to which mobile
21 homes were permitted as a right; minimum lot size
22 for single-family dwellings; minimum houses; bedroom
23 restrictions; perhaps frontage requirements. Those
24 are the ones I recall.

25 Demographic characteristics, we looked at the

1 proportion of minorities living in the jurisdictions
2 and an analysis of the distribution of income for
3 families in the jurisdiction, and I believe certain
4 characteristics of the housing stock.

5 Q And the items you mentioned, would
6 you consider these indices of exclusionary zoning?

7 A What do you mean by indices?

8 Q Characteristics with respect to
9 which -- strike that -- characteristics which
10 have to be studied and with respect to decisions
11 of whether exclusionary zoning is in existence or are
12 based.

13 A I think they
14 are important considerations in that evaluation, yes.

15 Q Were there others?

16 A There may have been. Those are the ones
17 that I recall.

18 Q And in that report did you make a
19 determination as to which zoning ordinances were
20 exclusionary and which were not?

21 A I don't believe so. As I recall, we compared
22 the various jurisdictions to one another.

23 Q In other words, they were relative
24 conclusions; that is, that one zoning ordinance was
25 more exclusionary than others?

A That one zoning ordinance had certain character-

1 istics within their zoning ordinances to a greater
2 extent than others, yes.

3 Q Is it the case that with respect to
4 each of the relevant municipalities, you identified
5 characteristics which might be seen as exclusionary?

6 A We identified those characteristics that
7 we evaluated the zoning ordinances with, as important
8 considerations in identifying the extent to which
9 exclusionary zoning may exist.

10 Q But you didn't label any particular
11 ordinances as exclusionary?

12 A I don't think so.

13 Q Is it fair to assume from that that
14 certain ordinances may have characteristics, one
15 or more characteristics, of an exclusionary zoning
16 ordinance but not in its entirety would be exclusionary?

17 A I don't understand that question.

18 Q Is it theoretically possible to have,
19 for example, a restriction against mobile homes in
20 more than mobile home parks, but that the rest of
21 the ordinance be so liberal with respect to the
22 provision of low and moderate income housing so as
23 to make the entire ordinance not quite exclusionary?

24 MR. BISGAIER: Could you read that
25 question back.

1 (At which time the requested information
2 was read back by the Reporter.)

3 MR. BISGAIER: I think that's a legal
4 question. However, if you want the witness
5 to answer, that's all right with me.

6 MR. SIROTA: I do. I don't agree
7 that it's legal. The witness is a Planner.
8 It's, her report is replete with quotes from
9 Madison. I assume that she'll concern herself
10 with the concept of exclusionary zoning.

11 MR. BISGAIER: You can answer that.
12 All I'm saying is that I think it's a legal
13 conclusion as to whether a municipality
14 is exclusionary or not. But as opposed to
15 whether it contains exclusionary provisions --

16 THE WITNESS: I find the question
17 confusing. And theoretically possible with
18 respect to what?

19 Q I'm afraid I don't understand your
20 comment, so we have a full block.

21 I mean, is it theoretically possible that
22 one might make that conclusion?

23 Q Yes. A One meaning
24 anyone?

25 Q A Planner, you.

1 A Which?

2 Q Is it theoretically possible that you
3 could determine, despite the fact that a zoning
4 ordinance has -- and I used as an example one indice
5 of exclusionary zoning, and I used the specific example
6 that no mobile homes are permitted anywhere except
7 in a mobile home park.

8 A Okay. I understand. With respect to that
9 example, I would conclude that that provision might
10 very well be exclusionary itself.

11 Q My question was, your answer doesn't
12 surprise me. My question is, my question is whether
13 that alone is sufficient to make a determination
14 that the entire ordinance is exclusionary, if there
15 are no other provisions that you would find offensive?

16 MR. BISGAIER: It's been answered --
17 I think the question has been answered that
18 she is, she would say that the ordinance
19 contains an exclusionary provision.

20 MR. SIROTA: Well, the question hasn't
21 been answered to my satisfaction.

22 Q If you can't answer the question,
23 tell me you can't answer it. I'm sorry to keep repeating
24 this.

25 Does the existence of one item, one

1 indice of exclusionary zoning, make a zoning ordinance
2 necessarily as a whole an exclusionary zoning ordinance
3 in your concept, in your opinion, in your understanding?

4 A If you won't accept my prior answer, I'll have
5 to say I can't answer that question.

6 Q In general, the work you're doing for
7 the Center for Community Change?

8 A That's not a question.

9 Q Yes, that is a question. There was
10 an inflection in my voice. I'm sorry that it wasn't
11 clear.

12 Would you describe generally the work
13 that you're doing for the Center for Community Change?

14 A The Center for Community Change has a grant
15 from the Community Services Administration to set up
16 a project to work with community groups in evaluating
17 Community Development Block Grant Applications. And
18 I am Director of that project.

19 Q With respect to the HUD/SAI cooperative
20 arrangement that you added to your list of consulting
21 firms at the beginning of this day, would you describe
22 that arrangement and that work you're doing?

23 A All right. The Office of Community Planning
24 and Development in the United States Department of
25 Housing and Urban Development came to Suburban Action

1 Institute on what is called a sole source cooperative
2 agreement, meaning that there's no competition for
3 the grant, asking us to identify and demonstrate
4 certain programs and activities to expand housing
5 opportunities for low and moderate income persons
6 in suburban areas.

7 Q And what have you done with respect
8 to that to date? What work have you done?

9 A The project has three phases to it. The
10 first is the development of a handbook which includes
11 a description of various programs and activities
12 that agencies or organizations have undertaken to
13 expand housing opportunities for low and moderate
14 income persons in the suburban areas.

15 We have conducted a survey to obtain those
16 examples. We have begun an evaluation and follow
17 through those examples.

18 Q Are any of the examples in New Jersey?

19 A I can recall one.

20 Q And what was that example?

21 It is a land banking program in Bergen County.

22 Q How does that work?

23 A I don't know.

24 Q I apologize. I interrupted you.

25 You said there were three facets to the program.

1 A Yes, three phases to the program. The second
2 is to provide technical assistance to a variety of
3 organizations and agencies on the development of
4 specific programs that they are interested in trying,
5 primarily that come out of our survey during the first
6 phase. That phase of the project has not been begun.

7 The third phase of the project is to work
8 intensively in three different metropolitan areas
9 to assist them in developing and implementing a variety
10 of programs to expand housing opportunities for low
11 and moderate income persons in suburban areas. We have
12 begun that phase.

13 Q What metropolitan areas?

14 A Norfolk, Virginia; Akron, Ohio; and Boston,
15 Massachusetts.

16 Q And what work have you done on that
17 phase to date?

18 A We have made initial
19 site visits to each of those areas and discussed with
20 the regional planning agencies and a variety of other
21 organizations the nature and intent of the program.

22 In at least the Norfolk situation, we have
23 collected information and done some preliminary evaluation
24 of those reports. And there's been a variety of
25 communication and contact with the others.

Q Do any of the three phases of that program

1 involve fair share planning?

2 A I'm not sure if I know what you mean by involve.

3 Q Relate to in any way.

4 A Yes.

5 Q How? A Two of the
6 areas have approved area wide housing opportunity
7 plans.

8 Q Approved by HUD?

9 A Yes.

10 Q Who promulgated them?

11 A The regional agencies.

12 Q In which areas and who are the regional
13 agencies? A Norfolk, Virginia,

14 the regional agency is the Southeastern Virginia
15 Regional Planning District; Akron, Ohio, Northeast
16 Four County Organization, commonly referred to as
17 NEFCO.

18 Q And does the study involve consideration
19 of exclusionary zoning ordinances, exclusionary

20 zoning? A It could.

21 Q How do you mean it could?

22 A All parts of the programs and activities
23 that will be conducted have not been determined at
24 this point.

25 Q Your resume indicates that you testified

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1 before Congressional Committees.

2 A Yes.

3 Q Which Congressional Committees?

4 A I would have to look at my resume.

5 Q On your resume are listed the following:

6 House Committee of Judiciary; Senate Committee on
7 Banking, Housing and Urban Affairs. Those are two
8 committees, are they not?

9 A I would have to look at my resume.

10 Yes.

11 Q And what was the subject of your
12 testimony before the House Committee of Judiciary?

13 A Is that the first one listed there?

14 Q Yes, it is, the first one listed in
15 your resume under: Testimony, Congressional Testimony.

16 A I don't remember. I believe it was the general
17 issue of the lack of housing for low and moderate
18 income persons.

19 Q And what was the subject of the hearing,
20 do you know? Was it a particular bill?

21 A I don't remember.

22 Q How long ago was this?

23 A Probably five years ago.

24 Q And with respect to your testimony before
25 the Senate Committee on Banking, Housing and Urban

before Congressional Committees.

A Yes.

Q Which Congressional Committees?

A I would have to look at my resume.

Q On your resume are listed the following:

House Committee of Judiciary; Senate Committee on Banking, Housing and Urban Affairs. Those are two committees, are they not?

A I would have to look at my resume.

Yes.

Q And what was the subject of your testimony before the House Committee of Judiciary?

A Is that the first one listed there?

Q Yes, it is, the first one listed in your resume under: Testimony, Congressional Testimony.

A I don't remember. I believe it was the general issue of the lack of housing for low and moderate income persons.

Q And what was the subject of the hearing, do you know? Was it a particular bill?

A I don't remember.

Q How long ago was this?

A Probably five years ago.

Q And with respect to your testimony before the Senate Committee on Banking, Housing and Urban

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Affairs, would you advise what the subject of that testimony was? A As I

recall, it was the Community Development Block Grant Program.

Q How long ago was that; that is, your testimony? A I don't remember.

Q Approximately? A A couple of years.

Q And did your testimony relate to proposed changes in the Block Grant Program?

A I believe it related to the emphasis in policy and direction within that program.

Q Could you expand upon that more fully?

A There were certain issues that I and the group I was with felt ought to be emphasized within the Community Development Block Grant Program.

Q What issues? A One to support existing emphasis within the program.

Q What were the existing emphasis?

A The attention to low and moderate income

programs.

Q And did you or the group that you were with feel that that was strengthened?

A I don't believe so.

Q But that, is it the case that that

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1 emphasis was the subject of the committee hearing?

2 A Not in particular.

3 Q Did you at that time feel it was necessary
4 that you support that emphasis?

5 A I always feel it's necessary to support that
6 emphasis.

7 Q Any particular reason at that time?

8 A There were hearings. I was asked to testify.
9 I felt it was an opportunity to do so.

10 Q How did you happen to testify before the
11 New Jersey State Legislature?

12 A I was asked to.

13 Q The entire Legislature or was it a
14 Legislative Committee? A I believe
15 it was a Legislative Committee.

16 Q Do you recall which committee?

17 A No.

18 Q Was it a Senate or an Assembly committee?

19 A I don't remember.

20 Q Do you remember what the responsibility
21 of the particular committee was?

22 A I believe it was consideration of the Greenburg
23 Bill.

24 Q Which Greenburg Bill, 505, Housing
25 Allocation Bill? A I believe so, yes.

1 Q Was it Senator Greenburg's committee?

2 A I believe so.

3 Q How long ago did you testify before the
4 committee?

A I don't remember.

5 Five years ago. I really don't remember.

6 Q Five.

7 MR. BISGAIER: For your information,
8 it was the predecessor of 505. It was about
9 four and a half, five years ago that they
10 held those hearings.

11 MR. SIROTA: Thank you.

12 Q And what were your comments at that
13 time?

A I don't remember.

14 Q Were you in favor of the bill?

15 A I was not asked to testify, as I recall, either
16 to be in favor or not in favor. It was a, my comments
17 related to the state of the art of the fair share
18 planning.

19 Q Do you know how the committee got your

A No, I do not.

20
21 Q Have you reviewed 505?

22 A No, not that I know of.

23 Q Are you familiar with the bill?

24 If I could identify more particularly, that's a bill
25 relating to housing allocation and a structure for

1 establishing housing application.

2 MR. SIROTA: Is that a fair description,
3 Mr. Bisgaier?

4 MR. BISGAIER: That's some of the things
5 it does, yes.

6 A I don't believe I reviewed that.

7 MR. SIROTA: Can we go off the record.
8 (At which time a discussion was held off the
9 record.)

10 Q In testimony, under the caption: Testimony
11 in your resume, it states as follows: "Congressional
12 testimony before the House Committee of the Judiciary;
13 the Senate Committee on Banking, Housing and Urban
14 Affairs; the New Jersey State Legislature, among others."

15 Among others referred to other State
16 Legislatures? A No.

17 Q What's the among others refer to?
18 In other words, among other what?

19 A I've testified before another Congressional
20 Committee that I couldn't remember.

21 Q United States Congressional Committee?

22 A Yes.

23 Q Have you been an expert witness in
24 litigation prior to this case?

25 A Yes.

1 Q In what cases? A The

2 Mt. Laurel case -- can we go off the record?

3 Q Yes. Go ahead.

4 (At which time a discussion was held off the
5 record.)

6 A To complete the answer --

7 Q Gee, I thought you had forgotten.

8 A -- Mr. Laurel is the only case in which I had
9 been an expert witness in.

10 Q In New Jersey and elsewhere?

11 A Yes.

12 Q Have you been involved with any other
13 litigation? A What's involved
14 mean?

15 Q Involved in any way?

16 A Yes.

17 Q In what way?

18 A Providing background research.

19 Q For whom? A Suburban

20 ~~Action~~ Institute.

21 Q In what cases?

22 A The City of Hartford v. Hills. I may have worked
23 on others, but nothing significant. I mean, nothing
24 of any major --

25 Q Well, what other cases?

1 A I would say, no, then. I also assisted
2 the Regional Housing Legal Services in a case, the
3 name of which I don't remember.

4 Q What was the entity you assisted?

5 A Regional Housing Legal Services.

6 Q And where are they located?

7 A Newton, Pennsylvania.

8 Q And was that a suit brought in Pennsylvania?

9 A I'm not sure.

10 Q With respect to the City of Hartford
11 suit, what did you do? A As I recall,
12 I assisted in the evaluation of the Community Development
13 Block Grant Applications, the preparation of some
14 demographic analysis of the jurisdictions.

15 Q And this is in preparation of, for,
16 this is -- strike that.

17 This is to aid Mr. Davidoff's testimony?

18 A Primarily, yes.

19 Q What else? A I really
20 don't know how else the data might have been used.
21 That was its purpose.

22 Can we go off the record again?

23 Q Sure. You want to -- just so we can
24 understand for the record, you're asking Mr. Bisgaier
25 questions. A I really don't under-

1 stand certain legal things you're asking me.

2 Q Well, you can ask that on the record,

3 if you want. If you want to go off the record --

4 I would prefer to go off the record.

5 Q Okay. A Okay.

6 (At which time a discussion was held off the
7 record.)

8 Q What was the remedy sought in the

9 City of Hartford case? A I was not

10 involved in the legal part of that court case. A

11 I recall, the major issue was the extent to which

12 the jurisdictions complied with what is referred to

13 as the expected to reside element of assessing housing

14 needs in the Housing Assistance Plan for the Block

15 Grant Applications.

16 Q Is "expected to reside" a planning

17 concept? A No. It's a term

18 used by the United States Department of Housing

19 and Urban Development.

20 Q But does it relate generally to the

21 housing goals of individuals; that is, where relevant

22 individuals wish to reside absent restrictions of

23 any sort? A Expected to

24 reside is a term used by HUD in identifying the number

25 of low and moderate income households that might be

1 expected as a result of existing or planned employment
2 within the jurisdiction.

3 MR. BISGAIER: It has a precise regulatory
4 definition. It's a term of legal art as defined
5 by regulations with the Department.

6 Q But is it also an useful planning term?

7 A Useful to what end?

8 Q In the determination of whether a particular
9 jurisdiction has provided for sufficient low and moderate
10 income housing. A That's very difficult
11 for me to answer because HUD is in the process of
12 evaluating the way in which they determine expected
13 to reside. And I cannot comment about the specifics
14 of that regulation.

15 Q With respect to Mt. Laurel, was your
16 expert testimony offered within the ambit of your
17 responsibilities with SAI? A Yes.

18 Q And who employed you in that case?

19 A Department of Public Advocate.

20 Q And what was your charge?

21 A To provide a discussion of the state of the
22 art of fair share planning and to critique the
23 New Jersey Department of Community Affairs Housing
24 Allocation Plan, as I recall.

25 Q Toward what purpose was your critique of

1 the DCA plan? A To identify
2 the extent to which that plan could be improved.

3 Q And did you, in fact, produce such

4 a critique? A Yes.

5 Q And what were the elements of the
6 critique? That's a shorthand question. I can ask
7 the particulars, but what the question really is is:
8 What was your critique of the DCA plan?

9 A I went through various components of the
10 Housing Allocation Plan and critiqued the various
11 components.

12 Q Which plan would have been in effect
13 at that time? A Excuse me.

14 I also, part of my charge was to evaluate a number
15 of other plans.

16 Q Which DCA plan was in effect as of
17 the commencement of your responsibilities with respect
18 to Mt. Laurel? A The one
19 prior to the one that's in effect right now.

20 MR. SIROTA: Can we go off the record.

21 (At which time a discussion was held off the
22 record.)

23 Q Was it the October or November 1976
24 DCA plan that you critiqued?

25 A I believe so.

1 Q And is it the fact that you considered
2 and discussed each and every component or element
3 of the plan? A No.

4 Q Would you describe the 1976 plan
5 generally first? A Without
6 a copy of that plan?

7 MR. SIROTA: Let's go off the record.
8 (At which time a discussion was held off the
9 record.)

10 (At which time the deposition was adjourned
11 for lunch.)

12 BY MR. SIROTA:

13 Q Ms. Brooks, I believe you had an
14 opportunity now to review for some period of time
15 the 1976 report. And I ask you now whether you could
16 generally describe the report, the DCA report?

17 A Yes, I will. The report is divided into
18 three sections with two appendices.

19 The first section is an introduction. It
20 contains background material and a general index of
21 the scope of the reports.

22 The second section discusses the plan itself.
23 It's divided into four sections.

24 The first treats present housing needs,
25 present meaning 1970.

1 The second section treats perspective housing
2 needs from 1970 to 1990.

3 The third section discusses the identification
4 of the regions for the housing allocation.

5 And the fourth section discusses the method
6 used for the allocation.

7 The third section of the report contains conclusions.

8 The two appendices identify in column form the
9 method for the allocation. And the second appendice
10 contains the base information for the allocation method.

11 Q All right. Would you describe the scope
12 of the 1976 DCA report which I see is November of 1976?
13 Mr. Bisgaier's memory was fine.

14 A The scope as they define it?

15 Q Yes. A The scope
16 as they define it is that the report is directed
17 to the unsatisfactory housing conditions that exist
18 in the State and the need to provide additional housing
19 for low and moderate income households. And that this
20 report is directed to the need for new housing construction
21 for low and moderate income households.

22 MR. SIROTA: Can we go off the record
23 for a second.
24 (At which time a discussion was held off the
25 record.)

1 Q Is it the case that as the expert in the
2 Mt. Laurel case, you developed criticism or critique
3 of the 1976 DCA report? A What
4 happened to the statement that we were going to put
5 -- as I recall, no.

6 Q You didn't develop criticism or critique
7 of the 1976 DCA report? A I'm
8 sorry. I thought you asked me about the scope of the
9 report. Yes, I did develop a critique.

10 MR. SIROTA: Can we go off the record.
11 (At which time a discussion was held off the
12 record.)

13 Q Have you ever read the transcript of
14 your own testimony? A I'm
15 sorry?

16 Q Have you ever read the transcript of
17 your own testimony? A Own testimony
18 in Mt. Laurel?

19 Q Any testimony that was taken down in
20 transcription. A Yes, I have.

21 Q Okay. Did you at the time you prepared
22 the criticism or critique of the 1976 DCA report,
23 did you have any comments on the scope as provided
24 in the report which you've just described?

25 MR. BISGAIER: As to that question which

1 raises, which is a question about Ms. Brooks'
2 criticism of this 1976 report, we previously
3 spoke on the record, off the record, and
4 indicated that that report was a written
5 document which Ms. Brooks prepared in 1977
6 for purposes of the second Mt. Laurel trial.
7 She has not had an opportunity to review that
8 document and did not know that questions would
9 be asked regarding it at this deposition,
10 nor has Mr. Sirota been given a copy of that
11 document, nor been able to review it prior
12 to this deposition since I did not know
13 nor did he, I presume, that questions relating
14 to it were going to be asked.

15 In any event, we have agreed to supply
16 Mr. Sirota with a copy of the document. And
17 our position is that the document essentially
18 speaks for itself as to what Ms. Brooks'
19 criticisms were at that time. And any problems
20 with her recall will be just that.

21 If there are questions which arise
22 as to her, the document once it is given to
23 Mr. Sirota, he may choose to ask her questions
24 about it. My concern is that she may not be
25 as thorough in her recollection as she was in the

1 document itself.

2 In any event, we've agreed to continue
3 with the understanding that the document itself
4 will be provided to Mr. Sirota as soon as
5 possible. I'm just saying that --

6 MR. SIROTA: I believe there was a
7 question.

8 MR. BISGAIER: I'm just saying that
9 in one statement as opposed to a caveat
10 to an answer with respect to the criticism
11 that she made two years ago.

12 MR. SIROTA: Let me pull back a question
13 and make some additional questions.

14 BY MR. SIROTA:

15 Q This was Mt. Laurel II that you were
16 an expert? A Yes.

17 Q And what was your understanding of
18 the remedy that was sought in Mt. Laurel II?

19 A I'm really not in a position to comment on
20 the remedy that was sought. I believe the situation
21 was an evaluation of the acceptability of a revised
22 zoning ordinance and the extent to which that complied
23 with a prior court order.

24 Q And it was the final conclusion of
25 your testimony that it did not?

1 A My testimony did not evaluate the zoning
2 ordinance.

3 Q Your testimony, was it only directed
4 towards fair share allocation or a critique of the
5 DCA fair share plan? A My testimony was
6 related only to the fair share, yes.

7 Q Did you make a fair share allocation
8 for Mt. Laurel Township? A No, I did
9 not.

10 Q In summary form, what was your -- strike
11 that.

12 Other than a critique of the DCA 1976
13 report, what other aspects were there in your
14 testimony? A As I indicated
15 earlier, I prepared and testified as to the state of
16 the art on fair share planning. I evaluated the
17 New Jersey Statewide Housing Allocation Plan along
18 with some other allocation plans.

19 Q And did you make a remedy as to
20 an appropriate fair share plan?

21 A I indicated which of the fair share plans
22 I reviewed, I thought, most consistent with the
23 criteria I was using for review.

24 Q And which plan or plans was it that
25 was most consistent with the criteria you were

1 utilizing? A The plan prepared
2 by Mallach, M-A-L-L-A-C-H, and Associates.

3 Q And how did that plan differ from the
4 1976 DCA report?

5 MR. BISGAIER: Do you remember?

6 A Bits and pieces.

7 MR. BISGAIER: See, this is where her
8 report spells it out in such specific detail,
9 what the differences are.

10 A As I recall, the plan differed first in that
11 it applied only to Region 12. The New Jersey Statewide
12 Plan is prepared for the entire state.

13 As I recall, the definition of the income
14 limit for low or moderate income households differed.

15 Q In what way? Was Mr. Mallach's
16 report higher? A I believe

17 so. As I recall, the criteria he used for the
18 allocation of housing need differed.

19 MR. BISGAIER: Okay. This is clearly,
20 you know, silly because if you had the report
21 in front of you, all this stuff would, you
22 know, what she's straining at trying to
23 remember would be done in a period of a
24 matter of seconds. Can't you --

25 MR. SIROTA: Can we go off the record for

1 second? Do you mind?

2 MR. BISGAIER: No.

3 (At which time a discussion was held off the
4 record.)

5 Q Ms. Brooks, I'm now going to go back
6 to the 1976 DCA report.

7 MR. SIROTA: Why don't we mark that
8 report for identification.

9 MR. BISGAIER: It has been. It's
10 P-21 in the front.

11 MR. SIROTA: That's the document
12 marked P 21 for identification upon the
13 production of documents; is that correct?

14 MR. BISGAIER: Right. It says PB--
15 no, P-21.

16 MR. SIROTA: It was so marked at the
17 production of documents; is that correct?
18 Well, I'm willing to use that.

19 Let's go off the record.

20 (At which time a discussion was held off
21 the record.)

22 BY MR. SIROTA:

23 Q With respect to P-21, you indicated
24 that the second portion of the report related to
25 the plan itself; is that correct?

1 A Yes.

2 Q Could you explain how the present
3 housing needs were determined?

4 A By DCA, yes.

5 Q By DCA, in the first section of the
6 second part of their report.

7 A Yes.

8 Q Would you please?

9 A They consider present housing needs to be
10 the housing needs that existed as of 1970. That
11 present housing need has three components to it:
12 Dilapidated units, overcrowded units and needed vacant
13 units.

14 Dilapidated units are identified as units
15 having one or more critical defects. And they are
16 units that have enough defects or that they're so
17 crucial that the units would have to be either
18 extensively repaired or torn down.

19 Overcrowded units are defined as a unit which
20 has one or more persons per room.

21 Needed vacant units are identified as the
22 need for a five percent vacancy rate in homeowner
23 units and a 1.5 percent vacancy rate in rented
24 units.

25 They combine those three items and use --

1 I'm relatively sure they use an overlap figure.

2 Q What is an overlap figure?

3 A To account for the number of units that might
4 both be dilapidated and overcrowded.

5 Q Do you know what the overlap figure
6 was? A It's not stated in this

7 report, and I may be confusing this report with the
8 later one. I believe it was twenty-five percent of
9 the dilapidated units.

10 Q You said twenty-five percent of the
11 dilapidated units. A Yes.

12 Q Where did they acquire the figure as
13 to the number of dilapidated units?

14 A Dilapidated units is a difficult number to
15 identify because the census in 1970 changed its
16 characterization of housing units.

17 As a result of that, DCA, as I recall, looked
18 at the number of dilapidated units in 1960 and used
19 a method of identifying an indication of the number
20 of dilapidated units that would exist based on a variety
21 of characteristics that exist within a municipality.

22 Q Could you explain that, the method in
23 more detail that you just referred to?

24 A The method -- I'm not sure I understand what
25 you mean.

1 Q For identifying the number of dilapidated
2 units in a community. A The

3 same thing that I just went through?

4 Q Yes. As I understand it, you said
5 that DCA used the 1960 figure, as I understand it;
6 is that correct? They used the 1960 figure because
7 of the unavailability of a figure for dilapidated
8 units with the same definition in the 1970 census.

9 A There isn't the same definition in the 1970
10 census. New Jersey DCA, as I recall, used a method
11 which is based on the belief that there are certain
12 indices that one can identify and relate to the
13 proportion of dilapidated units that exist within
14 the total housing stock. If --

15 Q What indices?

16 A If they take the number of dilapidated units
17 that were identified in 1960 and identified those
18 characteristics for 1960, then identify those same
19 characteristics for 1970, they can apply that
20 proportion to 1970.

21 Q How do they get the proportion for

22 1960? A They can take from the
23 census the number of dilapidated units in 1960. That
24 number does, is not identified for 1970.

25 Q So that they, is it the case that

1 they took from the 1960 census the proportion of
2 dilapidated units to total units and then utilized
3 that same proportion for 1970?

4 A No, you're not understanding what I'm saying.
5 They used a method of taking a, I believe it was three
6 characteristics that have a correlation to the or
7 they believed had a correlation to the proportion of
8 dilapidated units to the total housing stock.

9 Q What were the three characteristics?
10 Perhaps that would enable me to understand that better.

11 A I don't remember all of them. I believe one
12 of them was the age of the housing stock. I don't
13 remember the other two.

14 Q But if I use the one as an example,
15 do I understand correctly what you're saying, if
16 I said that based upon the age of a housing stock
17 and perhaps two other characteristics, they make
18 a determination of the percentage of total units
19 which would be dilapidated?

20 A Is that a question?

21 Q Yes. A Let me
22 give you a simple example.

23 Q Okay. I appreciate that.

24 A If you take the number of dogs that exist
25 in Newark, and, you know, the number of dilapidated

1 units that exist in Newark in 1960, there will be
2 a proportion that one can establish between those
3 two numbers relative to the total housing stock or
4 total number of dogs. One can apply that proportion
5 to the total housing stock that exists in Newark in
6 1970.

7 In this instance, we used three criteria that
8 they believed had a direct relationship to the number
9 of dilapidated units.

10 Q Let me try again and you tell me
11 whether I'm correct or whether I understand it.

12 As I understand it, you're saying that
13 you took three characteristics of housing, one of which
14 is age of housing stock in 1960, and establish a
15 relationship between these three characteristics and
16 the number of dilapidated homes as shown in the 1960
17 census. And then carried that relationship forward
18 to 1970, thereby arriving at the number of dilapidated
19 homes, although that figure is not provided in the

20 1970 census?

A As I recall, that's

21 how they did it.

22 Q With respect to overcrowded units,
23 where did they obtain that figure?

24 A I believe from the census.

25 Q And why was it their position that there

1 was a needed vacancy factor?

2 A They state in their report that needed vacant
3 units are considered necessary to permit mobility
4 and choice in the housing market.

5 Q And do you know how they arrived at
6 five percent with respect to non-rental units?

7 A No, I do not.

8 Q And do you know how they arrived at
9 1.5 percent with respect to rental vacancies?

10 A I have to change that, and you're repeating
11 exactly the way I said it earlier. The 1.5 applies
12 to owner units and the five percent applies to rental
13 units. No, I do not.

14 Q And is it the case that they totaled
15 these figures, applied an overlap figure and thereby
16 arrived at the present housing needs 1970?

17 A As I understand it, yes.

18 Q Would you explain how DCA in their
19 '76 report arrived at the perspective housing needs
20 ~~1970~~ through 1990? A New Jersey DCA

21 ~~CONSENT~~ based their perspective housing needs on a projection
22 of the population from 1970 to 1990.

23 Taking that population projection and dividing
24 it into the number of -- I'm sorry-- and determining
25 the number of households that would result from that

1 projection, and then determining the number of those
2 households that would be of low and moderate income.

3 Q How did they project the population
4 1970 through 1990? A I don't

5 believe they projected the population. They took
6 figures from the Department of Labor and Industry
7 projections.

8 Q Is that the New Jersey Department of
9 Labor and Industry? A Yes, it is.

10 Q And in what year were those figures
11 promulgated? A In what year did
12 the Department of Labor and Industry make their
13 projections?

14 Q That's correct.

15 A I don't know.

16 Q How did they translate that, the
17 projected figures on population, into a number of
18 households? A They took a

19 proportion for the number of households -- I'm
20 ~~not~~ -- for the size of households in 1990 and
21 ~~divided~~ the persons per household into the total
22 population.

23 Q What was that figure? What was
24 the projection of size of, I assume, an average
25 household in 1990? A It varies

1 by county.

2 Q Where does that figure come from?

3 A I believe, and I'm not sure of this, again
4 projections by the Department of Labor and Industry.

5 Q And how do they arrive at the number
6 of low and moderate income households?

7 A For each county they took the proportion
8 of low and moderate income households that existed
9 in 1970 according to their definition of the income
10 limit of, for low and moderate income households
11 in 1970 and multiplied that by the number of households
12 they projected for 1990.

13 Q That was on a county basis?

14 A County by county, yes.

15 Q Did they divide these figures by
16 municipality within the counties?

17 A The projections?

18 Q Both the present housing needs and
19 the perspective housing needs and the components
20 of them.

A I don't believe

21
22 Q You mentioned that the next part was
23 the identification of the regions for housing allocation.

24 Is that correct? A Yes.

25 Q And did they identify twelve different

1 regions? A I believe so.

2 Q Within the State of New Jersey?

3 A Yes.

4 Q Did they call them regions or sub-

5 regions? A They use both
6 words.

7 Q What's the difference, if any, that
8 you know of in DCA's terminology between a region and
9 a sub-region? A I don't believe
10 there's any.

11 Q Do you understand there to be a difference
12 between a region and a sub-region?

13 A For New Jersey DCA?

14 Q No, in your own lexicon.

15 A I don't use the word sub-region so I guess
16 not.

17 Q How did they arrive at the regions
18 for housing allocation? A They
19 identify four criteria that they used in identifying
20 the regions for the purposes of the housing allocation

21 please.

22 Q And what were the four criteria?

23 A The first one was sharing housing needs.

24 Q Excuse me. I didn't understand what
25 you said. A The first one was

1 sharing housing needs.

2 Q And what does that mean?

3 A The intent was that the regional delineation
4 should reflect the intent of the Mt. Laurel decision
5 and permit there to be a sharing of housing needs
6 that exist in areas and the resources that are available
7 to meet those housing needs.

8 Q Isn't that circular?

9 A I don't understand the question.

10 Q This question is not relating to your
11 interpretation of DCA. This question, I'm having
12 some difficulty understanding it. If, perhaps, you
13 could explain to me, doesn't one have to know the
14 region before one can know the area to be shared,
15 shared among, who is going to be shared, the needs,
16 or is this just a general concept? Is it, do they
17 mean, does DCA mean in sharing housing needs that
18 it is a general concept, areas within the State of
19 New Jersey should share housing needs?

20 Perhaps another way I might ask the question
21 is, how does the concept of sharing housing needs
22 lead to a definition of a region as opposed to
23 an existence of a region or any region?

24 A I don't understand the last part of that
25 question. But the first part I think I do.

1 It lends itself to the definition of a
2 ~~region~~ in that there are areas within New Jersey where
3 ~~there~~ are concentrations of housing needs for low
4 ~~and~~ moderate income persons and few resources to meet
5 those needs.

6 And there are other areas within New Jersey
7 where those concentrations do not exist and there
8 are greater resources for meeting the low and moderate
9 income housing needs.

10 Q What was the second factor that DCA
11 used? A Socio-economic inter-

12 dependence.

13 Q And what did they mean by that phrase?

14 A That it should be an area where there is
15 some definition of the housing location decisions
16 that are made. They give as examples, for instance,
17 job, the relationship between jobs and housing.

18 Q What was the third consideration?

19 A Data availability.

20 Q Pardon me, I didn't hear.

21 A Data availability.

22 Q And how do they explain data availability?

23 A The need to have an area defined for which
24 data are compiled without the necessity of interpolating
25 or translating partial data from a, an area or jurisdiction

1 that's only partially included within a region.

2 Q And the fourth characteristic?

3 A Executive Order 35.

4 Q And how do they use these four criteria
5 to establish the various regions?

6 A As I recall, they looked at the, by county
7 the housing needs that exist and the resources available
8 for meeting those needs to strike a balance between
9 them. They looked at commuter patterns.

10 Q Which of the four characteristics
11 do commuter patterns fall under?

12 A As I indicated in the socio-economic inter-
13 dependence, they use the relationship between housing
14 and jobs as an example.

15 Q And where do they gather, from where
16 do they gather information, from whence did information
17 come with respect to the socio-economic interdependence?

18 A I don't recall.

19 Q Do you recall whether the report advises
20 as to where that information came from?

21 A This report?

22 Q That's correct.

23 A I don't believe it does.

24 Q Did you have any conversations with
25 DCA officials or persons that you know worked on that

1 report?

2 MR. BISGAIER: Before she answers that
3 question, what was your prior question?

4 You were looking for --

5 MR. SIROTA: Do you want me to repeat
6 the question?

7 MR. BISGAIER: Either you or the
8 Court Reporter.

9 Q My question is --I was advised that one
10 of the four characteristics which related was translated
11 into regions was socio-economic interdependence. And
12 that one of the sub-categories in that was ~~constituted~~.
13 And I asked the question: Where did, does the report
14 tell, or if it doesn't tell, where did DCA get the
15 information upon which they base their conclusions
16 relating to socia-economic interdependence?

17 MR. BISGAIER: I can tell you where
18 you could find that or if you want to know
19 rather than want to know whether she knows.

20 MR. SIROTA: Well, she has testified
21 that she doesn't know, so that I would be
22 happy to know.

23 MR. BISGAIER: You might look at the
24 technical reports, the four technical reports
25 that form the basis of this document.

1 THE WITNESS: I know it's identified
2 in there. He asked me if it was identified
3 in this report.

4 MR. BISGAIER: I understand that.
5 It's not identified in there.

6 MR. SIROTA: I asked you initially
7 whether you know --

8 THE WITNESS: No. You asked me if it
9 was identified in this report.

10 MR. SIROTA: All right. Thank you.
11 I'll go back to asking the witness questions.

12 MR. BISGAIER: Okay.

13 BY MR. SIROTA:

14 Q I think when Mr. Bisgaier interrupted
15 I was, or, excuse me, made his comment, I was in
16 the process of asking you whether you knew or had
17 a conversation, in any way derived the information
18 as to where DCA obtained the socio-economic inter-
19 dependence information or upon figures that information
20 was based.

21 A I believe it is
22 contained in their background reports.

23 Q The background reports also contain
24 detailed information as to their -- the data availability
25 concern?

A It contains a
discussion of that criteria.

- 1 Q And of the other two criteria also?
- 2 A Yes.
- 3 Q Morris County is in Region 11; is that
- 4 correct? A Yes, it is.
- 5 Q What other counties are in that region
- 6 in the 1976 DCA report? A Bergen
- 7 County; Essex County; Hudson County; Middlesex County;
- 8 Morris County; Passaic County; Somerset County.
- 9 Q Can you explain to me how DCA --
- 10 A And Union County.
- 11 Q Wouldn't want to forget Union County.
- 12 Can you explain to me -- pardon me.
- 13 Could you explain to me how DCA
- 14 utilized these four characteristics to arrive
- 15 at a definition of Region 11?
- 16 A Generally, yes.
- 17 Q Well, as specifically as you can.
- 18 A I will explain it as specifically as I can.
- 19 That may be generally.
- 20 MR. BISGAIER: There also is a technical
- 21 report on regions which lays that out.
- 22 Q I believe you were going to explain.
- 23 A You're asking me to explain that now.
- 24 Q Yes. A They identify,
- 25 as I indicated, the housing needs by county and identify

1 a concentration of housing needs in, as I recall,
2 Essex and Hudson County, at least. And then looked
3 to the resources that were available in the surrounding,
4 immediately surrounding counties, and identified
5 an area that they felt was sufficient to meet the
6 housing needs that existed in those concentrated
7 areas.

8 Q What was the basis of their -- you
9 used the phrase they felt that inclusion of additional
10 counties was required to meet the housing needs of
11 the initially considered counties. I think you said
12 Essex and Hudson.

13 Why did they feel that way, and if
14 they felt that way -- A They chose
15 these particular counties because they were in
16 geographic proximity to Essex and Hudson Counties.
17 I believe, or at least the criterion that I recall
18 they looked at in terms of meeting those needs,
19 was vacant land available. And there may have been
20 others.

21 Q Is it fair to say what you're saying
22 is that they looked for areas that had land available
23 to be developed which could supply housing needs
24 for the cities of Hudson and Essex Counties?

25 A As I recall, that was part of the process

1 they went through, yes.

2 Q And how in the 1976 report did they
3 describe developable land, vacant land?

4 A I'm not certain of this. As I recall, they
5 used the vacant developable land criterion used
6 in the plan itself, which is identified as land which
7 has been defined as vacant land in a municipality
8 less reductions for land with greater than twelve
9 percent slope, wet lands, qualified farm land and
10 public lands.

11 Q What was included within public lands?

12 A I don't know.

13 Q Were military bases?

14 A I don't know.

15 Q Parks? A I don't
16 know.

17 Q And was this method of determining
18 the region described in more detail in one of the
19 technical papers? A I believe

20
21 Q Were there technical papers for the
22 1978 plan also? A Not that
23 I know of.

24 Q You mentioned that the fourth section
25 of the second part related to method used for allocation.

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1 Would you describe that method?

2 A New Jersey DCA identifies four criteria
3 to use in allocating -- I'm sorry. I'd like
4 to start over.

5 They allocate separately present and perspective
6 housing needs. Present housing needs, and present
7 always refers to 1970, housing needs, they allocate
8 based on the proportion of housing needs in the region
9 to the total housing stock in the region. And allocate
10 to a municipality that proportion relative to its
11 own housing stock.

12 For perspective housing needs, New Jersey DCA
13 identified four criteria to use in the allocation.
14 These criteria are vacant developable land, employment
15 growth, municipal fiscal capability and personal
16 income.

17 They take each of those criteria and identify
18 that characteristic for the municipality and that
19 municipality is the -- this steps back a little bit --
20 the proportion of that characteristic to the region
21 as a whole -- I'm sorry -- the proportion of that
22 characteristic within the municipality to the region
23 as a whole is the proportion of the housing need
24 allocated to that municipality of the total region's
25 housing need.

1 For those four criteria, it is then averaged
 2 and that final allocation is the allocation to the
 3 jurisdiction for perspective housing needs.

4 Q The definition of vacant developable
 5 land, that remains as we discussed just a few moments
 6 ago? A Yes.

7 Q With respect to the employment availability
 8 how do they measure that or how did they measure that
 9 for this '76 report? A They
 10 identified employment growth in covered employment
 11 between 1969 and 1975.

12 Q What is covered employment?
 13 A I believe it's all that employment covered
 14 by employment compensation.

15 MR. BISGAIER: You want to take
 16 five minutes?

17 (At which time a recess was held.)

18 MR. SIROTA: During the break we've
 19 discussed dates for continuation of this
 20 deposition or deposition of other defendants
 21 in this matter. And we've settled upon May
 22 17, Thursday, 9:15; May 21, Monday, 9:15;
 23 May 23, Wednesday, 9:15.

24 You ready to begin now? No?

25 BY MR. SIROTA:

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CONTENT

1 Q I believe prior to the break you advised
2 that the employment availability factor was based
3 upon employment growth in covered areas for approximately
4 a fifteen-year period; is that accurate?

5 A For approximately what?

6 Q Fifteen-year period, up to and through
7 1975. A 1969 to 1975.

8 Q And how was that information utilized
9 in the allocation? A In each
10 of these instances, the proportion of the criteria
11 for the municipality relative to the region as a
12 whole represents its proportion of the housing need
13 for the region as a whole.

14 Q So is it the case that to arrive at
15 this component they took the employment growth in
16 covered areas of employment in a specific municipality
17 as compared to the region as a whole?

18 A The growth between 1969 and '75, yes.

19 Q My question is, so that I understand
20 it completely: Was the proportion arrived at by
21 comparing the growth in the municipality as against
22 the growth in the region? A Yes.

23 Q With respect to the third component,
24 which you identified as municipal fiscal capability,
25 could you describe how DCA arrived at that component?

1 A They took the non-residential ratable growth
2 between 1968 and 1974 and again used that share
3 by municipality of the regional growth as the proportion
4 of the region's housing need that would be applied to
5 the jurisdiction.

6 Q Did they ~~was~~ assessed valuation or
7 modified assessed valuation?

8 A I don't recall.

9 Q You don't recall what types of, what
10 type of figure they used to establish the ratable amount?

11 A That's correct.

12 Q Would that be in the technical papers?

13 A I don't recall.

14 Q How would that affect a municipality
15 who happened to have a very large percentage of
16 their non-residential ratable growth between 1968
17 and 1974? A How would it

18 affect them with respect to what?

19 Q With respect to their allocation of
20 housing needs. A If they had a

21 very large growth?

22 Q During that relevant period.

23 A Relative to other municipalities?

24 Q Yes. A Then relative
25 to those other municipalities, their allocation would

1 be higher.

2 Q So that is it the case that if a municipality
3 acquired all its non-ratable growth between 1965
4 and 1968, and another municipality acquired all its
5 non-residential ratable growth, all its non-residential
6 ratables between 1968 and 1974, and all the other
7 concerns being equal, personal income, vacant developable
8 land and employment availability, that the one who
9 acquired the non-residential ratable growth in between
10 1968 and 1974 would be assigned a higher allocation?

11 A With respect to this one criterion, yes.

12 Q Part of the assumption was that all
13 the other criteria were equal.

14 A I'm sorry. Yes.

15 Q Isn't that a matter of happenstance when
16 one happens to acquire non-residential ratable growth?
17 Let me strike the question.

18 How were the years 1968 through 1974
19 chosen? A I don't know.

20 Q Are you aware of any particular significance
21 of that period of time? A No.

22 You mean for DCA, New Jersey DCA?

23 Q With respect to non-residential ratable
24 growth. A No. It may very well have been

25 at the point of the preparation of this plan, the

1 most recent data they obtained.

2 Q Do you know why they use non-residential
3 ~~ratable~~ growth as opposed to non-residential ratables?

4 A I don't recall that they explained that.

5 Q Well, based upon your expertise in
6 the area, why would they use growth as opposed to
7 ratables as of a point in time?

8 A They might have felt that the growth indicated
9 or had bore some relationship to the ability to absorb
10 additional housing.

11 Q And did they use personal income in
12 the same proportion that you described with ~~the~~
13 other three criteria? A I don't

14 understand that question.

15 Q How did they use personal income in
16 this formula, the fourth criteria?

17 A They identified per capita income in each
18 municipality and weighted that per capita income
19 in determining the allocation.

20 I think to answer your question more fully,
21 ~~then~~ the weighted per capita income is used in the
22 same way as a proportion.

23 Q Isn't per capita income affected by
24 the size of families? A I

25 don't understand that question.

1 Q Perhaps again I can best explain
2 it by setting up an example. If you had a municipality
3 where family income averaged \$15,000 and family size
4 averaged -- strike that -- and a family averaged two
5 children. And you had another municipality with the
6 same average family income but where there were either
7 more or less children, that situation affects per
8 capita income, does it not?

9 A You mean in relationship between the relationship
10 of per capita income between those two municipalities?

11 Q Well, yes, in that situation.

12 A Yes.

13 Q Where you had a larger number of children,
14 the per capita income would be lower likely and where
15 you had a lesser number of children the per capita
16 income would be higher, would it not?

17 A It is possible that that would be true.

18 Q Well, is it likely that it would be
19 true?

20 A Depending on the number
of unrelated individuals residing in the jurisdiction.

21 Q Well, given your knowledge as to what
22 a normal number of unrelated individuals residing in
23 a jurisdiction would be -- strike the question.

24 Well, given the example that I've
25 proposed, does personal income in a per capita basis

1 necessarily reflect a family's economic lifestyle?

2 A Could you repeat that question?

3 (At which time the requested information was
4 read back by the Reporter.)

5 Q I'll restate the question, if I may.

6 Does per capita personal income,
7 how well does per capita personal income evidence
8 the economic viability of the resident or residents
9 of housing units? A I can't
10 answer that question.

11 Q To determine whether someone is low
12 or moderate income, isn't it relevant to determine
13 the size of the household being supported by the
14 income? A I'm sorry. If
15 you could repeat the first part of that question.

16 Q Yes. To determine whether a household
17 is of the low or moderate income level, isn't it necessary
18 to know, one, the household income and, two, the number
19 of persons residing in the household being supported
20 by that income? A That's

21 a complicated question. Low and moderate income,
22 determining low and moderate income with respect to the
23 availability of housing?

24 Q Are there not various Federal subsidy
25 programs which attach and are available to residents,

1 families, households -- I'll use the phrase households --
2 based upon income level of the household?

WOW
ABLES

3 MR. BISGAIER: Regardless of size of
4 the family?

5 Q And the next question would be --

6 A Now I got to go back a second. You mean housing
7 subsidy programs?

8 Q Yes, correct. A For
9 which there are limits?

10 Q Yes. A Yes.

11 Q And isn't it relevant the number of
12 persons residing in the household?

13 A Do you mean -- yes, it is in most instances
14 part of the definition of income limit.

15 Q And why is that the case?

16 A Why is that the case? I'm not sure I know
17 all the reasons that it's the case.

18 My suspicion is that it's the case because
19 different size families require different size housing
20 units that may cost different amounts of money.

21 Q Is it the case that these four percentages
22 are then averaged? A Yes.

23 Q And then utilized to establish both the
24 current and the perspective housing needs?

25 A No. As I already identified, the present housing

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1 needs are allocated separately.

2 Q As you advised the third part of the
3 1976 report is the conclusion. Could you generally

4 describe the conclusion? A The conclusion
5 identifies that the report has presented a fair share
6 allocation plan for New Jersey, and that it provides
7 allocation numbers for each municipality; that it is
8 available in a certain number of locations and that
9 there will be a certain number of public hearings which
10 has "cancelled" written across it -- and an address to
11 which interested persons may send statements.

12 Q Does it also advise that the report,
13 the '76 report, is preliminary in nature and subject
14 to change? A It states that
15 it's a Preliminary Draft for Public Discussion.

16 Q Did you have any input in that report,
17 direct or indirect? A Not that
18 I know of.

19 Q Do you know who prepared that report?
20 A No.

21 MR. SIROTA: Off the record.
22 (At which time a discussion was held off the
23 record.)

24 Q You want to correct an answer?

25 A I didn't want to correct an answer. I said

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1 I looked into the report and it identifies that
 2 J. Fieldler, F-I-E-L-D L-E-R, is at the top of the
 3 list of participating staff members in the preparation
 4 of the report.

5 Q Well, you don't have to read them all.

6 A Thank you.

7 Q You are welcome.

8 MR. SIROTA: Off the record.

9 (At which time a discussion was held off
 10 the record.)

11 Q Are you familiar with the 1978 DCA
 12 report? A Yes, I am.

13 Q And is that report also in nature
 14 a fair share allocation plan?

15 A In part.

16 Q And is it based on the 1976 report?

17 A I believe so.

18 Q And are there changes in the 1976
 19 report? A You mean the 1978

20 report?

21 Q Thank you. I do mean the '78 report.

22 A Yes, there are.

23 Q Would you generally describe the changes
 24 in the '78 report compared to the '76 report?

25 A I'm going to go through the same components so

1 that they're easy for you to compare them.

2 As I understand it, their definition of low
3 and moderate income is the same. In identifying
4 present housing need, they made no changes.

5 In identifying perspective housing need,
6 they took into account in projecting the population
7 from 1970 to 1990 group, the population in group
8 quarters.

9 Q Population in group quarters?

10 A Yes.

11 Q What are group quarters?

12 A Persons that live in various forms of grouped
13 housings, such as a home for the --

14 Q For the aged? A Aged,
15 yes.

16 Q What other types of group housing?

17 A Homes for the retarded, that type of housing.
18 I don't --

19 Q Including State homes for the aged or
20 State homes for the retarded?

21 A I believe so.

22 Q Homes for mentally ill also?

23 A I believe so.

24 Q And did that have a net effect of
25 increasing the perspective housing needs over the 1976

1 perspective housing needs?

2 A I don't know.

3 Q It would be logical that it would,
4 would it not? Aren't you adding people to the group
5 which you would provide housing for potentially?

6 A They -- I'm sorry. I guess I didn't explain
7 that correctly. They eliminated the population in
8 group quarters.

9 Q Well, would that have the net effect
10 of reducing the perspective housing needs, growth
11 perspective housing needs, for the State?

12 A I would think so.

13 Q Were there any other changes in the
14 manner in which they determined perspective housing
15 needs? A The definition

16 -- I'm sorry. I don't believe so.

17 Q Are there any differences in the
18 '78 report over the '76 report with respect to the
19 manner in which they identify the regions for

20 allocation? A No.

21 Q Was there any difference in the
22 regions established? A No.

23 May I continue?

24 Q Yes, please.

25 A The allocation of the present, again 1970

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O.C.K.

1 housing need, is the same.

2 In the allocation of the perspective housing
3 need, the method is the same in that they again used
4 proportions and averaged those proportions. They
5 used the same four criteria.

6 They used the same definition of vacant developable
7 land. They used the same definition of employment
8 growth but updated it to 1976.

9 They changed the definition of municipal
10 fiscal capability to apply only to commercial and
11 industrial ratables growth, and was updated to 1975.
12 They used --

13 Q Excuse me. Industrial and commercial
14 ratable growth from -- A 1968
15 to 1975.

16 Q And formerly it was non-residential
17 ratable growth? A Yes.

18 Q So they eliminated agricultural?
19 Anything that's not included in commercial
20 industrial and is non-residential.

21 Q What would that be?

22 A It could be agricultural.

23 Q What else might it be?

24 A I don't know.

25 Q Yes, you were continuing.

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A Personal income criteria is the same.

Again they averaged the four allocations --

MR. SIROTA: Could you read that back. I'm missing it.

(At which time the requested information was read back by the Reporter.)

A (Continuing) In the 1978 report, they then made two adjustments to the allocation. The first is an adjustment based on what they refer to as the development limit within each municipality. That development -- the second adjustment is based on an attempt to have the plan conform to the State Development Guide Plan and results in placing a number of jurisdictions into what they refer to as a deferred category.

Q What happened to the allocations which were originally assigned the municipalities that have in the '78 report been placed into the deferred category? A Nothing.

Q They weren't added back into the total?

No.

Q You said that those were adjustments made in the allocation. That's the allocation for perspective? A The final, what

they call the unadjusted allocation.

1 Q What did they mean by unadjusted
2 allocation?

3 A I used a term
4 they used before. They get to the final allocation
5 which results after they've made the adjustment.

6 Q But this is the perspective allocation,
7 obviously not the current allocation, not the 1970
8 allocation?

9 A It's the result
10 of the --

11 Q Four factors?

12 A You have to ask your question again.

13 Q You said there were two adjustments
14 to the allocation. I'm asking: Is it the current
15 allocation or the perspective allocation?

16 A It's more complicated than that.

17 Q Well, if you would explain it to
18 me.

19 A Okay. They then go
20 through a method of determining the allocation
21 where they identify the 1970 housing need by
22 municipalities.

23 The allocation of the housing need, they
24 then calculate the difference between those two
25 and add to that the allocation in the perspective
26 housing need. That sum is what they refer to as
27 the unadjusted housing allocation.

28 That number is applied against the development

1 limit which is the first adjustment that I identified.

2 Either the allocation resulting from that
3 allocation is the development limit if the unadjusted
4 allocation is above the development limit or it is the
5 unadjusted housing allocation if the development limit
6 is below or whatever the relationship is between those
7 two.

8 Q What is the development limit?

9 A The development limit is the first of the
10 adjustments that I identified. They identify the
11 development limit as the number of units that could
12 be produced on the vacant developable land times
13 four dwelling units per acre.

14 The units that are not allocated as a result
15 of the development limit are then reallocated to
16 those jurisdictions that have not yet reached
17 their development limit through the allocation.
18 And the allocation is done on the same basis as
19 in the same proportion as the allocation was done
20 originally. That is what DCA refers to as the
21 distributed allocation.

22 Q Is it the case that the development
23 limit assumes quarter acre development, quarter acre
24 lots? A As I just mentioned,
25 the development limit is the result of multiplying

1 four dwelling units per acre times the number of acres
2 of vacant developable lands.

3 Q And the housing allocation will not --

4 A I want to correct something before you continue.

5 The number that results from the re-allocation is
6 what they term the unadjusted housing allocation.

7 Q You say that the development limit
8 is a factor of multiplying four --

9 A I'm sorry. It's what they referred to as
10 the adjusted housing allocation.

11 Q I was thinking of my question and not
12 listening to your correction. I apologize.

13 Q So what we have been referring to as
14 the development limit is the adjusted housing allocation.

15 A No. They apply the development limit concept
16 to the unadjusted housing allocation; reach a number
17 for each municipality. The number of units that
18 were not allocated because of the development limit
19 are then re-allocated.

20 The number that results from that and the
21 number that exists in those other jurisdictions
22 that meet their development limit have then allocations
23 which are required to as the adjusted housing allocation.

24 MR. BISGAIER: Off the record.

25 (At which time a discussion off the record

1 was held.)

2 Q I've been advised off the record
3 that the factor utilized is four times all vacant

4 available land which would include land either
5 zoned or appropriate for every possible use, and

6 including roads, absolutely all in a lay sense,

7 vacant land. A As indicated,

8 it's four dwelling units per acre times the vacant

9 developable land as defined earlier as vacant developable

10 land.

11 Q Thank you.

12 MR. BISGAIER: In other words,
13 not all vacant land. It's less wet lands,

14 less agricultural lands.

15 MR. SIROTA: I understand that.

16 Thank you.

17 MR. BISGAIER: I think this is
18 a logical --

19 THE WITNESS: I haven't gone through
20 the whole method.

21 MR. BISGAIER: Off the record.

22 (At which time a discussion was held off
23 the record.)

24 A The last step in the allocation method
25 used by New Jersey DCA is to add to the adjusted

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1 housing allocation what they refer to as the indigenous
 2 share of the 1970 housing needs. That is basically
 3 the number of current housing needs either represented
 4 by the 1970 housing need or the allocation of the 1970
 5 housing need, whichever is less. That is added
 6 to the adjusted housing allocation for the final
 7 allocation to each jurisdiction.

8 MR. SIROTA: Thank you.

9 (At which time the deposition was adjourned.)

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

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MORRIS COUNTY FAIR HOUSING COUNCIL,
et als,

Plaintiffs,

CERTIFICATE

vs.

BOONTON TOWNSHIP, et als.,

Defendants.

I, MICHELE HEADD, 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 MARY E. BROOKS, who was first duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

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

Michele Headd
A NOTARY PUBLIC OF THE STATE OF NEW JERSEY

MY COMMISSION EXPIRES NOVEMBER 1979.

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