

ML- Morris County Fair Housing Council
v. Brontan

~~CONFIDENTIAL~~
Feb. 22, 1980

Transcript of Oral Deposition of Alan Mallach (by Bernstein)

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MORRIS COUNTY FAIR HOUSING COUNCIL,)
)
) ML000920S
)
) Plaintiff,)
)
) CIVIL ACTION
)
) vs.)
)
) Deposition of:
) TOWNSHIP OF BOONTON, et als.,) ALAN MALLACH
)
)
) Defendants.)
)

T R A N S C R I P T of the stenographic note
of the proceedings in the above-entitled matter, as take
by and before JACQUELINE WASKO, a Certified Shorthand
Reporter and Notary Public of the State of New Jersey,
held at the DEPARTMENT OF THE PUBLIC ADVOCATE, 428 East
Street, Trenton, New Jersey, on Friday, February 22,
1980, commencing at approximately nine o'clock in the
forenoon.

A p p e a r a n c e s :

DEPARTMENT OF THE PUBLIC ADVOCATE,
By: CARL C. BISGAIER, ESQ.,
Attorney for the Plaintiff.

MESSRS. SACHAR, BERNSTEIN, ROTHBERG, SIKORA
& MONGELLO,
By: DANIEL S. BERNSTEIN, ESQ.,
Attorneys for the Townships of Chatham and
Mendham

* * * * *

SIMON CITTONE ASSOCIATES, INC.
1697 Oak Tree Road
Edison, New Jersey 08817

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DIRECT EXAMINATION BY MR. BERNSTEIN

Alan Mallach

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1 A L A N M A L L A C H, sworn.

2 DIRECT EXAMINATION BY MR. BERNSTEIN:

3 Q Mr. Mallach, before we get into your
4 latest reports, I just want to clarify my understanding
5 of your past testimony.

6 Was it your prior testimony that in order
7 to have least-cost housing one must zone for residential
8 homes on 5000 square foot lots townhouses at a minimum
9 density of ten units per acre and garden apartments
10 at a minimum density of 15 units per acre?

11 A That's correct. There were other features
12 as well, but those are the significant ones, yes.

13 Q Now, is there anyone or any organization
14 other than yourself which holds to these standards as
15 the minimums which are required for least-cost housing?

16 A As I may have testified previously, the term
17 "least-cost housing" is not a term that's been in
18 general in the field, and is something of a special
19 term that came about through the Madison Decision.
20 So there are no authorities that I'm familiar with that
21 focus specifically on that point. There are references
22 dealing with the standards for different housing types
23 that are consistent with those, but they don't
24 explicitly focus on least-cost as such.

25 Q Well, I appreciate that. Can you give me

1 some of the source material which suggests standards
2 for density?

3 A Certainly. One, and I believe that section of th
4 document was provided to the defendants from the HUD
5 Minimum Property Standards.

6 Q I believe that was an exhibit which you
7 prepared?

8 A I believe so. It was -- rather than prepared,
9 it was identified certain pages from these documents
10 that were reproduced.

11 Q Were they the LIU's?

12 A Yes, LUI's.

13 Q LUI's. Thank you.

14 A Another source which is consistent is the
15 information in a report from, I believe it's the
16 American Public Health Association, entitled "Planning
17 the Neighborhood."

18 Q That recommended the same densities that
19 you recommended for the lawsuit?

20 A No. Actually I would say on the whole the
21 densities recommended in that last report, as it is
22 true of the HUD report that I mentioned, are higher
23 or at least allow for substantially higher densities.
24 And I believe I may have stressed this previously,
25 the standards that I was recommending are by no means

1 the highest possible densities at which one could
2 reasonably build.

3 Q Are there any other reference material
4 which can advise us of -- that gives standards which
5 support your position other than the two that you
6 just mentioned?

7 A Not offhand. I believe the other document which
8 I'm familiar with is the planning and design criteria
9 by Koppleman.

10 Q Could you spell that?

11 A K-o-p-p-l-e-m-a-n. This essentially adopts
12 these. These are like basic source documents which
13 tend to be followed by other references.

14 Q Are there any other references you can
15 advise us of other than these three?

16 A Not offhand.

17 Q Are there any planning sources, that is,
18 planning organizations or planners, who have written
19 documents suggesting other standards or densities
20 other than those that you suggest which you're familiar
21 with?

22 A I don't doubt that there are. I'm familiar with
23 one report that comes to mind that's entitled "Guide to
24 Residential Design Review." This was put out by the
25 Local Planning Assistance Unit of the New Jersey

1 Department of Community Affairs. Its standards, if I
2 recall, tend to be slightly different, not drastically,
3 but slightly different.

4 Q Do you know if the Urban Land Institute has
5 recommended standards for multi-family development?

6 A I really don't know.

7 Q Can you give us any dollar figures to show
8 why the densities which you are recommending would
9 constitute least-cost housing, and why lesser densities
10 would not attain that status?

11 A Again, I can't give you an exact dollar difference.
12 I can't tell you such and such will result in a
13 difference of X number of dollars from alternative
14 standards.

15 I can discuss -- I can explain the nature or the
16 types of differences that would occur.

17 Q Well, I've deposed you at prior occasions
18 and you've explained to me the issues of lot coverage,
19 and you had certain diagrams and I appreciate that.

20 What I'm concerned with is whether you can
21 give us a range of dollar differences, whether you can
22 translate your definition of least-cost housing into
23 dollar figures, or is your definition of least-cost
24 housing derived from impirical reasoning rather than
25 physical reasoning.

1 MR. BISGAIER: Off the record.

2 (Discussion off the record.)

3 MR. BERNSTEIN: I'll rephrase it.

4 Q Is your definition of least-cost housing
5 based on construction costs and cost criteria or is
6 your definition of least-cost housing based on something
7 else?

8 A It's based on construction costs criteria but
9 not on actual construction costs. In other words --

10 MR. BISGAIER: Could you read that
11 last question back?

12 (Previous question read back by
13 reporter.)

14 A I'm familiar with the components of costs that
15 go into a house or a housing development, and the
16 factors that determine those components are the size
17 of them for any part. I'm not necessarily familiar
18 with what the actual cost might be in a particular
19 situation today, in a particular community.

20 Q Here's what I'm interested in, Mr. Mallach.
21 Can you give us differences in a lot cost
22 or construction cost for constructing a home on a 5000
23 square foot lot as contrasted with any other lot sizes?

24 A I can't give you an exact number.

25 Q Can you give us any range?

1 A I think it might vary considerably.

2 Q Basically what I'm trying to determine
3 is whether or not you can say with any degree of
4 certainty that construction of homes in the defendant
5 municipalities on 5000 square foot lots will cost at
6 least "X" being either a percentage or a dollar figure
7 less than the construction of identical houses on
8 ten square foot one acre lots, two acre lots, etc.

9 A No.

10 Q And can you tell us whether or not the
11 construction of ten townhouse units to the acre would
12 cost a dollar figure less or a percentage less than
13 the construction of six townhouse units to the acre?

14 A No.

15 Q And could you tell us that the construction
16 of 15 garden apartments to the acre would cost either
17 a dollar figure or a percentage figure less than the
18 construction of a lesser density of garden apartments
19 to the acre?

20 A No.

21 Q Could you tell us, Mr. Mallach, how you
22 ascertained the minimum standards for least-cost
23 housing which you have proposed in this lawsuit?

24 A Again, I would have to qualify that by saying
25 there are no absolute minimums.

1 What I did, as I believe was stated in
2 considerable detail in my report and previous
3 depositions, was to analyze based on the size of the
4 dwelling units, the functional requirements that those
5 units would have for land area.

6 For example, the lot size of 5000 square feet for
7 a single family house was defined on the basis of the
8 amount of land that was needed to provide for the
9 house itself, a driveway going up to the house, adequate
10 parking for the family's cars, adequate privacy between
11 the unit, the street, and the adjacent unit, and small
12 opened space for infant's play and for outdoor -- normal
13 family outdoor activity.

14 And in order to define the lot, we said how many
15 square feet is needed to encompass these activities
16 which can be reasonably related to the health and
17 safety of the family. And that comes out to be area
18 in the 5000 square feet.

19 It's quite possible the activities could be
20 accommodated in less than 5000 square feet, but it's
21 certainly not demonstrable that more than 5000 square
22 feet is needed.

23 Q And with regard to the 5000 square feet
24 as the maximum size lot that's consistent with least-cost
25 housing, can you tell us that that position is supported

1 by either of the three publications that you previously
2 referred to as agreeing with your position?

3 A Again, none of the publications that I cited
4 deal with the issue of what is appropriate for least-cost
5 housing, or deal with any attempt to pursue the
6 definition of least-cost housing as given in the
7 Madison Decision to arise at the functional standard.

8 It's my understanding, however, that a 5000
9 square foot lot is completely consistent with the
10 standards independently arrived at for other reasons
11 in those reports.

12 Q And could you tell us in synopsis form how
13 you arrived at the densities for townhouses and garden
14 apartments?

15 A Again, the same process followed. The amount of
16 space that is needed for the structures themselves,
17 amount of space needed for reasonable separation of
18 those structures from streets and adjacent units, the
19 parking likely to be needed by the residents, and a
20 small allocation for opened space suitable for, again,
21 infant and toddler's play and physical outdoor
22 recreation activities.

23 Q Can you tell us whether or not in other
24 cases, Mr. Mallach, you have given other figures as
25 the minimum densities which are acceptable to you for

1 either low-cost housing, moderate-income housing, or
2 least-cost housing?

3 A I don't know offhand. I think that I should
4 stress that these figures were arrived at to try to
5 apply the definition of least-cost housing as it
6 appears in the Madison Decision to functional standards
7 for development. They are net standards that I have
8 arrived at on the basis of my personal preference for
9 a particular type or density or size in housing.

10 Similarly even though under most normal
11 circumstances these are standards at which low income
12 housing under government subsidy programs, and so on,
13 could be constructed, they are not being proposed as
14 an absolute statement, as was required in all cases
15 to construct low income or moderate income subsidized
16 housing. They are proposed as a translation of the
17 Madison Decision of least-cost housing.

18 Q Well, can I gather from your last comments
19 that there are situations where a low density satisfies
20 the requirement of least-cost housing?

21 A No. That was not the point at all.

22 Q Then if I can ask that question, are there
23 instances that you can conceive of in the state of
24 New Jersey where a lower density than the densities
25 we have been describing, 5000 square foot for a single

1 family home, 15 units to the acre for townhouses and
2 15 units to the acre for garden apartments, that a
3 lesser density would, in fact, satisfy the requirements
4 for least-cost housing?

5 A It's a difficult question, because from a purely
6 formal standpoint in terms of the definition, and
7 again this all goes back to trying to apply the Madison
8 language, one's not a free agent in such matters.

9 Least-cost literally interpreted is least-cost,
10 not lesser cost, not most modest cost, not minimum
11 cost, but simply speaking least-cost.

12 Now, by that standard one would say that if
13 housing meeting all the health and safety requirements
14 could be constructed to the densities, any reduction
15 in density is likely to increase cost to some degree,
16 so that the definition is not least-cost.

17 Now, there may be circumstances particularly --
18 I shouldn't say particularly -- but mostly, exclusively
19 in rural areas, outlying areas where the typical house
20 price is extremely low and where land costs are
21 extremely low, where certain density differences would
22 not be significant. I'm thinking of areas in South
23 Jersey where you might be talking about raw land prices
24 of as little as a thousand or fifteen hundred dollars
25 per acre, and where typical house prices even today are

1 below \$40,000.

2 So in such situations, the differences might
3 become very modest.

4 Q Would that be the only situation that you
5 can conceive of where densities less than those you
6 have suggested could still constitute least-cost
7 housing?

8 A Offhand, yes.

9 Q Is it your position on the present case
10 that all the vacant land in the defendant communities
11 should be zoned exclusively for least-cost housing and
12 environmental constraints?

13 A No.

14 Q Could you explain to me then what your
15 position is with regard to zoning for least-cost
16 housing in each of the defendant municipalities?

17 A Well, I can deal with that in general. I can't
18 deal on a municipality-by-municipality basis.

19 I think, generally speaking, taking the group of
20 defendant municipalities as a whole --

21 MR. BERNSTEIN: Off the record.

22 (Discussion off the record.)

23 A -- there would certainly be land zoned for other
24 purposes. Some land is legitimately zoned for non-
25 residential uses.

1 In addition, I believe, again, looking back at
2 the Madison Decision, that there is a principle that
3 once the amount of land has been zoned to make -- I
4 think a phrase was realistically feasible meeting of
5 the low and moderate income fair shares and so forth --
6 that additional land that might be vacant need not be
7 zoned for such purposes.

8 Now, clearly the amount of land that is
9 appropriately zoned for least-cost housing would vary
10 tremendously from one municipality to the next, and
11 some municipalities it could be the greater part of
12 their vacant lots. On the other hand, it might be
13 a relatively modest part that would require a very
14 specific kind of study.

15 Q Would it be fair to say that in this
16 litigation you are giving the criteria for least-cost
17 housing, and Miss Herd is setting up the allocations
18 for least-cost housing in each municipality?

19 A I think you mean Miss Brooks.

20 Q Miss Brooks. Excuse me.

21 A I believe that would be fair to say.

22 Q Now, during the previous depositions which
23 we have had, Mr. Mallach, you had testified that you
24 had made a few field trips into a few of the communities
25 in Morris County, is that correct?

1 A Yes.

2 Q And I believe you had testified on one
3 occasion you had driven through Mendham Township, is
4 that correct?

5 A Yes.

6 Q Do you have any notes of your recollections
7 of any of the trips that you took through the communities
8 in Morris County?

9 A I have some notes. I don't have them with me.

10 MR. BISGAIER: I think they were all
11 reduced to writing and served on the
12 defendant municipalities.

13 Q Well, we have obtained from Mr. Mallach your
14 comments on the zoning of each municipality and your
15 analysis based on what you've referred to as a facial
16 examination.

17 What I'm interested here in though is
18 if you have any notes or writings embodying what you
19 saw in the various municipalities.

20 A Whatever notes or writings I had were served on
21 the defendants. I believe there were typewritten notes
22 headed "Field trip of April 4," I think something to
23 that effect. There had been notes on subsequent field
24 trips, or are there any notes that were not served
25 long since on the defendants?

1 Q Is it your testimony that the field trip
2 on April 4 -- was that in 1978?

3 A '79.

4 Q That was the sole field trip which you
5 took?

6 A No.

7 Q No?

8 A No. I'm stating that was my recollection as to
9 the heading of materials that were submitted.

10 Q And that would embody the document entitled
11 "Field trip, April, 1979," would embody all of your
12 notes on the field trips which you took?

13 A That I don't know. What I'm saying is that is
14 my recollection as to a heading of certain materials.
15 I don't know whether that particular document would
16 embody all the notes. There may have been other
17 documents provided. There are certain references that
18 are embodied in the analysis of the ordinances.

19 Q Let me ask it this way.

20 Q Were defense counsels supplied with copies
21 of your notes of your field trips?

22 A Yes.

23 Q When was the last field trip that you took?

24 A It was last spring. It may have been the April
25 trip, I don't recall specifically.

1 Q That would be somewhere between April and
2 June of 1979?

3 A That's correct.

4 Q And other subsequent field trips have been
5 made?

6 A That's correct.

7 MR. BISGAIER: That's not to say that
8 Mr. Mallach has not been in the county since
9 that period of time.

10 A I was trying to recall. I may have been
11 inadvertently in Morris County since June, but I --

12 MR. BERNSTEIN: Off the record.

13 (Discussion off the record.)

14 Q Mr. Mallach, when I deposed Mr. Sinton he
15 advised me that you were doing some work for one of
16 the counties in South Jersey?

17 A That's correct.

18 Q Which county is that?

19 A Atlantic.

20 Q Can you tell us what you're doing for
21 Atlantic County?

22 A Yes. We were retained by the County to prepare
23 what was termed a housing strategy study. What this
24 was was a report looking at the existing conditions
25 in the county in terms of the availability of housing

1 at moderate price, generally speaking, and more
2 significantly the likelihood of additional moderately
3 priced affordable housing being constructed in the
4 foreseeable future. And on the basis of that, then
5 recommending strategies that the county government can
6 undertake to try to increase the supply of affordable
7 housing.

8 Q What were those strategies which you
9 examined?

10 A Well, the key question here, of course, is the
11 nature of what a county government, which does not have
12 a direct role in many areas of the land use and
13 development, do. What should such an entity do?

14 Now, we reviewed the body of law in terms of the
15 county's powers as a prerogative in this area. In
16 particular reference to the fact that land, Atlantic
17 County, is a charter county and thus has certain
18 implicit powers that a regular county organized under
19 the conventional structure does not have.

20 In addition, we studied the application of two
21 recent bills that were just signed by the governor
22 dealing with the extension of the county improvement
23 authority into the housing area and a particular
24 Atlantic County related bill which essentially turned
25 the luxury taxes over to the county's proven authority.

1 We won't get into the technicalities. And we
2 tried to develop a series of approaches using these
3 different bills that would enable the county to become
4 more active. This included working to defend a kind of
5 fair share concept with the constituent municipalities,
6 in partnership with the constituent municipalities with
7 the county.

8 Q Could I stop you there for just a minute?

9 Was there fair share analysis which you
10 made as to Atlantic County?

11 A No.

12 Q You merely made recommendations as to
13 future fair share studies?

14 A No. In fact, we didn't say necessarily that a
15 study would be needed at all. We were suggesting
16 essentially to use the concept of fair share as a way
17 of trying to balance out so that no -- so that to try
18 to develop a partnership where all of the major
19 townships in the county would participate in this so
20 that no one would be singled out as bearing the burden.
21 And that, instead of necessarily doing a study in terms
22 of ultimate goals which might politically raise more
23 questions than it would answer at least initially, is
24 to try to focus on the availability of subsidy funds
25 and work from there, at least to get the ball rolling.

1 Q Were there other things you studied which
2 encompassed other than what you've just explained?

3 A Yes. We discussed the possibility of creating
4 a non-profit development corporation as an umbrella
5 for developing inexpensive housing as well as subsidized
6 housing using the County Improvement Authority as a
7 functioning vehicle for this entity.

8 We also looked at the concept of developing a
9 county housing department that would have a series of
10 housing responsibilities but unrelated to the development
11 process.

12 Q Were your recommendations embodied in the
13 written report?

14 A Yes.

15 Q Would you make that written report available
16 to Mr. Bisgaier so that he can send me a copy?

17 A I'm not sure that under the terms of my contract
18 I'm allowed to at this point.

19 Q Isn't it a public document?

20 A Not yet. It will become one, or so I've been
21 assured, but at this point there are a variety of what
22 I gather to be clearances particularly as it was funded
23 through the State Department of Environmental Protection
24 with federal funds received by them. So it's my
25 understanding that it is not available for release

1 at present.

2 I could inquire of the county administrators as
3 to whether a copy might be made available for this
4 purpose, but I can't do it on my own.

5 Q Now, I also understood from Mr. Sinton
6 that you were doing some work in the Pine Barrens?

7 A That's correct.

8 Q Can you explain to me what that work is?

9 A As you're undoubtedly aware, Congress and the
10 New Jersey legislature have passed companion bills
11 creating a Pinelands Commission with federal and
12 state participation and designating an area of roughly
13 30 percent of the state of New Jersey as being under
14 the jurisdiction of this commission in terms of
15 overall planning and land management.

16 The Pinelands Commission is mandated to present
17 its first draft of a plan for this area by August of
18 1980.

19 In preparation for this plan, they commissioned
20 a number of individual firms to do studies and analyses
21 to provide the basis for a plan. We are one of those
22 firms and we've been retained to study a series of
23 specific topics which fall under the general area of
24 development pressures affecting the pinelands.

25 Q Could you explain in more detail the

1 parameters of your study?

2 A Okay. There're really five elements.

3 The first is an analysis of future demand. This
4 is a study of household growth migration, land
5 availability, and related factors to determine, at
6 least in general terms, what is the kind of demands
7 for land and housing and such that is likely to be
8 accommodated in the pinelands region over the next
9 two decades.

10 The second is a study of the land market in the
11 pinelands region, the extent of land transactions, and
12 so forth.

13 The third is a study of what are called growth
14 shapers in the pinelands, physical factors encouraging
15 growth. This included the road system, the availability
16 of sewer facilities, the location of major employers,
17 and so forth.

18 Q If we could stop there a minute.

19 What relevance do the growth shapers have
20 with regard to your study?

21 A Well, there again, the growth shapers are all
22 factors that increase the likelihood of development
23 taking place, at least development pressures in
24 certain areas and away from other areas. So they are
25 a very important component in looking at the overall

1 likelihood and the nature of future development.

2 Q Aren't these same growth shapers present
3 throughout the state?

4 A Oh, yes.

5 Q And the factor that you've mentioned here
6 would be relevant, not just in the pinelands, but in
7 Morris County as well?

8 A To a degree. To a lesser degree because in
9 Morris County, of course, you're dealing with a
10 generally speaking, more developed, more compact
11 area.

12 Q The growth shapers would have the same
13 accelerating effect in development in Morris County
14 as they would in the pinelands area?

15 A Yes. How significant that effect is is debatable,
16 but yes, to some degree at least.

17 Q And item number four?

18 A Item number four is an examination of the demand
19 pressures in the light of certain very specific
20 potential considerations, and there are four.

21 One is the whole question of development.

22 The second is the question of future demand for
23 retirement community living.

24 The third is the energy situation.

25 And the fourth is the overall economic trend.

1 Finally, the last area is to work with the
2 Pinelands Commission to develop scenarios based on
3 alternative assumptions, projections, policies, and
4 the like for future development in and adjacent to
5 the pinelands.

6 One element to the study, which is not only to
7 look at the land within the pinelands boundary, but
8 to look at potential spillover effects for interactions
9 between the land inside the pinelands boundary and those
10 areas on the perimeter.

11 Q Well, what do you mean by the "spillover
12 effects"?

13 A Well, for example, if a projection of a development
14 trend indicates that in the absence of new restrictions
15 on land use, "X" number of units are likely to be built
16 in a certain part of the pinelands in the next decade
17 and then you hypothesize in one of your scenarios that
18 for some particular environmental reason, whatever
19 it may be, the Pinelands Commission feels that there
20 must be a significant reduction in the amount of
21 housing going into that particular place, the question
22 comes up, "Where is that housing going to go, and is it
23 going to be displaced to another part of the pinelands,
24 will it be displaced to areas outside the pinelands?"
25 If so, which areas are those that are more appropriate

1 for development, and so forth.

2 Q What effect would development adjacent to
3 the state-owned lands have on the areas which are to
4 be preserved by the state?

5 A Well, you've got -- that's a very complicated
6 question.

7 Certainly there's no consistent pattern. The
8 existing state-owned lands are fairly extensive, and
9 there are many areas where development comes up to,
10 and close to those state-owned lands with, as far as
11 anybody can tell, no ill effects.

12 And at the same time one of the things that the
13 Pinelands Commission has to deal with is the question
14 of what additional areas should be acquired by the
15 state or by the Pinelands Commission for future
16 preservation. And I think the important thing -- since
17 it's obvious to the Pinelands Commission that the
18 amount of money available for acquisition will never
19 be adequate to acquire more than relatively small
20 parts of the area -- is to identify what our particularly
21 strategic areas are that should not be developed, and
22 what areas which can accommodate additional development.
23 And the process of defining what are strategic areas
24 and what are not are so far an extremely complicated
25 one. I don't think it by any means is a real

1 resolution.

2 Q I believe you just testified, Mr. Mallach,
3 that there were areas adjacent to the state-owned lands
4 where the Pinelands Commission was concerned with
5 densities, wasn't that part of your testimony?

6 A They have not gotten to densities.

7 Q They were concerned with development?

8 A Well, concerned, yes, with kind of a yes or no
9 about development, not necessarily with the density
10 of development.

11 Q And did you get into that area, that is
12 looking at the areas adjacent to the state-owned
13 lands where development might cause adverse effects?

14 A No.

15 Q Is that within the ambient of your expertise
16 to look at areas and see if development on area "A"
17 will have an environmental impact on area "B"?

18 A Not at a high level, I wouldn't say.

19 Q Well, have you done such analyses for the
20 pinelands?

21 A No.

22 Q Have you done such analyses for Atlantic
23 County?

24 A No.

25 Q Have you done such analyses for Atlantic

1 County?

2 A No.

3 Q Have you done such analyses for the present
4 lawsuit?

5 A No.

6 Q Had you done such an analysis in the
7 Urban League vs. Carteret Case?

8 A No.

9 Q In the Mount Laurel Case?

10 A No.

11 Q Allen Dean?

12 A No.

13 Q For any other cases?

14 A No. I've never done, to the best of my
15 recollection, an analysis of environmental impact,
16 which I believe is what you're dealing with, as part
17 of any litigation.

18 Q Would you regard a decision by the court
19 in the present matter which directed municipalities
20 to rezone land from three and five acres to one acre
21 residential zoning as being a determination which would
22 promote the construction of low, moderate, or least-cost
23 housing?

24 A No.

25 Q In your view, anything less than 5000 square

1 foot lots for one family homes, anything of less
2 density than 15 townhouses to the acre, and anything
3 of less density than 15 garden apartments per acre,
4 would not promote least-cost housing in the present
5 lawsuit?

6 A That's correct.

7 Q And would it be a fair statement that you
8 would find any rulings by the court which reduced
9 densities from the present level but to less than the
10 densities which you advocated, that ruling would have
11 no effect on least-cost housing in Morris County?

12 A It would be unlikely.

13 Q And why is that?

14 A Because it is unlikely that densities less than
15 the ones I specified would be capable of producing
16 least-cost housing in Morris County.

17 Q Now, from your vantage point as a housing
18 consultant, would it make any difference for the
19 purpose of this litigation if any of the communities
20 were to zone a large area or small areas, any areas
21 for townhouse development at overall densities of
22 between six to eight units per acre?

23 A Well --

24 MR. BISGAIER: I'd like to interject
25 here. My concern is that I believe he's --

1 these questions are either redundant or
2 else one could draw answers to them with
3 any reasonable method of deductive
4 reasoning from answers previously given.
5 And that concern is with the shortness
6 of time whether this, being near the last
7 day of discovery, whether you're going to
8 be able to complete your questioning.

9 MR. BERNSTEIN: Today will be the
10 last day I'll depose Mr. Mallach,
11 Mr. Bisgaier, I can assure you of that.

12 Off the record.

13 (Discussion off the record.)

14 Q Would it make any difference if any of
15 the communities were to zone for garden apartments
16 at a density of between ten and twelve units per
17 acre as far as least-cost housing is concerned?

18 A No.

19 Q Are you familiar, Mr. Mallach, with the
20 townhouse project in Mendham Township known as the
21 Commons? The Commons project is in Maxham Township
22 Borough.

23 A I'm familiar with it. Very generally, I've
24 seen some references to it. I don't think I've ever
25 seen it, but I've heard of it and seen some stuff about it.

1 Q If I were to tell you that the Commons
2 project has a great many condominium units that had
3 been sold but that the density of the Commons project,
4 to my knowledge, is less than ten units per acre,
5 would you then say that the Commons project is not
6 least-cost housing?

7 A Well, this is correct. I mean I happen to know
8 that it is not. Otherwise, I could reach that
9 conclusion from what you said, yes.

10 Q From your vantage point, would Mendham
11 Borough get any credit for this large townhouse
12 project which is zoned for -- to the best of my
13 knowledge it wasn't under the compulsion of a
14 lawsuit.

15 Is there any plusses or are there any
16 points that you, as a housing analyst, could give
17 to Mendham Borough for this project?

18 A No.

19 Q Well, looking over all of the counties
20 are there any plusses or any points that any of the
21 municipalities could get for multi-family development
22 which did not meet your density?

23 A I have not seen an inventory of existing housing
24 in the county.

25 Q Well, you've analyzed the existing ordinances.

1 A I've analyzed the zoning ordinances, and
2 certainly I believe I have noted in a couple of cases
3 through my analyses where individual zones and
4 individual municipalities were at or near least-cost
5 standards.

6 Q Does a town, from your vantage point and
7 from your analyses, get any benefit, any plusses if
8 it's zoned for multi-family development but at
9 densities which you consider to be inadequate?

10 A No.

11 Q So that from your vantage point it would
12 make no difference if a town zoned five-acre residential
13 development on one family lots or townhouses at a
14 density six units to the acre?

15 A Well, again, it's not from my vantage point.
16 I personally might feel that certainly one would be
17 significantly less objectionable than the other in
18 terms of degrees of objectionableness.

19 On the other hand from the standpoint of
20 providing least-cost housing, one may provide housing
21 that is out of reach of the multitudes of the other,
22 so in that sense in a broad policy standpoint, that
23 is not considerably, utterly worthless. But from the
24 standpoint of least-cost housing, from the standpoint
25 of the Madison language and so on, this is all

1 essentially irrelevant.

2 Q And for the purpose of this litigation,
3 you're examining the zoning ordinances and the housing
4 exclusively from a least-cost standpoint?

5 A Not exclusively. I think we've also stressed
6 that a very significant issue is the degree to which
7 housing that's built benefits the low and moderate
8 income people that are spoken to in the Madison
9 and the Mount Laurel cases.

10 Q Well, other than the concept of least-cost
11 I believe in one of your reports you discussed
12 overzoning?

13 A That's a part of the picture, yes.

14 Q What are the other concepts that you
15 have used to weigh the validity or invalidity of
16 zoning ordinances other than these two concepts?

17 A Well, the key issue in reviewing the zoning
18 ordinances in the report that I have provided is
19 whether or not these ordinances made provisions for
20 the variety of least-cost housing types that are
21 discussed in the cases and at least-cost standards.

22 And then secondarily assuming they did, whether
23 there was ample land to meet hypothetical fair share
24 goals.

25 Now, as was discussed in the supplemental memo

1 on remedy, a further issue which pertains to what an
2 ordinance should look like is the degree to whatever
3 provisions are made realistically is capable of
4 benefiting low and moderate income households, which
5 suggests that it may be appropriate to go beyond
6 least-cost zoning and into a variety of other affirmative
7 measures that might be possible.

8 Q Is it my understanding then that the topics
9 which you concern yourself with in this litigation
10 were least-cost housing, overzoning, variety of housing
11 types, and making sure that the housing which is built
12 will benefit low and moderate income housing?

13 A That is generally it.

14 Q Mr. Mallach, I call your attention to your
15 report dated December 10, 1979, entitled "Employment
16 Issues in Morris County."

17 I'd ask you if you feel that employment
18 is relevant to the present litigation?

19 A I think it is.

20 Q And is there a relationship between
21 employment and the need for housing?

22 A Yes.

23 Q Would you explain what that relationship
24 is?

25 A Well, employment is a very significant trigger

1 as to the housing needs. Where jobs are created in
2 an area, there is a need within some reasonable
3 proximity to those jobs of housing for the families,
4 the people working at those jobs.

5 So where you have an area, a region, a community,
6 whatever, that is showing significant growth in jobs,
7 it's appropriate that there be a parallel growth in
8 housing opportunities for people who will be working
9 in these jobs.

10 Q You're not hypothesizing a one-to-one
11 relationship, jobs and housing, are you?

12 A You mean one job one housing unit?

13 Q Right.

14 A No, the relationship is somewhat more complicated
15 than that.

16 Q Isn't that because many households have
17 more than one worker?

18 A That's correct, which is to some degree
19 counteracted by the fact that some households have
20 no workers. But even so, the ratio of jobs to
21 households is explicitly less than one-to-one.

22 Q Well, do you have any ratio that you
23 use in trying to establish a formula?

24 A I haven't calculated such a ratio.

25 Q Do you have a feeling as to the number of

1 housing units that should be constructed in order to
2 accommodate "X" increase in the labor force?

3 A I would estimate -- and this is a very rough
4 estimate -- but generally speaking it would be in
5 the area of .8 housing units for every job, or it's
6 one housing unit for every one and a quarter jobs,
7 put in a different way.

8 I'm not proposing that is anything definitive
9 for Morris County, but it's a general ballpark.

10 Q There's a trend towards more single
11 household units, isn't that right, one person units,
12 two person units, and away from the nuclear family?

13 A Well, there are still nuclear families, but
14 they're smaller.

15 Q But the trend is away from that and towards
16 the one and two housekeeping units?

17 A I'm just -- I don't think it's away from the
18 nuclear family as such. It's just that there are
19 a whole series of factors that have led -- that the
20 average family is smaller and the larger percentage
21 of families are one and two-member households.

22 Q It's a more common trend for children to
23 leave their parents' homes at an earlier age and to
24 establish their own housekeeping unit prior to
25 marriage?

1 A That's correct. That's been going on for some
2 time.

3 What is more important recently is not only do
4 they do that, but they're likely to remain in that
5 unit for a longer period of time before setting up
6 a household and raising children and so on.

7 Q Isn't it true that, Mr. Mallach, in the
8 past children would remain a longer period of time
9 with their parents and the elderly would remain with
10 their children? And as a result you have larger
11 extended households which required a less smaller
12 apartment?

13 A That pattern of children remaining for longer
14 periods with their parents and elderly parents living
15 as a matter of course with their children has not been
16 the norm in the United States, at least since World War I
17 and probably not since the early 1900's.

18 MR. BISGAIER: Off the record.

19 (Discussion off the record.)

20 Q Now, is the purpose of your report dated
21 December 10 dealing with employment to show that there's
22 been substantial employment growth in Morris County
23 which requires a concomitant growth in housing units?

24 A That's one point made, yes.

25 Q And the other point?

1 A That's the principal.

2 Q The conclusion I'm really looking for.

3 A The principal points -- is that there has been
4 in recent years, and is anticipated to be in the
5 forthcoming decade, substantial employment growth
6 in Morris County and a substantial shift in the
7 employment towards Morris and a couple of other
8 counties from other parts of the region. And the
9 conclusion from that is given the relationship between
10 employment and housing that we just discussed, that
11 the growth should be respected in the housing
12 availability in the county during the coming decade.

13 Q Did you make any studies in order to
14 determine if this employment was in low, moderate,
15 or high paying jobs?

16 A No.

17 Q If you found --

18 A I should qualify that. I have not looked at the
19 wage scales. It's difficult to find. I've looked
20 at the categories that the employment falls into in
21 such things as manufacturing, retailing and so on.
22 And it's distributed in such a way as to suggest to
23 the very large part of the -- what is known as "the
24 working class" -- jobs of the low and moderate levels
25 of the wage scales.

1 Q In Morris County?

2 A Yes.

3 Q Well, have you done analyses to determine
4 where these employment generators are located, and
5 what I'm specifically interested in is where the
6 employment generators are located in the county with
7 respect to the defendants in this lawsuit?

8 A I've looked at some of the numbers, and I don't
9 recall them offhand, but I have looked at some of
10 that.

11 Q What difference does it make if Morris
12 County is obtaining increased jobs? Can't the workers
13 who are living in Newark or Plainfield or Paterson
14 can't they continue to commute to work?

15 A Well, certainly, people commute to work and
16 they'll undoubtedly continue to commute, and they
17 move wherever they end up moving to, to some degree,
18 but there are a number of factors that do suggest
19 that it's desirable or appropriate for the housing
20 and the jobs to be somewhat in balance.

21 The first is that from the standpoint of the
22 well-being of the workers and their families, a
23 shorter commute is preferable to a longer commute.
24 That has a particular significance in terms of lower
25 income families, people working at lower paying jobs.

1 because the longer they commute, the greater cost of
2 the commute and the greater the difference for a
3 less affluent person meeting those costs than it is
4 for a higher paid person.

5 A third factor -- let me go back for a second.

6 So there's some fairly significant benefits,
7 significant in terms of the individuals involved,
8 which is, of course, the key consideration.

9 A second factor or a third whatever --

10 Q The first factor you talked about was
11 a shorter commute?

12 A It's really one factor, that a shorter commute
13 benefits the individuals and that --

14 Q Particularly the poor people?

15 A And the significance of that is much greater,
16 the lower the wages, the lower the income of the
17 family.

18 Q Next?

19 A The next factor is the whole question of the
20 physical condition, if you will, in the region as
21 a whole, the areas that are losing the jobs in the
22 region and are losing the jobs at an almost
23 unprecedented rate. And it's really mind-boggling
24 what's happening in some of the older center cities.
25 They're becoming more and more burdened physically

1 less and less able to provide services to the
2 population, and raising taxes higher and higher in
3 order to provide such minimal services as they do.

4 At the same time the advantages from a ratable
5 standpoint are accruing to communities where the
6 labor force typically does not necessarily live.
7 So from a standpoint of overall equity, there is
8 logic towards providing housing in the communities
9 where the jobs are from this standpoint

10 I consider the first point to be more compelling
11 if, for example, it could be clearly shown that the
12 physical equity was clearly with the interests of the
13 workers, one could try to weigh them, but since the
14 two go in the same direction, then they contribute
15 to each other.

16 Q Are there any other factors that would
17 lead you to seek a balance between housing and jobs?

18 A There may be. I don't -- none come readily
19 to mind, but there may be others.

20 Q Now, when you speak about a shorter
21 commute being preferable, would you tell us why
22 it would be preferable? I think I know the answer,
23 but I'd like to hear it from you.

24 A Oh, there are principally two different areas.

25 One is the economic area in terms of the cost of

1 commuting.

2 A second, which can be very significant, though
3 it's harder to qualify, is termed the social cost
4 of commuting. I believe there has been research
5 on this even though I can't think of a specific
6 situation, that long commutes, difficult commutes,
7 and so on, do have a measurable toll in terms of
8 family stability, psychological well-being, and that
9 sort of thing.

10 Q You had mentioned that the longer commutes
11 were particularly hard on the poor people. Wouldn't
12 you seek areas of residence for the poor where they
13 could obtain public transportation to their work
14 and therefore not be burdened with having to have
15 two cars?

16 A Yes and no. There are a lot of problems or
17 questions with that.

18 Certainly in the ideal state there would be
19 public transportation linking people to their work
20 pretty consistently. The first question is whether
21 the work itself is being served by public transportation
22 from any locations, and in many cases with the new
23 suburban jobs that are located in fairly spread out
24 industrial parks and whatnot, there may be no public
25 transportation or very limited public transportation

1 to the jobs to begin with.

2 Secondly, of course, is the fact that public
3 transportation is a very variable kind of thing, and
4 as people come to realize that the basic system of
5 public transportation is the bus, there is a realization
6 that public transportation could become quite flexible
7 to respond to development patterns.

8 So whether there is public transportation in
9 a particular location at present is worth looking at,
10 but it's not really a deposit factor.

11 What is important, I think, is that where
12 possible development be located in such a way relative
13 to what you might call needs of development or
14 present and projected road networks, and so on, so
15 that the feasibility of providing public transportation
16 as the development takes place exists, rather than
17 development being sort of randomly scattered in a way
18 that will not be efficient public transportation.

19 Q Well, then you'd be advocating the
20 construction of this least-cost housing in areas
21 which are served by good roads?

22 A Or potentially so.

23 Q When you say "potentially so," do you
24 mean that they could be constructed in areas where
25 roads are not presently adequate, but that additional

1 road construction would take place?

2 A Would reasonably take place. Again, there's a
3 difference between marching many miles into the
4 untracked wilderness and expecting the roads to
5 follow versus, say, identifying the roads that may
6 be limited at the moment, but that have on reasonable
7 development trends, you can see this road within the
8 foreseeable future, least-cost housing or no least-cost
9 housing is clearly going to be updated, or where there
10 may be a specific plan for future road expansions.

11 So I'm not saying that one just assumes that
12 no matter what, the roads will follow. But one has to
13 look at the overall development situation and people's
14 future plans generally.

15 Q You would advocate the construction of
16 least-cost housing in areas which were either presently
17 served by good roads or which would have a high
18 likelihood of being served by good roads in the
19 near future?

20 A Yes, I think that's reasonable.

21 Q Now, you had talked about shorter commutes
22 being preferable.

23 With regard to the memorandum which you
24 prepared dealing with employment, was there any
25 commuting time which you thought as a minimum reasonable

1 commute, and the reason I ask you that is we know
2 Morris County is quite large, and one could have an
3 enormous commute solely in Morris County. So is
4 there any frame of reference -- is there any commute
5 which you would say is a maximum that you feel the
6 residents in the least-cost housing should be subject
7 to?

8 A No, I really do not.

9 Q Let me be more specific. My law office
10 is in Plainfield and it takes me in non-rush hour
11 approximately an hour to get to Morris, N.J. My home
12 is in Bridgewater and it takes me approximately
13 35 minutes to get to Morristown.

14 Are these what you consider to be
15 reasonable commutes?

16 A I don't know. There is a lot of difference
17 of opinion about how a reasonable commute is
18 defined. There's some research on this point, and
19 I believe I'm pretty fuzzy on this point. I've
20 seen it suggested that most people feel to commute
21 less than half an hour. I'm not proposing that.
22 I personally would feel rather uncomfortable if my
23 daily commute were much more than I think about
24 15 minutes. I really dislike commuting intensely.

25 There really is no hard and fast rule here.

1 I think clearly one would look at the ease of the
2 commute, the availability of public transportation,
3 but I really don't have a hard and fast number.

4 Q Here's my problem, Mr. Mallack. How do
5 we relate the preference for a short commute to
6 increased housing in Morris County when we don't
7 know what the time of the commute should be?

8 A Well, it depends on how specific you want to
9 get. I mean certainly if we are talking in general
10 terms about closer rather than further, then the
11 issue of picking a specific time need not arise.

12 If you are talking about trying to translate
13 employment opportunities into housing goals, or say,
14 employment, both existing employment opportunities
15 and projected ones, there are a number of different
16 approaches one could take from an analytic standpoint.

17 One can approach on a municipality-by-municipality
18 basis, one can identify commute radiuses as being
19 basic planning tools and work from there.

20 I think there is literature on people's
21 commuting preferences which could be identified
22 if one wanted to single this out and do a specific
23 study.

24 So I think it's a dealable-with problem as
25 having addressed it.

1 Q Would it be fair to say that you advocate
2 increased housing in Morris County because you see
3 increased employment?

4 A Well, that's at the risk of sounding like I'm
5 nitpicking in semantics. I'm not sure that I'm
6 advocating increased housing overall in Morris County.
7 I'm certainly advocating that of that housing that
8 gets built, that a larger part of it would be available
9 for low, moderate income working class people. I'm
10 by no means sure that I would argue the actual total
11 number need be increased, that might be an outcome.

12 Q Do you have any statistics that you can
13 give us today that would show the existing income
14 level of the workers who are working in Morris
15 County?

16 A No.

17 Q So that you can't tell us whether or not
18 least-cost housing is required for the majority of
19 the employees in Morris County?

20 A For the majority no. I have no idea whether
21 it would be a majority or not.

22 Q Are you hypothesizing that some of the
23 employees require least-cost housing and that's a
24 percentage you can't give us?

25 A That's correct.

1 Q With regards to employment, you picked
2 a region which solely encompassed Morris County?

3 A I don't believe I picked a region in any sense.
4 In my analysis itself, I'm not really looking from
5 a region standpoint.

6 Q Well, in page three of your report, you
7 mentioned the increases in employment in the various
8 counties.

9 A That's correct.

10 Q Now, I assume you feel it's relevant
11 that Morris County has had an increase in employment
12 from 1968 to 1972?

13 A '78, I think.

14 Q '78, excuse me.

15 A That's correct.

16 Q And what is the significance of that?

17 A Well, because within the region, within the
18 overall region or overall area of northern New Jersey,
19 if one accepts the premise that there should be some
20 relationship, however it's defined precisely, between
21 employment growth and housing, these trends suggest
22 where the stress in housing within the overall area
23 should fall.

24 Q Well, what you're saying then is you're
25 trying to match the increase in housing with the

1 increase in employment?

2 A Correct.

3 Q Are you trying to match it on a county
4 basis or on a municipality basis or both?

5 A I'm not recommending a specific technique.
6 I believe there should be a general matching. Now,
7 here you get into, of course, the question that the
8 Mount Laurel court looked at, is that if there were
9 an effective regional planning, regional housing
10 strategy, or so on, one could have a lot more
11 flexibility when looking at this than when one
12 actually does when looking at municipal systems of
13 land use planning and zoning and the like.

14 So I would say one would have to look at it
15 as well as on an area-wide level, which might reflect
16 the municipality, and those municipalities nearby
17 might reflect the entire county. It might reflect
18 a county and parts of another county, so it would
19 be hard to be precise.

20 Q Would you say that a municipality which
21 did not zone for any industry, or a municipality that
22 zoned for very little industry would have a lesser
23 requirement for least-cost housing than a community
24 that encouraged industry by its zoning practices,
25 all other things being equal?

1 A Quite possibly, yes.

2 Q Why would that be?

3 A Because I would think that the amount of zoning
4 for industry and the amount of industry actually
5 obtained as identified in terms of employment growth
6 are factors that are relevant to the demand for
7 housing, least-cost housing in the community.
8 And they are indeed factors that are widely
9 recognized as a legitimate part of the fair share
10 process.

11 Q I believe that you testified that you
12 felt that housing and jobs should be in a rough
13 balance?

14 A That's correct.

15 Q Were you speaking of municipalities
16 when you mentioned that?

17 A Not necessarily. You mean, for example, let's
18 say you have a municipality that is growing dramatically
19 in employment and has relatively limited area for
20 additional development, and you have another
21 municipality adjacent to it that has ample land
22 but that is zoned for industry and has no particular
23 employment growth? No, clearly in a situation like
24 that there's a relationship between the two municipalities
25 that has to be recognized. So that even though the

1 employment within the municipality is a factor, it's
2 not a hard and fast kind of rule. You have to look
3 at the wider area.

4 Q Well, you would say that developing
5 communities that encourage industrial development
6 have a higher requirement for providing least-cost
7 housing than developing communities that have not
8 encouraged industry?

9 A That's correct.

10 Q Now, you indicated, Mr. Mallach, in your
11 report that you estimated county employment by taking
12 covered employment and adding the non-covered
13 employment?

14 A No.

15 Q Didn't you indicate that on page one of
16 your report?

17 A No. My estimates that I presented in this
18 report are strictly to do with covered employment.
19 What I did here is lay out a sequence of actions
20 that could be taken to link housing and employment,
21 more precisely those are the steps one through five
22 on my report. These are not things that I have done,
23 but I'm merely outlining a methodology that would
24 be followed.

25 Q This hasn't been done?

1 A That's correct.

2 Q Step one would be estimating employment?

3 A That's correct.

4 Q Do you anticipate doing these five steps?

5 A I don't know that I do. I don't know that it's
6 a necessary part of the litigation though. I think
7 it may arise in the event of a certain kind of
8 decision. I could imagine doing this kind of analysis
9 after the litigation as part of a basis for figuring
10 out how to implement the court decision appropriately.

11 Q Would it be fair to say that this is a
12 possible remedy which you are advocating to the court?

13 A I wouldn't call this a remedy, but I think it
14 might provide good input as a remedy.

15 Q I understand. The first step would be
16 estimating overall county employment?

17 A That's correct.

18 Q The second step would be to calculate
19 the number of housing units which would be required
20 to provide housing for the new jobs?

21 A That's correct.

22 Q And I believe you told me your off-the-cuff
23 estimate was one housing unit per each one and a quarter
24 jobs?

25 A That's correct.

1 Q But that's not a number you'd want to
2 swear is valid in Morris County, but an off-the-cuff
3 number?

4 A Right.

5 Q The third step would be calculating the
6 household income?

7 A Calculating the distribution of the households
8 identified in step two by income.

9 Q Why would that be relevant?

10 A Because you're seeking some handle, not just
11 on the total number of units that would be needed,
12 but on the share of the units that would be needed
13 for people at different income levels or therefore
14 different cost levels.

15 Q Let's assume a hypothetical. Let's
16 assume in Morris County that all of the jobs pay a
17 high income. Now, what relevance would that have
18 for projected housing needs as you saw them in
19 Morris County?

20 A If all the jobs present and projected --

21 Q That's right.

22 A -- in Morris County were at high income levels
23 then it would seem, or it would follow that employment
24 would not be a significant consideration in terms of
25 lower income housing needs. It would be conceivably

1 considerable in terms of upper income housing needs,
2 but it would not be a factor as far as lower income
3 households were concerned.

4 Q Now, in determining the number of
5 least-cost housing needs that you feel should be
6 constructed in Morris County, would you construct
7 household income distribution for all the workers
8 in the eight county housing district, or the income
9 for all the workers working in the eight county
10 region, or would you merely zero in on the workers
11 or the existing residents in Morris County?

12 A Okay. I think all of these factors may be
13 relevant in different aspects of looking at housing
14 needs. Housing need is very much a multi-faceted
15 kind of thing. Here what this tends to look at is
16 purely that housing need that is related to the
17 employment growth that's taking place in the area.

18 So assuming that one chose Morris County as
19 the unit then one would look essentially at the
20 household income distribution of those households
21 that will be plausibly located in Morris County
22 as a result of employment growth in Morris County,
23 because those are the jobs that are relevant to this
24 question of reducing the commute.

25 Now, again you could say that perhaps do an

1 analysis that would identify other areas, but
2 certainly from the standpoint of simplicity if one
3 is concerned with that employment growth that is
4 most directed relevant to Morris County municipalities
5 from a housing standpoint, the employment growth in
6 Morris County municipalities would be the most logical
7 starting point.

8 Q So you would be advocating an
9 examination of the jobs in Morris County in order
10 to give input as to the future needs for housing in
11 Morris County?

12 A Related to those jobs.

13 Q And you feel that Morris County would be
14 the best region for your analysis?

15 A I'm not saying it's a region. Certainly it's
16 not a region in the sense that the term is used in
17 the Mount Laurel or the Madison Decision. It's --
18 in no way is it a region in that sense.

19 Q Well, you would suggest that the county
20 would be the best geographical entity for studying
21 the relationship between jobs and housing needs?

22 A Because --

23 Q The answer is yes I assume?

24 A It would be an appropriate one. I would not
25 say it would necessarily be the best one. It would

1 certainly be the most straight forward and the most
2 directly reasonable one.

3 Q Well, doesn't your study dated April 10
4 dealing with employment, recommend a study between
5 employment and housing for Morris County?

6 A That's correct.

7 Q And it doesn't recommend that the study
8 for the eight county region, that is, the employment
9 in the eight county region vis-a-vis housing needs
10 for Morris County?

11 A The basic study of the eight county region is
12 presented in that memo which shows the trends and
13 shows the shifts.

14 Now, there would be no need to study job growth,
15 say, in Essex County because there isn't any job
16 growth in Essex County.

17 Q There is job growth in other of the
18 counties?

19 A Okay. And that -- and clearly when you get
20 into it, there's a certain amount of overlap and
21 interaction between what takes place, for example,
22 in southern Morris and northern Somerset Counties,
23 for example, or lower Somerset County and part of
24 Middlesex. None of the regions -- none of the
25 counties are autarchies. But if -- again, and

1 this is where it goes back to choosing an area for
2 analysis that's appropriate for what you want to
3 end up in.

4 Let's say here we're talking about trying to
5 end up with something that would be meaningful to
6 apply to a group of Morris County municipalities,
7 not a group of Middlesex County municipalities or
8 Bergen County municipalities. So the most directly
9 relevant body of information relevant to those
10 municipalities is the job growth taking place in the
11 same municipalities.

12 You can argue -- for example, if you look at
13 the municipalities in the southern part of Morris
14 County, you may want to argue that you should take
15 into account a rather spectacular job growth taking
16 place in the northern part of Somerset County. But
17 I think from a practical standpoint, the relationship
18 between the immediate jobs and their housing directly
19 related to them can be done on the county level.

20 Q Now, did you make any study to determine
21 the number of workers living in Morris County and
22 the number of jobs presently existing in Morris County?

23 A I reviewed some of that data. Unfortunately
24 the only data that's available is 1970 data which is
25 very speculative in terms of current situations because

1 there's been such an enormous job growth in recent
2 years. It's hard to tell whether the 1970 picture
3 is still at all reliable.

4 Q That's the most recent information?

5 A Yes.

6 Q That's by Tri-State?

7 A It's a census. There have been different agencies
8 that have played with it. There are a -- Tri-State
9 has come out with certain stuff. The New Jersey
10 Department of Labor and Industry has published a
11 set of "Journey to Work" reports.

12 Q So that you can't tell us today whether
13 Morris County today has more workers living within
14 its borders or more jobs?

15 A That's correct.

16 Q You would suspect that there are more
17 workers living in Morris County than there are jobs
18 in Morris County?

19 A I'm not sure. That was the case ten years
20 ago, yes. The job growth since 1970, since 1968 in
21 recent years, however you cut it, has been
22 significantly greater than the population growth,
23 the housing growth. So it seems fairly clear that
24 the balance has been shifting in the last decade to
25 an increase in the number of jobs in Morris County

1 relative to the number of workers. Whether it's
2 shifted all the way to the point where there are now
3 more jobs than workers, I couldn't say. But it's
4 certainly shifting very significantly in that
5 direction.

6 Q Would you say that an excess of jobs
7 with workers was an indication that a community
8 was practicing exclusionary zoning?

9 A I don't think so. I think it certainly might
10 be, but one would have to look at a great deal else
11 to arrive at such a conclusion.

12 Q Is it a single factor which positively
13 correlates with exclusionary zoning?

14 A In suburban communities I would think so, yes.

15 Q Can we say the adverse is true, the
16 reverse?

17 A No.

18 Q So that even if a community has no jobs
19 and no industry, we can't say that in some way is
20 related to proper zoning?

21 A Exactly. It has no relationship.

22 Q So that from your vantage point, those
23 towns that have jobs, in Morris County, those towns
24 that have a lot of employment generating enterprises
25 should increase their housing proportionately?

1 A Assuming it's feasible to do so.

2 Q But those towns that have no industrial
3 enterprises get no credit from you for relief or
4 decreased housing allocations?

5 A Oh, yes, they certainly do. As I believe I
6 stated to begin with, I wouldn't call it credit,
7 but it's -- what I did say is that the amount of
8 employment in a community is a legitimate factor in
9 arriving at the housing allocation. How much weight
10 to give it is obviously something that people are
11 likely to differ on, but it's certainly a factor,
12 and I think it's generally recognized as such.

13 Q You would admit that certain communities
14 which are located adjacent to interstate highways
15 should zone some of their land for industrial
16 development?

17 A That's not -- that does not necessarily follow.

18 Q Do you have an opinion as to whether or
19 not at least some of the communities in Harris County
20 should be zoning some of their lands for industrial
21 development?

22 A I have no opinion in terms of specific
23 municipalities in regard to towns or boroughs. I
24 think in the general case within any region there
25 should be an amount of zoning for industry in

1 reasonable relationship to the demand for industrial
2 building.

3 Q And I assume that you would locate the
4 industrial zoning in proximity to the major interstates?

5 A Well, I think that's a factor to look at.
6 Again, it's a determinative factor. If you have
7 land that is otherwise suitable for industrial
8 development, that land is -- or let's say you have
9 two parcels that are equally suitable in other
10 regards, and one parcel is close to an interstate
11 interchange, and that's the important point, the
12 key thing is the interchange. It's not the fact
13 that the ribbon goes through the area then the
14 proximity to an interchange would be an added factor,
15 but there are other factors.

16 If the interchange is located in an area, for
17 example, that has, you know, difficult terrain or
18 some other factor or other problems, then it would
19 be less suitable.

20 Q Well, have you reached as a conclusion
21 as to where industrial zoning should take place
22 anywhere in Morris County?

23 A Locations?

24 Q Yes.

25 A No.

1 Q Communities?

2 A No.

3 Q Areas?

4 A Suitable ones.

5 Q But you can't tell us where these
6 suitable ones would be?

7 A I have not done any such study.

8 Q In any of your analyses have you suggested
9 that there's an overzoning for industry either overall
10 in Morris County or in any specific communities?

11 A I have not done any analyses of the amount of
12 land zoned for industry.

13 Q Do you remember when you and I were
14 battling it out in the Greater Urban League vs.
15 Carteret?

16 A Yes.

17 Q Do you remember when you prepared a
18 study showing the number of low and moderate income
19 families in each municipality?

20 A I didn't prepare a study. I believe that was
21 1970 census data.

22 Q It was 1970 census data? Wasn't it your
23 contention that each municipality should so zone as
24 to provide a constant percentage of its land for low
25 and moderate income families consistent with the

1 population mix in 1970?

2 A No.

3 Q What was your --

4 A I believe that Judge Ferman may have arrived
5 at some such conclusion. I do not believe that I
6 was -- that I testified towards such an end.

7 Q Was the purpose for giving all the
8 census data to show the number, the percentage, as
9 well as the number of low and moderate income persons
10 in each municipality?

11 A I think the purpose was to show in order to
12 provide some context in which you could look at the
13 exclusionary zoning features which was the gist of
14 my testimony that there was a relationship between
15 the exclusionary zoning patterns and the mal-distribution
16 as it were, of low and moderate income populations,
17 so that generally speaking the municipalities which
18 were the subjects of the litigation tended to have
19 smaller percentages of low and moderate income
20 households than those that were not.

21 MR. BISGAIER: Could you read that
22 last answer back.

23 (Previous answer read back by
24 reporter.)

25 Q What you're saying is that your study in

1 the Urban League Case was designed to show that there
2 were higher percentages of low and moderate income
3 persons in Perth Amboy and New Brunswick than in the
4 suburban communities?

5 A Yes, this sort of thing.

6 Q Was it your testimony that it was caused
7 by exclusionary zoning?

8 A I don't believe that I ever testified to that.

9 Q Is that your testimony today that the
10 so-called mal-distribution of low and moderate income
11 persons is caused exclusively by exclusionary zoning
12 practices?

13 A I doubt it.

14 Q There are other factors which tend to
15 keep the poor in the cities and the more affluent
16 in the suburban and rural areas, is that right?

17 A Yes.

18 Q What are those factors?

19 A That's a long one.

20 Q Okay.

21 A Certainly one factor that contributes is the
22 simple reality that newer housing tends, or has tended,
23 until recent years, to be more expensive than older
24 housing, and that the newer housing is built in the
25 suburbs, and the older housing is in the cities.

1 So that there is a certain economic pattern that would
2 encourage that distribution probably to some degree
3 independent of zoning.

4 A second factor, which is the significant one,
5 is the pervasiveness of racism in the society and the
6 existence of wide spread residential housing,
7 discrimination, which is particularly significant
8 in the northern New Jersey area because there is a
9 very close relationship between poverty and race.

10 Q Well, do you have any evidence of any
11 discrimination taking place in Morris County with
12 regard to any persons, realators, developers,
13 landlords? Could you point to a single instance
14 that you're aware of where discrimination is taking
15 place?

16 A I've made no effort to look up such facts.
17 From my familiarity with the New York metropolitan
18 area, if there was not such going on in Morris
19 County, it would make the county a unique oasis of
20 brotherhood in the midst of the other world.

21 So again it's not to my mind genuine, but
22 I'm certain that there is.

23 Q But you have no evidence that you can
24 bring forth today to document that racism --

25 A That's correct.

1 Q The other factors tending to keep the
2 poor in the cities and the more affluent in the
3 more rural and suburban areas are?

4 A One factor that was a significant factor in the
5 early development of the suburbs and has since
6 shifted, but the population patterns remain, is
7 when the suburbs were first developed, they tended
8 to be commuter settlements, and tended to be more
9 heavily residential than employment oriented. And
10 the people who lived in the suburbs tended to commute
11 to work since it was economically more feasible for
12 affluent people to commute longer distances to work.
13 The suburbanites at first, who set the tone for a lot
14 of suburban development, tended to be affluent
15 commuters back to urban jobs.

16 At that time, of course, jobs were typically
17 urban. However, that established a development
18 pattern that to some degree has persisted.

19 Q So that the zoning isn't the total reason
20 for the disparity in the relative income levels of
21 persons living in the cities versus the suburbs?

22 A Not totally, although zoning is certainly
23 interwoven with each of the three factors that I
24 mentioned.

25 Q Isn't crime also a factor?

1 MR. BISGAIER: That keeps poor
2 people in the cities?

3 MR. BERNSTEIN: Yes.

4 A I don't understand. Explain.

5 Q Did you hear Dr. Mann's testimony during
6 the Urban League lawsuit?

7 A I may have a little, but not much.

8 Q Well, isn't it a fact that the high crime
9 rates make the cities less desirable from a residential
10 standpoint?

11 A Presumably.

12 Q And isn't it a fact that the less effective
13 city schools also make city living less desirable?

14 A That's correct.

15 Q And isn't this also a factor in the
16 dispersal of the middle and upper class to the more
17 suburban areas?

18 A No.

19 Q That's not a factor?

20 A No, because if it were a factor, studies have
21 consistently shown, for example, that poor people
22 are more heavily victimized by crime than affluent
23 people within the same communities. Equally poor
24 people, although I don't know any data that deals with
25 their feelings on the matter from a purely economic

1 standpoint, poor people are less able to send their
2 children to private schools, which tend to cost
3 money, than more affluent people.

4 So from the standpoint of crime and poor
5 schools, one would expect if there were no other
6 factors at work, that poor people would flee the
7 cities to the suburbs just as readily, if not more
8 so, as affluent people.

9 So clearly the reason for the disparity in
10 who is fleeing the cities to the suburbs, has to do
11 with something other than those admittedly very
12 real problems.

13 Q But don't the poor have less opportunities
14 due to their poverty to choose housing, and as a
15 result, have to go where the older existing housing
16 is already located?

17 A Yes, but the question is why do they lack
18 those opportunities.

19 Q Isn't it a fact that the poor as well as
20 the wealthy as a group would prefer to live in areas
21 with less crime, with less problems in the schools,
22 and areas where there's more greenery?

23 A That seems to be the case, yes.

24 Q And that the reason the poor aren't
25 leaving the city is that there's a lack of money?

1 They don't have the opportunities to live in the
2 suburbs?

3 A It's a combination of the lack of money and
4 the lack of housing in those suburbs that's affordable
5 to them, given their lack of money.

6 Q And you would agree that the reason that
7 the cities have this housing is because it's
8 predominantly old housing?

9 A Well, that's part of it, that it's old housing,
10 but it's also old multi-family housing or row houses,
11 two to four family houses, apartment buildings, and
12 so on, as distinguished from old single family
13 housing.

14 Q And the new multi-family housing that's
15 being built in the cities as well as the suburban
16 areas isn't affordable by the poor unless there's
17 subsidies?

18 A With probably minor exceptions, that's correct.

19 Q Now, I'd like to turn to section two of
20 your report of December 10, 1979, dealing with
21 employment issues in Morris County. There you
22 speak of industrial zoning. Does this section of
23 your report also deal with a potential formula which
24 may be used by the court in effectuating a remedy?

25 A Yes, I wouldn't characterize it as a formula

1 because it's --

2 Q What would you characterize it as?

3 A A factor or an input.

4 Q Which you would distinguish from a
5 formula?

6 A Yes, because a formula suggests that it would
7 be applied to some mathematical fashion.

8 Q Well, is it your feeling, Mr. Mallach,
9 that in this whole exclusionary zoning business,
10 that it's better to look at factors and to come up
11 with an answer rather than with mathematical
12 formulas?

13 A I think it's an idea. And again, in the best
14 of all possible worlds where you have a group of
15 men and women of good will sitting around trying
16 to work something out in a general shared atmosphere
17 of good faith and fellowship, then the best thing
18 would be to look at the whole series of factors and
19 try applying the judgment to come up on common
20 ground and so on, and indeed not to have a mathematical
21 formula.

22 Mathematical formulas in areas like housing
23 allocation and so on are devices arrived at because
24 there seems to be a need for something precise,
25 something hard, something specific in order to just

1 sort of say "This is it, and let's go with it and not
2 talk around it," because it appears to be difficult,
3 if not impossible, to achieve that common ground
4 otherwise.

5 Q Let's assume another scenario.

6 Let's assume that we are in the process
7 of a lawsuit and both sides don't agree as to whether
8 or not there's a need for least-cost housing, and
9 if there is a need, where it should be located, and
10 in that setting.

11 A That's why we have judges.

12 Q That's right. That's why we have lawyers
13 and litigations.

14 Given that setting, would you as a
15 housing consultant, recommend that the court use
16 factors, that is, testimony of the various witnesses,
17 and weigh and look at all the different factors before
18 coming out with a result, or that the court use
19 mathematical formulas in order to come out with a
20 result for housing allocation purposes?

21 A I would reluctantly recommend that they come
22 out with some kind of a mathematical bottom line,
23 if you will. I say "reluctantly," because it's
24 bound to be less than ideal, but I believe it's
25 necessary, unfortunately, because of the record in

1 trying to get good faith effort from municipalities
2 in the absence of such a hard and fast kind of bottom
3 line.

4 Q But your testimony deals exclusively with
5 factors rather than with mathematical formulas?

6 A That's correct.

7 Q Now, turning to industrial zoning, you
8 would suggest that the court address the three issues
9 that you mention in order to form the basis for a
10 remedy, is that correct?

11 A Again, I would think that these three points
12 and their relationship would be worth looking at in
13 that regard.

14 Q The first one is pretty straight forward,
15 regional employment and employment growth present
16 and projected. The only question I would have is
17 when you speak of regional employment and employment
18 growth, what region would you be suggesting that the
19 court examine?

20 A I would think that the court should examine
21 first the overall pattern in the eight-county area,
22 and then look specifically at what's happening in
23 Morris County relative to the eight-county areas
24 as a whole.

25 Q Because you feel that the employment in

1 Morris County is more germane to this litigation?

2 A That's correct.

3 Q Now, this second factor you talked about
4 is employment levels and recent growth within a
5 municipality particularly if the total employment
6 is significantly out of proportion with the local
7 population.

8 I assume there you would be looking at the
9 relationship between jobs and housing stock?

10 A That's correct, or jobs and workers and jobs
11 and people.

12 Q And would you as a housing consultant
13 suggest that an ideal community would have a balance
14 of workers and jobs?

15 A Roughly speaking, yes.

16 Q And an ideal community would have a
17 balance between jobs and housing stock in some ratio
18 which you previously suggested as a ballpark as one
19 and a quarter jobs per each dwelling unit?

20 A In that area, yes.

21 MR. BISGAIER: Could you read those
22 last two questions back?

23 (Previous questions read back by
24 reporter.)

25 MR. BERNSTEIN: There was an off the

1 record colloquy in which Mr. Bisgaier
2 suggested that Mr. Mallach might wish
3 to amplify his answer.

4 Q Do you wish to, Mr. Mallach?

5 A Yes.

6 Q Shoot.

7 A I think it's important to stress that
8 communities vary greatly in their suitability for large-
9 scale employment, industry, and many other factors,
10 so that the evidence of a significant excess of
11 employment relative to workers, housing stock, and
12 population is, as I believe I mentioned in an
13 answer to an earlier question, an indicator that
14 something should be looked at more closely.

15 However, the existence of balance in a community
16 in the mathematical sense of a comparable number of
17 workers and jobs and so on is not by any means an
18 indicator that that community is not exclusionary
19 because you could have a community which has a large
20 number of working class jobs into which thousands
21 of people commute every morning from Newark or New
22 York or heaven knows where, while simultaneously
23 thousands of affluent stockbrokers, lawyers and
24 bankers are in the local train station to get the
25 train to New York City.

1 So again one has to, in each case, look much
2 more closely at the specific characteristics of the
3 community in order to make a judgment about whether
4 this is a community that's balanced in any kind of a
5 meaningful way.

6 Q You haven't done any of that analysis
7 for Morris County or for any of the component
8 municipalities?

9 A No.

10 Q And thirdly, you mentioned future
11 employment potential as measured by the zoning. Have
12 you made an analysis of this factor?

13 A No.

14 Q Aren't you saying that in all of the
15 communities that are defendants in this lawsuit that
16 there is a need for some housing generated by the
17 existing and future employment in Morris County?

18 A I'm saying that's likely to be the case, yes.

19 Q And while you suspect that some of that
20 employment is in the least-cost category, you can't
21 give us any statistics to show the income distribution
22 of the workers working in Morris County?

23 A That's correct.

24 Q You're also suggesting that those
25 communities that have significant amounts of employment

1 have a greater obligation to provide housing especially
2 for the workers that are working in the community?

3 A I would say that they, generally speaking, have
4 a greater obligation to provide least-cost housing,
5 low and moderate income housing opportunities. I
6 wouldn't say that necessarily has to be for people
7 working in the community because I think those
8 things tend to sort themselves out.

9 Q Now, turning to your table which is on
10 page three of the employment report, I see that the
11 first two columns deal with covered employment, that
12 is the first two vertical columns, is that correct?

13 A That's correct.

14 Q Can you tell us where you got the
15 information as to the 1968 and 1978 covered
16 employment?

17 A They come from reports that are published
18 annually by the New Jersey Department of Labor and
19 Industry that are entitled, if I'm not mistaken,
20 "Covered employment trends in New Jersey." and then
21 the year.

22 Q Is there any reason why you took the
23 period from 1968 to 1978 rather than some other
24 years?

25 A Yes. It was 1978 -- 1978 is the most recent

1 year for which data is available, and 1968 is ten years
2 before 1978 and I felt it would be appropriate to show
3 a ten-year period.

4 Q Now, the third column is entitled, "1990
5 shift share projection." You'll have to explain that
6 one to me.

7 A This is a projection of covered employment to
8 1990 based on a method that looks at the shares that
9 each county has in total of the eight county region
10 in 1968 and 1978, and projects the change in the
11 proportionate distribution of the jobs.

12 So, for example, if let's say, one municipality
13 goes from eight percent to --

14 Q You mean one county?

15 A I'm sorry. If one county goes from eighteen
16 to ten percent, it's that relationship that's
17 projected.

18 Q Let's take Morris County, and in 1968 let's
19 assume it had one percent of the overall employment,
20 and in 1978 let's assume it had two percent of the
21 overall employment.

22 What would be your hypothesis with regard
23 to the 1990 shift share projection?

24 A I don't know. You can't take one out. You
25 have to do them all simultaneously.

1 Q If you can give me the methodology?

2 A It's a little hard to describe verbally, but
3 I'll try.

4 Q Do you have anything in order to save
5 time -- and I'm not adverse to that -- but do you
6 have anything in writing or do you have any
7 computations that you could point out to me that
8 would show me without doing it verbally?

9 A I -- not with me.

10 Q Then if you could explain the third
11 column.

12 A Basically you calculate the percentage or the
13 share that each county has of the total in 1968.

14 Q When you say "the share" from Morris
15 County, that would mean what percentage is \$80,400
16 as a percentage of the total employment of approximately
17 \$1,500,000?

18 A That's correct. So it's about five percent.

19 Q All right.

20 A Then you calculate the same percentages in
21 1978. I would say it's about eight percent.

22 Q Fair enough.

23 A So you have a change of approximately three
24 percent over a ten-year period. And what you're doing
25 basically is then extending that for a twelve-year

1 period.

2 Q Are you assuming that Morris County will
3 gain another three percent in the overall share of
4 employment, or that it's share of the employment
5 will remain constant at a percent?

6 A No, you're assuming that it will, its share
7 will continue to increase.

8 Q At the same proportionate rate?

9 A Which would be an increase of, I believe,
10 3.6 percent.

11 Q Because it's 12 years?

12 A 12 years exactly, rather than 10 years to 1990
13 which would mean that you would come out with
14 something in the area of 11 or 12 percent by 1990.

15 Q What you're merely doing then is taking
16 the trend for a single ten-year period and you're
17 assuming that it will continue in the future?

18 A That's correct. That's the way one generally
19 does projections.

20 Q You haven't made any computations to
21 show where the vacant industrially located land is
22 situated or what infrastructure is there, where the
23 demands for the industrial property is? All that
24 you've done is made a simple mathematical
25 computation?

1 A That's correct.

2 Q What you really assume, too, is that
3 the employment will increase at a compounded
4 rather than a simple rate?

5 A No.

6 Q Well, is the rate of increase that you're
7 projecting five percent for a ten-year period?

8 A Yeah.

9 Q That would be for a 20-year period the
10 increase would be six percent?

11 A In the share, not in the number.

12 Q In the overall share of the employment?

13 A Of the total regional employment, whatever that
14 is.

15 Q Well, if we took your computations to
16 their logical conclusion, in a hundred years or
17 two hundred years all the employment would be in
18 Morris County since that is increasing its share
19 ultimately to a hundred percent, isn't that true?

20 A Well, obviously that's not possible because
21 we have other counties that are increasing their
22 shares, too, equally.

23 Obviously this is using the whole. The process
24 of projections is well known and this is the basic
25 rule that is established in any responsible book

1 on the subject of projections, is that projection
2 methodologies are accurate for short periods of time
3 universal in certain circumstances, but progressively
4 less accurate for longer periods, and utterly
5 meaningless after a certain point. This is reality.
6 This is inherent in any projection methodology.

7 So that if you were to take any methodology,
8 however sophisticated, and run it out to the year
9 2200 or something, you will have nonsense because
10 nobody has the foggiest idea of what anything is
11 going to be like in the year 2200.

12 Q So that's your conclusion that you can
13 only project it so far in the future that will be
14 meaningful?

15 A That's correct.

16 Q Did you feel that 1990 was the maximum
17 period that you could expend these periods in the
18 future?

19 A I think so. I believe for employment even
20 going to the year 2000 is highly speculative.

21 Q Would you feel with regard to population
22 and with regard to housing that projections should
23 only be made to the year 1990 and if you went beyond
24 that year they'd become relatively meaningless?

25 A Population is more projectionable than

1 employment because it's less directly susceptible
2 to shifts in the economy. I mean even though the rates
3 change, the basic process of having babies dying and
4 things of this sort are not really a function of
5 economic shifts.

6 Q How about housing needs?

7 A Housing needs are not directly projectionable.
8 Housing needs are a product of looking at population
9 projections, existing housing conditions, and
10 employment projections, to the degree that they're
11 doable, and so forth, so that they're a result of
12 the synthesis of projections.

13 Q I assume then that projecting housing
14 needs would lose most of their accuracy if it was
15 done beyond 1990?

16 A I think I could have reasonable projections
17 to the year 2000, but I think the ones to 1990 would
18 have a higher reliability than the ones to 2000.

19 Q That would be because there's so many
20 complex factors about housing that are subject
21 to change that the shorter the time period, the more
22 precise the formula you would expect it to be?

23 A That's correct.

24 MR. BERNSTEIN: Off the record.

25 (Discussion off the record.)

1 (There is a brief recess.)

2 Q Mr. Mallach, what is the fourth vertical
3 column in your chart on page three of your report
4 dealing with employment signify?

5 A The fourth column is another set of projections
6 based on a slightly different methodology.

7 Q What is the methodology?

8 A The methodology there is very simple. It's
9 the simplest projection technique. We just calculate
10 the numerical change from period A to period B then
11 extend that in simple numerical terms to the continued
12 period.

13 So, for example, after doing the ten-year
14 period there was a change of 100, you say this was
15 a change of 10 per year, and for the next 12 year
16 period, you would add a hundred and twenty.

17 Q So that you would be using a mathematical --

18 A Straight mathematical process.

19 Q Rather than a percentage which is used
20 in column three?

21 A That's correct.

22 I should mention that the one used in column
23 three is -- it's generally considered a little more
24 reflective of the trend because it reflects some of
25 the shift in the weight within different groups, so

1 if I had to pick one of them, I would say column
2 three is the more solid one.

3 Q Now, what I'd be interested in, Mr. Mallach,
4 have you compared your projections for employment
5 in each of these counties with other people's
6 projections?

7 A I haven't explicitly compared them. I'm
8 familiar with projections of Tri-State, but those
9 are the only ones. There may be other projections.

10 Q How did your comparisons compare with
11 Tri-State's?

12 A They're different.

13 Q In what ways are they different?

14 A Tri-State's projections are predicated on
15 the assumption that there will be a dramatic
16 turnaround in the level of employment in the urban
17 communities, and everything else flows from that
18 assumption.

19 Q Well, getting to the numbers without
20 looking at their assumptions --

21 A Well, the numbers are somewhat different
22 because the Tri-State projections are total employment
23 and these are covered employment, so the numbers
24 in all cases are generally larger with the Tri-State
25 projections.

1 Q But where does Tri-State see the growth
2 in employment? How does that compare with where you
3 see the growth in employment?

4 A Tri-State sees the growth in employment across
5 the board throughout the region. They see the growth
6 in employment as being greatest in the urban counties,
7 in the New York and Newark and Jersey City areas,
8 and less dramatic, at least in numerical terms, in the
9 suburban areas.

10 I see growth in employment in the suburban areas
11 possibly comparable to that of Tri-State's, but I
12 forget their exact numbers, but rather than on growth
13 in the urban areas, my projections indicate a
14 continuation of the declining trend in the urban
15 areas.

16 Q I assume as a housing consultant you would
17 favor industrial development and job development in
18 the cities, but don't see it as occurring?

19 A That's correct. In fact, I see the opposite
20 as occurring.

21 Q How would your projections for Morris
22 County insofar as employment is concerned compare
23 with Tri-State's projections?

24 A Again, I really don't know for sure, but my
25 recollection is that they're not terribly different.

1 Q Have you seen any other projections for
2 employment in Morris County other than Tri-State's
3 figures?

4 A No.

5 Q Did you check with the County Planning
6 Board to see what their figures were?

7 A No.

8 Q Mr. Mallach, I understand how you got
9 the figures, and in the first two columns, where did
10 you get the figure of 1,839,600 which is the total
11 estimated amount of employment for the year 1990 and
12 from which everything else flows?

13 A I think, if I'm not mistaken, that is an
14 arithmetical extention of the county total. I can
15 check on that.

16 Q You mean that wasn't obtained from any
17 other source, but what you merely did is you computed
18 the increase from '68 to 1978 and merely extended
19 it?

20 A I believe so.

21 Q Well, if that were true though wouldn't
22 we have a slightly different figure for column four
23 because column three was done on a percentage basis
24 and column four was done on a straight arithmetical
25 increase?

1 A No, because the difference is in allocating the
2 total among the counties.

3 Q Didn't you tell me that with column three
4 you were making percentage increases?

5 A Right, but what the projection method gives
6 you -- when you go by the percentage increase in the
7 shares as a set of percentages, it does not give you
8 a set of numbers.

9 Q But why is that? The total for column
10 three and the total for column four are the same.
11 I assume that in column three you computed on the
12 percentage basis the increase between '68 and '78
13 and just extended it to 1990?

14 A No, because the percentage -- the total is
15 always a hundred percent.

16 Q But how do you know a hundred percent
17 equaled 1,839,000?

18 A That's based on an arithmetical approach.
19 In other words the same arithmetical approach was
20 used to derive the total for 1990 as was used to
21 derive the individuals, and the total for the second
22 projection.

23 Q Well, is it your testimony that the total
24 figures in the third and fourth columns were both
25 computed based on arithmetical additions for the

1 employment from 1968 to 1978 which you merely extended
2 through 1990?

3 A Extrapolation is the term, yes.

4 Q Rather than percentage increase?

5 A Then the percentage method was used to allocate
6 that total between the eight counties.

7 Q The first column, and the arithmetical
8 method was used in the second column?

9 A Yes, but in the second column -- or rather I
10 guess the fourth column --

11 Q Yes?

12 A The arithmetical method was used to calculate
13 each county separately, and then the total derived
14 from that total was used as the total for the third
15 column and the shift share method was used to
16 allocate that total among the eight counties.

17 Q Give that to me one more time.

18 A Okay.

19 The individual county 1990 figures were projected
20 on the basis of the arithmetical projection.

21 Q And that's the fourth column?

22 A That's the fourth column. Then they were totaled.

23 Q Right. And that's 1,839,000?

24 A Then that total was used as the total for the
25 shares projections, that's the third column.

1 Q The total for the third column?

2 A Right, then the percentages that were derived
3 by the shares method were allocated on the basis of
4 that total.

5 Q And what's the significance of this
6 chart now that you've explained it to me?

7 A Okay. The significance of the chart -- well,
8 we have the two projections, and as you can see, the
9 two projections generally coincide quite closely.
10 And the significance is that it shows that based on
11 the extrapolation, however you do it, methodologically,
12 of recent trends in which where the jobs are, a larger
13 and larger part of the jobs in the northern New Jersey
14 area are in a group of suburban counties where job
15 growth is significant, and that there is significant
16 job loss in the urban counties.

17 Secondly, it gives you a ballpark idea of the
18 amount of job growth by county which you can use
19 if you see fit as an input into analyzing future
20 housing demands.

21 So, for example, the Morris County projection
22 from '78 to 1990 is between 69 and 81,000 jobs added,
23 so this can be a significant input in terms of
24 housing needs.

25

1 Q Turning to your second memorandum of
2 December 10, 1979 regarding remedy, is it your
3 understanding, Mr. Mallach, that the Mount Laurel
4 case stands for the proposition that all municipalities
5 should have a variety of housing types?

6 A I would say so leaving aside the possible
7 argument of developed versus developing municipality.

8 Q And do you assess the Mount Laurel
9 case as being primarily concerned with the needs of low
10 and moderate income families?

11 A Yes.

12 Q Now, I'm especially interested in point
13 three of your study in which you say "The simple
14 removal of barriers to least-cost housing in the
15 absence of additional measures will undoubtedly
16 create some opportunities and some benefits, but
17 they are limited in view of the following: A given
18 market reality in large parts of Morris County.
19 It's unrealistic to expect builders, developers,
20 to construct at the minimums established by least-cost
21 provisions, or if they do, to limit their potential
22 profit in order to keep costs down."

23 Would you explain that?

24 A Yes. Morris County, if not in its entirety,
25 at least in many parts of it, is an area characterized

1 by an expensive housing market, high housing demand
2 on the part of the affluent as well as the less
3 affluent, and high housing costs. That is a fairly
4 readily demonstrable fact. Under the circumstances,
5 one must assume that a normal, reasonable builder
6 does so for the purpose of maximizing his return.
7 Therefore, in any situation, since the profit on the
8 whole will be greater the more expensive the unit,
9 he is likely to want to build the most expensive
10 units that he can build and sell fast enough to be
11 the most profitable units.

12 In most parts of Morris County, these units
13 are substantially in excess of anything remotely
14 definable as least-cost. Therefore, let us say
15 that a developer buys a piece of land that has been
16 zoned for least-cost housing in, let's say, Harding
17 Township, he's going to realize that even though
18 it's theoretically possible for him to build
19 townhouses that sell for \$50,000 on this site or
20 \$40,000 or whatever least-cost may be at that point,
21 he could also sell townhouses on this site for \$90,000.
22 His economic realities dictate that he will make more
23 money by building and selling townhouses for \$90,000
24 than for \$50,000.

25 In order to do so, he will build most likely

1 larger houses than the minimum standards. He may
2 build them at lower densities, but not necessarily.
3 He will build in amenities both for dwelling units
4 and the amount -- I mean the dwelling units and the
5 site as a whole, which are not necessary, but will
6 make it attractive to the higher income market that
7 he's seeking. And furthermore, on the basis of his
8 assessment of what the market will bear after he's
9 finished, he will mark up the units over and above
10 his actual costs to as high a point he believes he
11 can without impairing their marketability.

12 Q Are you really saying that regardless
13 of the zoning that if you provide higher density
14 housing it still wouldn't be least-cost housing
15 in many, if not most, of Morris County communities?

16 A Again, clearly sometimes it would and sometimes
17 it wouldn't, and I'm not sure how much. But clearly
18 there will be many circumstances where it will not
19 be least-cost housing.

20 Q I assume that in those particular
21 communities that are more desirable from a real estate
22 standpoint that it will be even more difficult to
23 build least-cost housing because of the demand for
24 housing in those communities?

25 A I think the likelihood of the communities

1 being actually least-cost will be inverse in relation
2 to the desirability of the community from a real
3 estate standpoint.

4 Q Now, as a housing consultant, do you
5 have an opinion as to which municipalities in Morris
6 County are the most desirable and would have the
7 smallest chance of having least-cost housing units
8 built?

9 A I haven't analyzed it in any great detail.
10 I think some kind of a rough notion would follow
11 from an assessment of simply the sales prices, the
12 differential sales prices of housing in the different
13 municipalities of the county.

14 Q You haven't made such a study?

15 A I've looked at some of the numbers, but I
16 haven't studied it in detail.

17 Q You wouldn't be willing to offer an opinion
18 as to which are the most desirable communities from
19 a real estate standpoint?

20 A I couldn't go down the entire list and tell you
21 "this is," "this isn't."

22 Q Give us the ones that you know.

23 A I could give you a couple examples because
24 they're -- because you've been made aware of them
25 for one reason or another.

1 I would say Harding Township is certainly
2 in the desirable category, probably the most so
3 from what I recall of prices.

4 I think generally speaking the municipalities
5 in the southern part of the town -- of the county,
6 the Mendhams, Chester, Harding, are on the whole
7 more expensive than the ones in the northern part.

8 I think Jefferson is probably on the low side
9 of this scale.

10 Most of the others are somewhere in the middle.

11 Q How about Chatham? How would you rate
12 them?

13 A I would think on the high side.

14 Q And you would assume that in the expensive
15 or more desirable communities from a real estate
16 standpoint, that the likelihood of least-cost housing
17 actually being constructed is very small?

18 A Well, let me qualify that. The likelihood of
19 least-cost housing being constructed in the absence
20 of additional controls or affirmative measures of
21 some sorts is less than in the other communities
22 whether it was small, how small would depend on
23 other factors including the whole question of
24 overzoning you talked about.

25 One of the factors that comes to bear is that

1 the greater the desirability -- if that's the term
2 we're using -- most likely the overzoning that would
3 have to be done to make up for that in the absence
4 of affirmative steps that would more effectively
5 target the units towards the need.

6 Q I assume that if these more desirable
7 or expensive housing units also lacked infrastructure,
8 that the likelihood of least-cost housing being built
9 without other controls would be diminished still
10 further?

11 A It's possible. Really, I haven't thought about
12 it.

13 Q If the developer has to install the water
14 or use wells, a package plant instead of a sewer plant,
15 extend roads, isn't it much more likely that in a
16 situation such as this where you have a high demand
17 area, that the builder would charge more for the
18 resulting units, and therefore there would be even
19 a lesser chance of creating least-cost housing units
20 where infrastructure is lacking?

21 A I don't really think that it's a separate point.
22 I think basically it's correct. I mean, whatever the
23 cost the developer has, the more desirable the
24 community, the more the markup on those costs
25 there's likely to be.

1 Q Now, you made a second point in connection
2 with removal of least-cost barriers, and you indicated
3 in point 38 in your December 10, 1979 memo entitled
4 "Remedy Issues":

5 "Certain housing needs, particularly those of
6 all low and most moderate income households, cannot
7 be met without subsidies. The present vehicle for
8 such subsidies is the federal government at the present
9 time via the Section Eight Program."

10 What is the basis for your assumption that
11 the housing needs cannot be met without subsidies?

12 A That simply stated the cost of constructing
13 a new house, be it a single-family house, townhouse,
14 apartment, or whatever, is such that no matter how
15 you economize, it will be still out of reach of a
16 certain significant part of the low and moderate
17 income population.

18 I have not attempted to identify that precise
19 cutoff, but it's a substantial part.

20 Q Could you give us a ballpark figure as
21 to what townhouses, garden apartments, one-family
22 homes, given what you consider appropriate densities,
23 would cost in any of the towns in Morris County?

24 A Well --

25 Q Or what they would rent for?

1 A This is extremely rough, but I believe, for
2 example, it would be possible, under good circumstances,
3 to be able to build, say, a townhouse development
4 where the individual units would sell in the area of,
5 say, \$40,000.

6 Q That presupposes what type of density?

7 A This is very rough. I'm assuming something that
8 is built according to least-cost standards as I have
9 previously gone into them, but I've not made any
10 effort to cost out the specific standards or provisions.

11 Q And you haven't made any estimates as to
12 the improvement costs?

13 A That's correct.

14 Q Could you build these \$40,000 units if
15 the site lacked public water and public sewers?

16 A No. It's possible.

17 Q Is it likely in your opinion as a
18 housing consultant?

19 A It would not significantly alter the picture.

20 Q Do you have any idea what the cost to
21 extend public water and what the cost to construct
22 package treatment plants for townhouses or apartment
23 units is?

24 A Well, I don't know about extending public
25 water because that would depend on where you were

1 extending it from and to. That would vary tremendously.
2 The cost of constructing a package plant in situations
3 that I'm familiar with tends to run about \$7 per gallon.

4 Q And that's for what size plant?

5 A That would be for one capable of handling
6 a development of 250, 300 dwelling units. Your cost
7 would be in the area of \$2000 or so a unit.

8 Q Now, does this presuppose a secondary or
9 tertiary treatment?

10 A Tertiary.

11 Q Does this also presuppose advance waste
12 treatment which is required for some of the streams
13 in the state?

14 A That I really can't say.

15 Q And can you tell us where you got the
16 cost that you've just related?

17 A These are costs that we've gotten from the
18 Suffolk County-New York Health Department for
19 facilities that would be constructed subject to their
20 approval.

21 Q And these costs were based on what year's
22 figures?

23 A They're current costs.

24 Q And now, did you obtain in the form of a
25 brochure or was this in the form of a telephone call?

1 A This was a telephone call from -- by a member
2 of my staff.

3 Q So is that the only basis for your
4 estimate that it costs about \$7 to construct -- \$7 per
5 gallon to construct a package plant?

6 A This per gallon per day, I should say --

7 Q Right.

8 A --this is the specific figure. I have since
9 discussed this figure with other people working in
10 development in that area as well as people who've
11 been involved in development in New Jersey, and it's
12 generally consistent, quite consistent with figures
13 that they're using.

14 Q Have you ever read that figure in any
15 publication?

16 A Not offhand.

17 Q Can you tell us if that figure includes
18 the extension of sewer mains to each of the dwelling
19 units or whether it merely includes the cost of
20 constructing the plant?

21 A I believe it includes the cost of constructing
22 the plant.

23 Q You don't know what the cost of constructing
24 the sewer lines would run?

25 A Well, no, I don't.

1 On the other hand, since you're not talking
2 about an extension of sewer lines off site, you're
3 talking about costs that are part of the customary
4 site development costs under almost any circumstances,
5 you're not talking about any extraordinary costs.

6 Q You don't consider this \$200 per unit
7 for the package plant to be a significant cost
8 generator when speaking of least-cost housing?

9 A It's certainly a significant factor, yes.

10 Q Now, you talked about townhouses costing
11 \$40,000. Was that the cost to the developer or was
12 that the cost to the public?

13 A That is a very crude ballpark notion of what
14 it costs to the public.

15 Q What would the developer's cost be at
16 this least-cost townhouse unit?

17 A There would be probably a modest profit in
18 there, but not a significant one.

19 Q Of what?

20 A Oh, eight, ten percent.

21 Q So that you're saying the developer's
22 cost may be \$36,000 and he would be selling it for
23 \$40,000?

24 A That's right.

25 Q Does the \$36,000 include a commission

1 which the developer would be paying to a realtor
2 to sell the unit, or are you hypothecating that he
3 sells it himself?

4 A I am not hypothesizing one way or another.
5 I'm giving a very rough ballpark, that I did not take
6 the factors specifically into account, and you're
7 trying to construct a shaky edifice on them, and I
8 think it will fall down.

9 Q That's not my edifice, Mr. Mallach, but
10 yours.

11 MR. BERNSTEIN: Off the record.

12 (Discussion off the record.)

13 Q What size would these units be that you
14 figure could be constructed and sold for \$40,000 in
15 Morris County?

16 A Perhaps in the area of a thousand square feet.

17 Q You consider that a modest size for a
18 townhouse?

19 A Yes, a three bedroom unit, perhaps less.

20 Q And did you figure on any figure for the
21 land for each unit if the builder can package it and
22 sell it for \$40,000 a unit? Was there any figure
23 you had in mind for land?

24 A No.

25 Q Now, for garden apartments do you have a

1 figure in mind as to what a developer would get in the
2 way of lowest acceptable rent that's acceptable to him
3 from a new project?

4 A Offhand I think it would be unlikely to be
5 less than about the high three hundreds to low four
6 hundreds.

7 Q That would be the least rent that he
8 would require for a new apartment project?

9 A That's correct, say, for a modest two-bedroom
10 unit.

11 Q And how about for a one-family home on
12 a 5000 square foot lot, what would you figure is the
13 lowest price that developer could develop and sell
14 one of those jobs for in Morris County?

15 A Probably more than the townhouses, but not
16 significantly.

17 Q And that would be what?

18 A In the 40's.

19 Q And how many square feet could you build
20 for \$40,000?

21 A Somewhere in the same area.

22 Q Which is a thousand square feet?

23 A That's correct.

24 Q You don't know of any developments in
25 Morris County that have taken place within this

1 ambience, within these financial parameters, within
2 the past three years?

3 A No.

4 Q Would you agree that it would be unlikely
5 that such developments would occur in the defendant
6 municipalities in Morris County regardless of their
7 zoning in the absence of other controls which you have
8 advocated?

9 MR. BISGAIER: Assuming those controls
10 are not contained in the zoning ordinance.

11 MR. BERNSTEIN: True.

12 A I think it would be limited. I think you might
13 get some, but it would be a modest percentage of the
14 total housing that would be built in those zones
15 that were created.

16 Q And how much is modest? Is that less than
17 five percent?

18 A It might be more than five percent.

19 Q Less than ten?

20 A That is rank guesswork.

21 Q Rank guesswork?

22 A Of course. There's no way of predicting this.

23 Well, I'm just hesitant to give you a rank guess.

24 Q Okay, but it would be modest?

25 A It certainly would be modest.

1 Q Now, let's assume that the Public
2 Advocate were successful and every town in Morris
3 County that was a defendant in this suit was required
4 to construct least-cost housing, as you have defined
5 the term.

6 Do you consider that any dwelling units
7 would be constructed by the market price absent
8 of the controls which could be utilized without
9 subsidy by low-income families?

10 A By low-income families?

11 Q Yes.

12 A As distinguished from moderate-income families?

13 Q Yes.

14 A It's a possible distinction. The answer is
15 most probably not.

16 Q And you don't expect that there would be
17 much housing that would be developed absent subsidies
18 or other controls that could be purchased by even
19 moderate-income families in Morris County?

20 A "Much" is an imprecise term, probably not very
21 much.

22 Q You'd affect only a small amount of even
23 moderate-income housing, is that right?

24 A That's correct.

25 Q So as you look at it, the only answer

1 is for the court to require other things besides
2 increased density in order for the least-cost
3 housing to be actually constructed?

4 A And for it to serve the needs of low and
5 moderate income people.

6 Q Now, this requirement for controls other
7 than on density is not true for all communities in
8 New Jersey, is it?

9 A I'm sorry?

10 Q This requirement that there be other
11 controls on development besides density in order to
12 provide least-cost housing is not true of all
13 communities in New Jersey?

14 A If you can rephrase that, if you don't mind.

15 Q Fine.

16 A Are there communities in New Jersey where
17 least-cost housing will be constructed with no
18 controls other than the ones on density?

19 Q That's right.

20 A Possibly.

21 Q They would be in the communities that
22 are less desirable from a real estate standpoint
23 than those that are defendants in the present action,
24 and so forth?

25 A Well, they would be in communities that would

1 tend to be in outlying rural areas with large amounts
2 of inexpensive and more or less readily developed
3 land and generally low economic levels to begin with.

4 Q How about in those counties where the
5 housing stock is less expensive and land costs are
6 also less expensive? Wouldn't you suspect that a
7 breakdown on the density barriers would be enough
8 in and of itself to permit the construction of
9 least-cost housing?

10 A And where there was ample land available,
11 quite possibly.

12 Q As an example, in Middlesex County,
13 wouldn't you suspect that most of the suburban
14 communities that increased densities in new
15 developments would lead to significant amounts of
16 least-cost housing being constructed?

17 A No.

18 Q Not in Middlesex County?

19 A Probably not.

20 Q What counties would you suspect least-cost
21 housing would be constructed if density barriers were
22 taken down?

23 A Well, I would think of the counties in New Jersey's
24 deep south, for starters, like Cumberland and Salem.
25 Until a couple of years ago, there would be no question

1 that Atlantic County would be in that category,
2 but that seems to have changed somehow.

3 I think possibly in parts of Ocean County,
4 perhaps parts of Burlington County. I think, in
5 fact, the closest to what might be considered
6 least-cost housing in New Jersey in recent years
7 has been built, I think, in Ocean County. It's
8 in the form of retirement communities and mobile
9 home parks.

10 Q How would you explain, Mr. Mallach, that
11 there are communities to this very day in Sussex
12 County that lack zoning and yet no one is constructing
13 multi-family developments?

14 A Well, assuming that's true, which I really
15 don't know, I have had no idea that there are any
16 municipalities remaining in New Jersey that lacked
17 zoning -- and assuming that these are not municipalities,
18 they are entirely zoned by the federal government.
19 I would attribute it to either -- to the location,
20 the distance, or lack of access, or some such factor
21 or possibly to informal pressures in the community
22 that discourage people from so doing, or a combination
23 of the two.

24 Q Would the increase in the permitted
25 densities in the more desirable or more expensive

1 municipalities in Morris County lead to the construction
2 of least-cost housing?

3 A In those municipalities?

4 Q Yes.

5 A To a limited degree, if at all.

6 Q So that what advantage would it be from
7 your perspective as an advocate of least-cost housing
8 to achieve increased densities in the Mendhams, in
9 the Chesters, in the other communities in this
10 category if you're still not going to get least-cost
11 housing, if you're only to get increased density?

12 A Well, I think you get certain marginal benefits.
13 I think you might get a little least-cost housing.

14 Q When you say "a little," what price range
15 are you talking about?

16 A I don't know. When I say "least-cost housing,"
17 I'm just saying, as I stated before, that would be a
18 small part of what most likely actually is built.

19 In addition, with some good fortune, if there
20 were areas in these communities where multi-family
21 housing could be constructed by right, substantial
22 areas, I think the possibility of somebody coming
23 in to develop low and moderate income housing,
24 subsidized housing might be increased.

25 Q But do you feel that that's a strong

1 possibility that someone is going to construct
2 subsidized units? Is that a real possibility or
3 is that a small possibility?

4 MR. BISGAIER: Where and under what
5 circumstances?

6 MR. BERNSTEIN: The communities
7 we're talking about, the more expensive
8 communities, from a housing standpoint
9 in Morris County, assuming that there are
10 zoning ordinances without more permitted
11 densities that Mr. Mallach is advocating.

12 A I think there might be places where people
13 would attempt that.

14 Q You feel that's a high probability that
15 that would occur?

16 A It's hard to say.

17 Q Well, if you're not sure then, why are
18 you advocating additional controls other than zoning?

19 A Okay. Because whether or not it may occur here,
20 and it is certainly not likely to occur at the scale
21 or to the extent that the housing needs dictate, and
22 furthermore in the process of it occurring, it's
23 likely that a great deal of development that is not
24 least-cost or not affordable by moderate or low-income
25 families will also occur, which is not necessarily

1 bad. But by the same token is not necessarily needed.

2 Q From your vantage point, would there be
3 any benefit, if instead of having the least-cost
4 housing constructed you had apartments and townhouses
5 with all the luxury features that you've mentioned
6 which would go for high prices? Would you regard
7 that as a victory?

8 A There are two separate questions there, would
9 I regard it as a benefit and would I regard it as a
10 victory?

11 Q Okay.

12 A The answer is to some degree, yes, to the first
13 question. I mean, it would certainly be better if those
14 were the only alternatives to have a wider mix of
15 housing and somewhat wider mix of house price, and
16 after all even if expensive townhouses are built,
17 they are likely to be less expensive than if only
18 expensive single-family houses on large lots are
19 built.

20 So, yes, there would be some benefit in a
21 broad sense.

22 Would I consider it a victory in this litigation?

23 Q Yes.

24 A I'm not sure. I'm inclined to doubt it.

25 Q Isn't there some irony in your assertion

1 found on page two of your remedy report that the high
2 demand municipalities if they permitted dense housing
3 would really not have the least-cost housing built,
4 that would be constructed in the less desirable towns
5 if they broke down their density barriers?

6 A Yes.

7 Q And doesn't that offend your sense of
8 fair share?

9 A It's certainly inconsistent with it. That
10 was the point I made in my report.

11 Q Well, how would you feel about requiring
12 zoning for least-cost housing and at the same time
13 keeping alive your concept of fair share? How would
14 you make the two work together?

15 A By building into the zoning in various fashions
16 affirmative provision for housing low and moderate-income
17 people.

18 Q But would that be done in the less
19 desirable municipalities as well as the more desirable
20 municipalities?

21 A Certainly.

22 Q Now, I believe that these zoning approaches
23 are listed at the bottom of page two and the top of
24 page three of your remedy report.

25 A Those are some of them, yes.

1 Q Those are all that you've listed?

2 A Yes.

3 Q Now, your first approach is through the
4 conditional use mechanism.

5 A Well, I suggested that you can either have a
6 conditional use mechanism or a simply straight
7 forwardly mapped zone.

8 Q And as you envision it, what would the
9 zone permit?

10 A Well, there are two alternatives here. There
11 are probably more, but two fairly significant ones.

12 The first is that the zone would be defined
13 in such a way either mapped or as a conditional use
14 for housing built under a government subsidy program.
15 And that's fairly readily definable.

16 Q Would it permit any other types of
17 construction other than subsidized housing units?

18 A Well, clearly there would be an underlying
19 use.

20 Q Well, the problem I have is if it
21 permitted apartments and subsidized apartments,
22 what do you suspect would be built in most of
23 the communities in Morris County?

24 A If it permitted apartments and subsidized
25 housing -- if it permitted both apartments generally

1 and subsidized housing specifically under the same
2 standards?

3 Q Right.

4 A Then subsidized housing would probably not be
5 built. The point here is we're talking about a zone
6 where the standards for the subsidized housing
7 would be different than the standards for other uses
8 permitted in the zone.

9 Q Are you talking about density bonuses?

10 A No, we're talking about alternative uses.

11 In other words, let us say that you have a
12 conditional use. Here you have a variety of zones.
13 They may permit single-family housing on one acre
14 here, half acre there, quarter acre there. You may
15 have some commission zones and you provide that
16 subsidized housing at densities, say, of 15 to the
17 acre or 10 to the acre, as the case may be is a
18 permitted -- is a conditional use in each of the
19 following zones, subject to standards and procedures
20 as set down in the municipal land use law for
21 conditional uses.

22 So that there's no head-to-head competition
23 between subsidized housing and unsubsidized
24 multi-family housing.

25 Q Well, you give a higher density, I assume,

1 for your subsidized units?

2 A Right.

3 Q Would you mandate that they be smaller
4 than your conventional units, or is that not necessary?

5 A That would certainly not be necessary.

6 In other words, anything -- the point is to provide
7 housing for the low and moderate-income population.
8 If a developer builds housing or has a plan in a
9 design for housing that is acceptable to whichever
10 agency is going to provide the subsidies, then that's
11 really the only issue.

12 Q You feel it's reasonable to provide
13 differing densities for the same type of housing
14 depending whether or not the units are subsidized?

15 A Actually I did not say that.

16 Q I'm asking you. Is that reasonable from
17 a housing standpoint?

18 A Certainly.

19 Q They'll be identical units, the only
20 difference would be that some would be subsidized
21 by a government entity and some wouldn't?

22 A Okay. I'll qualify that.

23 There's no need to provide different standards
24 for subsidized and unsubsidized units. There is
25 nothing wrong with it either. I'm saying in this

1 kind of conditional use the point is to make
2 possible the construction or facility or make
3 realistically feasible the construction of subsidized
4 units. If a different density for subsidized units
5 makes that possible or enhances that, then it's worth
6 considering.

7 Q Would you advocate different densities
8 for subsidized and non-subsidized units, or would
9 you advocate the same density?

10 A I think I would probably advocate -- it would
11 really depend on again looking at the detail of the
12 individual municipalities, and I would see certain
13 areas where you have a general multi-family use and
14 you have reasonable standards which would be
15 applicable to subsidized or unsubsidized units.
16 You have other areas where multi-family is not a
17 permitted use by right, but with subsidized housing
18 at the same standards would be available as a
19 conditional use.

20 In addition to those areas where multi-family
21 is permitted by right, where no distinction would
22 be made by subsidized and unsubsidized housing.

23 Q But you suspect in the latter category
24 that if you subsidized, units would be built?

25 A Exactly, which is why you provide for the

1 conditional use in other parts of the municipality.

2 Q Under the old zoning law, did you recommend
3 that low, moderate, and least-cost housing be made
4 a special exception type of use?

5 A That would be analogous, though I think the
6 language dealing with conditional use in the new
7 law is much more conducive to this kind of policy
8 than the old special exception language.

9 Q What was your recommendation with regard
10 to special exception as a device for promoting low,
11 moderate, and least-cost housing?

12 A I don't recall specifically, that was some
13 time ago.

14 Q Were you opposed to special exceptions
15 for the multi-family development?

16 A I don't think so. I recall being opposed to
17 use of the D Variance for multi-family development
18 as a policy, which is something I still believe.

19 Q You were not opposed to special exceptions
20 for apartments?

21 A I don't recall that.

22 Q Now, in point 10, "The Remedies," you
23 mention that special zones have been created for
24 subsidized housing in Morris Township and Lincoln
25 Park, and I wonder if you could tell us what these

1 special provisions are?

2 A In each case they have to do with a special
3 tract. In Morris Township the tract has been zoned
4 for senior housing specifically, and it's my
5 understanding that this has been done towards the
6 end of assisting a project that is going to be
7 developed by the Morris County Housing Authority.

8 And it's a specific tract, specific piece of land
9 for senior citizen housing. That's the purpose.

10 Q But does it require that the project
11 be subsidized, or does it merely require that it
12 be a senior citizen's project?

13 A I don't recall.

14 Q But you consider a zone which permits
15 senior citizen housing specifically to be a zone
16 which encourages subsidized housing?

17 A This case -- it's clear that that was the
18 intent of the zone. So that I don't think there's
19 any question about it.

20 I'm not saying that any zone, any one draft
21 dealing with senior citizen housing would automatically
22 be constructed the same way.

23 Q What are the other permitted uses in the
24 Morris Township zone which permits senior citizen
25 housing?

1 A I have no idea offhand. There are no other
2 multi-family uses though.

3 Q If you permit senior citizen housing
4 and not other types of multi-family housing, would
5 there be a provision which you found to be inclusionary?

6 A In this case, again, this is a specific
7 provision of which I'm familiar with the intent
8 and can speak on that. The provisions I would still
9 consider hardly a model because I think that an
10 appropriate provision of this sort should not be
11 limited to senior citizens.

12 But in the case of the Lincoln Park Ordinance
13 the zone is explicitly delineated for moderate
14 income and senior citizen uses.

15 Q Were the Lincoln Park provisions enacted
16 as part of a settlement of this particular lawsuit?

17 A No, they preceded this lawsuit. I have no
18 idea whether there is any settlement in the works
19 with Lincoln Park.

20 Q Would you describe what you mean by
21 setting maximum standards in an ordinance under
22 section two of your remedies as to inclusionary
23 provisions?

24 A This is a straight forward one. In other words,
25 as I mentioned earlier, one of the areas of slippage

1 in least-cost zoning is the decision by the developer
2 to build large units even where the standards are
3 modest. The standards may call for -- let's say --
4 600 square foot for one bedroom. If he figures that
5 a 900 square foot unit would sell for disproportionately
6 higher prices, he may do so.

7 Setting maximum standards, in essence, says you
8 may not build more than -- let's say -- "X" amount
9 larger units than the minimums. Obviously you must
10 provide some flexibility, but let's say you would
11 say no units constructed in this zone can be more
12 than ten percent larger than the minimum set down
13 for this zone.

14 In other words, if the minimum was 600 square
15 feet, then no unit could be built in that zone that
16 would have an area of more than 800 square feet.

17 Q Do you know of any zoning ordinance in
18 New Jersey that sets forth maximum standards for
19 residential construction?

20 A Yes, though it's a rather unusual circumstance.

21 Q What's that one?

22 A Bedminster.

23 Q And that's a result of the settlement of
24 the Allen Dean case?

25 A Well, actually it was included in an ordinance

1 which has since been found to be not in compliance
2 for other unrelated reasons.

3 It was included in an ordinance that was adopted
4 by the Township of Bedminster in response to a court
5 order as a result of the initial Allen Bean decision.
6 Subsequent to the adoption of that ordinance, a
7 compliance hearing was held by the court on that
8 ordinance for unrelated reasons, the ordinance was
9 very recently found to be not in compliance with the
10 original court order, and the town is now under an
11 entirely different compliance process.

12 But the fact is that provision did appear in
13 that ordinance and was not challenged by the
14 plaintiffs.

15 Q So aside from this one ordinance which
16 was declared invalid in Bedminster Township, you
17 can't name a single ordinance in New Jersey that
18 has maximums for one-family residential development?

19 A That's correct.

20 Q Now, your third exclusionary provision
21 is the setting of controls for the price or rent
22 level of dwelling units. Can you explain that?

23 A Well, what that means is that other conditions
24 that would have to be met considered to be least-cost
25 housing, that it would be either below certain price

1 levels that might be specified in the ordinance, or
2 alternatively or perhaps more workably, that since
3 the actual price levels that would be realistic
4 change fairly frequently, that you would key the
5 prices to some changing standards. Like, for example,
6 the Department of Housing and Urban Development
7 periodically establishes an estimated medium income
8 for each housing market area around the county
9 including Morris County, and one could simply provide
10 that the housing sales price of that housing should
11 not be more than "X" times the current medium income,
12 or alternatively the rent charged in this development
13 should not be more than "X" percent of the current
14 medium income for the area in which it's being
15 built.

16 Q Do you advocate this measure?

17 A I think it would be reasonable, yes.

18 Q Do you know if it's been used anywhere
19 in New Jersey?

20 A Not offhand.

21 Q I assume if any of these inclusionary
22 measures were employed, that you as a housing
23 consultant and who specializes in inclusionary
24 zoning, and in fact, fights the inclusionary
25 battles, would be aware of these provisions?

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A Quite possibly.

Q Now, point four in your remedies section suggests the use of public funds other than housing subsidies to reduce housing cost.

A That's correct.

Q Would you explain that to me?

A Housing subsidies, I mean here are those funds that are explicitly for the purpose of subsidizing housing, section 8 subsidies, mortgage interest, subsidized things of this sort. At the same time there are other funds, and the particular one that's most appropriate is the community development grant program which can be used in a series of ways to reduce the cost of housing.

One approach, for example, would be to subsidize the cost of buying the land. Suppose there is a piece of land that's admirably suited for subsidizing housing but it's more expensive than can be encompassed in the federal cost limits. Community development block grant funds can be used to make up the difference between that price that's allowable under the cost limits and the actual cost of the land.

Q What would make the land admirably suited for subsidized housing?

1 A Well, there could be many factors, and I
2 believe we went into this extensively.

3 Q Can you give me a short synopsis?

4 A Certainly availability or potential future
5 availability of public transportation, reasonable
6 access to community facilities and services,
7 terrain without serious cost-generating problems,
8 and so forth.

9 Q Infrastructure?

10 A Infrastructure.

11 Q What you're suggesting is that municipalities
12 use their funds to subsidize housing construction?

13 A No.

14 Q Whose funds would be used to subsidize
15 this construction?

16 A Community development block grant funds, or
17 funds provided by the federal government where the
18 principal purpose of these funds by act of Congress
19 is to improve living conditions of low and moderate-
20 income people.

21 Q These are distributed throughout the
22 counties?

23 A It varies. In Morris County the county
24 administers the program and acts as a kind of
25 umbrella through which individual municipalities can

1 get funding for different projects and activities
2 they're interested in.

3 In other cases, municipalities apply directly.

4 Q Now, would these federal funds be used
5 to reduce the land costs or the building costs for
6 private development?

7 A Conceivably.

8 Q How could that be done in a legal manner?
9 I know you're not a lawyer, but you're familiar with
10 this.

11 A Berman vs. Parker.

12 Q Doesn't that have to do with the site
13 easements?

14 A It has to do with the use of urban funds to
15 right-to-buy private developers for private benefit,
16 U. S. Supreme Court.

17 Q You're talking about urban redevelopment?

18 A I'm talking about -- in this case or in that?
19 In my report or in Berman vs. Parker?

20 Q I can understand urban redevelopment.
21 There's a special statute dealing with that, isn't
22 that right?

23 A There's a special statute dealing with this.
24 It's called the Housing and Community Development
25 Act of 1974.

1 Q Now, you're saying that municipalities
2 can fortuitously aid private developers in constructing
3 housing for sale to the public, such sale being a
4 non-subsidized unit?

5 A If the sale of the housing is being done in a
6 way to benefit low and moderate-income families and
7 furtherance of the policies embodying the development
8 and Community Development Act, and regular HUD
9 regulations. This is being done at the present by
10 Bergen County.

11 Q Where in Bergen County?

12 A The Bergen County Housing Authority has a
13 program whereby it uses community development funds
14 to right-to-buy land in order to construct least-cost
15 houses which essentially are two-family houses in
16 different municipalities in Bergen County.

17 In the city of Philadelphia --

18 Q Once it builds these two-family houses,
19 what's it do with them?

20 A Sells them to the public.

21 Q At a loss?

22 A Yes. It sells them to moderate-income families
23 at a price they can afford, and the difference
24 between what the families can afford and what the
25 actual cost was is, if need be, written off.

1 Q Now, where is this procedure employed
2 in New Jersey where municipalities other than through
3 urban redevelopment purchase land which is given to
4 private developers for private developers so that
5 they can construct lower or moderate-income
6 housing?

7 THE WITNESS: May I have that read
8 back?

9 (Previous question read back by
10 reporter.)

11 MR. BISGAIER: Are you using the
12 term "urban redevelopment" --

13 MR. BERNSTEIN: I'm using the
14 term "urban redevelopment" to mean where
15 a municipality pursuant to the statute
16 goes in and condemns land pursuant to the
17 statutes.

18 MR. BISGAIER: Which statutes are
19 you talking about?

20 MR. BERNSTEIN: I don't have them
21 at my fingertips, but there are statutes
22 like provided by the Blighted Act, as an
23 example, where the municipality will
24 assemble a project and then sell it to a
25 developer.

1 I understand that, but I wonder
2 if the law goes further than that. I'm
3 curious as to what Mr. Mallach has to
4 say.

5 MR. BISGAIER: Off the record.

6 (Discussion off the record.)

7 A With the exception of the Bergen County
8 example that I mentioned just before, I'm not
9 familiar with any specific cases on that point in
10 New Jersey.

11 Q How did Bergen County determine who
12 were the lucky poor people who were going to
13 get this housing at below market price cost, and
14 who were the poor slobs who wouldn't be chosen?

15 A I have no idea. I guess you have to ask them.
16 I mean every agency that provides low and moderate-
17 income housing in this county, with perhaps very
18 few exceptions, has that problem, because the need
19 for that housing is far greater than the number of
20 units. Every agency that I'm familiar with has an
21 extensive waiting list.

22 Q As a housing consultant, haven't you
23 found that politician's influence plays a large
24 part in determining whether or not you become a
25 tenant in these public housing units?

1 A In some cases.

2 Q Now, do you know if there are any provisions
3 in the Bergen County duplex program which guard against
4 poor people getting these projects at below market,
5 and then turning them three years later and then
6 selling them for a profit?

7 A There's a very elaborate provision wherein,
8 if I understand it correctly, which provides for a
9 first refusal at a price that's on some formula
10 basis to the Housing Authority for resale to another
11 low-income family.

12 Q Do you know how long that option of
13 first refusal is in effect?

14 A No.

15 Q And you don't know what is the increment
16 in the price the poor person can expect for his
17 investment?

18 A I don't recall the exact amount. I recall
19 when I heard this presentation, I was struck that
20 it didn't seem very much.

21 Q You don't remember?

22 A No.

23 Q Lastly, you talk about density bonuses,
24 is that correct?

25 A That's correct.

1 Q And you would define density bonuses
2 as?

3 A Density bonuses is when a developer or a
4 builder is given the option of building a larger
5 number of units in return for subsidizing some
6 percentage of those units.

7 So, let's say hypothetically that in a given
8 zone you're entitled by right to build a hundred
9 units on a tract, and for a bonus you might provide
10 that for every ten units that you subsidize, you're
11 entitled to an additional ten units of conventional
12 housing up to some level, or an additional twenty.

13 Q How prevalent is this density bonus
14 method throughout the state?

15 A Well, one version of density bonus, which is
16 known as the mandatory minimum percentage ordinance,
17 sometimes, is where an ordinance may simply specify
18 that in such and such a development a minimum percent
19 of the units must be low and moderate income or
20 subsidized or some variation of that. It's not
21 uncommon, sometimes mandatory and sometimes optional.

22 Q Do you know which towns employ it?

23 A Well, I've seen such provisions and ordinances
24 in Cherry Hill, in East Windsor, Franklin Township
25 in Somerset County. I think Raritan Township in
Hunterdon.

1 Q It's not mandatory?

2 A That's an optional one.

3 Q Optional?

4 A The one in East Windsor and the one in Cherry
5 Hill, I believe are mandatory ones. I'm not sure
6 about the one in Franklin. There are probably others.
7 I believe there's recently been a court text which
8 upheld the legality of the Cherry Hill provision
9 in Superior Court down in Camden County.

10 Q You make an interesting statement,
11 Mr. Mallach, that "although the municipalities may
12 not be required to build subsidized housing, there
13 are many steps that a town can do to facilitate the
14 opportunities for low-income housing."

15 Can you go into these steps?

16 A Well, this essentially follows from the fact
17 that the process of approval of any development is
18 a lengthy one, usually involving many steps of
19 approval from the municipality including site plans,
20 subdivision, and the like.

21 In addition, with a subsidized housing project,
22 there may be other issues. As I mentioned, there may
23 be problems with the land cost which, if possible,
24 assistance from municipalities through ED Funds
25 could overcome.

1 Another concern is the question of tax abatement
2 which many subsidized developments need in order to
3 be feasible.

4 Another is the whole question of a resolution
5 of need which is required by the Housing Financial
6 Agency under the statute.

7 In addition, certainly under typical ordinances
8 that exist in most municipalities today and
9 conceivably even under a well-intentioned ordinance,
10 there may be specific waivers or credit variances
11 that might be required depending on a variety of
12 technical situations that develop during the
13 processing with the federal or state agencies.

14 So the point is that there's whole series
15 of steps at which the municipality may be in a
16 position to facilitate or alternatively to
17 discourage bringing such a project into fruition.
18 And an affirmative or positive approach by the
19 municipality in each of these steps can be a very
20 significant factor in whether or not housing gets
21 built.

22 Q Is it your position that filtering
23 down will not provide any substantial number of
24 least-cost housing units in Morris County?

25 A I think in the absence of a detailed study

1 on the subject, just based on the theoretical
2 assessment that the filtering down process will not
3 provide much housing for low and moderate-income
4 people or affordable by low or moderate-income
5 people, which is the issue in Morris County.

6 Q Why is that?

7 A Because Morris County is part of a region,
8 and there's a growth area in that region, an area
9 for the most part which has a high income demand,
10 and is an area that for the most part has a relatively
11 high quality housing stock.

12 And the evidence suggests that existing housing
13 or older housing in Morris County is appreciated
14 quite significantly, while the cost of new housing
15 is going up at the same time.

16 So with this appreciation in the existing
17 house price, if a new house is built, if somebody
18 moves from an older house in Morris County, he is
19 likely to be able to get a relatively high price
20 for that house. It might not be quite as high as
21 the price of his new house, but it's still likely
22 to be higher than what a low and moderate-income
23 family can afford.

24 Now, filtering is part of a chain, so
25 eventually in the filtering chain you may get to

1 a house that a low and moderate-income family
2 can afford, but again, that's likely to be elsewhere
3 in the region than in Morris County.

4 Q What difference does it make if it's
5 elsewhere in the region as long as more least-cost
6 housing is provided? Isn't it just as desirable
7 if it's in -- to use communities that you mentioned --

8 A Newark or East Orange.

9 Q -- whatever, does it really matter if
10 the low-income or moderate-income families head to
11 Newark or East Orange? Isn't it just as beneficial
12 as if new units were constructed in Parsippany or
13 Paterson?

14 A No.

15 Q Why is that? Why is that more desirable
16 to have these least-cost units constructed in Morris
17 County than in Newark or East Orange?

18 A Well, the first reason we discussed in some
19 detail earlier, is because of the movement of jobs
20 to Morris County, which is very significant. And
21 the housing is provided in Newark or East Orange
22 at the same time as the number of jobs available
23 for working class people in East Orange and Newark
24 is dropping drastically. Then you're making worse
25 a very serious balance between where people live

1 and where they work, and getting back to that whole
2 thing about excessive commuting and so on.

3 The second is that it further exacerbates
4 urban and suburban disparities, economic segregation,
5 racial segregation, which are bad things.

6 Furthermore, it further exacerbates the fiscal
7 disparity, the inability of the cities to provide
8 services for their citizens, and the massive
9 imbalances in wealth, resources, services, and the
10 like, between cities and suburbs.

11 Q Anymore?

12 A Furthermore, you have -- I think you'll
13 readily agree -- in many of these cities, Newark,
14 East Orange, you have a housing stock that is
15 deteriorating and aging to the point where there's
16 a serious likelihood that a lot of the units by the
17 time you get down to that far, to the filtering
18 chain, are no longer going to be decent housing.

19 In other words, if it were a matter of bringing
20 decent, sound housing down to that cost level, it
21 would be one thing, but in practice it may not be.
22 By the time the units filter down to that point,
23 they are dilapidated, deteriorating, in need of
24 repair, and so forth. So in the final analysis,
25 if the filtering chain extends to that degree and

1 winds up in Newark, East Orange, Jersey City, or
2 whatever, it really does have significantly less
3 benefit than if the housing were provided in Morris
4 County and similar areas.

5 Q Didn't you tell me earlier that you felt
6 these cities were going down the tubes, and they
7 wouldn't be revived?

8 A I think one could make a plausible argument
9 for that point. I'm not concerned one way or the
10 other.

11 Q What does your intuition tell you since
12 you're the housing expert? What's going to happen
13 to the cities?

14 A Well --

15 MR. BISGAIER: All cities or
16 specific cities?

17 MR. BERNSTEIN: I'm interested in
18 the cities in New Jersey, Mr. Bisgaier,
19 and the cities in a county region.

20 A I think -- well, let's look at what's
21 happening in the last 15 years.

22 Q Rather than looking at what's happened,
23 tell me what's going to happen in the future. We
24 all know that the cities have had rough fare up
25 until this time. I'm interested in the future.

1 A Actually what is amazing is the degree both
2 city people and state officials are dedicated to a
3 game of pretending that the cities are not
4 deteriorating the way they are. The cities have
5 been losing population drastically and will
6 continue undoubtedly to do so. What you are likely
7 to have in places like Newark is a series of
8 enclaves of different kinds of functions, an office
9 enclave linked to Penn Station, a university enclave,
10 a few middle class or stable working class areas
11 here and there, and a gradual decline in both the
12 overall population, the size of the housing stock,
13 and the amount of employment.

14 These cities have already become, and will
15 probably continue to be, essentially wards to the
16 state and federal governments. The percentage of
17 Newark's municipal budget that come under the form
18 of state and federal aid is significant and I
19 believe well over 50 percent of the budget. The
20 same is true of the school district.

21 So, in effect, you will have the linking
22 complexes of enclaves. I mean, the cities are
23 never going to disappear. They are there. And
24 they serve certain functions, certain specialized
25 functions.

1 In Newark you have areas like the North Ward.
2 There are certain areas in the North Ward which have
3 some things going for them. So these will continue.
4 But the overall prognosis is definitely downward.
5 And in terms of their share of regional population
6 or regional employment there seems to be no reason
7 to believe that it will not continue to decline.

8 Q Wouldn't you believe then that it would
9 be best not to sink these enormous amounts of money
10 into the urban sections? Wouldn't it be best to be
11 spending it in the suburbs where you'd get a better
12 return on your investment?

13 MR. BISGAIER: Which enormous
14 amounts of money?

15 MR. BERNSTEIN: All the amounts of
16 money, Mr. Bisgaier, that the federal
17 and state governments are using to
18 subsidize apartments in Newark that
19 Mr. Mallach has just described, the fact
20 that increasing percentages of the
21 municipalities' budget and in the large
22 cities are obtained from prior government
23 entities.

24 MR. BISGAIER: You're referring to
25 his statement that the Newark budget is

1 perhaps 50 percent paid for with state
2 or federal subsidies?

3 MR. BERNSTEIN: I'm also saying that
4 the federal government and the state
5 government are encouraging construction
6 of facilities in the center cities for
7 whatever reason.

8 I'm not the witness, but if he thinks
9 this is where the government is going to
10 get the best return on its investment,
11 considering his prognosis for the cities,
12 it doesn't seem to make sense, the
13 federal programs.

14 A Well, I think there are an awful lot of different
15 interesting agendas and concerns that prompt before
16 federal money is spent. I think certainly a place
17 like Newark contains a large number of poor people
18 and a large number of low value housing units which
19 are, from a practical standpoint, incapable of
20 supporting even a minimal level of public service
21 without that kind of assistance.

22 So as a form of geographic welfare, if you will,
23 it's a legitimate expenditure. Whether it's optimal,
24 one can argue. I mean, that's hard to tell.

25 Q How about the construction of bricks in

1 water? Would you advocate the state and federal
2 government to be directing it in the cities or in
3 the more suburban areas?

4 A I think there are areas in the cities where it's
5 appropriate. I think you have to bear in mind that
6 the housing formations are such that you need more
7 housing generally, and there certainly is a need
8 for certain amounts of replacement giving the
9 continuing function of cities. I certainly don't
10 see any need for massive construction in the cities.
11 I think it should be fairly selective and should
12 concentrate on well-thought-out development
13 concepts that have a potential, stabilizing a
14 neighborhood or anchoring an area or contributing
15 in some way to an area. In other words, I think
16 certainly construction of housing units for the
17 sake of adding housing units to the cities' housing
18 stock is probably not, in many cases, a very sound
19 investment.

20 Construction of housing units whereby so doing
21 one contributes to some aspect of revitalizing or
22 strengthening a neighborhood or an area or something
23 of that sort, having sound structures, or potential
24 sound structures, those things can make sense.

25 Q You would favor the construction of

1 least-cost housing in suburban areas even if it
2 were more expensive than the construction of similar
3 units in more urban areas because of what you
4 perceive to be overriding social considerations?

5 A That's a meaningless question because of the
6 fact that it's the other way around.

7 Q You find the construction is less
8 expensive in a suburban area?

9 A That's correct.

10 Q All suburban areas or in some areas?

11 A I would say most suburban areas. I wouldn't
12 generalize to all.

13 Q How about the defendants in this lawsuit?
14 Can you make any significant statements to
15 construction costs in any of the defendant
16 municipalities vis-a-vis Newark, East Orange,
17 Elizabeth, Plainfield, Trenton?

18 A Again, as based on theoretical knowledge
19 rather than specific analysis, I would say generally
20 speaking the cost of this construction would be
21 cheaper in those municipalities, in the defendant
22 municipalities, than in the urban and center cities.
23 There may be exceptions, but they would be exceptions
24 rather than a pattern.

25 Q Where are the land costs higher?

1 A In the cities.

2 Q In the cities? I'm talking about in
3 the one-family residential areas and in the
4 apartment areas of the cities, where is land higher,
5 suburban and residential properties, or urban
6 properties similarly zoned?

7 A There's a difference. The cost of an individual
8 dwelling unit of roughly comparable size and shape
9 and so on may be, and generally is, higher in the
10 suburbs. The cost of obtaining vacant land for
11 development is almost invariably higher in the
12 cities.

13 Q Where vacant land is available in the
14 cities, it's cheaper or more expensive than
15 similarly zoned land in the suburban areas?

16 A Again, it's a meaningless question. There's
17 virtually no such thing as similarly zoned land
18 between cities and suburbs. They're a completely
19 different frame of reference.

20 Q The land cost per dwelling unit, where
21 would you expect you would pay more if you were in
22 the market, in any of your towns that are defendants
23 in this action, in Newark, in East Orange, in
24 Elizabeth, in Plainfield, in Trenton? Where would
25 you pay more per dwelling unit?

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MR. BISCAIER: Given the same zoning?

MR. BERNSTEIN: He said there isn't the same zoning, so I've taken that out. I'm making it per unit costs. He can answer it on a townhouse, apartment, one-family basis.

A If you had reasonable zoning?

Q I'm saying given the present zoning, where is the cost of the land more expensive?

A It would vary. Given present zoning, you would probably have some municipalities where it was higher, some suburban and municipalities rather where it was higher, and some where it was not.

Q You can't really document for us any of these cost factors, can you?

A No.

Q It's all based on your intuitive reasoning?

A No.

Q What's it based on?

A It's based on a great deal of accumulated knowledge over the last ten years, but not on a specific study of the defendants in this litigation.

Q Assuming that costs were more expensive

1 in the suburban areas than in the cities, you would
2 still favor the construction of a substantial number
3 of least-cost housing units in the suburban areas
4 over the cities, wouldn't you?

5 MR. BISGAIER: Could you read
6 that question back?

7 (Previous question read back by
8 reporter.)

9 A Leaving aside the proposition that the
10 hypothetical is essentially impossible, because
11 if one provided the sort of zoning in the suburban
12 municipalities at issue that would make least-cost
13 housing possible, then that would make the land
14 cost in almost every case lower than urban costs.

15 However, even if that were the case, I would
16 still certainly believe that in keeping with some
17 kind of reasonable fair share goal, some kind of
18 judgment as to the movement of employment and the
19 like, that housing low and moderate-income people
20 should be constructed in the suburbs, too.

21 Q You didn't work on any fair share
22 analysis for this case?

23 A No.

24 Q You would agree in those suburban areas
25 that lack infrastructure that it's probable that

1 the cost of constructing new dwelling units would
2 exceed the cost of constructing the same units in
3 cities where infrastructure is located?

4 A Not necessarily.

5 MR. BISGAIER: Wait one second.

6 Are you going to pursue that?

7 MR. BERNSTEIN: No. He said not
8 necessarily.

9 Q You have no statistics on that?

10 A No.

11 Q Mr. Mallach, I believe that you have
12 given to each of the defense counsel through
13 Mr. Bisgaier a table with a number of different
14 charts in it.

15 A That's correct.

16 Q I'm curious, Mr. Mallach, about how
17 does the distribution of household units affect
18 this lawsuit, and I'm specifically looking at
19 pages one through seven. After that you go into
20 low and moderate-income housing. Obviously that
21 has a relationship. But how does the distribution
22 of housing units affect this lawsuit, and how is
23 it relevant?

24 A This is more in the nature of background,
25 or shall we say, educational material. It may or

1 may not affect the lawsuit directly. It suggests
2 the characteristics of the household that are coming
3 into being, and in turn, suggests the nature of the
4 kind of housing that's likely to be needed during
5 the coming decade.

6 Q Well, would you turn to the first chart
7 table 1A. It indicates that most of the new
8 households between 1950 and 1960, over half were
9 husband and wife families with children.

10 A That's correct.

11 Q And from 1960 to 1970 the number of
12 new households added with the husband and wife
13 families with children decreased down to 16 percent
14 of the new households that were added.

15 A That's correct.

16 Q What's the significance of that and the
17 fact that the single individual households increased
18 dramatically as did the husband and wife families
19 without children? How was that significant as far
20 as housing needs in general and housing needs in
21 Morris County in particular?

22 A Well, the significance is essentially in the
23 difference in the kinds of housing needs that these
24 different households represent. It's that the
25 growth in the population is very dramatic among

1 households that essentially are potential candidates
2 for smaller units and for multi-family housing.

3 Q That means that there's been bigger
4 need for one and two-bedroom apartments and a lesser
5 need for the larger dwelling unit?

6 A Among other things, yes.

7 Q Well, would you change your opinion
8 then that you gave in the Urban League report that
9 one or two-bedroom apartments weren't addressing
10 a significant need that the low and moderate-income
11 families had?

12 A Well, I think that all the housing units
13 address some need. I think if you look at the
14 evidence that you've seen on vacancy rates and the
15 like, that there is no significant shortage of,
16 for example, one-bedroom apartments.

17 Q There is no significant shortage?

18 A Of one-bedroom apartments compared to the
19 shortage that there is of moderately priced two
20 and three-bedroom apartments.

21 Q Is that true in Morris County that
22 there is no shortage?

23 A I don't know specifically with Morris County.

24 Q How about Middlesex County?

25 A I don't recall.

1 Q How about Union County?

2 A No, no.

3 Q Let me ask you this, Bergen County?

4 A I don't know with regard to a specific county.

5 I think you'll see generally, for I forget which
6 areas the statistics were for, whether it was state-wide
7 or regional that the vacancy rates declined -- are
8 higher rather for one-bedroom units than for two or
9 three-bedroom rental units.

10 Q But you don't know where these statistics
11 are taken from?

12 A That's correct.

13 Q And you don't know what the vacancies
14 are for any years in question?

15 A At the moment, no.

16 Q Would you suspect that in Morris County
17 we have enough one or two-bedroom apartments overall
18 for the county?

19 A With regard to two-bedroom apartments, certainly
20 not. With regard to one-bedroom apartments, I
21 doubt it, though at least there is a number of such
22 apartments, mainly in Parsippany-Troy and Mount
23 Olive.

24 The problem, in addition to the number of
25 units, of course, is the price of the units, which

1 is something else again.

2 Q That goes to your remedy issue?

3 A That's correct. But there are certainly
4 quite a few two-bedroom apartments in Morris County
5 and hardly any three-bedroom apartments.

6 Q Do you know what the demand for three-
7 bedroom apartments is opposed to three-bedroom homes
8 and three-bedroom townhouses?

9 A It depends on the income group. Among affluent
10 families in the market for three-bedroom units, the
11 demand is much stronger for houses, townhouses,
12 things that could be bought. Among the less affluent
13 families that can't afford houses, families that can't
14 make a down payment or don't have the credit to get
15 a mortgage, then it's a different matter.

16 Q But they can't afford a three-bedroom
17 unit in Morris County?

18 A If there were any.

19 Q If there were any, they couldn't afford
20 them?

21 A If they were built as conventional market
22 housing, that's correct.

23 Q But charts or tables 1A and 1B indicate
24 that the smaller units are more in demand because
25 your smaller housekeeping units are increasing

1 dramatically when compared with the larger housekeeping
 2 units?

3 A Well, the smaller households are increasing
 4 much faster than the larger ones. So that overall
 5 smaller units are somewhat more in demand. This
 6 does not have a one-to-one relationship because
 7 affluent small families tend to overoccupy housing,
 8 thereby using larger units than, according to the
 9 pure statistical requirements, they would not need.

10 Q Table 1C, it shows that the trends that
 11 you've found from the census material from 1950 to
 12 1970 you suspect will continue to the year 1990?

13 A Well, not continue. It's become even more
 14 in that direction.

15 Q And I assume your figures from 1970 to
 16 1990 are a projection?

17 A That's correct.

18 Q Was that done with the percentage method
 19 or with the annual increment method?

20 A Frankly, I don't recall. I think it was
 21 something else again, but I'm not certain.

22 Q Do you have a sheet where the computations
 23 were made on table 1C?

24 A I don't know. This was done many years ago.

25 Q Not for this suit?

A No.

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MR. BERNSTEIN: Mr. Bisgaard, if

Mr. Mallach at some time is going to testify as to the computations of 1C, I would request that we receive a sheet of his computations. If he doesn't remember, I have no problem with that. We'd be happy to let that stand during the course of the trial, but if he's going to testify, I think I have a right to know what the method is.

Q Mr. Mallach, if you discovered the method that you used, you'll supply it to Mr. Bisgaard?

A I have no problem with that.

MR. BISGAARD: What is it?

MR. BERNSTEIN: The computation method used in 1C.

Q Table 1D is really only a comparison of the previous three tables?

A That's correct. It summarizes them.

Q Now, this table 2A, you show the number of people in a household between 1960 and 1970, correct?

A Not quite. It's the number of households by their size, by the distribution by size.

Q So that in the tables 1A through D,

1 you showed the households according to their
2 constituent members such as husband, wife, children?

3 A Yes.

4 Q Whereas in table 2, you show the number
5 of households by the number of persons present?

6 A That's correct.

7 Q And it appears from an examination of
8 tables 2A, B, and C, that the percentage of the
9 smaller household units, that is, those four or
10 more members, is increasing?

11 A Four or more members is decreasing.

12 Q Four or less members, I should say?

13 A Right.

14 Q Four or less members increasing, and
15 five or more members is decreasing.

16 Q Looking at table 2C --

17 A That's correct.

18 Q So that really tables 1 and 2 provide
19 the same thing, is that right?

20 A They look at the same phenomena from slightly
21 different directions.

22 Q Which is?

23 A Which is the significant shift in the
24 characteristic of American households towards
25 larger numbers of what might be called non-traditional

1 households, away from the standard model of the
2 husband, wife, plus 2.3 children and dog, and in
3 the process towards an average smaller household
4 size, and a very sharp decline in the number of
5 very large families.

6 Q And the implications for the litigation
7 are?

8 A The increase in the need for multi-family housing is
9 generally, and also for the multi-family housing
10 types.

11 Q Wouldn't there be other implications that
12 the demand for multi-family housing types is
13 increasing in the smaller units, that is, in the
14 one or two-bedrooms as opposed to the three bedrooms?

15 A Not necessarily. Because you find a significant
16 significant increase in a category of units which is
17 that is usually not affluent, but does require
18 medium sized larger units, which is that of a single
19 parent family with children. So there is a
20 significant demand area there.

21 Q That's the single-head household?

22 A A large part of that. The lower part of
23 that category is single mothers with children.

24 Q These are predominantly from a lower
25 economic sphere or is this cut across economic

1 categories?

2 A Well, it's somewhat more in the lower economic
3 level than, for example, other categories.

4 If you will look, for example, on table 3A and
5 compare table 3A to table 1C, if you look in 1970
6 approximately 40 percent of the population in New
7 Jersey fell into the low and moderate-income
8 category more or less by definition, by using
9 80 percent of the median as the cutoff point.

10 We find that only about 25 to 30 percent of
11 husband-wife families with children fell into that
12 category, about 30 percent of husband-wife families
13 without children, nearly 60 percent of single parent
14 or single head families, then about 70 percent of
15 single individuals.

16 So these single-parent families are more
17 likely to be low and moderate income than any other
18 household types. And the pattern based on the
19 projections is likely to become sharper between
20 1970 and 1990 because a large number of the single
21 individuals come into being. Single-person households
22 are young people who are not wealthy, middle-income,
23 say, typically.

24 But the increase in single-person families
25 is very heavy in the low and moderate income category.

1 So in 1990, according to the projections, that's
2 the only category where over half of the families
3 are expected to be low and moderate-income families.

4 Q So that the implication from the tables
5 starting with 3 is that the fastest increase in
6 category, that is, the smaller units, especially
7 the single head families, have the largest percentage
8 of low and moderate-income constituents.

9 A That's correct. That does not mean that
10 single head families are the largest part of the
11 low and moderate-income total.

12 Q It means that as a percentage there's
13 more?

14 A Right.

15 Q So that your conclusion is that -- what
16 is the conclusion as to housing types that are required?
17 You see smaller families, you see a demand for smaller
18 units.

19 How is that reflected in the increase in
20 the single head families which have a large percent
21 in the lower income categories?

22 A That's a major factor. That sort of goes with
23 some of the other trends. Because the trend is overall
24 the demand is greater for smaller units. The demand
25 among low and moderate-income families for larger

1 units is likely to be greater than the demand for
2 larger units, again strictly speaking in terms of
3 household size and type, no preference among more
4 affluent families.

5 For example, in the population as a whole, the
6 number -- as you pointed out, the number of households
7 with five or more members is likely to decline
8 altogether by six percent. Among low and moderate-
9 income families, as 3B shows, that number is going to
10 increase during the same period by sixty percent.

11 So that there is a significant difference between
12 the general trend and the trend with particular
13 reference to low and moderate-income families.

14 There is a need for low income subsidies or at
15 least-cost housing for medium sized to large families.

16 Q Now, I see in 3C you've done a distribution
17 table for Burlington, Camden, and Gloucester Counties.
18 I assume that this is something you prepared?

19 A Right.

20 Q And it appears that the figures which you
21 show the different types of families?

22 A That's right.

23 Q Is that the total number of low-income
24 families in the entire county?

25 A Oh, no.

1 Q Or the total increase from 1970 to 1990?

2 A That's the increase from 1970 to 1990.

3 Q And the second vertical column that says,
4 "Existing low and moderate-income households in need,"
5 does that refer to homes, two households, that don't
6 have sufficient housing in 1970?

7 A That's correct.

8 Q So if you're looking for the 1990 needs,
9 we add those two columns together?

10 A Yes.

11 Q Now, as we go to the next part of this
12 chart, 3C, it says, "Housing needs by household size."

13 You're projecting the number of units that
14 are required for each household size?

15 A Right. In other words, we've taken each of
16 the four -- each of the five categories to the left
17 of the line, the line of dashes that divides the page,
18 and broken each category down according to its own
19 separate distribution by size.

20 So that, for example, among husband-wife
21 families with children, it's estimated to be 290 three-
22 members, 329 four-families, and so on.

23 Then in each of the columns we work up to arrive
24 at the number of low and moderate-income families
25 by size in this need category.

1 Q Well, how do you know that between 1970
2 and 1990 there would be additional 940 low-income or
3 moderate-income families, this was a husband-wife
4 and children? Was this merely projection?

5 A The only way you can find out something like
6 that is through a projection.

7 Q What I'd like, Mr. Mallach, if you're
8 going to testify about the computation of these
9 projections at the maxi or mini trial, I'd like a
10 sheet showing the computations ahead of time since
11 I assume at this moment in time you don't remember
12 how you made the projections, is that correct?

13 A That's right.

14 MR. BERNSTEIN: I'd request of
15 Mr. Bisgaier, so I don't want to object
16 to it at trial, if Mr. Mallach does
17 testify about the computations --

18 MR. BISGAIER: Which specific
19 computations?

20 MR. BERNSTEIN: I'm just interested
21 in the projections. I'm interested in
22 how he arrived at the projections. If
23 it's the same method, it can be explained
24 once.

25 He could say, "For all the tables

1 that I've submitted to defense counsel,
2 this is the method that I've used for
3 projections."

4 It's the methodology I'm really
5 interested in.

6 Q Now, on this report we have some little
7 sketches of apartments. What significance are these
8 as far as the trial is concerned?

9 A These are apartments that represent illustrations
10 of different housing developments that have actually
11 been built or approved for construction. That are
12 generally consistent in terms of floor area with the
13 least-cost standards presented in the report, as well
14 as with the HUD minimum property standards.

15 Q Did you play any part in any of these
16 projects?

17 A No.

18 Q How did you happen to choose these projects
19 other than the others that are in construction or
20 planned throughout the state?

21 A Well, since these were prepared in connection --
22 originally prepared in connection with work in
23 South Jersey, they were South Jersey products.

24 Q Do you find that there're differences
25 in the housing market in South Jersey and North Jersey?

1 A To some degree, just as there are differences
2 of the housing market within South Jersey and within
3 North Jersey.

4 Q Looking at the first floor plan, do you
5 feel that 587 square feet for a senior citizen's unit
6 is an excessively large unit?

7 A No.

8 Q It's reasonable?

9 A Yes.

10 Q You could build least-cost housing with
11 587 square feet?

12 A That's correct.

13 Q Turning to the Elmer Apartments in
14 Glasboro, do you find that 736 square feet for a
15 two-bedroom unit, and 875 square feet for a three-
16 bedroom unit are excessive from a least-cost standpoint?

17 A Not really. I think the 736 square feet is
18 possibly a little higher than need be, but I don't
19 think it's unreasonable.

20 Q How about the two projects on the last
21 page of your report in Tuckerton and the Duckahoe
22 construction projects in Burlington and Cape May
23 Counties. Are they one-family homes?

24 A Yes.

25 Q I assume that you find a three and square

1 feet is a reasonable square footage figure for
2 least-cost housing?

3 A For a one-family home, yes.

4 Q Do you know what the price is that these
5 projects either sold for or rented for?

6 A Well --

7 Q Was that not the purpose of your putting
8 these floor plans in your report?

9 A No, these were all subsidized low-rent units of
10 one sort or another.

11 Q So that whatever the prices were, it
12 didn't reflect your marketing conditions?

13 A Or whatever the final price or the carrying
14 cost rather to the occupants of the projects.

15 Q I believe it was your testimony that
16 the land costs in South Jersey are significantly
17 cheaper?

18 A Parts of South Jersey.

19 Q In the suburban areas, for the most
20 part, are they significantly cheaper than the land
21 costs in the defendant municipalities in Morris
22 County?

23 A In the suburban areas I would say slightly
24 cheaper, not significantly. Once you go out of
25 the suburban areas into the more rural areas, there

1 is a significant drop, and I think you do so sooner
2 going out from the urban center in South Jersey
3 than you do in North Jersey.

4 Q And home prices are significantly cheaper
5 in South Jersey than in North Jersey?

6 A Not consistently.

7 Q Explain that.

8 A In South Jersey you have in the suburban ring
9 that relates to Philadelphia, your home prices are
10 quite significantly high in a large part of that
11 suburban area. You have municipalities like
12 Moorestown, Haddonfield, Cherry Hill, and so on,
13 where home prices are comparable to similar
14 suburbs in North Jersey.

15 What happens is that rural areas, real rural
16 areas are most accessible to the center of population
17 employment in South Jersey than in North Jersey.
18 So people who are willing to make a trade-off
19 of a longer commute out into, say, central Burlington
20 County, lower Gloucester County, lower Camden County,
21 and so forth, are able to find houses where the price
22 starts to drop off significantly from the suburban
23 areas, but are still close enough that if a person
24 was willing to go to the trouble, if he can continue
25 to commute in the more central area.

1 MR. BISGAIER: Off the record.

2 (Discussion off the record.)

3 Q As a housing consultant, what do you
4 attribute the significant difference between housing
5 prices in South Jersey outside of the Camden suburbs
6 as opposed to the housing prices in Northern Jersey?

7 A The economic center of the region would not
8 generate the same volume of demand as the North
9 Jersey area. I mean, Philadelphia, relative to
10 New York, is one factor.

11 The second factor is that the overall economic
12 scale of wages and employment tends to be lower
13 in the Philadelphia metropolitan area. The medium
14 income is lower, the number of very affluent people
15 tends to be much smaller, so you don't have as
16 much money following the demand pressure.

17 Also, historically I think a great deal of the
18 most affluent suburb demand from the Philadelphia
19 area has gone to certain areas on the Pennsylvania
20 side of the river, and relatively few parts of the
21 New Jersey suburbs are elite suburbs in the same way,
22 as substantial parts of Bergen, Morris, and Somerset
23 Counties are in North Jersey.

24 Q You didn't make a projection of low
25 and moderate-income housing needs for Morris County

1 or the Morris County region for this lawsuit, did you?

2 A No, but if I do, you'll be the first to know.

3 MR. BISGAIER: I don't think
4 it would be any different from what
5 you have on the table there, just that
6 there wasn't time for him to do given
7 a quick deadline.

8 MR. BERNSTEIN: That's all.

9 (Witness excused.)

10 (Deposition concluded)

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MORRIS COUNTY FAIR HOUSING COUNCIL,)
)
Plaintiff,)
)
vs.)
)
TOWNSHIP OF BOONTON, et als.,)
)
Defendants.)
-----)

CERTIFICATE

I, JACQUELINE WASKO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of the deposition of ALAN MALLACH, who was first duly sworn by me at the place and on the date hereinbefore set forth.

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

Jacqueline Wasko
Certified Shorthand Reporter