

RULS-AD-1976-70

7/20/1976

• Deposition of Will Allen

Pages - 140

S-1290

THE ALLAN-DEANE CORPORATION,
a Delaware corporation,
qualified to do business in
the State of New Jersey,
Plaintiff,

Civil Action
Deposition of:
WILLIAM W. ALLEN

v.

THE TOWNSHIP OF BERNARDS,
in the County of Somerset,
a municipal corporation of
the State of New Jersey,

Defendant.

(Volume I)

DEPOSITION of WILLIAM W. ALLEN, taken by and
before Henry E. McGorrry, Jr., a Notary Public and
Shorthand Reporter of the State of New Jersey, at
Municipal Building, Basking Ridge, New Jersey, on Tuesday,
July 20, 1976, commencing at 10:05 a.m.

APPEARANCES:

For the Plaintiff : Messrs. Mason, Griffin & Pierson
By: Henry A. Hill, Jr., Esq.

For the Defendant : Messrs. McCarter & English
By: Nicholas Conover English, Esq.

JOSEPH F. READING
Certified Shorthand Reporter
13 Ramson Avenue
Trenton, New Jersey
882-3088
587-3251

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WILLIAM W. ALLEN

By Mr. Hill

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1 WILLIAM W. ALLEN, Sworn.

2 MR. ENGLISH: Could I suggest that any
3 objections as to the form of the question be
4 made but any other objections as to the substance
5 or admissibility be reserved.

6 MR. HILL: Certainly.

7
8 DIRECT EXAMINATION BY MR. HILL:

9 Q Mr. Allen, could you state your full name and
10 your home address.

11 A William W. Allen, 44 Holmes Brook Road, Basking
12 Ridge.

13 Q Mr. Allen, are you a member of the governing body
14 of Bernards Township?

15 A Yes.

16 Q How long have you been a member?

17 A January 19, 1974.

18 Q Are you a member of the Planning Board of Bernards
19 Township?

20 A Yes.

21 Q How long have you been a member of that?

22 A I was an alternate member in 1974 and '75, and
23 am currently a regular member.

24 Q What do you do in regular civilian life?

25 A I am employed by RCA, in Bridgewater Township.

1 I am currently in Planning Facilities and Capital.

2 Q What is your educational background, Mr. Allen?

3 A I majored in physics at Princeton University.

4 I have a Master of Science in Industrial Management from
5 Stevens Institute.

6 Q What are the nature of your duties at RCA?

7 A Currently, as I said, planning facilities and
8 capital for our Far Eastern manufacturing locations.

9 Q Did I hear you state either at a Planning Board
10 meeting or a Township Committee meeting that in coming up
11 with your own fair share analysis, you used personnel data
12 which you had obtained from RCA?

13 A That is correct.

14 Q Can you tell me what that data was and how you
15 used it.

16 A Sure. I will show you the tab from which I
17 worked. This is the only copy I have. Basically, it is a
18 computer tab generated by the Personnel Department from
19 data that they have on those people that were paid through
20 the Somerville -- we call our plant the Somerville plant
21 even though it is in Bridgewater Township, but it is people
22 that were paid through the Somerville payroll.

23 Now, this tabulation includes those people who
24 work at the Bridgewater site. The Bridgewater site is the
25 headquarters of what we call the Solid State Division. The

1 Solid State Division has several locations. The payroll
2 tab does include some people who were assigned to sales
3 offices in different parts of the country, and they are
4 paid from Somerville. I deleted those obvious people.
5 If somebody, for example, is listed for California, I
6 deleted those people. But, primarily, this tabulation is
7 of those people who are employed physically in the Bridge-
8 water location.

9 It includes in the tabulation not the names of
10 the employees but the names of the post offices, and it
11 also includes a number for the male employees and a number
12 for the female employees, and what I used essentially are
13 the numbers of employees and the post office locations, and
14 that is the tab, and it is the only copy I have.

15 I deleted, again, the obvious ones that were not
16 physically working in Somerville.

17 Q I am looking at what appears to be a computer
18 print-out, and the first item is "State", and then "City",
19 and then "Total Male", "W Male", which I guess is "White
20 Male", correct?

21 A I believe so. I didn't use those sub-groupings.
22 I only used the male and female.

23 Q "N Male", which I suppose is "Negro Male".

24 A Again, I did not use those columns, but I would
25 guess that may be the case.

1 MR. ENGLISH: Don't guess. If you don't know,
2 Mr. Allen, just say so.

3 A (Continuing) I never questioned what some of those
4 columns were, because I didn't have reason to use them.

5 Q You say that this document came out of the RCA
6 computer?

7 A This is something which a friend of mine in
8 Personnel, who was in Employment Management at that time
9 in Personnel, gave me. We discussed it a little bit, what
10 it meant, and then I took it and used it. There was no
11 other participation of RCA in this study other than to give
12 me permission to analyze this data. It was not a ~~specific~~
13 specifically for me or anything like that. It was just
14 something that they happened to have on hand which I made
15 use of.

16 Q Do I understand that each line represents one
17 employee?

18 A No. I believe you will find that each line,
19 if you will flip over to where you see "New Jersey", those
20 are listed first alphabetically by State, and then you will
21 have a large group showing New Jersey, and you will find
22 towns named, and then you will find numbers which are higher
23 than one. In other words, if there is more than one person
24 listed for Manville, it indicates to me that there were that
25 number of people living in Manville, or at least served by

1 the Manville post office, and working in RCA.

2 Q This document bears the date 01/23/75. Does that
3 mean it was run on January 23, 1975?

4 A Probably, but I'm not sure. That is the date put
5 on it by those who ran it, and, again, I am emphasizing that
6 I did not participate in the running of it. It was a docu-
7 ment that I was given when I was asking if they had data of
8 this kind. So, whether it was the date it was run, or the
9 effective date, I'm not sure.

10 Q Well, for instance, the first item under "New
11 Jersey" appears to be "NJ Milford, total males zero, total
12 females one." Does that mean that one female lives in
13 Milford?

14 A That is my interpretation. It is my interpretation
15 that these are post office addresses as opposed to any other
16 geographical location. There is a Milford town, but there
17 is also a Milford post office. So, my interpretation of
18 this was that these were the postal addresses.

19 Q Well, for instance, Page 6 of the read-out, it
20 says, "New Jersey, Princeton, total male 24, total female 2."
21 Does that mean that 24 males working out of the Somerville
22 plant in Bridgewater apparently reside in the Princeton
23 post office address?

24 A That is the way I interpret the data, yes.

25 Q Do you know how large the Princeton 08540 post

1 office address is? Do you know that it includes large parts
2 of Lawrence Township and West Windsor Township, Montgomery
3 Township?

4 A No, I made no investigation as to that.

5 Q So, some of these postal addresses involve areas
6 20 miles across.

7 A It could be.

8 Q The data that you get from them, it would appear
9 that if someone resides in Princeton, they might live in
10 Montgomery Township, which I represent to you is largely
11 all a Princeton post office address, or they could live in
12 parts of West Windsor or Lawrence Township, some ten or
13 fifteen miles away.

14 MR. ENGLISH: I object to the characterization
15 of distances. I think we ought to have something
16 other than Counsel's say-so that the distances are
17 either ten miles, fifteen miles or twenty miles.
18 I object to that. If the witness knows the dis-
19 tances, that's all right, but I object to Counsel's
20 testifying.

21 Q This data, then, you would agree, does not indicate
22 where in a postal area the employee's home might be located.

23 A The data was used in the manner described in a
24 report I wrote, which is a matter of record, called "Mt.
25 Laurel, a truly regional response". The potential pitfalls

1 in the use of the data were pointed out there, and you
2 have indicated some. This personnel information, except
3 for this kind of statistical summary, is privileged informa-
4 tion, as I think you recognize. So, I did not proceed any
5 further than just that particular sheet as to pinpointing a
6 specific address or home location.

7 Q You, nonetheless, used this information which you
8 have characterized as privileged in order to implement, in
9 effect, governmental policy for Bernards Township.

10 A I think there is a misreading of what I said.
11 This part is not privileged. To have gone into further
12 detail and tried to get further detailed information about
13 the employees that work in that location, I think would have
14 entered into an area of privileged information. This tab
15 was given to me for the use to which it was put, but I did
16 not feel it proper to try to go beyond the information
17 presented in that tab.

18 Q All right, you took this information, and what
19 did you do with it in order to arrive at what appears to
20 be the governmental policy of Bernards Township with relation
21 to its fair share?

22 MR. ENGLISH: I object to that characteriza-
23 tion as to what appears to be the governmental
24 policy and ask that it be stricken from the question.

25 Q You can go ahead and answer, Mr. Allen.

1 MR. ENGLISH: I think the question ought to
2 be interpreted by the witness as indicating what
3 he did in terms of the report he referred to, and
4 let it go at that.

5 Q What did you do with this information, Mr. Allen?

6 A I followed a procedure which is common in scienti-
7 fic investigation of which I have been a part, which is to
8 look at the data and see what kind of pattern connected the
9 data. The pattern which emerged is presented as a formula
10 which I described in that report.

11 Now, the particular data on employment numbers
12 and residential locations was next matched to a ~~very~~ ~~photo-~~
13 cated map of the State of New Jersey, which, in an index,
14 associates town names with cells in the map. So, what you
15 have here on this map is a matrix.

16 Q Can I see the map?

17 A Sure. Each cell is identified by a coordinate for
18 horizontal distance and a coordinate for vertical distance,
19 and I matched the towns that are on the RCA employment
20 ~~circulation~~ to cells on this map.

21 Q This is your so-called shotgun pattern, is that
22 correct?

23 A The red dots, by the way, are not pertinent to
24 the particular study. They were used for another purpose
25 later on. They do depict the concept but they were not part

1 of this study. They were used for an illustration later on.

2 Q So, it was your conclusion that within these
3 concentric rings a certain number of RCA employees fell,
4 is that correct?

5 A No, those concentric rings relate to another
6 matter. In the analysis of the data, backing up a little
7 bit again, I assigned the employees on the tab to cells on
8 the map. I then determined the distance from the Bridgewater
9 employment site to the center of each of the cells. I then
10 developed a cumulative histogram of the number of employees
11 as a function of the distance away.

12 Q Do you have any notes or records which show what
13 you did?

14 A I do.

15 Q Do you have them with you?

16 A I have some with me. I believe, though, that the
17 analysis was fairly clearly laid out in the report that I
18 mentioned earlier.

19 Q Well, I believe you got a notice to take your
20 deposition, which included a request that you bring with
21 you all your personal notes. I wonder if you could produce
22 those at this time.

23 MR. ENGLISH: Mr. Hill, I have advised the
24 witness that personal notes that didn't enter into
25 reports that he has made to the Township are

1 privileged, and they will not be produced.

2 MR. HILL: Mr. English, this will be the
3 subject of a motion which we will bring almost
4 immediately. I cannot understand your position.
5 I know no rule of law or equity that would support
6 your position, and I think that you are unduly
7 increasing the burden of this litigation for both
8 our clients.

9 MR. ENGLISH: Mr. Hill, you may be crying
10 before you are hurt, and perhaps you misunderstood
11 me. I understand the law to be that the private
12 opinions and motives of a member of a [REDACTED]
13 body of a municipality are not relevant or admis-
14 sible in evidence in a proceeding to determine the
15 validity or reasonableness of the ordinance, and
16 that is the line which I am attempting to draw.
17 I have advised Mr. Allen that he should produce
18 material which directly entered into the report
19 to which he has referred, which I regard as part
20 of the public record, and an appropriate subject
21 for inquiry on deposition or discussion at trial.

22 Now, my suggestion would be that you find
23 out what Mr. Allen has, and maybe you will be
24 satisfied.

25 MR. HILL: Mr. English, there are allegations

1 in this Complaint of a conspiracy. There are
2 allegations in this Complaint that there is an
3 intentional governmental policy of exclusionary
4 zoning. There are allegations in this Complaint
5 of malice and conspiracy. It is my understanding
6 that, because those allegations exist, we have the
7 right to inquire in discovery as to the personal
8 records of members of the governing body, and I
9 can see no theory of law which, in view of those
10 allegations, would support your answer that this
11 evidence is privileged.

12 Q What documents did you bring with you, Mr. Allen,
13 in response to our request for production of documents con-
14 tained in your Notice to appear for depositions?

15 A I picked up a whole lot of things which I didn't
16 know whether they would be required or not, and I think it
17 would be better for you to ask me specific questions as to
18 what I have, meaning whether I have the kind of document
19 rather than ask me what I have, because I have an awful lot
20 of things here, some of which may or may not be pertinent.

21 Q Why don't I ask you to produce and lay on this
22 table all your personal files, documents, memoranda, studies,
23 personal notes or diaries relating in any way to any matter
24 discussed by Bernards Township Planning Board, or relating to
25 any land use discussions of the Township Committee of the

1 Township of Bernards, and specifically, any documents
2 commenting or relating to any housing allocation or fair
3 share methodology used to evaluate Bernards Township fair
4 share of regional housing needs, and any document, study,
5 or memorandum prepared by you commenting or relating to
6 any allegations contained in the Plaintiff's Complaint.

7 I would like you further to put on the table all
8 materials, documents, computer programs or studies of the
9 Radio Corporation of America relied upon, used or studied
10 by you in connection with the development of the fair share
11 methodology to evaluate Bernards Township's fair share of
12 the regional housing need.

13 Could you place those documents on the table?

14 MR. ENGLISH: I object to the request because
15 it goes beyond the scope of what I stated a few
16 moments ago as being proper. May I suggest, Mr.
17 Hill, if you see fit to take my suggestion, that
18 you ask for something specific, and let's get on,
19 because you may well be satisfied with what you
20 find here.

21 Q Do you have any notes or memoranda dealing with
22 your computations in connection with the fair share methodo-
23 logy proposed for Bernards?

24 A First, let me say that I have been working with
25 numbers for the entire 25 years that I have been out of

1 college, and whether these be numbers with relation to a
2 social science-type project such as this, or a technical
3 science-type of project, there is an approach which one
4 used, at least I use. It is to first use very rough cal-
5 culations, scribble things down, develop tables, and
6 gradually, as a pattern emerged, to go back, recalculate,
7 make things a little neater.

8 Now, what I have done in the report that I issued,
9 is to summarize, I think in some detail, the analytical
10 procedure by which I worked from the initial data to the
11 conclusion. I did not include in that report the scratch
12 sheets, if you will, that led up to that. Now, I think
13 what is at issue here possibly is these scratch sheets;
14 you know, these penciled documents which, after a year's
15 absence from them, I might have difficulty deciphering them
16 myself, possibly.

17 Q You have those scratch sheets with you?

18 A I have a lot of these things. I haven't made an
19 attempt to go back and go over the same ground again in
20 preparation for this deposition. I think I could reconstruct
21 those numbers without any trouble, but I think the report
22 speaks for itself. The basic data from which the report is
23 derived is before you.

24 Q Could you produce those scratch sheets?

25 A Could I?

1 Q Would you?

2 A Physically, I probably could.

3 MR. ENGLISH: Do you have any of them here,
4 Mr. Allen?

5 THE WITNESS: Bear with me.

6 MR. HILL: While you are looking through
7 those, maybe the Court Reporter could mark this
8 RCA computer program as PWA-1.

9 (Copy of RCA computer print-out marked PWA-1
10 for identification.)

11 (Discussion off the record.)

12 A Now, the mechanical procedure that I used was the
13 following: This was all done by hand with the aid of this
14 at one point in time.

15 MR. ENGLISH: "This" being a hand computer.

16 A (Continuing) A hand calculator. The reference to
17 computers has been overdone, and that was a tab generated
18 by a computer, but this calculation was done by hand.

19 I, essentially, on file cards which I neglected
20 to bring with me, wrote down summaries of the data for each
21 cell. In other words, one card for each cell on the map.
22 For example, there could be more than one town that would
23 be present in one cell. So, I collected on one card the
24 data for one cell.

25 I then calculated the distance from the employment

1 site to the cell, and I wrote that on the same card.

2 Then, I ordered these manually so that one to the
3 northwest which was the same distance away as one which was
4 to the northeast would be in the same place in the file. I
5 ordered them by distance.

6 I also had on those cards the information regard-
7 ing the male and female.

8 So, I was able, by putting them on cards and then
9 ordering them, to make up summaries which I have listed on
10 these pieces of paper here. Basically, on these pieces of
11 paper here which I will show you, I have information regard-
12 ing the distance away. I have information regarding
13 number of male, the number of female, and the total. At
14 one point, I also divided the region into a western half
15 and an eastern half. So, what you see here is information
16 derived from the cards, in which I have in the left column
17 an "R" standing for "Radius" or distance away from the site
18 as the crow flies, and a triplet of columns under the word
19 "West", under the subdivision "Male, Female, and Total",
20 another triplet of columns under the heading "East, Male,
21 Female, and Total", and then some summations further to the
22 right of that.

23 MR. ENGLISH: I don't want to tell you, Mr.
24 Hill, how to conduct this, but would it be helpful
25 on the record to have that set of papers the

1 witness just referred to, and handed to you,
2 marked for identification, and perhaps the map,
3 also.

4 MR. HILL: Surely. We will mark the map
5 PWA-2, and the list of numbers, PWA-3.

6 MR. ENGLISH: The "list of numbers" being
7 the tabulations that the witness referred to in
8 his last answer.

9 MR. HILL: Right.

10 THE WITNESS: For the record, those listed
11 numbers carry the date 7/14/75, and there are
12 Pages 1 through 5, with three other pages
13 attached to them. So, there is a total of eight
14 pages there.

15 (Map marked PWA-2 for identification.

16 Eight-page listing of numbers marked PWA-3
17 for identification.)

18 Q Mr. Allen, you say the distances were arranged
19 as the crow flies, is that correct?

20 A Yes.

21 Q What reasonable relationship does the distance
22 as the crow flies bear to distances which people generally
23 have to commute to RCA? Do RCA employees all have heli-
24 copters?

25 A No, sir, they do not.

1 Q Are you aware that the road system distances,
2 and distances as the crow flies, particularly in rural
3 areas, bear little correlation?

4 A Could you repeat that question, please.

5 Q Are you aware of the fact that distances as the
6 crow flies and distances which human beings have to commute
7 using road systems, particularly road systems in rural
8 areas, bear little correlation one with the other?

9 MR. ENGLISH: I object to that as a leading
10 question, and I object to the form of the question.
11 If you want to ask him why he used as the crow
12 flies, that might be helpful to you.

13 MR. HILL: Mr. English, I don't understand
14 your objection at all.

15 MR. ENGLISH: I object to your testifying,
16 Mr. Hill, and I object to the leading question.

17 MR. HILL: We are not in a trial, Mr. English.

18 MR. ENGLISH: I know that, but I am not going
19 to have this witness put on the record his con-
20 forming or not conforming to your testimony. It
21 is an improper way of interrogating a witness,
22 and I'm going to object to your testifying, Mr.
23 Hill.

24 MR. HILL: Are you directing the witness not
25 to answer?

1 MR. ENGLISH: I will direct the witness not
2 to answer the last question.

3 Q Mr. Allen, what relevance does distance as the
4 crow flies bear to anything that this study could be
5 reasonably concerned with?

6 A This study, first of all, is a statistical study.
7 It is not a study of the commuting pattern of one or two
8 individuals. It summarizes some 1900 plus employees.
9 Therefore, it is based on the statistics of large numbers.

10 When one makes this kind of a study, one presumes
11 that rare occurrences or unusual occurrences will have
12 little impact on the total results. From my knowledge of
13 this region, I would suspect that there is a very strong
14 relationship between the amount of distance traveled by
15 roads and the distance to the destination as the crow flies.
16 The distance traveled by roads will certainly be greater
17 than the distance as the crow flies, but I submit that it
18 is reasonable that if you double the distance as the crow
19 flies, you will certainly increase the distance by road as
20 well.

21 Q Are you stating that the distance as the crow
22 flies and the distance by road for Bridgewater is largely
23 synonymous, or for Basking Ridge is largely synonymous?

24 A The study was based on employment patterns of
25 those people who work in Bridgewater.

1 Let me at this point interject another piece of
2 information which may be pertinent to this data, and which
3 I freely admit. RCA had a small number of people, and I
4 can't define the word "small" in this case, because, again,
5 I did not delve into the personnel files, who worked at a
6 satellite location in Franklin Township. Most of these
7 people had originally been employed at the Bridgewater plant,
8 but because of an overflow situation, we took up quarters
9 temporarily in Franklin Township. These people then commuted
10 to that location. It is my understanding that a few people
11 were hired at that location, and we have since closed it
12 down and the people are back again.

13 So, when I said that the people worked in Bridge-
14 water, that was not entirely correct, but certainly, the
15 major portion of them worked in Bridgewater. But, the study
16 was based on that. It was not based on any known commuting
17 pattern of people who might work in Basking Ridge.

18 Q So that you have mixed in here with your data
19 people who were employed in Franklin Township and people
20 who were employed in Bridgewater, is that correct?

21 A That is correct.

22 Q What is the approximate distance as the crow flies,
23 if you will, between the RCA plant in Bridgewater and the
24 satellite facility in Franklin Township?

25 A I don't know. I never made any estimate.

1 Q Why don't you look at the map and give me an
2 estimate. The map should show Franklin Township and it
3 should show Bridgewater.

4 MR. ENGLISH: I object to asking the witness
5 to do that. He said he has never measured it.

6 Can you do that, Mr. Allen?

7 A Well, Franklin is one of the bigger ones. It runs
8 almost to New Brunswick. Our plant was not that far away.
9 Our building was in an industrial park off one of the inter-
10 changes with 287. That interchange does not seem to be
11 shown on this map.

12 It may have been in the neighborhood of six to
13 eight miles, the farthest distance it could have been away
14 as the crow flies, but that is a rough estimate based on
15 eyeballing.

16 Q Have you traveled between the two?

17 A Yes.

18 Q How long does it take you?

19 A Oh, down 287 --- I have only gone a couple of
20 times, and I don't remember. If I try to estimate it based
21 on mileage, this would be circular. So, I don't really
22 remember. It wasn't a big deal, but I have only done it
23 two or three times.

24 Q Can you tell me something about the socio-economic
25 mix of the people who work for RCA at the Bridgewater plant

1 from whom this data was collected?

2 A I can tell you about the professions which these
3 people occupy. I cannot tell you anything about their
4 average income, or their racial, or social, or economic
5 background. I can tell you what they do.

6 Q What do they do?

7 A The Bridgewater location, again, is the head-
8 quarters of the Solid State Division. The Solid State
9 Division has manufacturing locations, manufacturing plants,
10 in Mountain Top, Pennsylvania, Finley, Ohio, Liege, Belgium,
11 Brazil, Malaysia, and three in Taiwan.

12 Now, as a result of this, the headquarters loca-
13 tion is topheavy with the division management, financial
14 people. It has most of the research and development, which
15 means a lot of engineers, and some technicians, that is,
16 non-degree technical people. It has marketing people,
17 planners like myself, personnel, accounting, which perform
18 a divisional function. It also has some pilot plants, or
19 what we call model shops, which are akin to factory opera-
20 tions, but they are a low-key type operation. There are
21 girls and some men who are members of an organized union
22 and are paid a union wage. Most of the rest of the employees
23 in that location are salaried persons.

24 Q Can you give me a general idea of how many
25 employees there are working out of the Bridgewater area?

1 A The study that I used, after culling those people
2 who were obviously not physically located in Bridgewater,
3 I ended up with 1935 people, I believe.

4 Q Can you tell me what approximate percent of those
5 people were either management or scientific, with a degree?

6 A No, I cannot. The only further breakdown is the
7 one that was stated in the report as to male and female,
8 and just to keep the record consistent, let me refer to that
9 report and make sure that we give you the right number,
10 because I have no independent data on this matter.

11 In this report, I cite 770 female employees and
12 1165 male employees, which should total to the 1935 employ-
13 ees that I mentioned earlier. Now, I have no further break-
14 down as to degrees, salary, whatever.

15 Q Out of curiosity, we have counted the number of
16 negroes, since the race is mentioned there, and we find
17 that there are 26 negro males and 69 negro females. Do
18 you want to look that over and see if you agree with it?

19 A I will not comment. I made no effort to determine
20 what those particular column headings were, and they did
21 not, in my view, have any bearing on my particular study.
22 We do draw from Manville, from Somerville, from Plainfield,
23 and these areas have some minorities represented, and we
24 have some in our plant, but I made no attempt to determine
25 whether there was a significant proportion, either significant.

1 high or significantly low, in this study.

2 Q Wouldn't you agree, Mr. Allen, that your findings
3 as to where RCA employees working out of the Bridgewater
4 plant live might be affected by the income levels and the
5 exclusionary zoning practices of the municipalities, the
6 income levels of the employees and the exclusionary zoning
7 practices of the municipalities surrounding Bridgewater?

8 MR. ENGLISH: I object to the question inso-
9 far as it refers to exclusionary zoning practices
10 of the municipalities surrounding Bridgewater. If
11 you eliminate that from the question, I will
12 withdraw my objection.

13 MR. HILL: Mr. English, that is what this
14 case is all about. Why can't we talk about
15 exclusionary zoning practices?

16 MR. ENGLISH: Because that is a conclusion
17 of yours, Mr. Hill, which has not been established
18 in the record, and, as I said before, I think in
19 the particular proceeding we are engaged in today,
20 you are not in the role of a witness.

21 Q Mr. Allen, do you know what an exclusionary
22 zoning practice is?

23 A I know that it is a word commonly used. I am not
24 always sure what different people have in mind when they
25 use it. So, if you were to use it, I would ask you to
define it.

1 Q Mr. Allen, would you agree that where people
2 working out of the RCA Bridgewater facility live may be a
3 factor of their incomes?

4 A I indicated in the study that where a person lives
5 is a function of many things. May I quote from that study?

6 Q I would prefer you to try and answer the question.
7 Is it a function in part of their income?

8 A Yes, sir.

9 Q And you admit that you have no idea what the
10 income level of your sample of 1935 persons was.

11 A No. I think it is incorrect to say that I have
12 no idea, because I work with them and I am one of the persons
13 that is paid from that group, and I know what I get paid.
14 So, I think it is an exaggeration to say I have no idea.

15 Q You have refused to testify as to what their
16 income levels are.

17 A I do not have quantitative data as to their
18 income levels. However, I would suspect that the people
19 that work in that plant are somewhat typical of others who
20 would work in similar plants in the area, not particularly
21 higher, not particularly lower, but I cannot give you
22 quantitative data.

23 Q So, you don't know what these 1935 people make
24 but you admit that you need to know in order to get some
25 meaning of where they choose to live, is that correct?

1 A No, I do not admit that.

2 Q Do you admit that it is a factor in their choice
3 of housing?

4 A The financial resources of a person is a factor,
5 I believe, in where they live, not necessarily a dominant
6 factor, but a factor.

7 Q Is the housing costs of municipalities adjacent
8 to where they work a factor in where they choose to live,
9 in your opinion?

10 A Yes.

11 Q Can you tell me when the RCA facility was
12 established at Bridgewater?

13 A In the 1956-7 period.

14 Q Did many of the employees move to that facility
15 at that time and purchase housing at that time?

16 A I could not say.

17 Q Will you admit that if many of them moved to
18 Bridgewater, moved into the Bridgewater area at that time,
19 and purchased housing at that time, then the housing costs
20 in the area, in the 1956, '57, '58 period, would have been
21 a factor as to where they chose ultimately to reside?

22 A I think before answering that I should say that
23 the move to Bridgewater was an expansion move. I was employed
24 in Harrison, New Jersey at that time, in the Receiving Tube
25 Division, and that was the home office of the Receiving Tube

1 Division. The Semiconductor Division was just starting out.
2 It needed space. It moved to Bridgewater to find space,
3 and to take advantage of what was then thought to be a
4 good job market, good employee market. I was not a partici-
5 pant in any of those decisions, nor the studies that pre-
6 ceded them. I cannot say whether these were correct
7 decisions or not, but this was the motivation, I believe,
8 to take advantage of people who were there. There were not
9 many who transferred from the Harrison location to Bridge-
10 water. There was no closing down of any operation in
11 Harrison to move to Bridgewater.

12 So, the transfer of people and the problem of
13 finding new housing for those people was not a major factor
14 at that time. So, I don't know how I can answer your
15 question, really.

16 Q When did you purchase housing in Bernards Township?

17 A When did I personally?

18 Q Yes.

19 A 1968.

20 Q Where did you live before that?

21 A North Plainfield.

22 Q Where do you live, Mr. Allen, in Bernards Township?

23 A Well, the address is Holmes Brook Road. Holmes
24 Brook Road is a small road off of Lake Road.

25 Q What is your zoning?

1 A Where I am, two acres.

2 Q You went through these calculations, and you filed
3 your index cards, and what did you do with this series of
4 numbers which appears on PWA-3?

5 A I plotted them, basically. Now, I wanted to
6 determine a function which described the density of resi-
7 dential sites around an employment site. I think it is a
8 common-sense view that there is some relationship between
9 where a person works and where he lives. What I was looking
10 for was a mathematical model which would give us the ability
11 to quantitatively determine where these people would live
12 in support of what I believe is a common-sense view.

13 So, I played with the numbers to try to determine
14 what mathematical function, what simple mathematical function,
15 would most nearly approximate the pattern that the data
16 provided. The mathematical function that I derived, which
17 I presented in the paper, includes an exponential term,
18 which is a mathematical technique for showing a diminishing
19 relationship, and I played around -- when I use the word
20 "play," by the way, I mean I tried to use some trial and
21 error techniques to find the particular formula, and the
22 constants in this formula which would most nearly fit the
23 data. The formula that I proposed in the September 1 report
24 that I referred to earlier is the formula which seemed to
25 me to most nearly fit the data.

1 Q What is that formula?

2 A It is hard to describe it verbally. It is listed
3 on Page One of the mentioned report. I will state it
4 verbally but it is better to look at it on paper.

5 The formula is equation one. It says f equals
6 one over b. B is raised to the quantity r, which in turn
7 is raised to the quantity 1.4. I believe, however, it
8 would be necessary to look at it on paper before one could
9 understand it.

10 Q Could I look at it on paper?

11 A Yes.

12 Q Is that your report which you have been referring
13 to?

14 A Yes.

15 MR. HILL: Could we mark this as PWA-4.

16 (Report entitled "Mt. Laurel, a Truly
17 Regional Response," written by William Allen,
18 dated September 1, 1975, marked PWA-4 for
19 identification.)

20 Q Looking at PWA-4, would you show me the formula
21 to which you referred.

22 A Yes, it is equation one on Page One.

23 Q What can you do with that formula, Mr. Allen?
24 How does that help you?

25 A The formula describes the fraction of employees

1 which can be expected to reside within a distance R of
2 their place of employment, and I have defined in the report
3 a term called "R-50," which is the radius of the circle in
4 which one could expect to find the residences of 50 percent
5 of the employees at a particular employment site. This is
6 also called the median. I called it there the median
7 commute, the 50 percentile commute.

8 Q What is the median commute?

9 A Again, all distances, I emphasize, are as the
10 crow flies here. They are not by road distances. The
11 median commute is the distance that one would expect half
12 -- excuse me, it is the radius of the circle which
13 inscribed around the employment site would include the
14 residences of 50 percent of the employees.

15 Q What is the municipality that borders Bernards
16 Township on the northeast?

17 A I guess Harding.

18 Q Your formula would cast a large amount ---

19 A Excuse me, did you say Bernards or Bridgewater?

20 Q Bernards.

21 A Okay, fine. Northeast of Bernards is Harding.

22 Q Your formula, or your shotgun approach, would
23 cast a large part of the burden of the A.T.&T. facility
24 in Basking Ridge on Harding, wouldn't it?

25 MR. ENGLISH: I object to the characterization

1 of "shotgun approach," because it hasn't been
2 used by the witness.

3 Q Did you use the term "shotgun pattern" in
4 describing your formula at a public meeting of the Planning
5 Board and Township Committee?

6 A I don't believe so. It is possible our Planner
7 did, but I don't believe so. I may have. It is certainly
8 not a precise term.

9 Q Didn't you show a large map with a lot of dots on
10 it, and characterize it as looking like a shotgun pattern,
11 with many dots in toward the center, and the dots decreasing
12 as you went out toward the periphery of the pattern?

13 A I may have. I don't recall it. I may have.
14 The term "shotgun pattern" in statistical work, however,
15 does have a meaning, and I submit that that meaning was not
16 intended if I used the word in this case. "Shotgun" applied
17 to statistics is a randomness, no pattern. Now, I certainly
18 did not mean to imply that. If I used the term, then I
19 used it incorrectly. This is not a random pattern at all.
20 It is an orderly pattern.

21 Q I am talking about the pattern of a fine shotgun
22 with a narrow bore that casts a good pattern for trapshooting.
23 Do you do any trapshooting, Mr. Allen?

24 A No.

25 Q Are you aware that people who do are concerned

1 about the kind of pattern their shotgun makes because they
2 want, if they aim truly, to have a good chance of hitting
3 the clay pigeon?

4 A Yes.

5 Q That is the kind of shotgun pattern you were
6 referring to at the meeting, and it struck me when it was
7 applied to the A.T.&T. facility, which practically borders
8 Harding, that Harding was getting a good share of the blast.
9 Would you agree?

10 MR. ENGLISH: Mr. Hill, I must regretfully
11 object to your testifying in this proceeding, and
12 I will direct the witness not to answer the
13 question.

14 Q Would you agree that this approach casts a burden
15 on Harding Township as a result of the A.T.&T. facility?

16 A The proposal that I have made here assigns a share
17 for Bernards employment to Bernards Township. It also
18 assigns a share for Bernards employment to other townships,
19 including Harding.

20 Q Does Harding and other townships get any share
21 of the tax ratable from Bernards employment?

22 A To the degree to which the A.T.&T. facility con-
23 tributes to Somerset County taxes, other municipalities
24 in Somerset County benefit.

25 Q Harding, unfortunately, is not in Somerset.

1 A Harding is not in Somerset County, so they don't
2 derive benefits by that route. There may be Federal taxes
3 or State taxes, however, which accrue through A.T.&T., and
4 the benefits of which are transferred to Harding. I cannot
5 say.

6 Q Wouldn't you agree that your approach tends to
7 lessen the burden on the municipality receiving the tax
8 ratable to the degree that they succeed in placing the
9 large employment generators on the periphery of their
10 municipality?

11 A I think I understand but would you repeat that,
12 please.

13 Q Wouldn't you agree that your fair share approach
14 tends to lessen Bernards' obligation to provide housing
15 for employment generated by large industries, or by employ-
16 ment generators, to the degree that the municipality is
17 successful in placing the employment generator on the
18 periphery of the municipality?

19 A No.

20 Q Why is that?

21 A In the report, I recommended that the distances
22 be calculated between the centers of a municipality and
23 other municipalities. I recommended that we request the
24 Tri-State Regional Planning Commission to determine the
25 centers of gravity, if you will, or the geographic centers

1 of each municipality, and that the employment within
2 Bernards Township be assumed to be, for purposes of fair
3 share computation, located at that center.

4 Q Were those recommendations followed in the
5 calculations which resulted in Ordinance No. 385?

6 A Not quite. I will give you the reason why.
7 The Tri-State Regional Planning Commission did not, at
8 the time I wrote this first report, have data on the
9 coordinates of the geographic centers of municipalities.
10 They did, however, have data on what they call a population
11 centroid for each municipality. It is my understanding
12 that this data was derived from census districts, and data
13 from the 1970 census, and submitted, and the manipulation
14 of which I did not go into at all, but the coordinates that
15 they provided by municipality were alleged to be the centers
16 of gravity of a population, if you will, of the municipali-
17 ties. Having nothing better, I used those.

18 Q That was unfortunate for poor Harding, was it not,
19 Basking Ridge being close to the center of the population
20 of Bernards Township?

21 A It turns out that the population centroid coordi-
22 nates for Bernards Township were somewhat to the west of
23 Lyons, which is considerably south of the Village of Basking
24 Ridge.

25 Q You have explained to us how you arrived at your

1 formula. What employment figure did you plug into your
2 formula in order to come up with your calculations as to
3 **Bernards'** fair share of the regional housing need for a low
4 and moderate income housing?

5 A Wait a minute. We have been talking until now
6 about the September 1 report. Now, what was your question?

7 Q Well, in Ordinance No. 385, there were some
8 numbers, were there not, which represented the Legislature's
9 judgment as to what its fair share of the regional housing
10 need for low and moderate income housing was?

11 A Yes.

12 Q Do you recall what those numbers were?

13 A The number of housing units for low and moderate
14 income persons, or households, was 354 dwelling units.

15 Q Was that number derived through an application
16 of the formula which you have just described?

17 A Partially.

18 Q How else was it derived?

19 A Well, there was other data which impinged on the
20 calculation.

21 Q Can you explain to me the mechanics that were gone
22 through in order to come up with that number?

23 A The basic statistic that was used to determine the
24 future share of housing need was an estimate of future
25 employment or growth employment, and the employment growth

1 was derived from an analysis of data in a book published
2 by the State, which I will read the title of, "1974 Covered
3 Employment Trends in New Jersey," and this bears the publi-
4 cation date of October, 1975, and it is published by the
5 Department of Labor and Industry of the State of New Jersey.
6 It gives data on covered employment by municipality in each
7 county in the State.

8 Q What did you do with that data in order to come
9 out with Bernards' anticipated employment?

10 A This report also gives data going back to 1965,
11 I believe, and -- yes, 1965 to 1974. That was the last
12 such report that was available to me at the time I was
13 working on this. The formula which we have been discussing
14 requires a distance. It requires a piece of data to plug
15 in for the parameter labeled "R". So, one thing that had
16 to be done was to determine the value of "R" between
17 Bernards and every other municipality that we were dealing
18 with.

19 We, or I, elected to use six counties, which were
20 the counties of Hudson, Somerset, Morris, Essex, Middlesex,
21 Union. Given more time, I believe we should also include
22 Warren, Sussex and Mercer. But, I did most of the work
23 with this hand calculator, and it was quite tedious.

24 But, using those population centroids of the
25 Tri-State Regional Commission, I developed an "R" value for

1 each municipality in the six counties that I mentioned,
2 and that is a total of 154 municipalities.

3 I then plugged that "R" value into the formula
4 and came up with a density value. The density value is an
5 estimate of the number of the employees per square mile in
6 Bernards that could be expected to reside in that square
7 mile and work in their particular municipality.

8 So, I had essentially the probability that a
9 man working in Linden would live in any particular square
10 mile in Bernards, or the probability that a man who worked
11 in Bridgewater would live in a particular square mile in
12 Bernards, or live in any square mile rather than a parti-
13 cular square mile. I used this report on employment to get
14 that probability with a specific number of employees. In
15 other words, I multiplied the probability of given employees
16 living here by the total number of jobs reported for the
17 municipality.

18 Q What did you do with these numbers that were
19 generated in order to arrive at Bernards' fair share?

20 A Now, the employment has been used in this case
21 to develop an estimate of future need. Ordinance 385 need
22 of 354 was a preliminary estimate based on preliminary
23 computations, and in the absence of some data that subse-
24 quently came to light, and in the absence of time to refine
25 the data that was available, I am currently working on a

1 new analysis, a refined analysis, if you will, and working
2 on a draft of a report which will describe that analysis,
3 but I have not yet finished. The report that I am working
4 on and the analysis which it describes suggests that the
5 preliminary figure was a good figure. At this point, I am
6 not sure whether I should describe to you what was done
7 originally, which was known to be an approximation, or
8 whether I should describe to you what I have done since.

9 Q Well, I am curious as to the number 354 and how
10 it was derived, and you say that that number consists
11 entirely of future need?

12 A 354 consisted entirely of an estimate of future
13 need, and for our purposes, we defined "future" at that
14 time as being six year's worth.

15 Q In the Mt. Laurel case, there is language which
16 lawyers have interpreted to suggest that the municipalities
17 have some present need. Did you consider Bernards' present
18 need for low and moderate income housing?

19 A The report which I am working on now, and the
20 computations which are the basis of that report, do include
21 present need.

22 Q And the number is still 354?

23 A It is not exactly that.

24 Q It is lower?

25 A Somewhat.

1 Q Are you aware that your Planner, Charles Agle,
2 has testified on depositions that the multiplier effect of
3 3500 new employees by A.T.&T. is not just 3500 new employ-
4 ees but would have a multiplier effect of 1.5 times that
5 number plus the 3500 new employees, and that that facility
6 alone should generate a need for housing for some 27,000
7 people?

8 MR. ENGLISH: Mr. Hill, may I interpose an
9 objection as to how you characterize or sum up
10 Mr. Agle's testimony. I am going by memory, but
11 it is my recollection that he did not state, as
12 I understand your question to assume, that
13 3500 employees of A.T.&T. in Basking Ridge would
14 be brand new as distinguished from a certain
15 number of people already living either in Bernards
16 Township or within commuting range, and so, I
17 object to that characterization in your question.

18 MR. HILL: Mr. English, I have got the
19 deposition in front of me. I browsed through it.
20 You do recall that he did indicate that the
21 requirement of the facility was some 54,000 people
22 living in households, and it was 3.1 per household,
23 so that the housing was less than 54,000.

24 MR. ENGLISH: I don't remember the figures.
25 I thought it was something like 27,000, but I

11 Q Well, Mr. Allen, does your computation take into
12 account the known fact that 3500 employees have ~~move into~~
13 are or/about to move into, the A.T.&T. facility in Basking Ridge?

Ordinance 385 was based on 354 units. This particular ordinance, or this particular result of 354, rested on a computation which made no specific allowance for Bernards Township employment as contrasted with employment growth in Somerset County as a whole. Now, the subsequent computation will make, and does make, specific allowance for the expected employment growth resulting from

1 A.T.&T.

2 Q Well, the covered employment figures don't reflect
3 A.T.&T., do they?

4 A That is correct.

5 Q So, if you only used them, A.T.&T. might as well
6 not exist, isn't that correct?

7 A If one only uses these, it is as if A.T.&T. did
8 not exist in Bernards Township specifically. However, you
9 would suspect, I believe, that projections of Somerset
10 County employment growth, to the extent that A.T.&T. is a
11 manifestation of that continued growth, and the factors
12 which contribute to the County growth, then A.T.&T. is
13 included in the growth projections of the County. Only if
14 you think of A.T.&T. as an aberration on the County growth
15 can you assume that that is not included.

16 Q Does that covered employment break down communica-
17 tion industry employees?

18 A I believe it breaks down by job classifications,
19 but I made no use of that classification.

20 (Brief recess taken.)

21 Q Our statistician, Mr. Reading, has asked me to
22 point out to you that if you are using Bernards Township
23 covered employment numbers, you get the number 1291. Did
24 you use that number?

25 A I am sure, yes, it was embodied in the overall

1 computation.

2 Q He states that if you look at the fair share
3 analysis then done by him and Carl Lindbloom, you will find
4 that Appendix Table 4, that that number does not include
5 1389 Federal government employees, is that right?

6 I'm sorry, it does not include 1453 V.A. hospital
7 employees, and does not include whatever employees you have
8 here in the municipal government, but the 1453 V.A. hospital
9 employees more than doubled that number. So, your calcula-
10 tions are off by an excess of 100 percent because of that
11 error alone. Did you consider the V.A. hospital employees?

12 A First of all, I do not concede that this is in
13 any way an error. You described in your statement that this
14 was somehow an error. We elected, and I slip into the word
15 "we", but I really should say "I". I elected to use covered
16 employment because it is a statistic published by the State,
17 on a regular basis, by municipality. It has certain
18 omissions such as the one you described, and those omissions
19 may influence the employment in one municipality more than
20 another. Those omissions may not affect all parts of the
21 State equally. I am not in a position to say. However, it
22 was the only body of data which I have so far encountered
23 which is published annually by the State, and which does
24 include each municipality.

25 Q Well, what I am saying is that the single largest

1 employer in Bernards Township, an employer of more persons
2 than you have in all other total covered employment within
3 the Township, is not included in that number, and that
4 number is less than half of what it should be, and we are
5 talking about Bernards Township's fair share, and that is
6 an error of a large magnitude, is it not?

7 MR. ENGLISH: I object to that question, Mr.
8 Hill. It seems to me it is argumentative. It
9 assumes that there is to be, or at least I think
10 it does, an enlargement of the employment of the
11 V.A. It assumes that those employees need
12 housing. I submit that an investigation would
13 probably show that the employment is stable at the
14 V.A. hospital, and that the employees are housed,
15 and that the existence of that does not in any way,
16 shape or form put a brand new increased burden on
17 the housing stock within whatever community area
18 is related to the V.A. hospital, and I submit that
19 your question is equally argumentative, and is,
20 therefore, objectionable on that basis.

21 Q Well, you will admit, will you not, that when you
22 secured the numbers in order to arrive at the figure you
23 arrived at, that you did not use all the available data?

24 MR. ENGLISH: I object to the use of the word
25 "secured". It has not been used by the witness.

1 I don't see how he could answer that. I don't
2 understand, but maybe he does.

3 A It is not a statistical term that I am familiar
4 with.

5 Q This is a rigged methodology, is it not, in order
6 to arrive at a very low fair share for your inhabitants?

7 A Not at all, not at all.

8 Q You seriously and sincerely believe that with
9 two huge facilities, one in Bedminster to your north and
10 one --

11 A South.

12 Q And one in Basking Ridge which will employ
13 7000 people, who will have great housing needs, and with
14 your own planner telling you that you can expect an
15 additional 9500 secondary employment within Somerset Hills
16 as a direct result of these two A.T.&T. facilities that
17 354 units of low and moderate income housing represents a
18 figure that is reasonable?

19 A If I may just take the last part of your statement
20 and say do I believe 354 is reasonable, yes, I do believe
21 it is reasonable.

22 Q How did you get to that number?

23 A Well, we have been discussing that a little bit
24 up until now. I think we got to the point where we discussed
25 how the covered employment data was matched against the

1 formula to determine the fair share of Bernards Township
2 with regard to that particular employment, and we didn't
3 get quite this far, but what I did was, I determined a
4 share from each of the 154 municipalities, and then added
5 up those shares, and the total Bernards' obligation then
6 is the sum of those 154 contributions.

7 Q What was the total low and moderate income housing
8 for your entire area?

9 A I have no idea because that computation was made
10 at the end rather than in the beginning.

11 Q Do you have that computation here?

12 That is a yes or no question. Do you have that
13 computation here?

14 A I am not sure which computation now you are
15 referring to.

16 Q Showing the total need for your region of low and
17 moderate income housing.

18 A I said we did not determine the total regional
19 requirement for low and moderate income housing because the
20 computation of housing need was made first, and then a
21 fraction of that housing need was assigned to the lower and
22 moderate income category. In other words, the thing was
23 already reduced to a Bernards' obligation first before the
24 ratio for low and moderate income housing was assigned to it.

25 Q How did you arrive at the number 354? We have

1 discussed how you developed your formula, and how you
2 plugged numbers into the formula. I still don't understand
3 how you get a fair share for a specific municipality.

4 A Now, the actual 354 was a collaborative effort.
5 I was giving some information to Fred Conley, who was then
6 doing some computations himself, and he was working with a
7 subcommittee, of which I was not a member, on a Mt. Laurel
8 ordinance. Now, Mr. Conley had made a summary sheet, which
9 I do not have with me, but which is a matter of public
10 record, I believe, which describes the computation. Now,
11 from memory, if you will permit, I will try to describe what
12 is on that sheet.

13 I used the data on covered employment for 1970
14 and 1974.

15 Q Do you have those calculations here?

16 A I'm not sure, but let me see.

17 First of all, the data for 1970 and 1974 is here,
18 the basic data. Let me describe it first, if I can, and
19 then we will see if we can find the scratch sheets, because
20 that's all they were.

21 I used a simple projection from 1970 to 1974, on
22 through 1982, in my more recent computation.

23 Q How did you make those projections?

24 A By simply determining the average annual growth
25 from 1970 to 1974, and assuming this growth rate continuing,

1 a compound interest-type thing.

2 Q Do you have those calculations?

3 A Those are the ones I am going to look for, but
4 let me just describe them first.

5 Q Was this a straight-line projection?

6 A I assumed that on a County basis, not individual
7 municipality basis, that the growth trend exhibited from
8 1970 to 1974 would continue through the period of interest.
9 Now, the growth of covered employment is being used here to
10 project a growth in population.

11 Q What was the employment with that figure of 1290 ---

12 A I am not sure what the 1290 is.

13 Q 1290 is the covered employment for 1974 of
14 Bernards Township.

15 MR. ENGLISH: 1291, if I may correct you, sir.

16 A In making growth projections, except for some
17 specific adjustment from Bernards Township which I have made
18 in my second computation, I made no further reference to
19 individual municipalities. I looked at them on a County
20 basis.

21 Q You looked at the County growth between 1970 and
22 1974, and projected it at the same rate for a period of six
23 years?

24 A Almost right, with this exception: We are using
25 here the employment as the means of getting a handle on

1 population. Now, we are relating census data on population
2 to this data on covered employment, and developing a ratio
3 between total population and total covered employment. All
4 right?

5 Now, in examining the data on census population,
6 the census population and on covered employment, it was
7 obvious that the ratio of covered employment and the
8 population increased during the period of four years, 1970
9 to 1974, and this comes about by a variety of ways. The
10 Legislature, for example, can cover more jobs. They can
11 include more jobs on unemployment compensation. You can
12 have greater participation in the labor force.

13 Q Do you anticipate this, that the Legislature will
14 continue to cover more jobs in the future?

15 A Not specifically, but what I have done is to
16 adjust the 1970 employment as recorded here in the State
17 report upwards to account for the statistical fact of the
18 change in the ratio during the four-year period.

19 Q So, let's look at the numbers. What was the
20 covered employment in Somerset County in 1974?

21 A Well, with that preliminary, let me now look for
22 the worksheets.

23 (Discussion off the record.)

24 MR. ENGLISH: Could we have the question
25 again, Mr. Hill.

1 Q The question is, did you need some more data to
2 explain to us how you arrived at Bernards fair share of
3 the regional housing need through the employment of that
4 formula and the use of the County covered employment data?

5 A I guess the answer is yes, we have more data.
6 I, in making the first computation, and I want to designate
7 the first computation as the one which led up to the
8 specific ordinance and contrast that with what I will call
9 the second computation, which is the one I have been doing
10 since that time, and we will make a report on that.

11 In making the first computation, I projected the
12 covered employment from 1970 to 1974 into the future. In
13 other words, I developed an annual rate of growth from 1970
14 to 1974, and projected for each County the same rate of
15 growth through 1982. It was a strictly mechanical projec-
16 tion. It was not one based on any economic insight or
17 data other than what is provided here, and what is provided
18 in the 1970 census.

19 Q You realize, Mr. Allen, that 1970 to 1974 was a
20 period in our economic history when the nation and the
21 region was beset by what has been characterized as either
22 a recession or a small depression, and that the economic
23 growth was substantially below that which it had been for
24 the period between 1960 and 1970, for instance, do you not?

25 A I believe that the period of 1970 to 1974 reflects

1 a lower rate of growth than for the decade preceding. I
2 have no knowledge, however, as to its temporariness. In
3 fact, I believe, and I am not an economist, but I believe
4 that the rate of growth in the first four years of the
5 decade is probably more typical of what will occur in the
6 future than the rate of growth in the prior decades.

7 Q Have you heard economists refer to that period
8 as a recession or depression?

9 A The term "recession" has certainly been used
10 nationwide to apply to some of the years of that period,
11 yes.

12 Q Does the term "recession" mean to you a permanent
13 state of things or a temporary fluctuation in the market?

14 A The term "recession" means a lowering of economic
15 activity around a longer-term norm. However, there is also
16 a school of thought which suggests that the Northeast region,
17 of which we are a part, is exhibiting its own trend with
18 regard to business activity.

19 Q You gave yourself every benefit of the doubt,
20 did you not, in devising a fair share methodology which
21 would assure that Bernards fair share was very low?

22 A I believe that the computations have elements of
23 bias in favor of a higher share and also elements of bias
24 in favor of a lower share. When you say we gave ourselves
25 every benefit of the doubt, I think one could argue that we

1 are high as opposed to low.

2 Q Were there methods of rigging the computation
3 further in order to make an even lower fair share that
4 either the Planning Board or Township Committee, or you
5 individually, rejected?

6 A I'm not sure that the word "rigging" is a
7 scientific term, so I really can't answer that question
8 with that term. What do you mean by that?

9 Q By "rigging", I mean devising, I mean playing
10 around with the numbers and playing around with the assump-
11 tions in order to come up with a methodology that assured
12 the lowest possible fair share for the municipality
13 represent. I think you know what I mean, Mr. Allen.

14 A I believe I could start right now and probably
15 come up with even a lower number.

16 Q Fine, then there were some techniques that you
17 considered and rejected as being too blatant and transparent
18 for use by Bernards Township, is that correct?

19 MR. ENGLISH: I object to that question as
20 contrary to what the witness said. It is leading.
21 It is argumentative. I direct the witness not to
22 answer it.

23 Q Were there any techniques that occurred to you,
24 and were discussed, which were rejected as possibly not
25 passing muster in court?

1 MR. ENGLISH: I object to that question, and
2 for this reason: The validity of the ordinance
3 depends upon its reasonableness. It does not
4 depend upon the validity of a process by which it
5 was arrived at, and you are more than welcome to
6 attack the ordinance as it reads, and as to its
7 operative effect, but this inquiry is improper
8 under the law, and I object to it, and I direct
9 the witness not to answer the question.

10 MR. HILL: Mr. English, you are directing the
11 witness not to answer a question directed at other
12 techniques that were thought about and discussed
13 which were not used, is that correct?

14 MR. ENGLISH: I am directing him not to
15 answer your question, which you did not fully
16 repeat in your last statement, Mr. Hill.

17 Q Were there other techniques which were thought
18 about, and discussed, and not used?

19 A I believe we are on record as proposing a
20 diametrically different technique last Fall.

21 Q What was that technique called?

22 A I am not sure of the designation for it, but
23 there was a proposal last Fall, which was incorporated into
24 an ordinance that was not passed, that looked entirely
25 inwardly at the employment in the Township, and the

1 obligation that might arise from that employment. This
2 received considerable discussion last Fall and was subse-
3 quently rejected, and that is a matter of record.

4 Q That was a technique which resulted in a fair
5 share of 567 units.

6 A I have forgotten the number, but it was higher
7 than we are now talking about, yes.

8 Q Were there any other techniques which were
9 discussed and rejected?

10 A I'm trying to think to give you an honest answer.
11 There were refinements, if you will, that were rejected as
12 being too time-consuming for the schedule under which
13 were operating. Some of these refinements I have tried to
14 put back in as a result of the second computation that I
15 have described as occurring since the Mt. Laurel ordinance
16 was passed.

17 Q What were these refinements?

18 A Well, for example, I believe that the Township
19 should make a special accommodation to known employment
20 generators in the Township such as A.T.&T.

21 Q That is not included in your present report?

22 A A specific accommodation to A.T.&T. was not made
23 in the Ordinance 385 quota of 354. That number arose out of
24 a projection of Somerset County growth and our share of that
25 growth. In my second computation, I will make a special

1 allowance for A.T.&T.

2 Q But you still will come up with a lower number
3 than 354 in your second computation.

4 A As with most preliminary computations, when you
5 go back and refine them, you find that certain elements
6 were off one way and other elements were off another way,
7 and happily, we are finding that these tend to compensate,
8 and though it is a more refined computation, it comes out
9 to approximately the same number.

10 Q Does it include a specific allocation for A.T.&T.?

11 A Yes, it does.

12 Q Can you tell me what that allocation is?

13 A Since that particular study has not been described
14 in anything other than a handwritten copy which no one else
15 has read, at this point, I will defer to Counsel as to
16 whether I should disclose the results of that computation.

17 MR. ENGLISH: Mr. Hill, when Mr. Allen com-
18 pletes that study, we will be glad, on our own
19 initiative and voluntariness, to furnish you with
20 a copy of it, but until it is finished, I think
21 it is really unfair and improper to get into
22 questions about it, because as the work proceeds
23 toward completion, there may be some changes in
24 it.

25 MR. HILL: Mr. English, we have experts who

1 have work to do, and we need to know the latest,
2 and I think I am entitled under the rules of
3 discovery to know what the municipality is doing.
4 I am deposing this witness now, and I know of no
5 rule of court or of law that would permit you to
6 decline discovery on the grounds that all compu-
7 tations are not finished.

8 MR. ENGLISH: Mr. Hill, you are awfully
9 sensitive. I have not declined discovery. I
10 was merely suggesting that the results may be
11 more satisfactory if you get the finished product
12 instead of a half-baked preliminary version which
13 will not be the final word, and, moreover, this
14 is, from what I have heard thus far, an activity
15 by Mr. Allen as an individual and has not yet
16 gotten to the stage of formal municipal action.

17 MR. HILL: Well, I am deposing Mr. Allen as
18 an individual. I know you have made the argument
19 that Mr. Allen's personal notes are not available
20 to me, and that will be the subject of a motion.
21 If you prevail on the motion, all members of the
22 governing body will become individual parties in
23 this litigation. We are going to get this material
24 one way or the other, Mr. English, and I think
25 that you are off base in telling us we cannot have

1 it, but we are willing to spend the time to get it.

2 MR. ENGLISH: Mr. Hill, I regard your state-
3 ment on the record as being a threat to the
4 Defendant from the Plaintiff to bend the Plaintiff's
5 way or dire consequences will happen to the
6 Defendant. I want the record to show that, and
7 I have heard similar statements from representa-
8 tives of the Plaintiff on other occasions, and I
9 think it is well for the Court to know the nature
10 of the litigation which the Plaintiff has seen fit
11 to bring. If this is a harassment operation
12 against the Defendant and the individual members
13 of the public body, I think you will find very
14 little cooperation from the Defendant in trying
15 to make discovery available.

16 I am trying to cooperate with you. I made
17 what I thought was a helpful suggestion which
18 would save time on the record, give you a better
19 result, and be helpful to you, and I have not
20 directed the witness not to answer. I was merely
21 making a suggestion which I thought would make
22 the record clearer, save some time and be more
23 satisfactory all around.

24 MR. HILL: I regard your second statement
25 that you won't abide by the rules of discovery

1 if you don't deem us cooperative ---

2 MR. ENGLISH: I did not say that. I will
3 abide by the rules of discovery, but there are
4 certain flexibilities in them, of course, and I
5 think thus far both sides, and I approve of this,
6 have not gone by the letter of the rules but have
7 tried to conduct discovery in a cooperative and
8 productive way. within, of course, the broad limits
9 of what is appropriate discovery under the rules,
10 and what is not, and to prevent the harassment of
11 witnesses, which is specifically provided for in
12 the rules.

13 MR. HILL: Well, Mr. English, we think that
14 Mr. Allen, who has described himself as making a
15 number of solo decisions which have become govern-
16 mental policy of Bernards Township, is a key
17 witness, and we intend to know and find out how
18 he arrived at his computations, and what his view
19 of the state of the art is, and if you refuse to
20 make discovery, it will be the subject of motions,
21 which is going to cost both our clients consider-
22 ably more dollars than the litigation would other-
23 wise cost, and I believe we are entitled to this
24 information, and I am asking for it voluntarily,
25 and that's all I am saying. I don't think that

1 you can take properly the position that the work
2 that Mr. Allen does as a Councilman on behalf of
3 Bernards Township are his personal records and
4 that we are not entitled to them.

5 MR. ENGLISH: I am not taking that position,
6 because without any objection from me you have
7 been inquiring into this for a long time. Now,
8 I don't remember what the last question was. I
9 don't remember whether I made an objection to the
10 question or whether I was trying to offer what I
11 thought was a helpful suggestion that would move
12 matters along more smoothly.

13 MR. HILL: Would you read back the last two
14 or three questions.

15 (The Court Reporter reads the last three
16 questions.)

17 THE WITNESS: I will answer or not as you
18 recommend.

19 MR. ENGLISH: If you can answer it, go ahead.

20 A I have to say, though, that the computational
21 procedure in the computation is such that it is not possible
22 for me to immediately give you the housing obligation which
23 flows directly from A.T.&T. alone, because there are a
24 series of steps, and A.T.&T. and its influence is inserted
25 at one step, and then subsequently there are other steps,

1 and you get a total result.

2 Q Why don't you go through the steps, Mr. Allen,
3 and explain them to us.

4 A All right. Basically, what I'm going to describe
5 is the procedure which I would propose, and I have no
6 assurance that my colleagues would agree with it, but the
7 procedure which I would propose is described in what I have
8 called the second computation.

9 I have taken the covered employment for 1970 and
10 1974 by County. I have taken the New Jersey population
11 census data, and let's get the name of this document. It
12 says, "Population Estimates for New Jersey, July 1, 1975,"
13 Office of Business Economics, Department of Labor and
14 Industry."

15 Q May I see that document.

16 A This is a publication which alleges to represent
17 the population statistics for the State of New Jersey in
18 July of various years running from 1970 through 1975. It
19 disagrees with the Federal census in that the pertinent
20 period is July of the year in question.

21 I have used that population data, aggregate
22 population data, not municipal data but the total State
23 population data, to develop ratios between the covered
24 employment of a particular year and the population for
25 that year. I have taken this data for 1970 and 1974 and

1 attempted to project growth for each County through 1982.

2 Q How does that include A.T.&T.?

3 A Okay, let me back off a little before I answer
4 your question.

5 MR. ENGLISH: If I can interrupt for clari-
6 fication. You say "projected growth." Did you
7 mean population growth or covered employment?

8 THE WITNESS: I have projected employment by
9 County, in each County separately, based on the
10 experience from the 1970 to 1974, but with the
11 1970 published figure adjusted by the ~~apparent~~
12 change in the ratio of population, ~~population to~~
13 employment.

14 Now, ultimately, these projections of employ-
15 ment will be converted back into projections of
16 people, but for the moment, we are talking about
17 employment.

18 In the case of Somerset County, I made a
19 separate computation for Bernards Township which
20 would include 3400 employees of A.T.&T. in
21 Bernards Township, and some other number. The
22 total of that and 3400 comes up to be 4177. So,
23 I guess the other number is 777 employees which
24 are associated with a projected development called
25 Mt. Airy Associates, which is also near at hand,

1 and is in what we call the OL2 zone. Both of
2 these projects, in my view, will materialize
3 during the 1976 to 1982 planning period, which
4 is the planning period which I am dealing with.

5 So, I have then a separate calculation which
6 suggests that during the six-year planning period,
7 4177 jobs will be created in Bernards Township,
8 and I think 4177 is right. Let me just make sure.

9 Q Hold on one moment, Mr. Allen. Does that include
10 any multiplier effect of the service industries which may
11 be expected to arise in Bernards Township to service the
12 needs of A.T.&T. employees?

13 A No.

14 Q So, you ignored any multiplier effect as a
15 secondary impact to A.T.&T. as the prime employer.

16 A I have not made specific allowance for that in
17 Bernards Township, to the extent that covered employment
18 statistics cover the secondary jobs, or to the extent that
19 secondary jobs are not covered by covered employment, but
20 these people are included in population statistics. To
21 that extent, we are making allowance for it.

22 Q Hasn't Mr. Agle, your Planner, told you that you
23 must provide the opportunity for 5250 new jobs to service
24 the 3500 employees of A.T.&T.?

25 A There are in the record many ratios of the type

1 you are describing.

2 Q This is your own Planner's ratio.

3 A I can neither recall nor support all of the
4 various ratios that I have heard on the subject.

5 Q Have you asked Mr. Agle to give you a ratio,
6 because that ratio he gave us on depositions ---

7 A One ratio I remember that Mr. Agle gave us was
8 approximately a four to one ratio of people to jobs, to
9 primary employment jobs. There is a fuzziness, however,
10 in the definition of primary employment, and in the
11 statistics which support it. Where primary employment
12 becomes secondary employment is not clear. Where do you
13 draw the line say between a branch office of the Bell
14 System in New Jersey and the corporate headquarters?
15 Somewhere along the line you go from local secondary
16 employment to primary employment.

17 Q It is very clear that the Basking Ridge facility
18 is not a local branch office, isn't it?

19 A That is correct, that is clear.

20 Q It is very clear that it may well be the corporate
21 headquarters of the entire corporation, isn't that so?

22 A In fact, except for the top brass, a nucleus of
23 people in New York, it will become the corporate headquarters
24 for the entire corporation.

25 Q So, how do you get around calling that particular

1 facility anything but prime employment?

2 A Oh, I call it prime employment.

3 Q What are you doing with the secondary impact
4 of that prime employment?

5 A I stated that I made no specific computation
6 with regard to a unique obligation that Bernards Township
7 has for the secondary employment. I do not know how to
8 make that computation with any degree of precision.

9 Q So, not knowing how to make it with any degree
10 of precision, as a result, you chose to ignore secondary
11 employment entirely in making your calculations and
12 defining Bernards fair share of the housing.

13 A Not so at all.

14 Q Where is that included in your calculations?

15 A First of all, the projections that we are making
16 with regard to housing needs are based on population growth,
17 that is, the needs of people. The projections of covered
18 employment are used to project people, population. If
19 certain kinds of jobs are not included in the statistics
20 on covered employment, the V.A. hospital, for example, the
21 people who hold these jobs, and their families, and their
22 households, are still covered in the population figure,
23 and to the extent that you provide housing for the population,
24 you have reflected the needs of these people who have not
25 been covered in the specific employment statistics.

1 Q Do you know how the population projections which
2 you have referred to -- we might as well mark this as an
3 exhibit right now.

4 (Document entitled "Population Estimates for
5 New Jersey, July 1, 1975" marked PWA-5 for
6 identification.)

7 Q Do you know how the Office of Business Economics
8 makes population projections, Mr. Allen?

9 A Excuse me, this particular document is not a
10 population projection. It is an estimate which they have
11 made of the current or immediately-past population for the
12 State of New Jersey. I do not know how they make it, but
13 it is not a projection. It is an estimate of what they think
14 exists today, or at least in the recent past.

15 Q Mr. Allen, one of the problems in making any fair
16 share analysis is that since a fair share housing analysis
17 is made in order to come up with a municipality's fair share
18 and test that fair share against the existing zoning of the
19 municipality, the methodology which you use to make your
20 fair share analysis has to be immune from what you are
21 trying to test for, namely, whether or not the zoning in
22 the municipality is exclusionary, isn't that correct?

23 A Let me answer the question that I think you asked
24 me. I believe the methodology should be free of the sus-
25 picion of being self-serving. Is that the question?

1 Q That is correct.

2 A Okay, and it has been my attempt by the use of
3 these State statistics, statistics which are published
4 annually, and upon which you could test your calculation
5 on a year-by-year basis, that these are free of being
6 self-serving.

7 Q To the extent that the past increase in population
8 within the County has been held back by exclusionary zoning
9 practices for land use schemes which require, for instance,
10 large lots and expensive housing in an economy where people
11 cannot afford such expensive housing, to the extent that
12 the past growth has been held back by exclusionary practices,
13 the projection of past growth into the future in order to
14 arrive at the municipality's fair share of the regional
15 housing need is biased and does not serve to test whether
16 the municipality is in effect exclusionarily zoned, isn't
17 that correct?

18 A I expected my Counsel to comment on that question.

19 MR. ENGLISH: I don't understand it.

20 Q Do you understand what I am saying, Mr. Allen?

21 A I think it is based on some premises, some of
22 which I might subscribe to and some of which I will not.
23 First of all, I have used projections here for six counties,
24 not just Somerset County. These six counties happen to be
25 the same six counties as in the Lindbloom report, and as I

1 stated before, if I had the time, it would include three
2 more counties which are to the west of us. Right now, the
3 study of six counties tends to give us bias as to the
4 employment concentration to the East. It is biased in
5 favor of heavy employment, and, therefore, a heavy obliga-
6 tion.

7 I think when you make projections on a county
8 basis, and you include counties such as Middlesex, Union
9 and Essex, as well as Somerset, which, by your allegation
10 is a bastion of exclusionary zoning, your words, I don't
11 think that you would necessarily say Hunterdon was that,
12 or Sussex, though they may have some towns which you are
13 unhappy with, but when you make a projection on the basis
14 of six counties, I think what you are incorporating into
15 the projection are a whole host of factors, some of which
16 may be exclusionary zoning, whatever that means, but also
17 other things which are perfectly fine. They happen to be
18 a projection of what is existing, including the loss of
19 employment by the State of New Jersey to the rest of the
20 country, say, and including the deterioration of cities,
21 including a prime agricultural area such as Hunterdon,
22 including what is traditionally a commuter area such as
23 we are living in now, including the effect of transportation
24 arteries, and the effect that has on transportation patterns.
25 It includes a whole host of things.

1 Mr. Allen, let's get back to how you included
2 A.T.&T. in this new second calculation.

3 A Okay, using again the period from 1970 to '74
4 as a means to project the future, I determined the number
5 of new jobs that would be created in Somerset County during
6 the period 1976 to 1982, and I want to emphasize my planning
7 period for the second computation has been 1976 to '82. The
8 planning period for the first computation was 1974 to '80.
9 So, there is a slight difference between the figures for
10 that reason, but I am taking the position that we are now
11 in 1976, we are passing the ordinance in '76, and we are
12 looking six years forward.

13 Now, I developed an estimate, therefore, of the
14 amount of new jobs, covered jobs, that would be created in
15 Somerset County during the planning period. With a side
16 computation, I listed the 4177 that I knew about in Bernards
17 Township. I subtracted those from the independent Somerset
18 County estimate.

19 (Discussion off the record.)

20 (Luncheon recess taken.)

21 THE WITNESS: I believe your question related
22 to what is the employment that I had projected for
23 Somerset County, and I believe that was leading
24 into the question of how we dealt with A.T.&T.
25 specifically. I have a number here which is the

1 projection of covered employment for Somerset
2 County for 1976 of 66341, and for 1982, 87516.
3 The increment there for a six-year period then
4 is 21175. Now, that would have been the incre-
5 mental projection for the six-year planning
6 period for the County without any special compu-
7 tation for A.T.&T.

8 Now, it is the premise of this computation
9 that taken in toto, the County projection includes
10 A.T.&T., that A.T.&T. is not an aberration when
11 looked upon from a County viewpoint, that the
12 County projection includes A.T.&T. as just one
13 more facility which is coming into the County.

14 Q Who made the County projections?

15 A Well, I made the County projections from use of
16 this data. This is the covered employment data and the
17 census data.

18 Q How did you convert covered employment, to total
19 employment, to population?

20 A The conversion is not two-step as you have just
21 suggested. The conversion is a single step, covered directly
22 to population. I did not go through, like Lindbloom, and
23 make a conversion from covered, to uncovered, and covered
24 together, and then to population. I have gone directly
25 from covered to population.

1 Q What is your conversion factor?

2 A The conversion factor for purposes of computation
3 number two is 3.2377, and that happens to be the ratio
4 between all of those people which are stated as residents
5 in the State of New Jersey in 1975 divided by all of those
6 persons who are listed as covered employment in the 21
7 counties in 1975. It does not include the so-called
8 undistributed covered employment, because these are not
9 located geographically, and, therefore, cannot help in
10 the assignment of responsibility on a regional basis. So,
11 that ratio is directly the result of the statistics ~~here~~
12 the census data and the covered employment data.

13 Q So, you divided the total covered employment in
14 New Jersey in 1975 into the total population of New Jersey
15 in 1975 as revealed by those two documents.

16 A I'm sorry, I have used a document published in
17 1975 but the year that I am working from is the year 1974,
18 because that is the last detailed employment data that was
19 available. So, it is what you said but with the year 1974
20 rather than the year 1975.

21 Q All right, can you give me the numbers? What was
22 the total population of New Jersey in 1974 as used in this
23 calculation?

24 A The 1974 population was 7,408,955.

25 Q What is the source of that number?

1 A This is PWA-5, Population Estimates. The
2 employment is 2,288,342.

3 MR. ENGLISH: That is covered employment?

4 THE WITNESS: That is covered employment,
5 that is assignable to the 21 counties, and the
6 ratio it goes to is 3.2377.

7 Q Now, I am somewhat confused here. We are talking
8 about on one hand the old calculations used to calculate
9 future need for Bernards Township of 354 units, and on the
10 other hand, your new updated calculations. Are you referring
11 here to both or to just the new updated calculations?

12 A The new. A similar ratio was used in the ~~first~~
13 computation but it wasn't identical to that.

14 Q Over lunch, I asked Mr. Reading if he understood
15 your computations so that he could attempt to duplicate them
16 and come up with the same number of 354, and he certainly
17 did not, and I would like to elicit from you enough informa-
18 tion so that he can see where you are getting your numbers,
19 and go through it himself, and understand the methodology,
20 and give me a report on it.

21 A We started with your formula, and he told me,
22 first of all, that you have not explained all the factors
23 in that formula which appears under "Mt. Laurel, a Truly
24 Regional Response." What page was that formula, do you
25 recall?

1 One.

2 You have a copy in front of you, and I have one
3 in my records.

4 Now, on Page One, what does F stand for?

5 A The fraction of employee residences which can be
6 expected to fall within a circle of diameter R inscribed
7 around the location of the employment, the employment site.

8 Q The employment site?

9 A Yes, we are talking about residence sites and
10 employment sites here.

11 Q What is B?

12 A B is a constant for any particular computation.
13 B for base, if you will.

14 Q For base?

15 A Well, that is my terminology. In other words,
16 it is a constant. I use the letter B because it is a base
17 number, it is a starting point.

18 Q Did you ever attribute a number to B?

19 A B is found indirectly by -- I am looking for my
20 copy of that report. I haven't found it yet.

21 B is found indirectly by substituting into the
22 formula the value of median commuting distance, or median
23 R, that you want to work with, and then B comes out as a
24 result of that. In the formula, you have an F, you have
25 an R, you have a B. There are only three ---

1 Q Variables?

2 A Variables. If you assign values to two, your
3 third one is fixed, is determinable. I have used the term
4 "median commute," which I have designated as R5 or R50,
5 meaning 50 percentile, and if you substitute the value of
6 R for the median commute, then your value of F should be
7 .5, because by definition, median commute describes the
8 circle in which 50 or half, 50 percent or half of the
9 people will reside.

10 So, if you then substitute .5 for F, and you
11 substitute a value of median commute for R, then B falls
12 out. It turns out B is a complicated number. It is a
13 number with a lot of digits and whatnot, and I have never
14 specifically stated it. I have referred to it by inference,
15 but I have never specifically stated it because it is not
16 necessary.

17 Q What is R?

18 A R in the case of the second computation is ten
19 miles.

20 Q What is R in the case of the first computation?

21 A Eight miles.

22 Q With this calculation, with this formula, you can
23 compute, you allege, Bernards Township's fair share of the
24 regional housing need, is that correct?

25 A That is one ingredient of the computation. It is

1 In the second computation, I have used ten miles.

2 Q Ten miles each way, twenty miles?

3 A Ten miles as the crow flies between residence
4 site and employment site for, again, the 50 percentile
5 or the median commute.

6 Q Which may be a 30-mile commutation by car.

7 A I would be surprised if a commute of ten miles
8 by airline miles would be a 30-mile road trip. I would be
9 surprised if our roads are that indirect.

10 Q Well, ten miles each way, and ten miles for the
11 indirectness.

12 A You are saying fifteen miles by road ~~versus~~
13 by air?

14 Q Right.

15 A That is possible, I guess. I have made no study
16 of the actual road mileage.

17 Q Well, do you think it is the function of the
18 Planning Board, in planning for the municipality's fair
19 share, to take into account the energy crisis, for instance,
20 and the amount of gasoline that is used in commutation to
21 try and ameliorate that by your planning policies?

22 A The ten-mile figure is the observed figure rounded
23 of the RCA sample. It also turns out in conformance with
24 some data which our Planner developed in the fifties. He
25 has spoken verbally of this. I haven't seen the data in

1 writing, but he has said he made a study in the Somerville
2 area in the fifties which suggested that the median commute
3 was approximately ten miles. So, based on those two facts,
4 and no evidence to the contrary, for this particular area,
5 I said this would be okay as a starting point. Then, this
6 describes conventional commuting patterns in this area.

7 Q Besides being a scientist, Mr. Allen, you are a
8 member of a Planning Board, and perhaps you will agree that
9 part of your duties as a member of the Planning Board is to
10 plan in such a way that will ameliorate some of the problems
11 we are experiencing in our society, and one of those problems
12 is the fuel crisis, and there are some planners that feel
13 that that is contributed to by excess commuting. Wouldn't
14 you agree that it would be desirable, from a planning point
15 of view, to reduce the commutation to the extent possible,
16 that is, as a planner and a member of the governing body?

17 A I think that this area of conjecture is somewhat
18 apart from the area relevant to the establishment of a
19 fair share of housing under the Mt. Laurel decision. I
20 agree that there are some who feel that you should have
21 balanced communities with regard to employment and residence,
22 and I think that there are still many, many people in our
23 society who feel that you should not have that. Recent
24 things I have read suggest that the American public has not
25 curtailed its traveling at all. So, I don't believe that

1 there is a consensus in our society to reduce the commute.
2 As a policy maker, you don't consider it your
3 responsibility to make a local decision, or contribute in
4 a local decision in this respect?

5 A I certainly do not believe that the shortening
6 of the job-to-home trip is a first priority consideration
7 in my position as a member of the Township Committee in
8 this Township.

9 Q The first thing I want to try and do is get the
10 numbers and your computations, and get them marked so that
11 we can try and duplicate them and understand exactly how
12 you came up with the number 354. We have talked a lot of
13 theory but we haven't gotten into the computations, and I
14 understand how you convert from covered jobs to population,
15 and I understand to a certain extent your formula, which I
16 guess the purpose of which is to define a region. I would
17 like to know how exactly you get the number 354, and I
18 would like to see the computations and the input. Do you
19 have some figures that end up with the number 354 in front
20 of you?

21 A Again, I think it is important to make the distinc-
22 tion between the first and second computations. I have a
23 sheet that Mr. Conley prepared before me which ends up with
24 the number 354.

25 Q Could I see that sheet.

1 A I believe it is already a part of your records.
2
3 apparently, this wasn't made available to us as
4 part of your records on our demand for production of documents.

5 A Okay, he thought it had been.

6 MR. HILL: Could we mark this as Exhibit
7 PWA-6.

8 (Paper with computations by Mr. Conley
9 marked PWA-6 for identification.)

10 Q This document, PWA-6, purports to be a determina-
11 tion of fair share, and it ends up with the number 354.
12 Can you explain to me verbally how that number was arrived
13 at by going over this document?

14 A Okay. Backing up just a bit, equation 2 of the
15 September report gives you a formula -- I believe it is
16 equation 2 -- for density, as a function of distance.

17 Q What do you mean by "density"?

18 A The probability that people who work in one place
19 will live somewhere else. If you have a million people who
20 work in one place, how many of those people per square mile
21 will live somewhere else. So, that density, or probability,
22 is determinable by that equation 2, and if you have a value
23 of R, you plug it in, and you get the value density. So,
24 I plugged in a value of R for each of the 154 municipalities
25 in the six-county region, and developed a value of density

1 which the employee residence sites would have in Bernards
2 Township if they worked off in that other municipality.

3 In other words, what I am visualizing here are
4 154 commuter sheds which all overlap in Bernards Township
5 to some degree, and each of those 154 commuter sheds has
6 its own impact on the probability of a person taking up
7 residence in Bernards Township.

8 Now, the total number of people which would be
9 expected to live in Bernards Township as a function of the
10 employment in the County is given in the left-hand column
11 here. For example, it says that Essex County, by virtue
12 of the 1974 covered employment, by virtue of the formula,
13 could expect to contribute 1245.5 resident employees to
14 Bernards Township. This number does not include the non-
15 working members of that person's family. It is the
16 employed person himself in this particular column.

17 Q How did you get the number 1245.5?

18 A By taking the density for Newark, let us say,
19 multiplying it times the area of Bernards Township, which
20 is twenty-three and a half miles, and multiplying it times
21 the covered employment listed for Newark, and then doing
22 that for each municipality in Essex County and adding them
23 up.

24 Q But what you are testing for is simply future
25 employment, is it not? The amount Newark will grow between

1 now and the six-year period.

2 A This is the base from which I am starting. How-
3 ever, what we are now doing is computing a base. This says
4 that if the model which I have described mathematically in
5 equation one, and which we have called a job oriented resi-
6 dential distribution, or JORD, J-O-R-D, and I will use that
7 term from now on, but if the JORD model had been followed
8 since day one, and, it was not, of course, but it is a
9 means of establishing a share. It is really a crude approxi-
10 mation of what has happened in the past, but if it had been
11 followed from day one exactly, then the 1245 and a half
12 people would live in Bernards Township and work in Essex
13 County in 1974, and that is the base from which the projec-
14 tion begins.

15 Q So, your JORD, as a mathematical model, in order
16 for your reasoning to be consistent, must be immune from
17 the ills which I call exclusionary zoning, which you are
18 trying to test for. In other words, the purpose of a fair
19 share analysis is to determine what a municipality's fair
20 share would be if there were no such things as exclusionary
21 zoning, and the methodology, in order to be appropriate,
22 must not in any of its assumptions use data from a model
23 which may be marred by the presence of exclusionary zoning.
24 Do you understand?

25 A I understand what you are saying.

1 Q Isn't that correct?

2 A I don't believe so.

3 Q Well, if your JORD is marred by past exclusionary
4 zoning practices, aren't you perpetuating them by applying
5 that JORD in order to compute Bernards' fair share?

6 A First of all, the JORD, I don't know if it is
7 marred, and that is your word, by the exclusionary zoning
8 which you allege took place. It is a model which attempts
9 to describe the pattern of residential sites around an
10 employment site. Now, that pattern has been developed
11 historically by many things, and you might say that there
12 have been some sins committed in developing that pattern.
13 I don't know. I'm not sure what those sins were.

14 Q Were you taking into ---

15 MR. ENGLISH: Mr. Hill, wait until he finishes.

16 A (Continuing) But it in no way singles out any
17 particular impact or influence on that pattern. It is an
18 attempt to describe an aggregate pattern of residential
19 distributions around the job site without any particular
20 regard to the separate influences which bring that pattern
21 about. I am not in a position to evaluate those separate
22 influences.

23 Q Well, your JORD was taken from an existing situa-
24 tion in Bridgewater Township as it existed in 1974, isn't
25 that correct?

1 A I believe the data is effective 1974 or early
2 1975, yes.

3 Q Your assumption is that the distribution of RCA
4 employees around their job site, i.e., Bridgewater, is one
5 that should be perpetuated, is the logical residential
6 patterns of employees, and is one that should be perpetua-
7 ted in your plan, isn't it?

8 A May I look for a statement here.

9 In the September report, Exhibit 4, at the end,
10 on Page 9, I close with other questions, and one of the
11 questions states: "Should the median commute reflect what
12 currently obtains, recognizing that this reflects some
13 questionable zoning practices, or should it be modified to
14 reflect some other concept of what is proper?"

15 I posed that as a question for the future. I am
16 not in a position to answer it.

17 Q Do you know that in 1975 Bridgewater Township,
18 for instance, in the case of Wasser versus Bridgewater
19 Township, was held by a judge of the Superior Court in
20 Somerset County to be an exclusionary community and its
21 zoning was voided?

22 A From time to time I see in the papers some mention
23 of cases of this type. I am not familiar with the case by
24 name or the decision.

25 Q But you are familiar with the fact that Bridgewater

1 is in exclusionary zoning trouble, generally.

2 A I am aware that Bridgewater is having some of the
3 same attacks on its zoning that we are.

4 Q And its zoning has been invalidated.

5 A I am not personally aware of the invalidation.
6 I know that there is some litigation but I don't know the
7 details.

8 Q You do know that Bedminster's zoning has been
9 invalidated, do you not?

10 A I know that Bedminster is in appeal with regard
11 to an order of the trial court, but when you say

12 Q Which invalidated their zoning.

13 A I believe the judge in this case had asked them
14 to comply with the Mt. Laurel decision. I have read the
15 decision, but I can't recall the exact directive to the
16 Township of Bedminster, but I do know they are in appeal
17 on that matter.

18 Q You know that there are some who allege that
19 Bernards' zoning is not in accordance with the general

20 principle.

21 A I know there are those who on occasion have
22 criticized Bernards' zoning.

23 Q Do you know that there are numerous municipalities
24 in Somerset County under similar attacks?

25 A I can't recall specific municipalities that are

1 under this particular kind of attack other than the three
2 that you mentioned, but there may be others. For example,
3 I have never heard of anything with regard to Bernardsville
4 or Watchung. There may be.

5 Q You have heard that Chester is under such an
6 attack, have you not?

7 A I can't place that one.

8 Q Have you heard that Montgomery Township is under
9 such an attack?

10 A I believe Montgomery had a case some time ago
11 in which their particular remedy was accepted by Judge
12 Meredith, but, again, I am not sure if there is anything
13 further on that or not.

14 Q But you would agree, as a general proposition,
15 that if in fact the zoning of Bridgewater Township and the
16 zoning of communities surrounding Bridgewater Township was
17 illegal, improper and exclusionary, that your JORD would be
18 rationally invalidated, would it not?

19 A No.

20 Q No? Could you explain that? Let us suppose that
21 all the municipalities around Bridgewater, and Bridgewater
22 itself, were exclusionarily zoned, and let us suppose, just
23 as a proposition, that there was no municipality within 15
24 miles of the center of Bridgewater Township that was not
25 exclusionary, and where people earning less than \$15,000

1 or \$18,000 could reasonably be expected to live because of
2 the zoning practices. Would you feel then that your JORD
3 had a rational basis and it could be used in determining
4 Bernards' fair share?

5 MR. ENGLISH: May I object to the question
6 because it rests purely on hypothesis. It does
7 not seem to take into account in its premise the
8 fact that a great many low-income people reside
9 in existing housing in the municipalities surround-
10 ing Bridgewater. As a matter of fact, the evidence
11 in the case of Allan-Deane versus Bedminster shows
12 that Bedminster Township has a higher percentage
13 of low-income inhabitants than any other munici-
14 pality in Somerset County except Rocky Hill.

15 So, I object to the question as purely hypo-
16 thetical. It is based on premises that have not
17 been established, and that are faulty because they
18 are not in accordance with the stated facts.

19 MR. HILL: Mr. English, if you are not going
20 to attempt to qualify Mr. Allen as an expert wit-
21 ness, your objection is well taken, but if Mr.
22 Allen is going to testify to any of this stuff,
23 he is going to have to qualify as an expert witness,
24 and in which case, I would have the right to ask
25 him hypothetical questions.

1 MR. ENGLISH: I have made my objection. I
2 have not told him not to answer it.

3 Q Would you answer that question. We are supposing
4 that all municipalities around Bridgewater from which your
5 JORD was calculated are exclusionary, and that people earn-
6 ing less than \$18,000 cannot reasonably be expected to buy
7 housing there. Assuming that that assumption is correct,
8 does your JORD analysis hold up as one that should be used
9 in order to calculate the fair share of each municipality
10 around the State?

11 A The JORD analysis has two aspects. The very simple
12 one is, what value of median commute do you plug into the
13 formula. Now, one could argue that because of the economic
14 burden of commuting, that it would be wise to legislate a
15 shorter median commute than history has so determined. How-
16 ever, I think this is a matter for the Legislature to
17 decide.

18 Q The State Legislature?

19 A Yes, because this is a proper matter for people
20 with regional planning and zoning authority to decide. I
21 do not believe that a single municipality should make that
22 decision for society at large, because I don't think we
23 have the data to do so, or that we have the perspective to
24 do so. This is a matter which should properly be decided
25 by a truly regional planning body of some kind, with the

1 authority to impose its decision.

2 Q Were you assisted in computing your fair share
3 by any Planner?

4 A The JORD formula is my own. The subsequent
5 computations which bring in such things as population-to-
6 job ratios, and fractions of low and moderate income housing,
7 this has been kind of a collaborative enterprise. Charley
8 Agle has contributed some data and insight as has Fred
9 Conley.

10 Q Has Mr. Agle commented on your overall JORD
11 proposal and the overall methodology by which you reached
12 Bernards' fair share?

13 A I believe he has, and I believe he supports the
14 concepts.

15 Q On deposition, I asked him about it, and my
16 recollection is that he disavowed any connection with it.
17 Is it your testimony that he will back up this fair share
18 methodology in court?

19 MR. ENGLISH: I object to that question.

20 How can this witness state what some other witness
21 is going to testify to?

22 Q Were any other Planners but Charles Agle involved
23 in the computation of Bernards fair share?

24 A I mentioned Fred Conley, who is by education
25 conversant with the kind of statistics we are dealing with

1 here, and is trained in analytical techniques. Don't ask
2 me for his specific educational background because I can't
3 give it to you, but you can get that from him. But, in
4 conversations I have had with him, I suspect that he is
5 conversant with this kind of thing. He, as well as Charlie
6 Agle and I, have talked informally over a period of about
7 three months now about this kind of thing.

8 Q And it is your feeling that this technique has
9 Mr. Agle's stamp of approval?

10 A I believe that when a report is written, that the
11 fundamental concepts in it will be supported by Mr. Agle.
12 He might agree or disagree with some specific part of it,
13 I cannot say, but I think that the concepts will be some-
14 thing he certainly will agree with.

15 Q Did he agree with your final number, that Bernards'
16 share was 354 units of low and moderate income housing?

17 MR. ENGLISH: I object to that question as
18 calling for hearsay.

19 MR. HILL: That is not a valid objection on
20 depositions, Mr. English.

21 MR. ENGLISH: Well, you can ask Mr. Agle that.

22 MR. HILL: I did ask Mr. Agle that.

23 MR. ENGLISH: All right, then you have the
24 answer already.

25 MR. HILL: Are you directing him not to answer?

1 MR. ENGLISH: Yes.

2 MR. HILL: I am asking for a conversation
3 between him and the Planner, and you are direct-
4 ing him not to answer?

5 MR. ENGLISH: I am directing him not to
6 answer the specific question you asked.

7 Q Can you describe in detail all conversations you
8 have had with Mr. Agle regarding this fair share methodology.

9 A I physically cannot. It is not a question of
10 will not, but I cannot physically. I am not gifted with total
11 recall. There has been discussions of this kind of thing
12 over a period of several months with different people
13 different times, some informal discussions, some by phone.
14 It has been an ongoing thing. I cannot remember who said
15 what, where and when. It is my belief, however, that Mr.
16 Agle supports the basic concepts which are embodied here.

17 Q Who else worked on this methodology besides you,
18 Mr. Conley and Mr. Agle?

19 A I am trying to think, and offhand I can't think
20 of anyone. I can't recall anyone else at this point.

21 Excuse me, we may have derived some statistics
22 or insights from work that was done last year, and last year,
23 the primary person, the primary leader, was Margaret Fox,
24 who is Chairman of the Master Planning Committee, and it is
25 possible that some of the data we are now using, or insights

1 that we have gotten, were derived from that period, but I
2 cannot assign a specific proportionate responsibility to
3 that.

4 Q Were you on the Master Plan Committee?

5 A Yes. I think it is important to recognize that
6 some of us have been involved to a greater degree than others.
7 I, for example, have almost been totally immersed in this
8 subject for a year or more, and there are very few of my
9 waking moments when I have not been thinking about some
10 aspect of this. Ideas of all sorts have evolved as a result
11 of many contacts. It is not always possible to assign a
12 source for a particular insight. The report that I have
13 written is my work, and where I can assign credit to someone
14 else, I will do so, but it is impossible to trace the origins
15 of all of these ideas to their genesis.

16 Q You were in the forefront of the movement on the
17 Township Committee to cut back the amount of land zoned for
18 employment-generated uses, were you not?

19 A Yes.

20 Q What is the status of that proposed legislation?

21 A There is an ordinance, 388, currently on the table
22 which is an amended version of a prior ordinance which was
23 also called 388, and it was introduced, the first reading,
24 at the first meeting in July, and will be up for public
25 hearing the first meeting in August.

1 That ordinance is a less ambitious cutback of
2 employment ---

3 A It is zoned for more acreage for employment
4 purposes than I would like to see.

5 Q What is your rationale for cutting back the
6 employment zoning in the municipality? What is your reason
7 for this?

8 A This is a complex subject. There are regional
9 as well as local implications. I believe employment of the
10 type that our zones can support, and I use that phrase
11 advisedly because more than one kind of development can
12 take place in those zones, but employment of the type, such
13 as A.T.&T. or a Firemen's Fund, is primary employment, and
14 this will stimulate growth in the wrong place in our State,
15 in my view. I would far rather see this stimulus in the
16 urban areas.

17 Q You have been quoted as saying that there is some
18 implication, that the cutback of employment-generating zones
19 will have some consequence on the municipality's fair share
20 of housing. Were those quotations correct? Have you made
21 statements to that effect?

22 A If one follows the JORD method for developing a
23 fair share, it means that the closer the employment is to
24 you, either within your municipality or a neighboring
25 municipality, the greater your obligation for housing of all

1 types becomes, not just low and moderate income, but all
2 types. So, the extent to which you follow that approach
3 is the extent to which your share will increase. This is
4 not only a judicial mandate, as I read the Mt. Laurel
5 decision, but it is a common-sense, fair-minded view.

6 Q So, one of the reasons that you are supporting
7 this cutback is that by cutting back the employment growth
8 in Bernards Township, the housing pressure under Mt. Laurel
9 will be lessened, is that correct?

10 A I believe the Press has popularized the issue of
11 lower and moderate income housing in excess of its real
12 importance to the issue. My own view is that the region
13 between Morristown and Somerville has been traditionally
14 a low density region for a variety of reasons, and I believe
15 it should remain that way, and we should not bring in major
16 growth stimulators.

17 Q Do you agree that A.T.&T. is a major growth
18 stimulator?

19 A Yes.

20 Q Do you think that A.T.&T., the presence of the
21 two A.T.&T. complexes, will have placed some obligation on
22 Bernards Township?

23 A I believe the placement of the A.T.&T. facility
24 in Bernards Township does place an obligation on Bernards
25 Township, and my second computation reflects that. I am

1 not in a position to state that the one next door places
2 any special obligation on Bernards Township.

3 Q Are you aware that the cost of new housing in
4 Bernards Township is high, in excess of \$80,000?

5 A I think that that question is kind of a trap.

6 Q I'm just here to help you, Mr. Allen.

7 A The cost of housing which one purchases in
8 Bernards Township is high, that is a fair term, I guess.
9 I have not made a study to determine what the relative
10 prices of Bernards Township's houses are as compared to
11 other townships in the area. I suspect, however, that it
12 would be high.

13 However, price is a phenomenon which is influenced
14 by many separate factors. For example, if the buyers want
15 a large house with many frills, and are prepared to pay for
16 it, that is their decision, and it is a function of their
17 financial resources more than a function of the zoning in
18 the municipality.

19 Q Do you think that it is practical to build low-
20 cost houses on three-acre lots?

21 A Low-cost houses? I'm not sure what the words
22 "low-cost houses" means, quite frankly.

23 Q Well, do you think it is possible to build and
24 sell houses, and lots, at less than \$35,000 in Bernards
25 Township, three-acre lots?

1 A I'm not sure, from what I heard, that it is
2 possible to build houses less than \$35,000 anywhere. I
3 really don't know.

4 Q Do you recognize that lot size is a factor in
5 increasing housing costs?

6 A I believe that the influence of lot size on
7 housing costs is a very small component, that the cost of
8 construction of the shell, the interior improvements, the
9 overhead, these things far, far exceed the cost of the land.

10 Q Were you on the Township Committee when it
11 enacted its present PRN zoning ordinance which requires
12 a review cost of \$50 an acre, and two cents a square foot,
13 and states that no unit can be constructed over another
14 unit?

15 A Well, you are referring to Ordinance 347. Yes,
16 I was on the Township Committee when that was enacted in
17 September, 1974.

18 Q Did you discuss those factors and the effect of
19 those on housing costs at all?

20 A Which?

21 Q Do you recall any discussion of the prohibition
22 in the ordinance that no unit could be placed above another
23 unit?

24 A Yes. By the way, you haven't stated it quite
25 correctly. I believe the ordinance says that no unit of

1 three or more bedrooms can be placed above another. I
2 believe it permits one and two-bedroom units to be placed
3 above another, but there was some discussion, yes.

4 Q Well, I believe this interpretation is correct,
5 but I will get back to it.

6 A I had my memory jogged there a week or two ago
7 on that. It is either one's can be placed above one another,
8 or one's and two's can be placed above each other. Defini-
9 tely, three and four bedrooms cannot be placed above each
10 other, and I believe that is the case.

11 Q Well, the same ordinance appears in Ordinance No.
12 385, that no unit can be placed above another unit, does it
13 not?

14 A Again, I believe it was our intent, at least, to
15 put into Ordinance 385 the same kind of provisions that
16 were in Ordinance 347, that one's and two's could be placed
17 above each other but not the three's and four's.

18 Q Well, Mr. Allen, you will find, when you have time
19 to review those ordinances, that neither can be placed one
20 above the other.

21 MR. ENGLISH: I object to Counsel's statement.
22 The ordinance speaks for itself, and I don't think
23 that the implication that the witness is speaking
24 incorrectly is an appropriate one if it comes from
25 Counsel.

1 THE WITNESS: We could settle it quickly.

2 Q Well, I am obviously going to continue this
3 deposition another day. I am going to try and get all the
4 data I can on how the fair share was calculated, and we
5 will get these general subjects on another day.

6 Going back to Exhibit PWA-6, what is that number,
7 23.5, and how was it derived?

8 A 23.5 is the area of the Township.

9 MR. ENGLISH: In square miles?

10 THE WITNESS: In square miles.

11 Q What is D?

12 A D is the density, or probability value taken from
13 equation 2.

14 Q What is E?

15 A The covered employment from Exhibit -- whatever
16 number it was, the covered employment.

17 Q So, when you multiplied 23.5 times the covered
18 employment for Essex County, times D, you came out with
19 1245.50, is that correct?

20 A Not quite. The single line for Essex County was
21 really a summation of that kind of computation over the
22 entire number of municipalities which were -- it looks like
23 17. No, 22 municipalities. So, it is really a subtotal
24 already. You have the computation correct but it was
25 applied individually to each of the separate municipalities.

1 Q Do you have those computations?

2 A I have these.

3 Q Does that list every municipality in the region?

4 A Yes, it does. It lists every one in Essex County
5 on one page, and subsequent pages for subsequent counties.

6 MR. HILL: Can we mark this as Exhibit PWA-7.

7 (Preliminary computation of employment share,
8 dated 4/2/76, marked PWA-7 for identification.)

9 Q How did you get to your second column, "covered
10 increase from 1974 to 1980"?

11 MR. ENGLISH: You are referring to PWA-6?

12 MR. HILL: That is correct.

13 A Here again, we get into the projection part. I
14 made a projection, as I described earlier, from 1970 to
15 1974, and simply by dividing the 1974 number for the County
16 by the 1970 number for the County, and taking the fourth
17 root of that, you can come up with the annual growth. If
18 you then multiply the 1974 number, which we will call a
19 base number, by the annual growth to the sixth power, you
20 will come up with a six-year compounded projection.

21 I actually did this for two periods in this
22 preliminary calculation. I did it for the period from
23 1974 to '78, and for the period from 1974 to '82. I found
24 then a total percent increase represented by 1978 as
25 compared to 1974, and a total percent increase of 1982 over

1 1974. In other words, I came up with a four-year increment
2 and an eight-year increment.

3 Now, let's go to a bigger number. Let's go to
4 Somerset County.

5 Q Let's go to Essex County. I would like that one,
6 it is very easy for me to deal with.

7 A Let me back up a step. I did mention earlier that
8 the ratio of covered employment with the population has
9 increased as a result of two or three factors for which I
10 was not able to assign a specific responsibility. I could
11 guess at them, but the ratio has increased. Now, what I
12 attempted to do was project how this ratio was changing.
13 In other words, as employment is going up, so is the ratio
14 of covered employment in the population going up. So, if
15 one is seeking a population projection, he has to somehow
16 compensate his projection of employment increase downward to
17 take into account the fact that the ratio of covered
18 employment to population is increasing.

19 You have got two trends, in other words. You try
20 to get a third trend, which is population. So, you have to
21 somehow superimpose these two trends and to come up with a
22 third trend.

23 Q So, you came to the conclusion, if I understand
24 these calculations correctly, that one more person in the
25 next six years, working in Essex County, should live in

1 Bernards Township. How did you get that one person?

2 A The specific number that I gave to Mr. Conley
3 was that there would be a .76 Bernards share, .76 jobs
4 would be the Bernards' share of the change in the employment
5 status of Essex County during the four-year period from
6 1974 to '78. The reason for that insignificant number is
7 that Essex, by this projection, is not growing. The same
8 number for the eight-year period was 1.52 people, or jobs
9 rather.

10 Mr. Conley simply took the average of these two,
11 because when he did this, and this was his work, he was
12 looking for a 1980 number, and I provided him with the
13 1970 number and the 1982 number, and he wanted to strike
14 some middle ground for a 1980 number.

15 Q Assuming that all those numbers are correct,
16 you get a region increase of 2221 employees, covered
17 employees, is that right?

18 A Covered jobs. I guess covered employees is a
19 similar concept, but we are talking jobs.

20 Q What is that 10,949? Is that using your conver-
21 sion factor on that number of jobs?

22 A I believe that is what it is. Let me make sure.
23 Now, 2221 is the increment of jobs in the region
24 for which this Township bears responsibility.

25 Q In the next six years?

1 In that six-year period, '74 to '80, and if I
2 follow his sheet here correctly, I should multiply that
3 by 1982, but I did not get the same number. I'm not sure
4 what that 10,949 is.

5 Wait a minute, wait a minute, I think I know.
6 Let us give these columns letters A, B and C, if you will.
7 The column headed 1974, let's call A, the column headed
8 1974-80, let's call B, and the next one over headed 1980,
9 let's call C.

10 Now, in the line captioned "Region," column C
11 is simply a total of column A plus column B. I'm not sure
12 that that has any -- wait a minute. I was going to say it
13 doesn't have any significance, but now I see how this was
14 done. It does have some significance.

15 There was a separate projection of the population
16 versus employment, and that is given in the line captioned
17 "P/E". I believe he also devised that 2.89 number from
18 interpolating between the two numbers that I provided. I
19 had projected the change in ratio of the population versus
20 employment also to 1978 and to 1982, and he again struck
21 the mid-point between those two numbers, and has stated
22 that out here in column C.

23 Now, if one multiplies the 10,949 regional
24 number ---

25 Q What is that number?

1 A That is the total of the 1974 Bernards' "share"
2 of the regional covered employment. That is in column A.
3 In column B, on the same line, is the Bernards' share of the
4 six-year increment. So, C then is the new 1980 number,
5 which is the present 1974 plus the six-year increment.

6 Now, that 1980 number, which is a covered
7 employment statistic, is then multiplied by a ratio of
8 population to covered employment to give you in the line
9 there which is designated "Population", 31662.

10 Q I thought we agreed that the ratio of population
11 to covered employment was 3.2377.

12 A That is the problem we are dealing with when we
13 talk about the two different computations. I now would do
14 it differently than this was done. What we just talked
15 about in the last few minutes is what I call computation
16 one, which is the origin of the specific 354 number that is
17 included in Ordinance 385. If I were doing it over again,
18 I would use for my projections the number that currently
19 exists, or did exist in 1974. That was not the case when
20 this particular ordinance was put together.

21 Q How did you get that number, 2.8918, which you
22 now admit is wrong by a factor of some 30 percent?

23 A Excuse me, I think the word "wrong" is again a
24 somewhat loaded term.

25 Q Call it right by 30 percent.

1 A This projection, I have set it aside in favor of
2 one which I believe makes more sense.

3 Q It is a conversion factor, and it was relied upon
4 in order to get the 354 units, I gather. How was the
5 conversion factor obtained?

6 A I have to search through some more data. Basically,
7 I believe it was the ratio that was computed for the period
8 of 1974 to the ratio that was computed in 1970, and,
9 essentially, a straight-line projection of this trend that
10 was only characterized by two points, and a trend which is
11 characterized by two points, as you know, is not always the
12 most valid.

13 Q Well, let us show your new conversion factor.
14 If you have a calculator there, why not multiply 10,949
15 by the 3.2377 and see what you get.

16 MR. ENGLISH: May I interrupt. It is not
17 clear to me from my notes that the 3.2377 con-
18 version factor related to the year 1980. If I
19 am wrong about that, please tell me.

20 THE WITNESS: I think you are right, it did
21 not, but it also does not relate to the 10,949,
22 because in going back and changing the projection
23 technique, I also would come up with a different
24 value for column B, because the projection tech-
25 nique impacts on that as well. So, it is not valid.

1 I'm not sure what the answer would be, but I'm
2 not sure it has any significance to multiply
3 10,949 times the 3.2 number.

4 Q How do you use the 3.2377 number in getting to
5 column B, or why do you need that conversion factor in
6 getting to column B? Where does the 2.8918 conversion
7 factor appear on Exhibit PWA-7?

8 A Where does it appear?

9 Q Yes.

10 A There it is there.

11 Q That is PWA-6. These numbers were derived from
12 PWA-7, I gather, is that right?

13 A Not entirely, because there were some scratch
14 sheets here which were never submitted in evidence, which
15 are actually the projection part of this computation one.

16 Q Well, let's put those in evidence. Let's call
17 them PWA-8.

18 (Projections with regard to computation one
19 marked PWA-8 for identification.)

20 Q Would you describe what PWA-8 is.

21 A PWA-8 is a single page in pencil, dated 4/7/76.
22 It has the basic data which is reproduced in PWA-6, column
23 A, on it, and it also, at the bottom, has some ratios of
24 population to employment. Specifically, for our purposes
25 here, it has a ratio of 2.9894 for 1978, and a ratio of

1 2.7942 for 1982. These two were averaged to derive the
2 2.8918 number which is on PWA-6, for 1980.

3 Q But you testified that the proper ratio of covered
4 employment to population is 3.2377. Where did you get all
5 these other ratios?

6 A The ratios that are on the worksheet dated 4/7
7 were derived by a technique which attempted to project the
8 change in a ratio. I now believe that this is improper,
9 and I am no longer trying to project that change in the
10 ratio. I am sticking, for projection purposes, with the
11 ratio that obtained during 1974.

12 I have corrected, however, the 1970 data, or
13 pumped up, if you will, the 1970 employment data, by virtue
14 of the historically-evident change in the ratio during the
15 historical period of 1970 to 1974.

16 So, in computation one, I attempted to project
17 forward a changing ratio. In computation two, I no longer
18 attempt to project that forward. I only look back and make
19 a single adjustment, but I do not attempt to project it
20 forward.

21 Q Would you mind multiplying, just out of my
22 curiosity, 3.2377 by 10,949 on your computer.

23 (Discussion off the record.)

24 A I have the number 35450.

25 Q Now, let's go back to your computations, and you

1 say you multiplied 2.8918 by 10,949 to get a population of
2 31,662? I'm looking at PWA-6.

3 A Let me just check this out.

4 31,662, okay, I confirm that number.

5 Q So, that is your estimated population for
6 Bernards Township in the year 1980, is that correct?

7 A No, that is a number, which is the expected
8 number of people who would live in Bernards Township in
9 1980 if the JORD model were followed completely and in
10 detail from day one, which obviously is not the case.
11 So, it is of no validity in total. What we are looking
12 for is an estimate of housing obligations for the future.
13 So, the difference between the 1980 number and the 1974
14 number is an incremental number, and it is a fair share
15 of housing quota for the Township reflected by the
16 employment increase during a six-year period. The incre-
17 ment is the number we are looking for.

18 Q 3747, that represents the future need of Bernards
19 Township for housing of all types?

20 A This represents the ---

21 Q The future need from a base year of 1974.

22 A This is a number now in units of people. It is
23 not units of dwellings, it is units of people, and this is
24 saying that housing for that number of people should be
25 provided between 1974 and 1980.

1 Q And you divide that by three and you get 1249
2 new households in all income categories for Bernards
3 Township as their fair share from the period 1974 to 1980,
4 is that right?

5 A I believe so. 1249, correct.

6 Q And that is future need, is that correct?

7 A Future, during the six-year planning period,
8 '74 to '80.

9 Q Do you know the approximate population of Bernards
10 Township today?

11 A 14 or 15,000.

12 Q Let us say 15,000. If you deduct 15,000 from
13 your 1974 base figure of 27,915, what would the population
14 of Bernards be?

15 A I think you should rephrase your question. You
16 said if we deducted, what would it be. We know what it is.
17 It is in the 14 or 15,000 range.

18 Q Your JORD model indicates that the proper popu-
19 lation of Bernards Township should be 27,915 people if there
20 had been no exclusionary zoning in Bernards Township from
21 day one.

22 A I am deducting the 15,000 that exists now in
23 order to calculate ---

24 MR. ENGLISH: I object to the question,
25 because you are putting words in the witness'

1 mouth which he has not said.

2 Q Do you agree that that is a proper computation?

3 MR. ENGLISH: I direct the witness not to

4 answer the previous question for the reason I

5 stated. If you want to rephrase it, go ahead, Mr.

6 Hill.

7 Q Mr. Allen, what is the present population of

8 Bernards Township?

9 A 14 or 15,000.

10 Q What does this number, 27,915, stand for?

11 A It is an estimate of the people that would be
12 expected to live within Bernards Township if the JUNE 1961
13 were followed completely and in detail from day one.

14 Q What is day one?

15 A From the beginning of time.

16 Q And if there were no exclusionary zoning, is that
17 correct?

18 A From the beginning of time with all conditions,

19 but it is entirely illogical, in my view, to say that if
20 that number does not reside in a particular municipality,

21 that there is something wrong with that state of affairs,

22 because people have taken up residence over the years for

23 a whole host of reasons, among which might be zoning conditions,

24 but certainly among which are transportation arteries and

25 many other considerations.

1 Q Well, your JORD model, I understand, is sophisto-
2 cated enough in order to take care of that, and assuming
3 that your model is a correct model for growth, and a correct
4 way of determining a municipality's fair share of the
5 regional housing need, I wonder what you would characterize
6 the number that you would arrive at if you deducted 15,000
7 from 27,915.

8 A You would come up with a number like 12,000,
9 13,000, and that is the difference between a historical
10 fact and a modular projection.

11 Q So, if the courts of this State determine that a
12 municipality, as Judge Furman did in Middlesex County, ~~that~~
13 its existing housing needs plus its future housing needs,
14 and assuming, by your projections, that the future housing
15 need is 1249 units in all income categories in the next
16 six years, wouldn't it be logical to assume that the
17 existing housing need is some 4000 units, or enough to
18 accommodate a population between 12 and 13,000, which is
19 the difference between Bernards' present population and
20 its ideal population under the JORD methodology?

21 A I think I know what you said, and I disagree with
22 it. I don't believe the courts, or the Legislature, or
23 anyone else will want to homogenize the region and impose
24 the same density of development everywhere. What we are
25 dealing with here is a mechanical technique for developing

1 a fair share until such time as regional zoning, which takes
2 more things into consideration, is in place. I do not
3 believe that anyone would suggest that Bernards Township
4 should provide housing for 27,000, or whatever the number
5 of people is, simply because a formula suggests that.

6 We are not rearranging the countryside on the
7 basis of a mathematical formula. We are only trying to
8 develop an incremental share in a somewhat arithmetical
9 way until better techniques evolve.

10 Q Mr. Allen, let me put it this way: Assuming a
11 court were to conclude that Bernards Township had been
12 exclusionary -- whatever that means, and the courts will
13 define it -- for the last ten years, and, as a result of
14 blatant and exclusionary zoning practices, the population
15 of Bernards Township had not grown as it should have, or
16 as it would have had the municipality had constitutional
17 zoning over that period of time, and assuming also that a
18 court were to conclude, as we may argue, that Mt. Laurel
19 says the municipality has an obligation to provide the
20 opportunity not only for its fair share of the future need
21 but to immediately provide for its fair share of the present
22 need, wouldn't it be a logical extension of your own
23 methodology to calculate Bernards Township's present need
24 as some 4000 additional units in order to make up that
25 population, the population that now resides there and the

1 ideal population according to your methodology?

2 MR. ENGLISH: I object to the question
3 because the present need is not defined. If I
4 understand the question, and I'm not sure I do,
5 the assumption underlying it is that some number
6 of people who make up the present need should be
7 picked up bodily from where they now live and
8 dumped into Bernards Township, and if "present
9 need" means reshuffling population so that some
10 municipalities lose and others gain, I think it
11 should be so stated, but it is a very ambiguous
12 term without precision, and I don't see how the
13 witness can possibly give a rational answer to it.

14 MR. HILL: Mr. English, in the Mt. Laurel
15 opinion, Justice Hall talks about each municipality
16 shall by its zoning provide for its present and
17 prospective need.

18 MR. ENGLISH: "Present need" was defined,
19 as I remember, in the Mt. Laurel opinion as the
20 residents in Mt. Laurel Township who were unable
21 to find decent housing for themselves within that
22 same township. Now, if that is what you mean by
23 your question, I wish you would say so, but I'm
24 trying to get a definition of "present need".

25 Q This methodology suggests, does it not, Mr. Allen,

1 that there is a discrepancy between Bernards' ideal popu-
2 lation, applying JORD, and its existing population for the
3 year 1974?

4 A I think the word "ideal" is misplaced. This is
5 a theoretical population with no connotation of being
6 desirable at all. This is a theoretical population based
7 on a strict application of a model. Now, there is a
8 difference between this theoretical number and the historical
9 number, and I believe the difference is the result of many,
10 many factors, most of which are probably commendable.

11 Now, we are not dealing here with, as Mr. English
12 said, a wholesale redeployment of people's residences. We
13 are talking about need for new housing. I don't believe
14 anyone is talking about abandoning houses which exist in
15 municipality X and rebuilding them in municipality Y. Most
16 people live somewhere today, some in inadequate housing,
17 true, but most live somewhere today and probably will, in
18 the near future at least, stay there.

19 Q Well, Mr. Allen, isn't it true that the courts
20 have not required a municipality to build housing, that
21 they only require municipalities to provide, through their
22 zoning, the opportunity for the construction of that
23 housing, and the marketplace will decide if Allan-Deane
24 will build those 4000 units, and if nobody were to buy them
25 or to rent them, the municipality would not have the burden?

1 In a free market system, you trust the marketplace as to
2 what will get built, but there may indeed be an obligation
3 to zone for that housing.

4 A I don't think you can no longer distinguish
5 between the need for housing and the need for zoning. It
6 would be an excessive reaction, in my view, to zone for a
7 class of houses, or a class of anything, far in excess of
8 the demonstrated need.

9 Q Well, if in fact there is an obligation on the
10 part of the municipality to make up the difference, as
11 Judge Furman indicated there was in applying this fair
12 share technique to municipalities in Middlesex County,
13 he indicated that those municipalities that were below
14 the norm, that were below the mix of low and moderate which
15 prevailed in the County as a whole, had to immediately make
16 up that, and all municipalities got allocated a fair share
17 on top of that. If there is a need, if his decision pre-
18 vails and there is an obligation to make up for past wrongs
19 today, under Mt. Laurel, then your methodology would indi-
20 cate that the amount of housing that Bernards must make up
21 for in order to meet its present need is approximately 4000
22 units, is it not, plus what you have got for future need?

23 A On this particular document, PWA-6, there is an
24 incremental need of 3747. Now, what is the other number
25 that you made reference to?

1 Q The other number is the difference between the
2 present population of 15,000 -- let's look at the population
3 for 1974 in your Population Estimates, PWA-5. For Bernards
4 Township, what is that number in 1974?

5 A 13,705.

6 Q Let us just for the exercise deduct 13,705 from
7 27,915 and see what number we get.

8 A 14,210.

9 Q 14,200, and in order to get the number of house-
10 holds, let's divide that by three, which is your estimate
11 of the persons per household.

12 A 4733.

13 Q So, 4733, using a consistent approach ---

14 A 4737.

15 Q 4737 is the number of units which Bernards might
16 have to zone for in order to accommodate its ideal or
17 theoretical population had JORD applied since the beginning
18 of time, is that right?

19 A Had JORD applied since the beginning of time, or
20 if we are retroactively trying to impose JORD as if it
21 applied from the beginning of time, some such large number
22 as that might be required. I think this is quite hypo-
23 thetical.

24 Also, I think it is worthwhile adding, however,
25 that in our Master Plan review of last year, our Planner

1 did make an estimate of what our present holding capacity
2 is, and in our residential zones it was in the neighborhood
3 of 30,000 people. So that Bernards Township has already
4 zoned, under the present zoning, for a number quite similar
5 to the one we are talking about here.

6 (Discussion off the record.)

7 Q Mr. Allen, were you present on March 11, 1976
8 when Allan-Deane presented its proposal for the development
9 of its property?

10 A Wasn't that in February?

11 Q I'm sorry, February 11.

12 A I was present at the John Rahenkamp presentation,
13 et al.

14 Q Did you participate in any discussions subsequent
15 to that as to the merits of the Allan-Deane proposal?

16 A Do you mean subsequent to that meeting?

17 Q That presentation, yes.

18 A I do not believe that the Planning Board took
19 any formal action on that proposal prior to the initiation
20 of litigation.

21 Q However, there was a meeting scheduled in early
22 March, which was canceled because of snow, in which formal
23 action was to be taken, is that correct?

24 A Yes. Our plan at that time was to give Allan-
25 Deane a response, and I frankly forget the exact language

1 of that response. However, it wasn't supportive of the
2 application.

3 Q Was it to deny the application?

4 A The application had never been formally submitted,
5 for one thing, so I'm not sure of the precise structure of
6 that response because we were not responding to a formal
7 application.

8 Q You were submitted a proposed planned unit
9 development ordinance to be enacted, were you not?

10 A I believe one was submitted. I personally never
11 reviewed it.

12 Q Mr. Mason told you, did he not, that Allan-Deane
13 wished that that ordinance would be adopted so that the
14 Allan-Deane property would be rezoned in a planned unit
15 development area to accommodate six to eight units per acre?

16 A Mr. Mason did ask that we consider a P.U.D.-type
17 ordinance. The specifics of density and whatnot, I don't
18 recall. I don't remember that coming up specifically.

19 Q Well, do you have a formal procedure for asking
20 for a zoning change?

21 A A formal procedure?

22 Q Well, you stated that the application was not
23 formally submitted for a zoning change.

24 A Excuse me, when you said "application", I was
25 thinking in terms of a site plan application. Now, that is

1 what I had in mind when I said to you that there was not a
2 formal application. I inferred formal site plan application.

3 Q Well, it is impossible to make a formal site plan
4 application in an area which is not zoned for the use
5 proposed because there are no standards in that zone that
6 would allow the proposed use, isn't that correct?

7 A I guess at least the Planning Board wouldn't be
8 the proper body to make that application to.

9 Pardon me, let me back up. The variance procedure
10 for an application which is at odds with the existing zoning
11 ordinance would first come before the Planning Board in a
12 formal way, and then would be referred under the present
13 municipal land use law -- we are not in August yet -- to
14 the Board of Adjustment.

15 Q Well, the amount of land involved was 1100 acres,
16 or approximately ten percent of the entire municipality.
17 The zoning law under which the Board of Adjustment acts
18 defines a variance as -- well, is it your view that it is
19 proper for an applicant seeking a zoning change of 1100
20 acres to appear before the zoning Board of Adjustment? Do
21 you think the Board of Adjustment has the authority to make
22 that large a variance?

23 A I think what would be proper is probably what
24 Allan-Deane did. They asked to be heard. We accepted that
25 request and invited them to make a presentation at a public

1 meeting, and this was done. Shortly after, there was
2 initiation of litigation.

3 Q You are not stating that the municipality intended
4 to grant the application and go ahead and rezone the area,
5 and that we initiated litigation before you could act, are
6 you?

7 A I can only speak for myself when I make the
8 following statement. We could certainly not make a decision
9 of that type quickly. We had other items which were on the
10 agenda, which took precedent. We had a position developed
11 through our Master Plan review the preceding year with
12 regard to the overall residential zoning of the town
13 that was at odds with the Allan-Deane proposal. So, the
14 position at that point in time, if I had to stand up and
15 be counted, was that I would not support the Allan-Deane
16 proposal. Rather than have it sit on the shelf without
17 any comment or response at all, it was my position that we
18 should say we cannot support that proposal. Now, we were
19 prepared to say that at the meeting which was adjourned
20 because of snow, or called off because of snow. We were
21 prepared to say that, and my own feelings for that statement
22 were as I have stated.

23 Q Were you familiar with the fact that Allan-Deane
24 had applied in 1971 for a zoning change?

25 A I do not recall prior to Allan-Deane's late 1975

1 and early '76 statements ever having heard that fact, if
2 it is a fact. I take your word for it that they did apply.
3 There had been no discussions on this matter in my presence
4 since I became a member of the Planning Board. As far as
5 I can recall, there was no dialogue, no communication,
6 between Allan-Deane and either the Planning Board or the
7 Township Committee during 1974 and '75, prior to the late
8 '75 communication.

9 Q Were you generally aware that Allan-Deane owned
10 substantial acreage in Bernards Township?

11 A Yes.

12 Q Were you aware that Allan-Deane had initiated
13 action in Bedminister Township?

14 A Yes.

15 Q Were you aware that the plan that Allan-Deane had
16 submitted to Bedminister Township, which was prior to
17 instituting litigation, which was turned down, included
18 substantial development in Bernards Township?

19 MR. ENGLISH: I object to that question

20 because the fact of the matter is that in the
21 Allan-Deane-Bedminister litigation, Allan-Deane
22 refused to make available to the Defendant any
23 material relating to its Bernards Township plans.
24 So, I'm not sure that Allan-Deane's proposals for
25 Bernards Township were ever made public to anybody.

1 MR. HILL: Well, Mr. English, the record
2 will show the mere fact that Bernards Township had
3 on file a completed Worldly Woods plan, which your
4 associate, Mr. Nickerson, pointed out to me on the
5 return date of the request for documents that
6 Bernards Township had a full copy of the Worldly
7 Woods plan as early as 1971. Mr. Hannigan may
8 not have chosen to give it to you in that liti-
9 gation, but it was sitting here in the public
10 records of Bernards Township.

11 MR. ENGLISH: Well, if that is a fact, ~~it~~
12 stand corrected.

13 Q Were you familiar with the fact that a plan had
14 been submitted called Worldly Woods and it was in your files?

15 A I certainly never saw it, and I don't recall the
16 phrase Worldly Woods. I don't recall that name ever being
17 mentioned in my presence, nor do I recall any discussion
18 of the specific plan.

19 There was, of course, knowledge that Allan-Deane
20 owned a lot of property, and that some day would be coming
21 before the Township with development proposals, but I do
22 not believe that -- well, I can't say what was in other
23 people's minds. I do not recall, nor did I sense, that the
24 others with whom I dealt on the Committee or the Planning
25 Board knew the details of that proposal.

1 By the way, nor do I now know the details of the
2 Worldly Woods proposal. Never having seen it, I still don't
3 know what is in it, or care. Presumably, you have another
4 proposal now.

5 Q Mr. Allen, in the Answer filed by Bernards Town-
6 ship, reliance is placed on the fact that Allan-Deane
7 property is an area designated under the Somerset County
8 Master Plan as rural settlement. Are you aware that it is
9 in such an area?

10 A I am familiar with the Somerset County Master Plan.
11 I have never tried to match up the color on that [REDACTED]
12 the boundary lines of your property, but I am completely
13 aware of that plan.

14 Q Is it the intention of the Bernards Township
15 Planning Board to comply with the Somerset County Master Plan?

16 A Is it the intention?

17 Q Well, is it your intention as a member of the
18 Bernards Township Planning Board?

19 A I have taken the position on several occasions
20 that plans of all kinds are subject to change, and that a
21 master plan in particular should be evolutionary rather than
22 revolutionary, and I would like to see that we would accommo-
23 date new data, new insight, new goals in our Master Plan on
24 a reasonably frequent basis rather than wait long periods
25 before we make these changes. If, at times, the sentiments

1 and the data in Bernards Township are that we should do
2 something that is slightly at odds with the County Master
3 Plan, then I believe we should do so, and I believe we can,
4 that if we got the data for making these changes, that we
5 can have a dialogue with our County representatives and
6 reach an accommodation, but I do not believe that we are
7 forced to be in lock step with every detail of the County
8 Master Plan.

9 Q Are you aware of the fact that the A.T.&T.
10 facility in Bernards Township is in an area designated by
11 the Somerset County Master Plan as a community development,
12 residential neighborhood and open space?

13 A Yes.

14 Q Are you aware that in that respect it does not
15 comply with the Somerset County Master Plan?

16 A Yes.

17 Q Did you participate in the decision to rezone
18 for A.T.&T.?

19 A No.

20 Q Do you support that decision in retrospect?

21 A I am glad you added "in retrospect", because we
22 always have better hindsight than foresight, and I cannot
23 say what I would have done in a similar situation, but
24 certainly, looking back, I think it was a mistake.

25 Q Are you aware of the fact that the A.T.&T. longlines

1 development in neighboring Bedminster Township just across
2 the line is in an area designated on the County Master Plan
3 as open space and rural settlement?

4 A I have never made any examination of the longlines
5 site with regard to the County Master Plan.

6 Q Do you agree as a general proposition that the
7 location of these two major primary employment centers will
8 affect the Somerset Hills obligation to provide housing
9 under the Mt. Laurel decision?

10 A Under the Mt. Laurel decision, and also under the
11 JORD formula, both of these installations, if adopted by
12 the municipalities in this area, will impose greater housing
13 obligations on these municipalities than if the installations
14 were not there.

15 Q Have you examined the Lindbloom-Reading fair
16 share housing allocation for Bernards Township?

17 A I have read it on at least two occasions, not in
18 the last few months, but I am familiar with the concept
19 although I have forgotten some of the details.

20 Q Do you have any problems with that methodology?

21 A Yes.

22 Q What?

23 A The first problem, as you stated, or the first
24 point of disagreement that comes to mind is the designation
25 of a uniform obligation over a region. The JORD formula is

1 intended to specifically address the concept of a diminishing
2 obligation as one gets farther from the employment site.
3 It is my understanding from the Lindbloom proposal, within
4 a 30-minute commute, or 20 miles, whichever it is, approxi-
5 mately those, I believe, that there is no distinction made
6 as to where you are in the region, where the job is in the
7 region. Now, if I read that properly, that is saying that
8 an employment site 20 miles away with 1000 people creates
9 precisely the same obligation in Bernards Township as does
10 an employment site two miles away with 1000 people. It is
11 my understanding that this formula, or this model, if that
12 is the case, I feel that it is not only at odds with what
13 traditionally happens but it also is essentially unfair.

14 Q Have you examined the Malek and Lindbloom commen-
15 taries on Ordinance No. 385 which were returned through
16 your attorneys in this litigation in Answers to Interro-
17 gatories?

18 A No.

19 Q Were you responsible for the drafting of Ordinance
20 No. 385?

21 A Not at all, not the drafting. I emphasize the
22 word "drafting".

23 Q One of the documents that was turned over to me
24 in answer to our request for production of documents was
25 an opinion letter to the Township Committee from Wharton,

1 Stewart & Davis, advising the Township Committee that it
2 would be legally inappropriate to cut back on the employment
3 generating zones in Bernards Township. Subsequent to
4 receiving that document, the governing body continued to
5 consider and promote the cutback incorporated in Ordinance
6 No. 488 of employment generating zones. Are you familiar
7 with that opinion letter from Mr. Herold to the Township
8 Committee?

9 A I think you have to show me the letter. I do
10 not recall him making a statement quite as clear as you
11 implied he has made, and the ordinance is 388, by the way.

12 Q I can't locate that right now, and I just have
13 a couple of more questions right now.

14 One of the documents that was turned over to us
15 was a mathematic policy research proposal to do a fair share
16 analysis. Are you familiar with that?

17 A Does this carry a date of approximately April?

18 Q Yes.

19 A Yes, I am familiar with a proposal carrying that
20 date.

21 Q Do you remember what the cost on that proposal was?

22 A I better not guess at that. I really am not sure.
23 It was a number something like 15,000. That sticks in my
24 mind.

25 Q 15?

1 A I'm not sure.

2 Q Was that proposal ever authorized? Is that going
3 ahead? Do you know what the status of that proposal is?

4 A To answer the question, do I know what the status
5 is, the answer is no. I was not going to be directly
6 involved because I knew I was going to be away for awhile.
7 We were going to pursue a more limited study, or at least
8 the outline of a more limited study, but the actual study
9 and the actual cost I do not believe was completely estab-
10 lished.

11 Q Do you recall a discussion last summer, during
12 the Master Plan sessions which were chaired by Mrs. Fox
13 of the Allan-Deane property and the suitability of the
14 Allan-Deane property for development for septic systems?

15 A Do I recall a ---

16 Q A discussion during the summer of 1975.

17 A Do you mean a public meeting discussion?

18 Q A public work meeting session. You might recall
19 that Mr. Kerwin was there.

20 A Last summer?

21 Q Last summer.

22 A Obviously, I don't recall it yet, but help me.
23 I'm not trying to hedge. I don't specifically recall
24 it yet.

25 Q A Master Plan hearing last summer at which the

1 suitability of the Allan-Deane property for development
2 as zoned was discussed.

3 A I recall presentations and kind of information
4 hearings, if you will, or information meetings. There were
5 several of them. I'm not sure when a particular topic may
6 have been brought forward, but I do recall that there were
7 times when plans for expansion of the sewerage system in
8 Bernards Township were discussed, and probably at that time
9 Allan-Deane was discussed. Can you be more specific as to
10 your question?

11 Q Yes. Do you remember Margaret Fox making a
12 comment to someone in the audience that the Planning Board
13 anticipated that the Allan-Deane property could only be
14 developed on a random lot basis due to the land unsuitability
15 for septic systems?

16 A I will not say that I recall her making a specific
17 statement, but I do believe that that is a fairly accurate
18 statement of the position of the Planning Board at that time,
19 and the Sewerage Authority has had no plans which I am
20 familiar with to expand its sewerage, whatever the words
21 are, pipes, collectors, into that property.

22 Q Well, the comment related to the permeability or
23 suitability of that property generally which is underlined
24 by basalt for septic systems, and her comment related to
25 the fact that in her opinion, or in the opinion of the

1 Board, only a few random lots on the Allan-Deane property
2 would pass septic percolation tests, and, therefore, the
3 property could only be expected to be developed on a
4 random basis. Do you recall that?

5 MR. ENGLISH: I object to that question. It
6 is pure testimony by Counsel. The witness stated
7 he doesn't remember.

8 MR. HILL: Mr. English, the witness asked me
9 to help him with his recollection. I was trying
10 to help him, and I am asking him to recall that
11 conversation.

12 MR. ENGLISH: I'm objecting to your question,
13 Mr. Hill, which I have a right to do, and I think
14 your question is improper. If you want to prove
15 what was said, get a record of the meeting, or
16 call Mrs. Fox, but when the witness says he
17 doesn't remember, I think it is unfair and im-
18 proper for you to try to put ideas into his head,
19 and that is why I am pressing the objection, and
20 I direct him not to answer that question.

21 MR. HILL: Mr. English, you astound me in the
22 inconsistency of your objections. Mr. Allen said
23 he recalled a conversation. He didn't say he
24 didn't recall any conversation. You have told
25 him now that he doesn't recall the conversation.

1 Obviously, we can discover this case by having
2 about five motions per deposition, or we can
3 reasonably try and get at the facts so that the
4 case can be tried and issues decided, and I think
5 I am entitled to an answer to that question.

6 MR. ENGLISH: You are not entitled to testify,
7 and you can make all the motions you want, Mr.
8 Hill, but I direct the witness not to answer that
9 particular question. If you want to rephrase it,
10 go ahead, that is your privilege.

11 Q Mr. Allen, do you recall a conversation last
12 summer to that effect?

13 MR. ENGLISH: To what effect?

14 Q Mr. Allen, do you recall any conversations re-
15 garding the suitability of the Allan-Deane property to
16 development with septic systems?

17 A If I may, let me see if I can answer a question,
18 if not the one you have asked. There has been a considerable
19 amount of discussion about many aspects of planning in this
20 Township over a long period of time, and many people have
21 participated in it. I have never prided myself on my
22 retention ability of details. I find it difficult to
23 remember specific people or specific times at which a
24 specific subject may have been discussed. It, however,
25 has been the position of the Planning Board, I believe,

1 and the Township Committee, that as a result of their
2 natural resources inventory, and as a result of the plans
3 of the Sewerage Authority, that the property in the south-
4 western portion of the Township, which would include Allan-
5 Deane's property, would, if developed, probably be developed
6 with septic systems, and because of the soil and geologic
7 conditions in that area, the lot sizes per dwelling would
8 be three acres, or in that neighborhood.

9 Now, I believe that is a fair statement as to the
10 position of the Township government at this time. I do not
11 recall specific discussions, and, by the way, I am not
12 myself an expert in any of these matters.

13 Q Do you know where Margaret Fox resides today?

14 A I believe they live in Holmdel.

15 Q Do you know where I could find out where she lives
16 in order to subpoena her for a deposition?

17 A I guess the Township could track her down for you.

18 Q Do you have any other memoranda or documents
19 that you brought with you besides those which have been
20 marked in evidence? I would like to get those together,
21 if I can.

22 A I think we can now bear on the question we raised
23 earlier. I have a lot of stuff. I didn't know what you
24 wanted, and I think it would probably be better for you to
25 follow a certain line of questioning and see if there is a

1 pertinent document.

2 Q Do you have any notes or records of any discussions
3 concerning the Allan-Deane property?

4 A I made notes during most of the Master Plan
5 deliberations last year, and have no idea what is in them
6 at this point because I have never had occasion to go back
7 over them. So, at this point, I don't believe I have any
8 with me, and I cannot offhand identify any notes I might
9 have on Allan-Deane.

10 Q Did you take any notes as a result of discussions
11 between February 11 and March 11, 1976 regarding the Allan-
12 Deane proposal?

13 A I'm not sure. Sometimes I sit in meetings and
14 doodle, and sometimes I don't. I'm not really sure. But,
15 at any rate, I have had no reason to go back and review them,
16 so I am really not sure.

17 Q Did you attend the meeting called by the County
18 Planning Board to discuss the zoning in Somerset Hills and
19 the preservation of Somerset Hills from residential develop-
20 ment?

21 A I attended a meeting which was closed, and which
22 subsequently was the subject of some dispute.

23 Q Was that meeting in Far Hills?

24 A It was a meeting in the Somerset County Municipal
25 Building.

1 Q What was the subject matter of that meeting?

2 A I believe spokesmen for the County have commented
3 upon that, and I also believe that meeting is the subject
4 of litigation, and it was a closed meeting, and, as I
5 remember, the Court permitted it to be a closed meeting.

6 Q Was there a Court Reporter at that meeting?

7 A Yes.

8 Q What was the general subject matter of the
9 meeting?

10 MR. ENGLISH: I object to that question and
11 I direct the witness not to answer because this
12 is the subject of litigation, as to whether it
13 was a proper or closed meeting or not.

14 Q Have you attended any other meetings regarding
15 Allan-Deane specifically?

16 A I believe the records show that we had one or
17 more, and I won't say how many, but the records will disclose
18 this. There were meetings with attorneys on matters of
19 litigation, and I believe the opening statements, which are
20 a matter of public record, prior to closure of those meet-
21 ings indicated the subject matter, and I believe that Allan-
22 Deane was the subject of at least one of those.

23 Q Have you reviewed the Allan-Deane Complaint?

24 A I read, I guess, the original Complaint. There
25 may have been changes with which I am not familiar, but I

1 certainly read the original Complaint. I guess I read the
2 amended Complaint after we passed Ordinance 385. Was there
3 an amended Complaint after that?

4 Q Yes, there was.

5 A Okay, I believe I read that, also.

6 Q Do you recall the demographic counts, the first
7 15 or 16 counts of the Complaint talking about what kind
8 of community Bernards Township was from a demographic point
9 of view?

10 A I remember statements of this nature, yes.

11 Q Did you make any statement to the newspapers that
12 generally that Count was correct, that the description was
13 accurate?

14 A I made a comment at one point in which I said,
15 and I am not sure when, that some of the things in the
16 Complaint were true and others were not true. I don't
17 believe I specifically indicated which parts of the Complaint
18 I thought might be true and which were not. However, you
19 may correct me, but I don't believe that I pointed out any
20 specific things as saying they were true, but maybe I did.
21 However, if you are making reference to census data, I
22 would not have a quarrel with census data.

23 Q At the Lorent trial, Mr. Hannigan asked you if
24 you had commented during your election campaign that you
25 intended to prevent development in the PRN zone. Do you

1 recall that question?

2 MR. ENGLISH: I object to the question
3 because the next day, Mr. Hill, Judge Leahy ruled
4 that it was an improper question.

5 Q What was Mr. Hannigan's question?

6 MR. ENGLISH: I object to that because the
7 question I think you are referring to was one that
8 the Court said was an improper question and should
9 not be answered by the witness.

10 MR. HILL: That was for the purpose of
11 trial, not for this deposition.

12 MR. ENGLISH: I take the same position.

13 Q What statements did you make during your campaign
14 about the PRN zone?

15 MR. ENGLISH: I object to that and direct
16 the witness not to answer.

17 Q Mr. Allen, did you state, with regard to Ordinance
18 385, that you were convinced that no, or very little, low
19 or moderate income housing would be built in Bernards Town-
20 ship because of the terms of the ordinance and because of
21 the unavailability of Federal funds?

22 A I made the statement, which I believe you allude
23 to, in a public information meeting back in April, sometime
24 like that. It was not an official scheduled meeting. It
25 was a meeting to which representatives of the various

1 nongovernmental organizations in the Township were invited,
2 as well as the public.

3 I believe that it is important to accept risks
4 and burdens but to not magnify the fears of people with
5 regard to those risks and those burdens. Now, it has been
6 my understanding, and it is not based on a personal analysis
7 but it is based on comments that have been made in my
8 presence, that the amount of money that is available for
9 subsidation of these housing units is limited, and though
10 we are not trying to frustrate the efforts of those who
11 have the money and have the desire to construct low and
12 moderate income housing in this Township, I think the public
13 should be aware that the funds are limited, and that the
14 likelihood of large numbers of these units being constructed
15 in this Township in a short period of time is low, and that
16 is essentially the statement I made, that though we are
17 making an honest effort, in my view, to provide land use
18 regulations which will enable builders to construct low
19 and moderate income housing in this Township, that the
20 public should not become alarmed that this will happen
21 overnight, not because of actions of ours but because of
22 the realistic assessment of the funds which are available.

23 Now, I may not have made the statement coherently,
24 and the Press may not have repeated it properly, but that
25 was my intent.

1 Are you aware that in order for a municipality to
2 be eligible for Section 8 Housing, the governing body of
3 the municipality must pass a resolution ~~excepting~~ the
4 proposed development from taxation?

5 A I believe that the Ridge Oak Senior Citizens
6 Housing Project fell under some kind of provision of that
7 type, and we did pass a resolution last year, or 1974.

8 Q Is it your personal intent to pass such resolutions
9 where needed to make projects built in accordance with
10 Ordinance No. 385 economically possible?

11 A Certainly. If developers come forward ~~which meet~~
12 the requirements of Ordinance 385, and such a ~~provision is~~
13 required at that time, and if I am on the Township Committee,
14 I would vote that that is part of the obligation we incur
15 when we do this.

16 Q Were you made aware in designing Ordinance No.
17 385 that the requirement that funding be guaranteed for a
18 period of 40 years made Ordinance 385 only available for
19 one possible Federal funding program which would have to be
20 piggybacked on a State Housing Finance Authority loan in
21 order to obtain that 40-year guarantee?

22 A Yes, and the information which we received, and
23 the guidance which we received, suggested that the huge
24 proportion of funds that were available would comply with
25 that provision.

1 Q Did you realize that when you put that provision
2 in you in effect cut off Section 202 funding or Farm-Home
3 Administration funding from being available?

4 A I am not an expert on the various funding programs,
5 and so I have to say no, I was not aware. When you mention
6 Section 202, or whatever, I was not aware of the specific
7 programs at that time. There may have been some discussion
8 but there was not a detailed discussion in my presence,
9 at least.

10 Q Were you aware of the fact that Ordinance 385,
11 because it prohibits any such project from being placed
12 within half a mile of an existing project, and if it is
13 for that purpose the current Ridge Oak proposal, in effect,
14 would bar any such project from being built in the environs
15 of Basking Ridge?

16 A I don't believe Basking Ridge is a geographical
17 entity, so when you say within the environs of Basking Ridge,
18 I'm not sure what that means.

19 Q Well, within half a mile of the center of Basking
20 Ridge,

21 Ridge Oak is not in the center of the village of
22 Basking Ridge.

23 Q Where is Ridge Oak?

24 A Ridge Oak is proposed to be to the east of the
25 center, East Oak Street.

1 Q Approximately how far from the center of Basking
2 Ridge?

3 A I'm not sure, but you could look at the map. There
4 is no open land in the center of Basking Ridge which would
5 be denied access to this particular opportunity, as I recall,
6 as a result of that provision.

7 Q Doesn't that provide that no projects are to be
8 within a mile of each other, the first few projects?

9 A It provides that there is a minimum distance
10 between projects, and ultimately the minimum distance would
11 be one-half mile, but during the consumption of the first
12 half of the fair share quota, during that period, the
13 minimum distance should be one mile.

14 Q So, when the first 170 or so units are under
15 construction, none could be built within a mile of Ridge
16 Oak, which is near Basking Ridge.

17 A The first half of the permitted balanced residential
18 complex, BRC, if you will, would not be permitted within
19 one mile of the proposed Ridge Oak site, that is correct.

20 Q Did you consult with your Planner, Mr. Agle, on
21 those provisions?

22 A He was present at meetings at which this was
23 discussed, yes.

24 Q Did he give you any input as to his opinion as
25 to the planning propriety of this?

1 A Here we come back to a question that was touched
2 on before. There have been a series of ongoing meetings,
3 an ongoing series of meetings, and membership at these
4 meetings has not been constant. It is impossible for me to
5 recall at this time who attended any particular meeting,
6 and what particular discussion was had, and the status at
7 which the deliberation was at that meeting. These things
8 evolved. This decision evolved. It is my distinct recol-
9 lection, however, that he was present during this discussion
10 at some time or another, because it was not a one-time
11 discussion, it was, again, an evolutionary discussion, and
12 he at no time disagreed. However, he will have [REDACTED]
13 for himself as to whether he agrees or disagrees. I believe
14 he agrees.

15 Q Did you ever state that the purpose of the fee
16 schedule for applications in the PRN zone, namely, the
17 requirements of applicants to pay \$50 an acre and two cents
18 a square foot, the reason that that fee schedule was so
19 high was in order to bankroll litigation which the municipal-
20 ity anticipated it might incur as a result of these appli-
21 cations?

22 A The fee schedule, about which I recall some
23 discussion, is the fee schedule that was introduced as an
24 amendment to our environmental impact statement ordinance,
25 and I have forgotten the number of that now, but there was

1 an amendment to that ordinance back in early 1975, and a
2 specific fee schedule was recommended and adopted. I don't
3 recall the fee schedule discussed with regard to Ordinance
4 347 and the PRN proposal. The fee schedule that was adopted
5 is part of the Environmental Impact Statement. It was a
6 schedule which was largely the recommendation, I believe,
7 of Charles Agle, and, as I recall, it was intended to cover
8 the cost of planning, and review, and follow-up. I do not
9 recall litigation being a specific cost that that schedule
10 was intended to cover.

11 Q Did you ever state that it was?

12 A Did I ever state it was?

13 Q Yes.

14 A I don't believe so. Again, if I did, I don't
15 recall it.

16 MR. HILL: That's all I have for today,

17 Mr. Allen.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NO. L-25645-75 P.W.

THE ALLAN-DEANE CORPORATION,
a Delaware corporation,
qualified to do business in
the State of New Jersey,

Plaintiff,

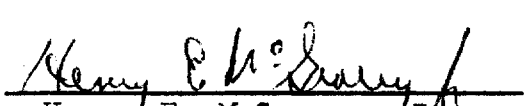
v.

THE TOWNSHIP OF BERNARDS,
in the County of Somerset,
a municipal corporation of
the State of New Jersey,

Defendant.

CERTIFICATE

I, Henry E. McGorrry, Jr., a Notary Public and
Certified Shorthand Reporter of the State of New Jersey,
do hereby certify that the named witness was first by me
duly sworn and that the foregoing transcript of deposition
is a true record of the proceedings and testimony as taken
by and before me at the Municipal Building, Basking Ridge,
New Jersey, on Tuesday, July 20, 1976.


Henry E. McGorrry, Jr.
Notary Public and Certified
Shorthand Reporter of New Jersey

Dated 7/20/76