

RULS - AD - 1978 - 60

4/19/78

Stenographic Transcript of Order to Show Cause

Pg. 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES (Continued):

ALFRED L. FERGUSON, ESQ.
(McCarter & English, Esqs.)
For Township of Bedminster.

ROSLYN HARRISON, ESQ.
(McCarter & English, Esqs.)
For Township of Bedminster.

EDWARD D. BOWLBY, ESQ.
For Township of Bedminster.

Marian V. Balerno, C.S.R.
1913 Scenic Drive
Trenton, NJ 08828

1 THE COURT: May I apologize for keeping
2 you waiting. I had some matrimonial matters I
3 had to handle in Judge Imbriani's room. Counsel,
4 I'll be happy to hear you on your application.

5 MR. GORDON: My name is Gary Gordon,
6 and I represent the Cieswick Plaintiffs. I will
7 submit to the Court my substitution of attorney
8 form. I would like to move to have Ann Nelson
9 admitted as counsel pro hoc vice. She is an
10 admitted attorney from Pennsylvania and is the
11 staff counsel of the American Civil Liberties
12 Union. She's not yet admitted to the New Jersey
13 Bar, but hopefully will be soon.

14 THE COURT: Is there any objection by
15 any of the other parties to Ms. Nelson appearing
16 pro hoc vice?

17 MR. FERGUSON: No, Sir.

18 MR. HILL: No, Sir.

19 THE COURT: The Court is happy to grant
20 that request.

21 MS. NELSON: Thank you, Your Honor.

22 THE COURT: It's obvious that there
23 have to be some procedural ground rules determined
24 before this matter proceeds, and I would like to
25 hear discussion by counsel on that point.

1 Mr. Hill, this is your application for
2 an order to show cause. I'll hear you first.

3 MR. HILL: Your Honor, there are two
4 procedural matters which we believe should be
5 settled by the Court before this application
6 proceeds. Both matters are purely in the
7 discretion of the Court. In other words, there's
8 no case law that we can find that would dictate
9 that you should adopt a certain procedure because
10 it's an order to show cause.

11 Under Rule 1:10-5 Your Honor sets the
12 ground rules. The first question to be decided
13 is who has the burden of going forward. That is
14 different from the burden of proof. We acknowledge --
15 Allan-Deane acknowledges that we have the burden
16 of proof of showing, first of all, that Bedminster
17 Township has not complied with previous orders of
18 this Court. And secondly, that after we have made
19 that showing to the Court's satisfaction, that
20 specific corporate relief should be granted. And
21 as Your Honor knows from reviewing the affidavits,
22 Allan-Deane acknowledges that it's asking this
23 Court to bestow a private benefit on the Allan-
24 Deane Corporation and under a rule of law which
25 talks about public need and public good, and Allan-

1 Deane is willing and able to shoulder its fair
2 share of the public burden in the form of providing
3 a certain percentage of the housing on the site
4 for least cost or low and moderate.

5 On the issue of the burden of moving
6 forward, we contend that since there are unrebutted
7 affidavits on file with the Court, that we have
8 established, at this point in time, a prima facie
9 case, and that rather than have our witnesses, all
10 of whom are sitting in the court, go forward and
11 explain to the Court what their affidavit said
12 and what they present and be subjected to cross-
13 examination, that the most procedurally expeditious
14 manner of handling this case would be for Your
15 Honor to determine that Bedminster Township has
16 the burden of moving forward. In other words,
17 that they should meet the prima facie case that
18 we have established in our affidavits, and then we
19 should have a chance to rebut.

20 The second procedural issue to be
21 determined by the Court, the first one being who
22 has the burden of moving forward, is whether or
23 not this case should be, in effect, bifurcated or
24 tried in two parts. We contend that the most
25 reasonable manner of trying the case, the manner

1 that will result in the most intelligible record
2 is for the Court first to hear evidence on the
3 question of whether or not Bedminster has complied
4 with the previous orders of this Court. And then
5 after that issue has been determined, assuming it
6 has been determined in plaintiff's favor, to hear
7 and decide how to proceed with respect to specific
8 corporate relief. We're asking Your Honor's
9 indulgence in bringing forward witnesses to
10 testify only on the zoning ordinance which
11 Bedminster has enacted, allegedly, in response to
12 Your Honor's previous orders and to have the right
13 to call them later if Your Honor determines
14 favorably on that issue on what we plan to do on
15 our property and why we'll do it and why we believe
16 it's feasible and how we can provide our share of
17 the public need for housing in the lower income
18 spectrums of the population.

19 Once again, this is completely at Your
20 Honor's discretion. We think that it's the logical
21 way to proceed. We think that it will protect the
22 Court's order, that conceptually, it will be easiest
23 on you and easiest on us if we can focus, first of
24 all, on the one issue, has Bedminster complied,
25 rather than perhaps waste the Court's time in

1 talking about our plan for development prior to a
2 determination or at least the presentation of
3 evidence on that issue. In other words, we
4 strongly urge the Court to, in effect, allow us to
5 bifurcate, and I believe that the order to show
6 cause, as presented and as signed provides for
7 that bifurcation. It says the Court will hear two
8 issues, and it spells those issues out. We'd
9 like to be able to just call the witness on the
10 one issue first and have the right to recall them
11 later to talk about our plan if and when Your
12 Honor decides that Bedminster has not complied.

13 Thank you, Your Honor.

14 THE COURT: Ms. Nelson, do you want to
15 be heard?

16 MS. NELSON: Your Honor, I don't think
17 we have too much to add to what Mr. Hill has already
18 stated on the record. We essentially adopt his
19 position on both issues. The bifurcation issue,
20 I would just urge upon the Court that it's probably
21 the most sufficient use of the Court's time to
22 bifurcate the matter at this point, and also not
23 to muddy the waters in an already very complex
24 case.

25 On the issue of who has the obligation to

1 go forward at this point, essentially, I adopt
2 Mr. Hill's arguments, Your Honor, that Bedminster
3 should go forward. I would also urge upon the
4 Court that the plaintiffs in this action, I think,
5 have been most patient. We've been waiting for
6 years and years and years at this point, and a
7 prima facie case has been made out by way of
8 affidavit.

9 Defendants had ample time to file
10 affidavits, counter-affidavits. They failed to
11 do that. And I think they have the obligation,
12 at this point, to go forward with their case.

13 THE COURT: Mr. Ferguson.

14 MR. FERGUSON: May it please the Court,
15 the utility of not bifurcating would be that the
16 enormity of the Allan-Deane site plan going for
17 1,840 plus units on grounds that their own
18 expert who testified shouldn't have more than
19 540 plus at the first trial, would, apparently and
20 hopefully, get rid of Allan-Deane as a plaintiff
21 forever.

22 I would think that would accomplish much
23 more than a staged trial process. As long as
24 Allan-Deane can try for the pot of gold at the end
25 of the Madison Township rainbow in the terms of a

1 building permit, I think they will be here
2 taking the Court's time.

3 I think the Court should hear testimony
4 on whether the Allan-Deane proposal of 1,840 plus
5 units is appropriate for their ground. The same
6 witnesses will be testifying about the same issues,
7 and to my mind, it would be better to hear it all
8 at once.

9 As to the first issue of who should go
10 forward, I think the affidavits are unrebutted for
11 two reasons. One is that even on the plaintiffs'
12 affidavits, it is clear that the Township did rezone.
13 It rezoned for density in excess of that specified
14 by the trial court and the Somerset County Master
15 Plan. It rezoned in locations specified as
16 appropriate by this Court in the prior case and by
17 the Somerset County Master Plan, and it rezoned
18 in numbers sufficient for -- there are 1,582 units
19 in the current Master Plan Zone, in excess of five
20 dwelling units per acre, subject to the 300 unit
21 limitation in the ordinance.

22 And as to that limitation, it's our
23 position, and we will so testify, that that is
24 sufficient a staging mechanism and is not intended
25 to be a limitation. It's spelled out in the Master

1 Plan that if the units are built and if the zoning
2 scheme works out, the number will be raised. In
3 point of fact, there are 1,582 units zoned in the
4 R-20 zone and in the CRC cluster concept. So I
5 think the simple question of whether Bedminster
6 Township has complied must be answered in the
7 affirmative.

8 Now, in the traditional rule, 1:10-5
9 hearing, that's all the Court is called upon to
10 determine, has a defendant complied. Have you
11 signed the deed. Have you transferred the bank
12 account to your ex-wife who needs the alimony.
13 Have you done this, have you done that. That kind
14 of determination can be made usually on affidavits
15 or with minimal testimony. I think it's important
16 to note that Rule 4:6-7 deals with summary
17 proceedings. If it's a summary proceeding which
18 can be determined on affidavit or minimal testimony,
19 it's appropriate to do so. Minimal testimony is
20 defined in the Rules at page 795 as testimony which
21 should not exceed one day.

22 If we had that kind of issue before the
23 Court, I would agree with Mr. Hill that it would be
24 appropriate for us to go first and that, indeed, it
25 could be determined on both affidavits and what

1 minimal testimony the Court wanted to hear.

2 Unfortunately, however, this case is just
3 not a 1:10-5 hearing. It is a full plenary hearing
4 on whether the constitutional obligations of Mount
5 Laurel and Madison Township have been met. And
6 in that context, the Township is prepared to present
7 testimony on a number of issues.

8 And the other reason why there are not
9 counter-affidavits on file is that it took a great
10 deal of time in terms of consulting with the planner
11 who prepared the ordinance, other planners and our
12 clients, the planning Board and the Township
13 officials to determine exactly issues we were
14 prepared to put testimony forward on, what issues
15 we were prepared to concede to Mr. Hill, what items
16 we claim Mr. Hill is wrong concerning in his
17 affidavits, and what issues are legal issues and
18 don't require testimony at all.

19 I have an extensive memorandum which we
20 prepared yesterday, and I can recite each of those
21 issues to the Court at this time if the Court wishes.
22 I won't do so unless the Court would ask me.

23 THE COURT: Not on that point.

24 MR. FERGUSON: Our basic position is that
25 we are prepared to justify our multi-family housing

1 and the basic numbers of units provided for in the
2 ordinance. I think they're in keeping in the
3 prior decision in this case by this Court, in
4 keeping with Mount Laurel and in keeping with
5 Madison Township.

6 The witnesses whom we will present include
7 the following, and I specify these for the guidance
8 of the Court in adopting the ground rules: Candace
9 Ashmun, Chairman of the Environmental Commission
10 and a member of the Zoning Committee that did the
11 Master Plan and the ordinance; Robert Graff,
12 Chairman of the Planning Board; Charles Agle, the
13 professional planner who was a consultant during
14 the process. Perhaps some others from the Planning
15 Board, although I'm not quite sure about that at
16 this time.

17 In addition, we have two additional
18 witnesses, Richard Cappola and Peter Durham,
19 professional planners who will testify as to the
20 appropriateness of the response of the ordinance
21 to Madison Township and Mount Laurel in terms of
22 density, location and numbers. As to issue number
23 two, the appropriateness of the plaintiffs' site
24 plan and their proposal for 1,840 plus units. We
25 will have additional experts. At this time, I cannot

1 tell the Court exactly who they will be. The
2 problem is that the town has never seen the site
3 plan except in the papers that were served upon.

4 As the Court will note, that site plan
5 is dated December 1977, and the first time the
6 town officials saw it was when it was served in
7 late March. I have consulted with a number of
8 planners on it, and they tell me that in order to
9 testify, they must have access to and see the backup
10 documents which were attached to it. And indeed,
11 some of the exhibits I didn't even receive. Some
12 of them I may have from the Bernards Township
13 litigation, but, at this point, I don't think I
14 received a full set.

15 I understand there are large blowup maps
16 and additional data which support the site plan,
17 and before we can present extensive testimony on
18 that, our people will have, of course, to review it.

19 I think, Your Honor, that what we have
20 here is a full plenary trial on a constitutional
21 issue and not simply a 1:10-5 hearing. Whether we
22 complied with the court order by rezoning must be
23 answered in the affirmative. The question is does
24 that stand up to constitutional scrutiny. I think
25 it's appropriate for this Court to follow the

1 suggestion in the Curtis Point case at 138 N.J.
2 Super, page 51, the schedule "A" pretrial conference
3 or some kind of a proceeding where the attorneys
4 will specify the issues to be tried, the fact witnesses
5 to be presented, the expert witnesses to be
6 presented. And perhaps we can mark maps and
7 documents to save the time both of counsel and the
8 Court. I would conceive of that to be a far
9 preferable method of proceeding rather than just
10 call either one of us to go forward.

11 Should the Court, however, do so, I am
12 prepared to put on witnesses starting today, but I
13 will inform the Court that in my judgment, our
14 presentation will suffer because of the time
15 constraints which I think will be eliminated if
16 we follow my suggestion which is to have an orderly
17 procedure.

18 MR. HILL: Your Honor, may I just respond
19 on two points.

20 We also are prepared to go forward. All
21 the witnesses who signed affidavits are sitting in
22 the courtroom. Now, we've been over it, and we
23 believe we are prepared.

24 I'd just like to answer one of the points
25 or the main point that Mr. Ferguson makes which is

1 that the issues here are complex, and he says
2 because they're complex, they shouldn't be under
3 Rule 1:10-5, and it should be scheduled at some
4 later date after going through full trial proceed-
5 ings.

6 I'd just like to point out to the Court
7 that the issues really are only whether or not
8 Bedminster has complied, that our affidavits say
9 that they've actually provided for less multi-
10 family units at lower densities than the ordinance
11 previously invalidated by this Court. We can show
12 you that today if the issues are complex, they are
13 complex because Bedminster has made them complex
14 by adopting a Byzantine ordinance that is almost
15 unintelligible, but which we have spent many hours
16 trying to understand and trying to work with. And
17 we can show you some plans of what they say a
18 developer must do if they want to develop in
19 Bedminster. You'll see from the affidavits that
20 not many people develop in Bedminster. There are
21 8 or 12 building permits issued in the last eight
22 years, less than 20.

23 The only reason that this case might be
24 complex is that the ordinance is maze-like and
25 very complex, but the issues before the Court

1 aren't complex. The issues are compliance or non-
2 compliance that Bedminster has not, in effect, even
3 attempted to comply, and their overall intention
4 insofar as intentions can be interpreted from the
5 officials of the governing body and the Planning
6 Board is that there be no development in Bedminster
7 Township.

8 THE COURT: Well, the point remains that
9 I have diametrically opposed assertions by
10 counsel as to what the ordinance does or does not
11 permit, the densities that will or will not
12 result from the ordinance. And it may be necessary
13 for us to progress carefully through that Byzantine
14 labyrinth before we can decide who is accurate in
15 those assertions. So the matter remains complex.

16 MR. HILL: Complex because they wrote
17 an ordinance that is complex.

18 THE COURT: Clearly, this is an
19 application for what has been called, I believe most
20 in New Jersey, relief to litigant. The relief is
21 sought even in the order to show cause in two aspects;
22 one, a declaration of invalidity of a municipal
23 zoning ordinance and plan; and second, a request for
24 extraordinary relief of Court direction for
25 issuance of permit for development to one of the

1 plaintiffs.

2 The original litigation in this matter
3 was extraordinarily complex. In the Court's
4 original decision, a distinction was found between
5 the bulk of the Township and the more developed
6 corridor in the eastern portion of the Township,
7 a distinction which, at least, this Court found
8 based on the fact in the record rather important
9 ecological considerations, water quality,
10 concepts, etc.

11 On reconsideration after the issuance of
12 the decision in the Mount Laurel case by the State
13 Supreme Court, this Court realized that that
14 decision did not permit the trial court to draw
15 such a distinction, at least not on the basis on
16 which the Court then drew it on the proofs before
17 it.

18 The Supreme Court, having inserted a
19 footnote in its opinion in Mount Laurel, expressly
20 holding that there was no statutory scheme, at
21 that time, requiring any compatibility with the
22 County Master Plan. The law by legislative
23 enactment has shifted somewhat since then on that
24 issue. This Court will want to know to what
25 extent the new zoning ordinance does or does not

1 comply with the County Master Plan. The Court
2 will be interested in knowing whether or not the
3 new zoning ordinance is, at least in part,
4 necessitated by the ecological proofs that were
5 presented a few years ago. As I mentioned a few
6 minutes ago, we will have to work our way through
7 the ordinance to see what it does or does not permit
8 and to what extent. I'm satisfied, in effect, that
9 there are a number of issues that will require
10 introduction of substantial testimony before they
11 can be resolved and put in shape for ultimate
12 resolution. I'm sure by the Court, different
13 than this one, we have a certain obligation to
14 keep things orderly and organized for those
15 review panels. I, therefore, agree with the
16 defendant that a pretrial conference and order
17 is warranted and needed in this case. I, therefore,
18 schedule a pretrial, however, in the near future.
19 Of course, when this Court uses that phrase, that
20 means 30 days, not tomorrow.

21 In light of that, I question whether it
22 would be appropriate, at this point, to rule on the
23 bifurcation aspect or even on the burden of
24 producing evidence. That might better be resolved
25 at the pretrial conference. It could be one of the

1 issues listed for determination on that date. I
2 don't want to delay discovery. If I'm going to
3 order a pretrial conference, I'd just as soon start
4 it now.

5 Who wants discovery and of what, and we
6 might as well go the same order.

7 MR. HILL: I understand that the defendants
8 have contacted four planners. Both of them have
9 refused to testify on behalf of this ordinance.
10 Some have submitted reports. I would like copies
11 of those reports.

12 THE COURT: Ms. Nelson, any request for
13 discovery? Is there anything above and beyond this
14 record that you want to see?

15 MS. NELSON: Not at this time.

16 MR. FERGUSON: I want to see the reports
17 received by the plaintiff from its experts, some of
18 which I understand were used to prepare the
19 affidavits, but some of which may not have been
20 used for anything to this point.

21 I would also like availability of all the
22 backup documents for the plaintiffs' site plan to
23 have those experts whom I have contacted review
24 them, and those are the four experts that
25 Mr. Henry Hill refers to. I, of course, will

1 resist Mr. Hill's discovery of experts retained
2 for the purposes of this litigation and which we
3 may or may not use until it becomes clear we're
4 going to use them, in which case he's entitled
5 to the reports, and we will certainly supply them.

6 If Mr. Hill limits the testimony of
7 Messrs. Lynbloom, Rahenkamp and Mallach to the
8 substance of their affidavits, I don't see that we
9 need any depositions or further discovery of those
10 witnesses. If there are matters beyond those
11 affidavits, and if they're covered in reports,
12 I would think that would be adequate.

13 I do not think the parties ought to get
14 bogged down in a large discovery process. I think
15 that would waste time and money, and I think we
16 should try and avoid that.

17 THE COURT: I agree with you substantially
18 in that respect. This case is very similar to that
19 old tale about the fourth grader who read a book and
20 said I now know more than I ever cared to know about
21 such and such. The record is adequate.

22 Any reluctance to give the Township the
23 discovery just requested?

24 MR. HILL: Your Honor, we are daily
25 working on our site plans and our proposals and

1 modifying them, and to some extent, negotiating
2 with the Cieswick plaintiffs as to how much, low
3 and moderate, they want to support us in our
4 application. That process is by its nature
5 fluid. I would urge on the Court until we get to
6 the point where Your Honor has said that Bedminster
7 is in contempt or concluded that Bedminster has not
8 complied with the court order, what we might plan
9 to develop on our land is none of their business
10 until we apply to Bedminster. They can keep most
11 of the lawyers in our offices busy on depositions
12 regarding --

13 THE COURT: Nobody has asked for
14 depositions yet. He just wanted all the underlying
15 reports and studies that supported the affidavits
16 submitted with the order to show cause. Isn't
17 that basically what you've asked for?

18 MR. FERGUSON: Yes, Sir.

19 MR. HILL: We gave you a preliminary
20 preview of what we're asking for in the nature of
21 corporate relief, the affidavits supporting that,
22 the data supporting that, the soil boring tests,
23 the computer model of the mountain and how runoff
24 works. All the stuff that comes out of some
25 computer in Boston is terrifically voluminous, and

1 I have only seen summaries of some of it. I don't
2 think that what we plan to do on our property
3 should be properly discoverable at this time when
4 the issue still remains whether Bedminster is in
5 compliance or not in compliance. I would be glad
6 to furnish them with all our data relating to our
7 analysis of their ordinance, but I would resist,
8 at this point, presenting them with our data
9 relevant to what we plan to do on our land and why
10 we think it appropriate. I think that the Court
11 is first going to have to make a determination as
12 to whether or not Bedminster has complied before
13 that becomes relevant. And it's extremely
14 expensive to produce, extremely large plans, and
15 we are continually playing with slight variations
16 of site plans as we, indeed, talk with the Cieswick
17 plaintiffs, and I don't want an obligation to run
18 to McCarter & English every time a line is changed
19 on a plan that may not be relevant. I'd like to
20 focus, and I'll be glad to give them the material
21 on our analysis of their ordinance, but they wrote
22 the ordinance.

23 I don't see why they should be entitled
24 to that either. But we finally have it figured out,
25 and there are various levels of study that go beyond

1 the affidavits as to the assumptions we made, the
2 ways we figured out what they were doing, and on
3 reflection when the question is whether a party
4 has complied or not complied, how we intend to
5 show that they have not complied with previous
6 orders which are available to them, how we have
7 analyzed their ordinance, what work we've done, and
8 it's very expensive to figure out how much land
9 is in each zone. They don't know. They have no
10 idea. It's not in their master plan. Their master
11 plan is a 4-page document which is merely conceptual.
12 We have, over weeks and months analyzed what their
13 ordinance really says, and the fact they need to
14 know that in order to protect themselves, to know
15 what they've adopted, to me, is, in fact, remarkable
16 and displays that the many assurances that Your
17 Honor has received that they were proceeding in good
18 faith and studying hard and that it would take a
19 little longer to adopt this ordinance are question-
20 able.

21 I resist that discovery because the issue
22 is solely whether or not they have complied.

23 THE COURT: It may well be helpful to the
24 Court, however, if both sides know what the other is
25 trying to do. It may save some time. Go ahead.

1 MR. FERGUSON: I would only say it's
2 not quite so easy to differentiate the two issues
3 of their site plan and the attack on the ordinance.
4 This Allan-Deane says if I buy Pikes Peak at
5 \$10,000,000 with one building at the bottom, I'm
6 entitled to, as a matter of right, to a high-rise
7 building on that lot with sufficient floor space
8 for me to get the return for the other. And
9 pure and simple, their attack on the ordinance
10 is motivated by the fact that they have \$10,00,000
11 according to their testimony in that investment
12 which consists of some good land on the bottom
13 and 240 acres of very, very steep slope and some
14 flat land at the top which may or may not be
15 appropriate for what they want. The point is they
16 have to justify their attack on the ordinance in
17 terms that give them the right under their theory
18 to pay off their investment, and I think the two
19 may very well be interrelated, and I think some
20 discovery might show it.

21 MR. HILL: As a matter of law, it's clear
22 that we have standing, just as the Cieswick
23 plaintiffs have standing. I do attack their
24 ordinance and the economic variations aren't
25 relevant except insofar -- we think that it's very

1 relevant that it costs Allan-Deane \$3,500 per day
2 to hold that land. That, historically, has cost
3 them that. And Mr. Muror's affidavit, there is
4 a table of expenses of the Allan-Deane Corporation
5 in fighting -- in litigating with Bernards Township
6 over eight and a half, seven years. And every day
7 that goes by with computed interest and expenses.

8 Allan-Deane -- it costs Allan-Deane
9 \$3,500, and that is --

10 THE COURT: These two issues don't help
11 me much in deciding who's going to get what
12 discovery. My present intention is that this
13 pretrial conference will be held during the week
14 of May 22nd somehow, some time. I will, therefore,
15 permit all parties to serve interrogatories and
16 demands for admissions on all other parties through
17 April 28th. Normal time for answering will be
18 permitted because, I assume, that after pretrial
19 conference that fourth week of May, there will be
20 some time before the matter is scheduled for
21 plenary hearing. That will give everybody,
22 basically, three weeks to prepare their arguments,
23 why everybody else's request for discovery are
24 extraordinary, burdensome, improper, etc., and I
25 can decide that and order answers at the pretrial

1 conference.

2 Those orders may be short-term, however,
3 so you will be using three weeks to compile
4 information. Don't be caught short having to
5 answer things in three or four days. Be ready
6 to answer while you're also arguing whether
7 you should have to or not.

8 All right, I think that puts things on
9 a track, at least, and leads us in a common
10 direction.

11 We'll cross the other bridges that
12 develop at the time of pretrial conference. There
13 may also be a request for briefs on short notice,
14 at this time, so I'm sure you will have a great
15 deal of research in your files, and in your office
16 keep it handy. You may have to prepare your
17 briefs rather promptly also.

18 MR. FERGUSON: Do I understand the Court
19 would grant perhaps a brief before the pretrial or --

20 THE COURT: No. I'm anticipating a six-
21 or seven-hour pretrial. I'm going to tell the
22 assignment clerk I want a whole day for this. You
23 may, if you wish, submit letter memoranda to me on
24 any issues which you may feel will be helpful on
25 the pretrial, and get it to me sufficiently in

1 advance so you have some assurance that I'll read
2 them. But I'll leave that up to you. I don't
3 order the same.

4 MR. HILL: I understand there will be
5 no evidence taken upon the date of the pretrial;
6 is that correct?

7 THE COURT: That's correct. I may want
8 a number of exhibits marked not because you like
9 them, but because you do acknowledge that they
10 will probably be admissible in order to support
11 an argument by your adversary which you do not at
12 all agree.

13 All right, anything else that we should
14 decide now for then?

15 MR. HILL: Can you give us any idea as
16 to when we might be taking testimony? Some of
17 my witnesses live in California. They'll be glad
18 to be here, but sometimes they like to plan.

19 THE COURT: All I can say is that I would
20 express a hope on my part that the matter could be
21 completed as far as proofs before I go on my
22 summer recess so I will have something to keep me
23 busy other than pure leisure activities, but my
24 wishes are not always granted. So I can't have
25 any assurance. But I'd be very happy to have the

1 whole thing over with the week of the Fourth of
2 July, but we can't be sure of that.

3 All right, thank you for your help.

4
5 (The matter was concluded for the day.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, MARIAN V. BALERNO, C.S.R., one of the
Official Court Reporters in and for the State of New
Jersey, certify that the foregoing is a true and
accurate transcript of my original stenographic notes
to the best of my knowledge and ability.



MARIAN V. BALERNO, C.S.R.

Dated: 5-1-78