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Transcript ~~of~~ of the deposition of Edwin S. Mills

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THE ALLAN-DEANE CORPORATION, et als., :

Plaintiffs, : DEPOSITION UPON
ORAL EXAMINATION

vs.

THE TOWNSHIP OF BEDMINISTER, et als., :

OF

EDWIN S. MILLS

Defendants. :

TRANSCRIPT of the deposition of EDWIN S. MILLS,
witness called for Oral Examination in the above-entitled
action, said deposition being taken pursuant to Rules
Governing Civil Practice in the Courts of New Jersey, by
and before Kathleen Fitzgerald, a Notary Public and
Certified Shorthand Reporter of the State of New Jersey,
held at the offices of Hannotch, Weisman, Stern & Besser,
Esqs., 744 Broad Street, Newark, New Jersey, taken on
February 2, 1979, commencing at 10:00 a.m.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>REDIRECT</u>	<u>CROSS</u>	<u>RECROSS</u>
EDWIN S. MILLS				
BY MR. GAVER	3	80		
BY MS. NELSON			65	95
BY MR. FERGUSON			101	

E D W I N S. M I L L S, first having been duly sworn according to law by the Officer, testifies as follows:

DIRECT EXAMINATION BY MR. GAVER:

Q Professor Mills, what is your home address?

A 46 Sturges Way, Princeton, New Jersey.

Q When were you first approached in becoming involved in this case?

A In the fall.

Q Can you be more specific?

A It must have been some time in November. I believe it was November.

Q And who approached you?

A Mr. Ferguson. It started with a phone call.

Q A phone call?

A Yes.

Q What were you asked to do at that time, Mr. Mills?

A We discussed the case, Mr. Ferguson discussed the case and we talked about different kinds of economic issues involved and basically what he asked me to do was to read over some testimony by Mr. Mallach and others and to make some comments on it, on the methodology.

Q When did you do that?

A I did that in December.

Q Early December or late December?

A Well the results of my reading and thinking were given to Mr. Ferguson in a letter, which I believe was dated December 27, just before I left for a trip abroad.

Q Is that the only letter you wrote in connection with this matter?

A I believe so.

Q Did you receive any letters setting forth facts and circumstances of this case?

A I received two or three letters with accompanied documents just indicating what the documents were that were enclosed.

Q And what documents did you review for purposes of your involvement?

A Well I gave transcripts which I read here. Volume 3, Volume 4 and Volume 5 and then Volume 15, nothing in between, 17. Those are all the volumes of transcripts.

I received this low and moderate income housing study and I also read this report prepared by the State of New Jersey called "A revised State-wide housing allocation report from New Jersey."

I read a few other things that Mr. Ferguson sent me which are summaries of transcripts prepared in his office.

Q Summaries of what?

A Summaries of courtroom testimony.

Q Of whose testimony?

A Mr. Mallach's and others.

Q Do you recall what others?

A Not offhand.

Q Do you have those summaries with you today?

A No. Summaries and analysis I suppose would be a better word.

Q And did those summaries and analysis, was that part of the things that you took into account in forming your opinions and views?

A Well I certainly took them into account in the sense that there is a lot of paper there and it is sometimes hard to figure out what the basic issues are and by reading the summaries and going back to the transcripts, it was made easier for me to focus on the issues, as specifically, on the question of methodology in computing the fair shares, which is mentioned a number of time in different places in the transcript.

And I found that a useful kind of index to guide my way through the transcript.

But my recollection is that there is not much in the way of views because the legal issues involved that

are presented in the summaries. So I don't believe I was influenced in terms of my views about the substantive issues involved.

Q So it is your recollection that these are principally factual summaries of the testimony rather than legal analysis of the testimony?

A I think that is mainly true and is certainly what I paid attention to.

I am not a lawyer and I don't quite know what the legal issues are. Excuse me, I think there may have been one or two other documents that were sent to me in which I read.

Q What are those?

A I am trying to think. I can't remember whether there were others or not.

Q Do you have them in your possession?

A Everything I received I have in my possession.

MR. GAVER: I would like a list and description of everything this witness saw and used in connection with his analysis.

Q Could you compile such a list for me?

A Yes.

Q You mentioned that one of the things you looked at was the blue document there, the housing allocation plan. Is that the first time you reviewed the document?

A Yes.

Q Now I just want to plumb your recollection. You indicated in addition to what you have here today, there was some testimony, summaries and some other documents.

Can you give me any glimmer as to what the other documents were?

A As I said, there might have been some other things. I am not quite sure whether there were. If there were, I can't remember what they were. I am going to have to look them over.

Q Your letter says that you also examined various letters, memos, exhibits and worksheets. Does that refresh your recollection?

A Yes.

Q What kind of letters did you look at?

A It has been a couple of months since I read these things and I am just going to have to go back and look. There is no point in guessing. These were things that were sent to me.

One of them I recall was a letter from one of the witnesses, maybe Mr. Mallach, somebody, and I don't know to whom and I take it as I recall it was a preliminary letter before the testimony outlining what he was going to study and discuss in the case. But it was not detailed or substantive and I just took note of what it was about,

A No.

Q This is it?

A Yes, this is everything I have been asked to look at.

Q Did you ask to see any other documents aside from the transcripts, other than that which was sent to you by Mr. Ferguson?

A No.

Oh, I asked to see this blue volume.

Q The housing allocation?

A Yes.

Q Now you indicated in your letter of December 27th your review of these documents?

A Yes.

Q And there has been no other document or letter prepared by you since that time?

A No. In fact, I have been abroad for the whole time.

Q Turning to your letter of December 27, Professor Mills, you mention at the top of Page 2 that prior witnesses had used "Land availability, income level of the community, and the availability of jobs

Q Your next sentence goes on to say "I believe these notions of fair share are fundamentally defective," in your opinion. Do I correctly understand you to say that you do not believe that a fair share housing allocation plan should use any or all of those four factors?

A I didn't say that they should not be used. I said that the use of those four factors was defective in my view.

I think there are other things that should determine the fair share allocation as well as those, in addition to these factors.

Exactly what factors one uses, depends on exactly what you are trying to do. And I don't know exactly what the court is trying to do, so I would have to say it is an open question whether any or all of these four factors should be included.

Q Putting aside what the court is trying to do, I am here to find out what you are trying to do.

MR. FERGUSON: We can't totally put aside what the court is trying to do, since

... going to have to give a couple of sentences of background.

My understanding of what the court basically requires of zoning or land use controls these days is from the Madison Case which I have read. That is another document I have, by the way. I was provided the transcript of the court's finding in the Madison Case.

Q For purposes of this proceeding?

A That may have been at my request.

Q Is that the first time you saw that opinion?

A No. I had seen it before, but I did not have a copy in my possession.

Q You read it before?

A I glanced at it.

I had read rather carefully the Mt. Laurel Supreme Court decision, although, I don't have a copy of that in my possession now.

My understanding of what court requires in the land use controls from the Madison Case is that land use controls should not prevent people from living in a

community who would live there in the absence of unduly restrictive land use controls in a relevant region.

Now, that is my basic framework. So if you say that land use controls should not exclude people who would live in a community in the absence of land use--exclusively, land use controls that are elsewhere in some region, you would have to ask who would want to live there and who could afford to live in this community and that brings in inevitably how people make residential location choices. In other words, it brings in the demand side or the side of the equation which has to do with people's preferences and economic interests in terms of places to live, and I don't think these four factors adequately express that side of the equation.

In addition, however, to the question of where people would like to live if there were no excessive restrictions for land use controls; there is in the State study and in the court case and in the other court cases, some notion that you have to take into account the ability of the community to absorb people and that does bring in some or all of the factors that are in the formula that we are discussing.

So I am not willing to say that those factors are relevant. I am simply trying to say that they are inadequate as a determination of where people would live in the

absence of unduly restrictive land use controls.

Q What other factors would you add to that?

A I would add the incomes of people who might be thought of as potential residents in the community, if the land use controls don't restrict them. I would like to know about their work places; I would like to know about the kinds of people they are in the sense that people do a lot of clustering, which is quite voluntary, with other people, clustering with other people who are in one way or another similar to them.

Some of that is imposed by racial prejudices and discrimination in housing markets; historically in education and employment markets. People tend quite aside from any impact of land use controls, for example, to cluster in terms of income. It is true in the United States, it is true in parts of the United States in which zoning is not very important.

It is true to a considerable extent in other countries.

So I would take some account of the fact that people tend to cluster their residences around others who are in some ways similar to them.

Q You first mentioned you would want to know about the incomes of the potential residents. What is the relevance of that factor?

A Well the relevance starts from the fact that we want to think of work places or concentrations of work places. Like central business districts of the Metropolitan area in terms of Northeastern New Jersey, jobs are concentrated to the east both in New York and in the eastern part of New York, Eastern New Jersey and residences tend to sprinkle out from there westward, northward and to some extent southward.

Now there is a typical pattern which is probably the best study subject in urban economics by which people in a statistical sense segregate their residences by income in terms of distances from the employment centers.

Statistically speaking with a lot of exceptions to lower income people, people whose earned incomes are lower tend to live closer to employment centers than higher income people.

In American metropolitan areas, there is a typical so-called income gradient in which shows how the average level of income by distance at given distances from the center of the metropolitan area varies with that distance. And typically these gradients tend to rise. That is to say, high income people tend to cluster near the edge of the metropolitan area and there is a good factual reason for that; namely, that housing demand goes up with income for obvious reasons.

High income people spend more on housing or have better housing than low income people and what you get by living closer to the edge of a metropolitan area is cheaper housing of given qualities and sizes, and if a rational person asks himself, should I move another mile away from the employment centers, the answer is, I should if the saving in housing costs compensates for the additional commuting costs, both time and money costs of commuting.

A high income person who wants to buy a large volume and high quality of housing will save more by that additional mile than a low income person whose housing consumption is somewhat more modest and for that reason, aside from any others of which there are some, high income people tend on an average to live from the centers of the metropolitan areas than the low income people.

Q You are quite sure there are studies that support this? What studies?

A Lots. The first one that comes to mind is certainly one of the very best. It is a book by a man named Richard Muth. The book is called "Cities and Housing." It was published in 1969 by the University of Chicago Press.

I have myself done some work showing how incomes and land varies from distances and centers. Some of

that work is summarized in a book called "Urban Economics," published in 1962.

There are several more recent studies of much of the same subject.

Q Can you identify them for me?

A Yes, I can, showing how income population density and land varies from city centers.

There is a book just published in a series of volumes that I edited for the same publisher that publishes the journal that I edit. I can't give you the exact title. This book is a comparison of--it is a book mainly about Japanese urban problems. But in that book he has a large number of comparisons of density patterns around metropolitan areas and income patterns in terms of distance from metropolitan areas, such comparisons between Japan, the United States and Europe. I am going to think of the author of the book in just a minute. But this name slips my mind.

I read that volume in manuscript when I was considering it for the series that I edit. The book is now published, but I have not read it since it was published.

There are many such studies. Indeed, I have a paper which I wrote last summer and registered in Princeton which is a survey of such studies and I can

empirically do you do that?

A Suppose you take an employment center and you find that there are people with varying incomes who work in that center. It might be New York City; it might be one of the communities in New York, Eastern New Jersey, one of the employment centers in Northeastern New Jersey, and then one would want to estimate the demands of such people for residential locations at varying distances at city centers and you can draw a curve showing the amounts of the particular income groups that are willing to bid for housing or land as a function of distance from the city's center, and you find that at some distances the curve for high income groups is above the curve for low income groups, and if you have more than two income groups, high above middle above low and at other distances, the heights of the curve are reversed and that leads to the prediction that the group will locate at any particular distance from the employment center whose amount they are willing to pay which is greatest by the distance. That is the way the economists go about analyzing the demand for residential location.

One then finds that not only income is important but other things are important.

Q By demand, you are talking about natural market demand?

A Yes.

Q You also mentioned voluntary clustering. Is that the self-segregation that you talk about in your letter?

A Yes. I am referring to segregation not only by race but by other characteristics.

Q Would you explain what you mean?

A People tend to cluster not only by race, and that is hard because some of it is voluntary and some is not. Some tend to cluster by religion, ethnic group, national origin, by family status. Certain areas tend to be lived in by the single people or married childless couples and other areas tend to be lived in with the families with children.

Q Have you yourself ever studied and published any self-segregation pieces?

A Yes. Not as much as some of the people have, but my textbook contains a good deal of discussion on segregation voluntarily and otherwise.

Q Who else would you consider authorities on this subject? Do you consider yourself an authority on

this subject?

MR. FERGUSON: What is the definition of "authority"?

A On a scale of one to ten, I would give myself a six.

Q Who is up closer to ten?

A A very good man who is really a geographer, but does the same kind of research as urban economists is Brian Berry who is a professor at Harvard.

He has written a lot of papers on the subject. There are several former students of mine who have written extensively on it. Paul Courant who is now a professor of the University of Michigan. Another one is named John Yinger who is at Harvard. In fact, this year he is in Washington, but he is on leave at Harvard. A third is more or less a contemporary of mine, John Kain, a professor of economics at Harvard.

Q Is there anybody else that you would put in that category?

A There are other people who have--there are plenty of non-economists who write on segregation. Sociologists write on the subject.

Q Are you familiar with someone named Schnare on this subject?

A Not offhand. My memory for names is not the best.

Wait a minute. Anne Schnare. I think she has written a paper which either has been or shortly will be published in my journal on the subject.

Q Is she up close to ten in your rating system?

A She is a young scholar. She is not as well established as most of the people I have been referring to. She is younger than Courant and Yinger. But she is good.

Another person I might mention who has done a lot of work on the subject, very good work, a woman named Susan Rose Ackerman. She is on the faculty at Yale. She has done several papers on the subject.

There are others. If I could sit in my office for an hour, I could give you a list of names.

Q Just so I understand your background in this voluntary segregation, self-segregation, is it a fair characterization that you have not yourself studied the subject intensely?

A Well it has not been a major ^{part} of my own research. But I have read very carefully books and papers that have appeared by economists and to a lesser extent by others, because it is a subject of great interest to me as it should be to anyone who wants to understand segregation problems, and what is imposed on low and moderate income producing people by racial discrimination or by zoning rules or by other things that are beyond their controls,

is a very important issue and it is a subject of great concern to me.

I do not want anybody to get the impression at least that I am willing to admit that I am not well informed on the subject.

Q How does one empirically factor this into your fair share formulation?

A Well I think one has to take account of the fact that he would not get a random selection of people from the Northeastern New Jersey region, eight counties, or whatever the right number of counties is, living in a distant community like Bedminster even if there were no zoning or land use controls of any kind, anywhere, in the greater metropolitan area.

You would tend to get a particular concentration of certain kinds of people and the easiest thing to say is that I can't guarantee Bedminster, but typically on the fringe of metropolitan areas you would tend to get concentrations of relatively high income people.

Now, in the United States there are post war conditions that resulted to some extent from exclusionary zoning, but it also results to some extent from basic economic considerations that would be relevant even in the absence of any zoning and which have nothing to do with zoning.

done some. Because in many countries, land use controls are rather nonexistent or unimportant in this respect. In many countries there are no racial problems.

I have done a lot of work on Japan and Korea. Neither country has any problem that remotely resembles our racial problems.

To some extent one does it in the United States by comparing settlement patterns, segregation patterns in the metropolitan areas where either land use controls are unimportant or where there is good reason to think that the voluntary aspects of segregation are important.

In the former category, I would include Houston, for example, on a kind of extreme example where there is no zoning. There are metropolitan areas where zoning is not very stringent in the sense that there is no large zoning, no minimum bulk requirements where zoning mainly simply tends to segregate nonresidential uses from residential uses.

A metropolitan area like Minneapolis has a small percentage of blacks and the presumption has to be that blacks, at least outside the Southwestern part of

the United States, are the main group for whom there is involuntary segregation.

Q Most of the commentators agree on what you just said. Isn't that true?

A Most of the people I would consider to be well informed, which may be a small minority of people. That is a serious comment; that is not just meant to be frivolous. Because these issues are highly emotional and many, many people write and speak about them and I am referring to what I regard as high quality scholarly work which I believe to be more detached.

Q Would that include Kain studies in Detroit and Cleveland?

A Yes, indeed. He is concerned entirely with racial segregation, not with other kinds of segregation. At least insofar as the studies I have seen. And his concern is clearly within involuntary segregation. He does not in the studies that I have seen employ a demand model.

He just asks the kind of question that he asks which is, how much lower would unemployment among racial minorities, black in particular, be if the residences were distributed equally or proportionately with other populations throughout the metropolitan area. He does not believe that they would be even if there were no land use controls or racial discrimination of housing.

IN OTHER WORDS, HE UNDERSTANDS THAT BLACKS HAVE
lower incomes than whites and that that in itself effects
statistically where people live.

Q In this connection are you familiar with
any studies that relate specifically to the New Jersey
housing market rather than generally, or to some other
location?

A Some. There is one of the studies done by one
of my students at Princeton which has some New Jersey
data in it. There is a study done by a woman named
Michele White who was concerned more with physical aspects
of residential patterns, but who brought in the effects of
zoning on segregation. That study is published in a
book which I hope to edit.

Q On physical zoning?

A Yeah. Part of it is published. Parts are published
in my journal and parts are published elsewhere.

There is also some studies done at Rutgers. I
can't give you the exact references, but these things
come across my desk and I look at them.

Q In the absence of zoning, who in your opinion

would live in Bedminster who doesn't now? How would it be different, is what I am saying.

A I can't tell you specifically. I have never been in Bedminster and there are certainly local conditions that affect who lives there.

For example, what kind of employment there is in the immediate area and the only kind of employment I know of there is the AT&T complex.

But what I can say statistically, one would expect near the fringe of a metropolitan area or of a regional area as Bedminster, one would tend to get a cluster of relatively high income people.

Q With or without zoning?

A In the absence of zoning--even in the absence of zoning.

Q Have you studied Bedminster in specifics?

A No, I have not. I looked at the map. I know where Bedminster is. But I have not been there and I have not tried to do any statistical analyses of what kind of people live there in the absence of involuntary exclusion.

Q Have you studied the employment patterns around Bedminster for purposes of this case or for any purpose?

A Not really. I have read the studies by Mallach and the State of New Jersey study. I have read many studies

of employment residential income and other aspects of the New York metropolitan area.

Q How about just New Jersey or focusing on New Jersey? Can you give me some references that you read and may have considered in your analysis?

MR. FERGUSON: Well make the distinction between studies he considers specifically for this analysis and then the studies generally which he may have been familiar with.

MR. GABRIEL: The point is well taken.

A It is well taken but I am not sure it helps. I don't know of anything specifically about Northeastern New Jersey. There must have been some things from Rutgers that I have seen in the last few years. Since I can't remember what they are, I suggest they haven't strongly influenced my analysis.

In connection with a specific study, the only things I can refer to are the things I already mentioned. The study by Mallach and the one by the State of New Jersey and the testimony by Mallach and others.

Q What aspects of the study by the State of New Jersey--I presume you are referring to the housing allocation plan?

A Yes.

guess it came while I was gone. But anyway, I may have received it before I wrote the letter, but I haven't read it before I wrote the letter.

But, that has a lot of data in it about locations of employment in that region of New Jersey as well as others, and about income levels of people in various communities.

Q And specifically, what did you take into account with regard to Bedminster?

A Nothing. Bedminster is not mentioned in the study to the best of my knowledge.

Q All right.

On--

A I am sorry, maybe it is. I can't remember. I certainly looked rather carefully at the data for that region of New Jersey. But I did not--I did not pay a great deal of attention to the numbers for Bedminster because I have not been able to follow the alternative, the calculations that led to the alternative numbers in Mr. Mallach's work.

So since I can't figure out how he got his numerical

conclusions, I have no way of comparing them to the ones in here.

Q Just concluding on this point, I asked you who would reside in Bedminster absent zoning. Am I correct in understanding the only thing you can tell me is that you would expect a clustering of relatively high income people? That is as specific as you could be?

A I would also expect a clustering of people who work at AT&T.

Q At all income levels?

A Not necessarily in the same proportions, but that is the closest large employment center. So presumably some people would like to live there. So I would expect a mixture of people from AT&T.

I don't know what that mixture is. I don't know what the income levels of the people who work at the AT&T center are.

Q Are you telling me that you do a distinction ^{make} between voluntary and involuntary segregation?

A I used the term self-segregation to refer to voluntary segregation.

Q How quantitatively or empirically can you distinguish between the two?

A I think I partly answered that question. I can make international comparisons comparing the residential

patterns in the United States with those in metropolitan areas of countries where either land use controls are unimportant or where the other kinds of segregation that we presume to be involuntary are not very important.

Racial segregation being the foremost among them. Since in the other countries there are no--

Q Have you ever done such an analysis for New Jersey?

A I don't know what "such an analysis" refers to.

The last question had to do with how you analyze self-segregation and my answer was in one way was to do international comparisons.

Q I am asking you whether you have ever undertaken such an analysis to determine how one can quantify self-segregation, voluntary segregation versus involuntary segregation as it would apply through the New Jersey housing market.

A No.

Q Are you familiar with any studies that have done so?

A Some of the studies that I have referred to have some implications for involuntary segregation. The work by Michele White, perhaps foremost.

And she is concerned with the effects of large lot zoning on excluding low income, presumably low and

moderate income from communities, and she does have in her studies some data from New Jersey.

Q Is this that which is published in your physical zoning and--

A I believe so, but if it is not there, it is in my journal.

Q Do you think you could provide me with any references outside that book of hers?

A Sure.

You are interested in references that use New Jersey data?

Q Correct.

A I think it is just one, but I am not sure.

MR. FERGUSON: Perhaps if Mr. Gaver looks at that one.

Q You would agree, would you not, that the segregation--the commentators generally agree that segregation by race principally talking about blacks, is generally agreed to have a significantly higher involuntary component than traditional segregation by religion or ethnicity?

A Sure.

I suppose if you go back far enough in history, you would probably say there was a lot of discrimination against the Irish Catholics in Boston in the 19th century.

into a white neighborhood or having his children beaten up to and from school. Or they would have a hard time having a realtor that would show them a house or apartment in a white area.

I believe that has changed a great deal in Baltimore and elsewhere.

Q Are you talking about the social attitude problem?

A Yes, but I don't believe it is nonexistent now.

All the studies that refer to involuntary segregation by and large study its effects but they are deficient, most of them are deficient in asking the question, how much segregation would there be for example by race in the absence of involuntary segregation either resulting from prejudice or land use controls and that is still an open question.

It depends partly on what you mean by an involuntary segregation. You might say that the statistical tendency for blacks to have lower incomes than whites itself results from discrimination in the educational process, against the parents of the black children if they don't do as well.

So there is room for different judgments on that matter.

But if you take a distribution of income among

blacks as given, then I think it is clear that even in the absence of other kinds of involuntary segregation, either from housing discrimination or land use controls, there would still be a good deal of voluntary segregation on the basis of race around the United States. I am not referring specifically to Northeastern New Jersey.

Q Voluntary segregation where?

A Statistically it would tend to be concentrated where it is now close to the large employment centers, predominantly central business districts in metropolitan areas.

Q How do you measure the order of magnitude of that self-segregation?

A Not easily, because we don't have any good data on where blacks live in the absence of involuntary segregation.

You have to ask what is the residential pattern of groups with similar incomes, family sizes and employment locations, who do not have the racial discrimination problems that blacks have and that is the best evidence one can get as to how black residents would be distributed in the absence of involuntary segregation.

Q What is your opinion as to how blacks would disburse themselves in New Jersey without regard to zoning?

blacks, even among the absence of any kind of involuntary segregation or discrimination, blacks would statistically still be concentrated closer to the center of metropolitan areas than are whites.

Q I just want to get your sources for that opinion.

A I base that predominantly on studies that show a systematic variation in income levels by location of residents in metropolitan areas.

I also base it on knowledge that we have about self-segregation of other groups, ethnic, religious and other kinds of groups.

Many, many metropolitan areas in the United States have a place that is locally referred to as little Italy and these are ethnic and religious groups which have voluntarily segregated their residences. There are no zoning to zone out Italians and probably very little prejudice on the part of residents in other areas in having Italian or more Catholic neighbors.

Q My question was addressed to your opinions

Q You are basing that however not on any specific study to New Jersey that you are familiar with?

A Basing my conclusions about voluntary segregation?

Q In New Jersey.

MR. FERGUSON: I don't know that he gave any conclusions about specific New Jersey voluntary segregation--

MR. GAVER: I asked what his opinion is at to what the black dispersal would be without zoning in New Jersey.

MR. FERGUSON: I think he said he didn't know of any reason why it would be different in any place else.

MR. GAVER: I asked him whether he is familiar and whether he basis that on any study with specific regard to New Jersey. If it is not, that is fine.

MR. FERGUSON: He said some of the studies he referred to had New Jersey

data in them. If that is included in your question, he has already answered it.

Q Is that your answer?'

A Let me elaborate a little bit.

The studies that I can remember that had New Jersey data in them are mostly about involuntary segregation, mainly from land use controls which had very little to do with race directly.

Well I think basically, my answer is that I have a strong presumption that the things that are similar about people are more important than the differences compared with New Jerseyites, with those from Connecticut and Colorado and I am pretty confident that the same kinds of considerations that govern residential locations in Chicago and Denver and elsewhere would apply to New Jersey, absent things that governments do which obviously vary from one state to another.

Q And your basis then includes your sources which you gave us earlier?

A Yes.

Q That is White, Kain, et cetera?

A Yes.

I don't want to be thought that those are the only things I read. Those are the things that I can remember most easily. In fact, it was a very good

Q You go on in your letter to say that average income rises with distance from metropolitan areas?

A From centers.

Q Centers of metropolitan areas, I'm sorry.

Is it your testimony and opinion that this is a totally voluntary result?

A No, not totally voluntary result. It is influenced by racial discrimination. It is influenced by exclusionary land use controls in suburbs. It exists in central cities where the zoning aspects are much less important. It also exists in communities where the racial aspects are not important.

Q Do I understand you correctly, in the absence of any kind of zoning whatsoever, you would not expect to find large concentrations of blacks and poor in Bedminster?

A I don't know Bedminster. It is conceivable that there is something in or around Bedminster that would attract them. But I do believe that statistically, black

and low income people would be concentrated closer to the centers of metropolitan areas than would whites.

Q What order of magnitude of population would you expect to disperse out there?

I mean, what you told me, I think you would find more proportionately closer to Newark, let's say, than you would in Bedminster?

A Yes.

Q How do you quantify that?

A I can't quantify it except with some very careful study. I would have to estimate what part of segregation of blacks result involuntarily. I would have to look carefully at studies on how other people with similar incomes and family compositions distribute themselves around metropolitan areas.

I think it could be quantified if you ask who would live in Bedminster in the absence of involuntary segregation. That of course changes over time. Then your whole New York region is growing in population, gradually, not very fast.

So gradually, the edges spread out in Bedminster being the edge, 50 years from now probably might be something else. So one can't answer that question without dating it.

One has to say--for example, you could say in 1970 what group of people in terms of numbers and

...minister--"would have a relatively small proportion of low and moderate income residents even if there were no zoning anywhere in North-eastern New Jersey."

A Yes.

Q Relative to what?

A What I mean is that a smaller proportion of the residents of a typical community on the fringe of a metropolitan area would be low and moderate income than in the metropolitan area as a whole.

In other words, if a metropolitan area has 25 percent low income people, I would expect typically communities on the fringe of the metropolitan area to have much less than 25 percent.

Q Can you quantify that?

A Not very precisely. What I can mainly tell you is that there is a substantially rising average income gradient from the center of the metropolitan area or from any major employment centers. But I am not able to tell you quantitatively what percentage of the residents

area
f the Bedminster would be lower or moderate income in
he absence of land use controls anywhere in the metropolitan
rea. I don't think anybody can tell you that.

Q You don't know if anybody has attempted to
o that?

MR. FERGUSON: Attempted to do what?

MR. GAVEREL: Attempted to quantify
the factor he just described for New Jersey.

MR. FERGUSON: Could you specify in
your question exactly what you mean? It was
a long answer.

MR. GAVEREL: The witness told me he
has not attempted to quantify the proportion
of low income people he would expect to
find in Bedminster in the absence of zoning
and I asked him if he was aware of any studies
or anyone who has attempted to make such
a quantification.

Well the people that have done these fair share
calculations, both the state and Mr. Mallach, are doing
something relative but not the same. They are trying to
ask what numbers of low and moderate income people can
Bedminster be expected to be able to absorb and my
fundamental point is that that is quite different from the
question, how many low and moderate income people would

A No, but I can tell you statistically, I am confident that a smaller proportion of low and moderate income people live on the fringes of metropolitan areas than the proportion of higher income people who live on the fringes of metropolitan areas.

Q And that opinion is based on studies that show that income rises as you rotate away from open centers. Is that correct?

A Yes.

Q And can you give me any such studies that relate to New Jersey?

A Most of the studies that I can give you are from samples of cities from around the country. I can't tell you offhand whether any New Jersey cities are included in the particular samples, but they may be.

The book that I referred to by Richard Muth has a lot of such income gradients in it and those are from a sample of cities from around the country. I cannot tell you whether any New Jersey cities are included.

But I myself have calculated, many people have

size, region, importance of zoning inside and outside the central city and so forth.

Q You have told me that were you to do a fair share analysis, you would include in addition to the factors you described in Messrs. Mallach and Davidoff as using, you would include such analysis of incomes of the people who would live there, relevant work places and concepts of clustering or self-segregation. Is there anything else you would include?

A Well I would ask whoever asked me to do the study, very precisely what is meant by "fair share." The factors that you just mentioned, I think are the correct ones, correct or important ones.

If you want to ask the question who would like to live in Bedminster absent involuntary segregation, the notion of fair share may include as it were in some way forcing people in Bedminster or some other community because it is felt by a court or by somebody that they ought to have a certain share of low income people.

The answer to your question depends on exactly what is meant by "fair share."

Q What is your understanding of the meaning?

A My understanding is that the concept is murky.

As I read the Madison Case, the Madison decision, my view was that the obligation of communities under the court's decision was to permit to live in that community the same groups of people who would live there in the absence of involuntary exclusion, anywhere in a relevant region.

That sounds to me like asking on the demand side who wanted to live where. It does not sound to me like how many people does Bedminster or Princeton have an obligation to take because they can afford them, even though they may not want to live there.

I don't exactly know what is meant by the term "fair share," other than the demand side considerations that I have just been discussing. If you look at the formulas that are used in the State of New Jersey study and the Mallach study and the Davidoff study, they are mostly addressed to the issue of somehow what could a community absorb in terms of vacant land in its own income level and, therefore, low and moderate income people not being a terrible burden on the community.

Those factors say nothing about who wants to live

... sizes and
the family composition is also important. Some childless
couples both of who work tend to have statistically
different residential location patterns than do families
with children and only one worker.

The last few years there have been some evidence
of increasing numbers of upper middle class whites living
very near the centers of metropolitan areas. Some
evidence, not very good, that those people are mostly
childless couples with two wage earners.

That is certainly a factor that is relevant. So
there are other factors. My response is partly in terms
of what I think is important which is apparently in
terms of what kind of data has been available and have
been studied better. Income is available, it is
collected by our census and so it is studied extensively.

Q Have you exhausted the list?

A If you ask me to do a study kind of statistically
of what groups are going to live where around the
metropolitan area, those are the main things that I
would take into account.

If you ask me specifically why does Joe Schmuck live where he lives, it may be because his cousin or girlfriend lives there and he just likes to live near that person.

It depends partly on the scale on which you are asking the question, what factors I am going to take into account. If you go and knock on people's doors and ask them why they live there, you will get all kinds of answers. Mostly of which I would not take into account on a higher scale analysis.

Q Is that sort of a micro-macro distinction?

A More or less micro, I would call it. Macro usually refers to an economy as a whole. I am not up to that scale.

Q You then discuss in your letter the concept of overzoning?

A Yes.

Q Do you recall that?

A Yes.

Q In which you describe in two places as being mysterious to you?

A Yes.

Q Are you totally unfamiliar with any discussion of the concept of overzoning in the fair share context?

A It may be mentioned here in the--

Q What is "here"?

A In the State's blue study. I have not seen it before that. I never heard of the concept before I became involved in this case.

I took it to referring to the notion that if you zone X acres of any kind of housing, low, moderate, high or nondescript, that not all those acres would be used for the kind of housing for which the area is zoned. Some people wouldn't want their land to be bought and developed. Some people would want it to be used for some other purpose than the kind of housing for which it is zoned and they would apply for variances and so forth.

I think it is totally a mysterious notion. But I don't understand where the factor three for example comes from. I have no idea how that ratio was estimated or might be estimated. If you asked me to estimate it, I would have a hard time estimating it.

Q But you agree in concept that --

MR. FERGUSON: What concept?

Q -- that it is a conceivable issue in fair share?

A Sure. My guess is that --
I should say judgment is that if someone concludes that large amounts of overzoning is necessary, it probably is partly because the area is not really very desirable for the group in question. And that is the point I tried to

make in my letter. And the factor of three seems to be a large amount of overzoning.

If you zone half a square mile of Princeton Township where there is a lot of vacant land for low and moderate income housing, I believe that much more than a third of it would be developed for low and moderate income housing because that is a desirable place for low and moderate income people to live.

Q And is Bedminster desirable in your opinion?

A I said it is relatively undesirable.

Q Because?

A Because it is on the fringe of a metropolitan area. It is not close to large employment centers.

Q How do you define "close"?

A Close is a statistical matter. Bedminster is further than Newark and Newark is further than Hoboken.

Q From what?

A From the large employment centers in the New York region.

I don't have to tell you what is close and what is far. Bedminster is further than most other parts of the New York region and employment centers in that region.

Q Do I understand you to say that you agree that overzoning may be appropriate, but you disagree with the order of magnitude in what you have read?

understands it, he can answer it.

A I would agree if you want to get a thousand residential units of low and moderate income housing in any community, Bedminster or Manhattan, it might be necessary to zone for somewhat more than 1000. It is beyond me how it has been calculated in this instance by Mr. Mallach.

Q How would you calculate it?

A First of all, I would require some time and resources to do it. But I would start by asking the question, how desirable a place is this to live for the kinds of people for whom the zoning is being contemplated and what alternatives are there near there.

In Princeton Township, there are very few alternatives. All of Princeton Township by and large excludes low and moderate income housing. Many of the communities surrounding Princeton do the same thing. So that would make a small area zoned for such housing in Princeton Township quite desirable and I would, therefore, conclude that very little overzoning would be necessary.

On the other hand, if the area in question is

Q Would about Bedminster?

A I was using Princeton as an example. I would employ the same considerations there. I would try to ask in a statistical way to what extent that area is a desirable place for low and moderate income people to live.

Q One is the alternatives and the other is the concept of desirability?

A Right. The desirability of the area in question which is Bedminster, in this question, as a place for low and moderate income people to live.

One of the questions I would want to ask is to what extent are there potential residential locations for low and moderate income people elsewhere.

Q That is your alternatives?

A Yes.

Q And what are the local alternatives in and around Bedminster?

A I don't know. I would have to look.

Q So your other element to consider is desirability?

A Yes.

Q Do I understand you correctly by "desirability," you mean simply distance from urban centers?

A Distance from urban centers in relationship to the incomes of the people for whom this kind of housing is the optimum type.

MR. FERGUSON: Are we using the word "desirability" --

MR. GAVER: It is his term.

MR. FERGUSON: You are using it in your question, Mr. Gaver, to describe the demand side of the residential equation, or are you imputing to the word "desirability" the desires of a macro planner to say it is more desirable from the point of view of total economic development to have certain --

MR. GAVER: I am using "desirability" as he used it in the letter and I believe he described it and I just asked him that as being locational factors.

MR. FERGUSON: The letter is speaking mainly to the demand side of the residential equation. When we use the terminology, we should be specific whether we are including or excluding --

A When I use the term, I mean in terms of the people who are at issue. Namely, would low and moderate income people desire to live in Bedminster. I don't mean, would a planner desire them to live there or some other group of people think it was good for society if they lived there.

Q With regard to overzoning, you say in your letter "It plays no part in any literature of which I am aware." What literature are you referring to?

A Any literature on urban economics or urban planning.

As I said before, the first time I met the concept was in connection with this case.

Q Did you review the literature further to see if there were anything on this subject, this mystery to you?

A No, but I have recollection of things that I read over the last 20 years and I don't recall seeing the term before. It may well play a role in some urban planning. I don't know that literature as well as I know the urban economics literature.

Q So when you state in your letter that Bedminster is not a desirable place for low and moderate income people to live, do I understand you correctly to mean that by that, that because of its distance from urban centers --

A Can you tell me where I say that?

Q Right in the middle of the page, page three.

"I suspect that the notion is an implicit recognition of the fact that, on the demand side, Bedminster is not a desirable place for low and moderate income people to live."

Do I understand that to mean that because of Bedminster's geographic distance from Newark or New York, that you would expect that relatively few low and moderate income people would choose to live there?

A What I meant by that distance was I expect that this large volume of overzoning is a recognition on their part of what they presume to be. Although, they don't state to be the fact that Bedminster is not a very desirable place for low and moderate income people. Not very many low and moderate income people would be attracted there relative to the acres zoned for the housing.

Q But you do agree that is a fact?

A I agree statistically speaking there is a relatively small concentration of low and moderate people on the fringes of metropolitan areas or indeed far from most employment centers. I don't know exactly what employment opportunities there are in Bedminster and how far they are from Bedminster. I do know that Bedminster is on the far western fringe of the New York region.

fringe of metropolitan areas and I also know that Bedminster is on the fringe of a very large metropolitan area. I do not however know detailed local characteristics of Bedminster.

Q Well that doesn't answer my question. My question is, do you have an opinion as to whether Bedminster is a desirable place for low and moderate income people to live as you use that term, or do you not?

A I can't answer that question yes or no. I know some things about Bedminster, mainly, its distance from some employment centers, major employment centers in the New York region. I know it is very far and I know statistically that low and moderate income people do not concentrate that far from the New York region area. There may be other things about Bedminster that I don't know, of which I would not hesitate to modify that opinion.

Q On that limited information base, you do have an opinion but are prepared to be convinced to the contrary if other evidence were to be presented?

A If I may, I would like to stand on what I just said.

Q I don't know what you said.

THE WITNESS: Could you read it back?

MR. FERGUSON: He asked the reporter
to read it back.

MR. GAVER: It is a deposition. I
don't have to take his last answer.

A Let me try to repeat it.

What I know is that Bedminster is on the far western fringe of the New York region. I know that it is a substantial distance from the most important employment centers in Northeastern New Jersey and in the New York region. I also know that statistically speaking low and moderate income people are not strongly concentrated near the fringes of metropolitan areas. And that creates a presumption that some communities as Bedminster are not places where large groups of low and moderate income people would live even in the absence of exclusionary zoning anywhere in the New York region.

I do not know all the details about Bedminster and there may be characteristics of Bedminster which would make it more or less desirable for low and moderate income people than do the characteristics that I know about.

Q What other characteristics that you had the information on them would be important in that determination?

A There could be a particular -- Bedminster is a very

Q You next discuss the tax rate in Bedminster and how it might affect, I guess, desirability. Is that an accurate description of the significance of the tax rate?

A Yes.

Q Clearly viewing that factor alone, Bedminster is an attractive or desirable place to live. Is that true?

A Would you ask the question again?

Q Viewing just the tax rate, you would agree, would you not, that Bedminster is a desirable or attractive place to live?

MR. FERGUSON: To whom?

MR. GAVER: To anybody.

A I don't know Bedminster tax rates specifically. But most high income communities have relatively low tax rates, taxes per dollar of assessed value and I would presume that Bedminster does as well.

Q If it does and let's assume for the most that it does, would you agree in viewing that factor alone that Bedminster is an attractive or desirable place to live?

A Sure. The point I tried to make in the letter is that the low tax rate of a high income community is an attraction to low and moderate income people only insofar as they remain a minority. If they become a large part of the total, then the low tax rate disappears.

The low tax rate results from the fact that high income people have expensive houses, so a low tax rate will yield enough revenues to pay for the local services that they consume. Low income people have less valuable houses and it is only insofar as they can take advantage of the fact that the average house value in the community is greater than theirs is -- that the low tax rate remains an advantage to them.

If you have a community in which low and moderate income people are a majority, then the tax rate must be based on the values of their houses and must be high enough to pay for the local public services that people in the community demand. To the extent that low and moderate people are a large part of the total community, the tax rate must reflect the relatively low values of their houses.

Q And you have concluded in other writings, have you not, in your opinion, the desire or intent to keep out these, I think you used the term free riders, has been a principal motive in zoning historically?

A If I may, I would like to make that a little more

City of Newark
has high residential tax rates and that presumably it is a substantial factor. For most communities, I don't believe the tax rates are among the predominate considerations.

Insofar as exclusionary zoning has been a desire to keep out undesirable people, which is to a considerable extent, I believe, the major motive is not part of it, but the major motive is not to exclude people whose presence will increase the tax rate. I believe the major motive is excluding people who are undesirable because of their race and because they will require public services or demand public services to the extent that they are able to get them through a political process, which are purely expensive to provide.

Low income communities tend to have subsidized medical services, particularly expensive educational requirements because of the poor home backgrounds of children and so forth.

Q What else?

A Welfare, which is not mostly paid for by the

income.
The fact that the presence of the low income people will increase the demand for different local services and transfers which are more expensive to provide. That, plus the fact that many high income people simply don't like to have low income and black people living there. Traditionally, as I say, I think it is less now.

Q I want to get a specification of what these local services that you described are that low income people will demand that are not provided or whatever in their absence. Welfare is one?

A Welfare is one, subsidized medical services. The City of Baltimore where I lived in one way or another provides more or less free medical care for large members of the poor people. Subsidized housing programs, the cost of which is shared by the local community and Federal Government.

In most cases, welfare, housing and specially expensive education. Many low income communities have compensatory educational schemes which are expensive. Many

equalled Newark's?

A I can't tell you.

Q Are you aware of any studies with respect to New Jersey, in particular, that deal empirically with this situation?

A Tax rates as they vary with respect to the portions of low and moderate income?

Q Right.

A Not from New Jersey. I know of one from Baltimore.

I also know some national data that undertakes to explain not just tax rates, but tax receipts per person or per dollar of personal income which are higher in central cities and other communities with predominantly low and moderate income residents than elsewhere.

There is a group in Washington called the Advisory Commission on Intergovernmental Relations which collects a lot of data on comparative problems and activities in State and local governments and they produced data on tax levels related to people, related to income

... on a personal income than do high income
person and per
communities. And they spend more on local public services

That you can also get out of the census of
governments, by the way. You don't have to go to any
fancy tabulation to find that.

Q What is the Baltimore study that you
referred to?

A That is a study done by people at Johns Hopkins,
partly when I was there and finished after I left. The
chief author is a man by the name of William Oakland and
I have a copy of the study. I believe it has been published,
but I can't tell you where. I have a copy of the study
before it was published.

Q We have also been provided, Professor Mills,
with a document of yours entitled "Economic Analysis of
Urban Land Use Controls." You are familiar with that?

A Yes. I wrote it, I should be.

Q And that first embarks on sort of a survey
of zoning as it existed in the United States, historically.

A Not just racial exclusion. Early years of zoning were concerned more with occupational and ethnic exclusion, income exclusion than with racial exclusion.

But my main conclusion on that paper is that the history of zoning in the United States is rather incoherent in the sense that it doesn't seem to have as its goal good well defined or coherent social goals. A legal base for it, of course, is improving the health and welfare of the population and some of it has been for that purpose. But these either illegal or some undesirable goals of zoning have played a much more important part than many people seem to be aware of. And that is not a postwar invention. That goes back a long way, certainly to the First World War.

Q And you also conclude, do you not, that the control of external diseconomies is not very effectively done by land use controls. Is that correct?

A That is correct. I don't mean to say that land use controls -- I am talking now about land use controls that

... people may simply not like to have such activities near where they live. Then do it by land use controls. If you are concerned with environmental effects, air and water pollution, noise vibrations, congestion in the streets, generally speaking, I think land use controls are not the best way to go at them.

Q Do I understand you correctly that you would prefer direct controls on whatever the problem is rather than the use of land use controls to indirectly control the problems?

A I would prefer either what I would call economic controls or regulations.

Q What do you mean by "economic controls"?

A Environment problems which have been studied best by economists.

The best way to control air and water pollution is by charges and discharges that pollute the air and water and not by regulations of the kind that we have adopted in our national environmental programs. But I think both are preferable to land use controls, by and large. I don't mean

to say I would never use land use controls for environmental purposes, but it is not the first way that I would prefer to attack the problem.

Q Why is that? Because they are insufficient and don't work?

A By and large they go at the wrong variable. The variable that you are after with environmental problems is discharges of polluting substances of the air and water. And I think that I say somewhere that land use controls just move the pollution around. They don't really stop it and that may be some benefit, but it is a pretty gross way of getting out of the environmental problems.

Q You then go on in a section of this article to discuss the neighborhood effects as you described it.

A That is correct.

Q Do I understand and is it a fair synopsis of this article that in your opinion that the neighborhood effect is much more important in central cities and much less important in less dense suburban regions?

A Yes, that is correct.

Q Finally, I believe your article deals with, to some extent, on land use, the Tiebout Hypothesis?

A That is correct.

Q Can you very briefly describe to me what the Tiebout Hypothesis is?

A The Tiebout Hypothesis is the notion that if you have a metropolitan area as we do in the United States with a large number of relatively small local government jurisdictions, then people as it were shop around for local government jurisdictions which will provide the menu of local government services and the tax rate to pay for them which the family in question wants and having found a community that provides this mixture of services and taxes, to the best of the objects of the family to find such a community and use their voting and political power to maintain the community as one which provides the menu of services and taxes which is appropriate for that family.

Q It is your opinion, is it not, that historically exclusionary land use controls have been employed by the existing residents to prevent any change or increase in local services by keeping people out who might demand them?

A That is correct.

Q Do you agree with the hypothesis that it is generally true in all housing markets?

MR. FERGUSON: What is generally true?

MR. GAVER: The hypothesis.

A I think it is important, an important statistical factor in the United States. Certainly more than any other

country in the world of which I know. It is of course choosing a community in which it has the right mixture of local public services and taxes which is only one consideration when people are looking for a place to live.

I don't want to be put in a position that the only or main thing that people look for when looking for a place to live is how much the community spends on education and such things. Obviously, that is not correct. They look for places in connection with work locations and kinds of housing that are provided that they want.

Q Do you agree that it generally describes an aspect of the housing market in generally all locations?

A Yes, I think that is a fair summary.

Q You go on at the tail end of this article to recommend that no controls on residential development be permitted. Is that correct?

A Well --

Q Among other things.

A Recommend in a sense, yes. I am trying to get people to think about whether a situation in which the taxes needed to pay for local services were completely divorced from real estate and which, therefore, there was no justification for land use controls of the sort that we traditionally have would exist. Whether that kind of situation might not be desirable -- might not be preferable

to the one that we have.

In other words, if one separated financing, local public services from real estate in the United States, then the reason for land use controls to exclude free riders would be absent and one would then be able to say to what extent the real motivation of which the land use controls was the desire to exclude people on a social ground, which is uncharacteristic in the United States, which I think the Supreme Court also regards as undesirable.

Q This article, just so I understand, Economic Analysis of Urban Land Use Controls, does not deal with fair share housing allocation plans in any way?

A No, it does not.

MR. GAVER: That is all I have
at this moment.

CROSS-EXAMINATION BY MS. NELSON:

Q I would like to pick up on what Mr. Gaver was asking you about the article and ask you to comment on the statement that you have at the conclusion of your article, the one Economic Analysis of Urban Land Use Controls. You say "My conclusion is that the combination of real estate taxes as the main source of local government revenues and a laissez-faire attitude on the part of the courts toward local government land use controls guarantees the controls will be excessively exclusionary."

courts, that local governments have a great deal of freedom in choosing a menu of the local public services and the taxes to finance them based on the wishes of the residents of that local government jurisdiction.

That is in contrast with most of the democratic countries in the world, where the local public services that are provided are mainly financed by the national government. Therefore, through national taxes and even where they're financed through local taxes, they are mostly dictated by the national government.

Even though education is provided at a local level, teachers are higher than a local level. The menu of educational services are dictated by a national government level. It is a kind of American purity to some extent to permit what I call this laissez-faire attitude of local government to choosing the menu of local government services in corresponding tax rates that will be provided and my belief is that if you permit that, you provide powerful incentive to local governments to have exclusionary land use controls.

And legally, you almost must permit it because you

have to permit local governments to keep out those who cannot or will not pay their share of local taxes and that makes it difficult for the courts to discriminate between that motive for zoning and exclusionary motives based on raises in income, ethnic characteristics of people who might like to live there. And I regard the latter as socially undesirable use of the police power in the contemporary United States.

Q Doctor, would it be fair to say that there has been an increasing suburbanization in this country of business and industry away from the metropolitan areas spreading throughout?

A I have to make a distinction there between suburbanization in which entails the movement of employment outside central cities and that which entails the movement of employment outside of the metropolitan areas.

In the early 1970s, there was a large group of people that thought that employment was moving out of the metropolitan areas. That may have been a characteristic of the recession period of '74 and '75. But I do not believe that there is a long-term trend for employment to move out of metropolitan areas. There is a trend to move out of the central cities.

Q In your criticism of Mr. Mallach's testimony and Mr. Davidoff's testimony in your letter and

... extremely difficult to factor
in these phenomena of voluntary segregation.

How would you empirically, at least, factor in voluntary segregation to come up with a fair share allocation?

A Well voluntary segregation deals with several kinds. The easiest kind to deal with mainly about the data is -- or which is more plentiful is segregation by income. And I believe that voluntary segregation by income is an important basis and characteristic of the United States or elsewhere. The Americans are terribly different from others in that respect.

I think that also important is voluntary segregation by other characteristics, such as religion, ethnic origin. That is much more difficult to deal with in terms of data. Partly because most American censuses do not collect data on such characteristics. They never ask questions on religion except for the separation of church and State in the Constitution.

I also have lived and traveled in many metropolitan

areas and I have talked to many others who have and I do believe that voluntary segregation by such other characteristics is also important.

Q Well would it have been possible for Mr. Mallach or Mr. Davidoff to factor in the element that you term "voluntary segregation" in terms of what you describe, I believe, as the factor that people cluster in similar groups like kind of living together? I mean, could they have done it?

A They certainly could have done it by income. And they could have done it to a less accurate degree of approximation by other characteristics..

Q So when you say that an important factor that strongly affects residential location decisions is the desire of people to live near others who are similar to themselves, you are referring more to income than you are to anything else?

A Well I guess I ought to ask where I say that. It may depend upon the context in which I say it, whether I am referring to income or other characteristics.

Q I am quoting now from page two of your December 27th letter.

A Where on page two?

Q The third paragraph.

A Well there I am referring to other characteristics

other than income.

The next sentence, the middle sentence in the paragraph says "Americans cluster residences by race, by ethnic group, by religion and by other characteristics."

Q That is what I understand you to mean. And I am asking you how does one empirically factor in this phenomena that you are describing in the third paragraph there?

A It is not easy. But I don't think that it is impossible and I don't think that a complete and careful analysis of who would like to live in an area like Bedminster ought to ignore them.

At the very minimum, I ought to say I think these are probably important but I can't take them into account. If one is ambitious and energetic, I think one could do better than that.

Q Let me ask you this: How would you, if you were computing fair share for the Township of Bedminster, factor in --

MR. FERGUSON: I am going to object to the question until and unless you give the witness what the parameters of fair share are. I think he indicated depending on who is doing the asking and what the goal is, the answer is different.

calculate the numbers of low and moderate income people in that region and then allocate a percentage of them to Bedminster based on the three or four criteria that we have been discussing. That takes account of where people might come from, who they think are going to move into Bedminster. It treats the region as a homogeneous whole in terms of the sources of low and moderate income people.

In fact, when low and moderate income people move because of the change in family status or change in income level or maybe an opening up of zoning in suburbs, providing they don't change their job, they tend not to move terribly far for the obvious reason. If you move very far, you add to your commuting costs and people don't like to do that.

So if I were starting on a study of this kind, I would not treat an eight county region as a homogeneous whole in terms of sources of low and moderate income people that might come to Bedminster. I would ask what numbers of low and moderate income people are there X miles away and that X varies from zero to a large number and make the assumption that a fraction of low and moderate income people

compel, conduce to accept people or influence people to live in particular communities even though it is not in their best interest in the absence of controls in their doing so.

So let me talk about the demand side. The question I take it was how would one factor in these other elements such as income influence voluntary segregation on the demand side?

Q Right.

A I would look at other communities in the region that is germane and I would ask to what extent people have collected themselves together in ways and by characteristics that appear not to be coercive, but appear not to be strongly influenced by land use controls or racial discrimination. You can do that to some extent from the census; you can do that to some extent from other sources. Then I would try to say, for example, if I found that people of particular ethnic backgrounds tend to be located close to employment centers, if I found that, then I would say that such people are unlikely to locate in Bedminster in large numbers, even in the absence of land use controls.

Q Would you say this about the black/white experience in this country?

MR. FERGUSON: Let us go off the record for a moment.

(Off the record discussion.)

Q Professor, in terms of the black/white experience, what communities in New Jersey would you look at in order to factor in this voluntary segregation concept?

A The racial aspect of segregation is the most different one to deal with in terms of separating voluntary from involuntary segregation, because that is the one where we have the best evidence and the best reasons to believe that many of the historical segregation has not been voluntary.

It is very difficult to say to what extent people would segregate themselves voluntarily by race in the absence of either exclusionary land use controls or racial prejudice in the housing markets.

Q Would it be fair to say then that neither Mr. Davidoff or Mr. Mallach could have really factored that in?

A I don't think it is fair to say that they couldn't have done anything with it. I think if I were writing such reports and had given such testimony, I would have at a very minimum said that it may well be that black people, many black people, not all, prefer to live near other black people even in the absence of involuntary segregation.

What you can certainly do in addition to that is to take account of the fact that statistically, black people have lower incomes than white and their incomes affect where

they want to live statistically quite aside from any racial discrimination or land use controls and that can certainly be factored in.

Q Do you basically agree with Professor Michele White's findings in terms of the literature she has written on the topic of physical transfer zoning and other phenomena that deal with exclusionary zoning patterns in the United States?

A She is a former student of mine and I am sympathetic with what she does. But I don't want to put myself in the position of having to agree with everything she said. Some I haven't read.

Q You talked about making comparisons in terms of studying voluntary segregation patterns, by studying other international communities or settings and comparing them then to the United States. Which ones have you studied that would reflect a situation similar to the black/white situation in this country?

A I have not studied any racial problems in communities, but I do know there is a lot of voluntary segregation in countries -- I do know there is a lot of segregation that I strongly believe are voluntary in countries other than the United States precisely because the mechanisms of involuntary segregation are absent there, not necessarily by race.

Q When you talked about this tendency to cluster in terms of voluntary segregation, take for example with ethnic groups, does this tendency in at least American history persist throughout generations?

A Tendency to cluster by what?

Q By, like, kind in terms of ethnic groups. Has this persisted throughout generations?

A That is hard to say pending on how many generations you want to talk about. The data are much more plentiful after 1940 than before. There are studies from the 19th century which indicate Boston was a highly segregated place by income, by ethnic group. We know very well that the Boston Brahmins lived in certain places and the Irish lived in other places and the Irish were much poorer and had a different ethnic background that was in good part involuntarily given. But that is an anecdote; that is not a comparison of or a sample of metropolitan areas.

MS. NELSON: This may be a good time to break for lunch if that is all right.

MR. FERGUSON: Fine.

(A lunch recess is taken from 12:30 to 1:30 P.M.)

A F T E R N O O N S E S S I O N

E D W I N S . M I L L S , resumes:

CONTINUED CROSS-EXAMINATION BY MS. NELSON:

Q Dr. Mills, have you ever actually done a fair share analysis for any municipality?

A No.

Q You indicated you were looking at the DCA Report, the Housing Allocation Plan for the State of New Jersey. Did you examine the methodology employed?

A Yes, I did.

Q And what are your criticisms of their methodology?

A The criticism is the same one that I have been giving of the work that Mr. Mallach and Mr. Davidoff did in their testimony; namely, I think they ignored the demand side of the decision about where to live. They don't take account of who would want to live in particular communities in the absence of any artificial inhibitions to doing so.

Q Dr. Mills, there was testimony on this record during this trial by another witness, in fact, a witness from the Township which indicated that when AT&T facility in Basking Ridge at least relocated, that roughly 80 percent, maybe 75 percent, I forget the exact figure, of the lower paid employees failed to make the move from the city out to Basking Ridge.

What economic factors would you consider relevant to that phenomenon especially when compared to the fact

that I think less than one percent of the other employees failed to make the move?

A I can only speculate because I have not studied the AT&T movement.

What we do know is that low income people, statistically speaking, commute less for fewer minutes and fewer miles than do higher income people. Mainly, the advantage to higher income people to moving out of the periphery of the outside areas in terms of sharing housing costs is greater than for lower income people.

It may also be, and with some relatively low income groups I officially believe it is true, that they attach more value to living in a particular and traditional neighborhood than do high income people.

In many, many countries there is a lot of evidence that very poor people get a great deal of sustenance and reinforcement from their surrounding neighbors that they know with whom they extend support and services, help in bad times. One person will repair the other person's washer if the other person does some favor for the first person. These kind of informal relationships are probably stronger for low income people than higher income people who tend to do things through market transactions than informal arrangements. They can use money because they have more. That does mean with some groups, the importance

Q How about housing availability and/or scarcity as a factor which might have affected that decision making process for lower paid employees?

A That may well have been important. There are two aspects of the housing availability which I would think may have been important there. One is the one that is the subject of this case. Namely, exclusionary zoning and that may well have been important.

The other is the fact that most low income people do not live in new houses and many communities near the peripheries of the metropolitan areas for the simple reason that they have been going most recently -- the higher income people most recently consist of mostly relatively new houses and low income people mostly consume relatively old housing because it is cheaper.

Q When you say exclusionary zoning which is the subject of this lawsuit could have been a factor, could you elaborate on that?

... place of other characteristics. If many of the communities near the western periphery of the New York metropolitan area with AT&T had moved to a place that had stringent zoning, that may well have been a factor in preventing the poorly paid workers from moving out there.

Q I am a little confused. When Mr. Gaver asked you about the concept of overzoning and you described this as a rather mysterious notion and you said, I think, in your letter report of December 27th that overzoning -- the concept of overzoning as used by Mr. Mallach and Mr. Davidoff probably reflected that Bedminster was relatively undesirable for low and moderate income people.

Then you went on to say, I believe, that the question of desirability if a community was highly desirable, then you would not have to overzone. Is that correct?

A Well you would not have to overzone as much in the sense that if a community has a place where a lot of low and moderate people want very much to live, then if you make it possible for them to do so by zoning, then you would

expect that most of the land so zoned would be used by the group in question.

I don't mean to say that no overzoning would be desirable. There may be some people who refuse to permit their land to be used for housing just because it is obstreperous or they want to hang on to it for their grandchildren or they don't think the time is right to sell or for some other reason.

Q So you don't agree then that theoretical maximum yield of a zone district probably wouldn't produce in reality that maximum yield? Would that be fair to say?

A Sure. It is the magnitude I found mysterious.

Q The factor of three --

A Of three or ten -- I think Mr. Davidoff even said a factor of ten in his testimony, if I remember correctly.

Q What factor would you use as applied to Bedminster?

A I can't tell you without careful study of Bedminster, which I haven't undertaken.

MS. NELSON: I don't have any more questions.

REDIRECT EXAMINATION BY MR. GAVER:

Q Professor Mills, Mr. Ferguson indicated four additional subject areas which you apparently have opinions on. The first being the concept of the, I guess,

of the region of Bedminster and your opinions thereof.

MR. FERGUSON: I just want to correct the statement. I did tell you certain kinds of questions that I would be asking. It is my position that those are not mystery areas.

MR. GAVER: I didn't call them mystery areas.

MR. FERGUSON: Indeed it is all the same area about which Professor Mills has been testifying this morning, but the questions come at least from a slightly different perspective.

This deposition is to avoid surprise to the attorneys for the plaintiffs. I told you what those areas would be so that if you wanted to ask any questions in those areas, I wanted you to be able to do so.

MR. GAVER: And I have done so.

Q Do you recall my question?

A It was something about the region of which Bedminster is a part of. I didn't get exactly what you want to know about the region.

Q Do you have some opinions with respect to the appropriate region of Bedminster for purposes of fair

that might move to Bedminster, for example, because of the removal of the exclusionary zoning, would fall off as X became large.

So I try to take account of the effective distance on the willingness to move rather than treating the region as a homogeneous whole.

Q That is a general statement.

What would be in your opinion the appropriate housing region for Bedminster?

A I would not treat it as a -- the calculations by Mallach say that every low and moderate income person in the eight county area or some other such region, counts as one. Every low and moderate income person outside that region counts as zero. Zero-one variable.

I would instead say that the probability fraction of low and moderate income people who would move to Bedminster from X miles away would fall off as X becomes big.

Q In a perfect market?

A I haven't used that term "perfect market." I don't know what it means.

I am saying if you ask me what numbers of low and moderate income people would live in Bedminster, if you removed exclusionary zoning there and elsewhere, I would ask the question in the context of numbers of low and moderate income people as a function of distance from

Bedminster and I would assume that a larger fraction would move from short distances than would move from long distances.

For the same reason that we discussed at length this morning, that population density functions, figures fall off rather systematically in terms of distance from major employment centers. So if Bedminster was located in the middle of Pennsylvania, I would assume it would have no attraction to people who worked in the New York region. If it was located in the Delaware River, I would assume it would have no attraction. It is a quantitative matter.

Q Empirically, I am not sure what you are doing.

Are you telling me you would do some calculation based upon where the poor people live today?

A Yes.

Q And just where they live today and then there would be some fall off on the basis of distance?

A I would take account of the distance that low and moderate income people live from Bedminster today and in trying to calculate the fraction of them, who might move to Bedminster as a result of the reduction in exclusionary zoning.

Q Other than where they live, what else would you take into account in that formulation?

A Where they work. Few might work closer to Bedminster than they do to their present residences. Therefore, moving to Bedminster would be a decrease in commuting to them. I would make the presumption for most of the low and moderate income people who might move into Bedminster if exclusionary zoning were removed, most of those people would increase their commuting distances by the move and to the extent they did that, I would assume that the number who would make the move would fall off as a function of the increased commuting distance that the move entailed.

 And that would imply that low and moderate income persons from way up in the northeastern corner of the eight county region would have no problem in moving to Bedminster, whereas someone from a much further area would have a problem.

Q It depends on where they work? It is not as simple as to just where they live, correct?

A Yes.

Q Would you use the Newark SMSA? Would that be an appropriate region in your opinion?

A I would use the entire region that has in fact been used, but I would not use it the way it has been used.

 I would take account of distances within that region between Bedminster and present residences and present places of employment of low and moderate income people which factors

have not been taken into account in the calculations that I have seen.

Q What is your data base for that calculation, sir?

MR. FERGUSON: What do you mean?

MR. GAVER: He just told me what he would do. I want to know where he would get the information from.

MR. FERGUSON: What would be his data base if he were to do that?

MR. GAVER: Right.

A The easy data base is the census which is a complete data by local governmental jurisdictions where people live and which has some data on where people work and a good deal more about commuting patterns.

Q You haven't done any such study with respect to the New Jersey housing market, have you?

A No.

Q Do you know anyone that has? Are you aware of any such studies that relate jobs and residential location in New Jersey?

A Oh, there certainly are studies which I have seen of commuting patterns in the New York metropolitan area. One of the first major studies ever done of the metropolitan area was done 15 or 20 years ago for the

New York region, done under the supervision of a very fine Harvard business scholar whose name hopefully will come to me.

I certainly have seen studies of commuting patterns in the New York region which certainly included northeastern New Jersey.

Q How about New Jersey in particular as a focus rather than the New York metropolitan area?

A I can't recall any.

Q The model that you would develop in fact would be quite complicated because you would have to take into account somehow sorting out voluntary versus involuntary segregation, actual availability of the housing and the like?

A If I were doing the study, I would be very keen on including the demand side for precisely the reason I would want to separate the question, where would people like to live in the absence of exclusionary zoning or other involuntary segregation from the equity question of to what extent should the courts or State government or Federal government or anybody else try to insist or coerce people to live in particular places.

The latter may be important socially. It may be equitable under some assumptions, but if I were advising the court, I would want to separate my advice about who would live where by his own choice from my advice because what I

think would be in the social interest to do by way of coercing or inducing people to live in places where they don't want to particularly want to live.

For that reason, I would certainly want to separate the demand side from the equity considerations in this so-called fair share calculation and that would be more complicated than what has been done. But I don't admit it would be so complicated that it would make any progress.

Q Do you know of any such models of at least SMSA?

MR. FERGUSON: What kind of models of SMSA? I don't understand the question.

MR. GAVER: Models of the housing markets.

MR. FERGUSON: Based upon SMSA data?

A I know of plenty of models which discuss the demand side of the residential location decision. I have done summaries and read many others.

Q But you haven't done any regarding the Newark SMSA, have you?

A No, nor have I tried to, nor do I know of any other studies which tried to put them in something called a fair share allocation.

In other words, I don't know of other studies than the ones I have seen in connection with this case which asked

how many people ought to be allocated to communities other than those who would choose to live there if there were no restrictions under doing so.

Q So I understand, you are telling me that there are none or you haven't found any?

A I haven't looked.

Q So you really don't know whether they are included in any existing fair share models or not?

A Whether what is included --

Q The kind of analysis you are talking about. How would you define what you just described?

A What I seem to want to talk about all the time here, because Mr. Mallach and Mr. Davidoff and the State of New Jersey don't want to talk about it; where would people choose to live in the absence of restrictions on where they can live, restrictions in racial or exclusionary zoning.

I have seen studies of that kind, demand studies of where people do choose to live. I have not seen studies that incorporate that analysis into a model which also contains some equity notions. I guess, we should call it fair share analysis.

Q Have you looked for such models or are you talking from a general background?

A I do read the Urban Economics literature pretty carefully and I look at some literature in Urban City planning

and I have not seen any.

Q I understand that you have some comments of some statements of Mr. Davidoff regarding the amelioration and racism of poverty.

A I can't speak to your understanding but --

Q I think I am parroting my notes from what Mr. Ferguson advised me.

A I am not sure just what you want to know about Mr. Davidoff's views on racism and poverty.

Q I want to know your views.

A I am not sure what you want to know about my views of his views. I am asking that you ask the question more specifically.

Q Do you have some disagreement with Mr. Davidoff on his views of, I gather, it is the effect of fair share housing plans on the problems of racism and poverty in New Jersey?

A Yes, I think I do have disagreements with him. Based on my reading of his testimony, I think he attaches much more weight than I would to opening up suburbs to housing for black people as a mechanism for improving the quality of life for those people. My feeling is that the main problem that black people face in city ghettos is poverty and that the main causes of poverty are not lack of access to suburban housing. The main causes are either

discrimination of the labor market. I believe that this day, even more important, is poor qualifications in terms of poor education, poor labor force experience and to some extent erratic job listings.

Some of those things are the result of discrimination in other areas such as education and going further back in history, discrimination and experience which affects the quality of education.

I am not trying to say that prejudice and discrimination are unimportant. But I think I do disagree with Mr. Davidoff if he believes as he appears to that simply opening up suburbs to housing for low and moderate income blacks would make a substantial or a very important dent in the problems of black people who now live in central city ghettos.

Q You think it would be insignificant?

A I think it would be only a minor part of improving the quality of life of black people.

Can I make another comment? He has some comments in there about the effect of high density on the poor quality of life.

Q That is the next area.

A Do you want to ask the question first?

Q I have notes here of the significance of the density of central cities and the ability to rebuild

them.

A I don't think that density is a serious problem in almost any American central city. American metropolitan areas have extraordinary low density central cities/almost everywhere else in the world. I think the problems in American central cities with that are problems of poverty and discrimination and not problems of density.

If you moved half the people out, you would just have just as many miserable people living in half the density. Many American urban slums are a very low density. I think density is just hardly part of the problem.

Indeed, there are many kinds of infrastructure that are needed in urban areas that are cheaper to provide. It is much cheaper to deliver water and the removal of liquid wastes with exceptions of two extremes.

Q What are the extremes?

A If you have extremely high density, then you have a tendency to get congested streets. If you have extremely high density, you tend to get congestion in the streets. So that it is slow and expensive to get trash trucks through the streets; that might be something of a problem in the most crowded parts of Manhattan if not really much of a problem in most other metropolitan areas in the United States.

But, for example, with delivering water and the

A The kind of density you find in central cities in American metropolitan areas.

Q Newark for instance?

A Newark is not a very high density place.

Q What is the other extreme you mentioned?

You said it was in effect at both extremes.

A What I should have said is high density in the infrastructure may become expensive. It certainly becomes expensive at low density.

Q What do you mean?

A The kind of density you find in metropolitan areas and in the sunbelt of the United States, southern and southwestern parts of the country. Take Phoenix, which is a good sized metropolitan area. It has extraordinary low density areas. Getting kids to school, delivering of wastes, delivering of water, et cetera, these are all expensive simply because it has to be moved so far.

Q I understood you had further comments with regard to I think who would live in Bedminster in the absence of exclusionary zoning.

A I don't know what those comments are.

MR. FERGUSON: I would ask the Professor at the trial if exclusionary zoning were eliminated in northern New Jersey, what population groups by income or however he would describe them would he expect to find in an area with a municipality like Bedminster, and I think he substantially answered that this morning. But I don't know whether you articulated that particular question.

MR. GAVER: Fine. That is a good question.

A Based on the fact that Bedminster is on the extreme periphery of the eight county region, the western periphery based on the fact that the most important employment centers are not very close to Bedminster, based on the fact that I know as statistically, relatively high income people tend to concentrate on the peripheries of metropolitan areas and at relatively great distances from employment centers. I conclude that I would expect that even in the absence of exclusionary zoning anywhere in the eight county region or in the New York region altogether that we would get mostly relatively high income people living in a place like Bedminster.

Q Do I understand you correctly that it is

your opinion that were there no zoning, that you would expect northern New Jersey to be pretty much the way it is today?

A It depends on what you mean by "pretty much the way it is today."

I think you would get less concentration of black people; you would get somewhat more people living in inner suburbs -- no. I think you would get somewhat more low and moderate income people living in the inner suburbs of metropolitan areas than you would get some outward movement especially of low and moderate income people and to some extent of black people from the central cities of the metropolitan areas and from the parts of the metropolitan areas that are very close to employment centers.

Q You haven't studied zoning as it exists today or ever has existed in Bedminster, have you?

A No. I only looked at the map that shows the zoning.

MR. GAVER: I have nothing further.

RE-CROSS-EXAMINATION BY MS. NELSON:

Q It seems to me that the model you are describing is fairly complex. Would that be fair to say?

A It depends on what you mean. If you ask me, suppose you came to me and said, please tell us something we can use about the demand side of the residential location decision, I would tell you something that I think would be

useful very easily. If you say I want more, I want something much more exact than that, then it could get complicated.

I think this is important, the demand side, the term, the expression, the notion of where people would like to live in the absence of artificial restrictions when they are doing so is not mentioned in this testimony. It is not mentioned in the State's document and I think that is unforgiveable if you are concerned with what would happen and what should happen in the absence of exclusionary zoning.

I am not saying that that is the only thing that is important, but I think it is unforgiveable not to mention that there is an issue of where people want to live and exactly how complicated the model gets depends on how exact and how localized and how detailed you want the answers to be. I could tell you something with much less work than these people put in on their fair share models. And so could they if they had the mind to do so.

Q How long would it take you to come up with a fair share calculation say for the Township of Bedminster considering all of the factors that you described, as well as a determination of the region?

MR. FERGUSON: I am not sure that question can be answered the way it is stated. I think you might have to be a lot

more assumptious in statements of purpose for any such study. Insofar as the witness can answer it, he may do so.

Q I am asking for the purpose of this litigation, how long would it take you to consider all of the factors that you have listed today in your testimony; that is, income levels, all the factors on the demand side, family households, composition, all of those elements that you enumerated this morning, coupled with some of the other elements that were utilized by Mr. Mallach and Mr. Davidoff.

A Well the first thing I would have to do is to discuss with whoever asked me to do it in much more detail what they mean by fair share other than the demand side.

The second thing I would have to do is whether I could make use of the work that is already done by Mr. Mallach and the State which I suppose I could. Then I would say -- to do it to an approximation which I believe would be useful to a court, would not be difficult. I am sure it could be for much less than what was spent on Mr. Mallach's calculations.

To do it very precisely in the way that nobody would question, would be extraordinarily time consuming and expensive.

Q On the topic of region for the New York metropolitan area of which Bedminster is a part, you said

you would consider factors like where people work and where people live presently. Is that correct?

A Yes.

Q Could you draw a diagram, a rough diagram for me which would reflect that region as you might envision it for the New York area? Just giving a very rough approximation.

A Well what I said was that the effect of removing exclusionary zoning from just Bedminster or from every place in the region would be like a ripple. The effect would be very great on people whose present residences and whose work is close to Bedminster. It would be smaller on people whose residences and work were further away. It would be very small on people whose residences and/or work were very far away.

I would not treat the region as a homogeneous whole as though everybody of low or moderate income had the aim, probability or wished to move to Bedminster as everybody else. I would take account of inhomogeneous, especially distance within a big region.

Q You said --

A I would try to estimate the effect of distance on such interest in moving.

Q Maybe I am missing the point here. You said that one of the reasons you faulted the region, the

deposition by Mr. Mallach was outside of the region and those individuals of low and moderate incomes are totally discounted and within the region, those individuals are counted as one.

What I am asking you now is wouldn't that be true for anyone who is working with a region as a geographic entity, assuming you have to come up with some data base?

A No, that is exactly my point. There is no reason why you can't calculate the effect of distance from Bedminster on the interest or desire of people to move to Bedminster. It is a matter of elementary common sense that somebody who lives way up in the northeastern corner of this eight county region is less interested in moving to Bedminster than somebody living next door or somebody who works up in the northeastern county compared to somebody who works right next door at AT&T or some such place and I think that ought to be taken into account.

Distances are important and travel times are important within that region and there is no reason that some account be taken of that.

Q Would your study reflect more of a correlation that would move say from west to east, that is moving from Bedminster in towards New York City?

A I am not sure what you mean by moving. People moving?

Q Yes, the movement would be between the central

business districts and Bedminster Township. The most movement would occur between New York City, for example, and Bedminster Township as opposed to say Allentown, Pennsylvania and Bedminster Township. Would that be fair to say?

A I am going to say the same thing, I hope. I would try to calculate the effect of distance from Bedminster to places of work and places of residence on people's willingness or interest or desire to move to Bedminster. I would certainly start off with a strong presumption, the greater those distances are, the less people are interested in moving to Bedminster and I would treat it as a continuing. It doesn't have to be treated as a zero-one matter.

Q You mention the equitable dimension to the problem as being distinguishable from the demand side of the problem. At least in your understanding of fair share, would you be able to factor in the equitable dimension to the problem?

A I think the very term fair share suggests an equity notion and if I was asked to calculate a fair share, I would try to pry out of who was asking me what kind of equity notion is germane.

I don't see it in the Madison Case. As I read the Madison Case, it looked to me as though the court is concerned with the question, who would like to live in

place X in the absence of artificial inhibitions on doing so. I have no objection whatsoever to bringing into the calculation equity considerations. But those in a sense are ones for someone else to decide, for an economist or expert as to what they are and what weight should be given to them and then ask the expert how do you grind it out into the formula.

I have no particular reason why I should be better than anybody else in deciding on the equity issue.

MS. NELSON: I have no further questions.

CROSS-EXAMINATION BY MR. FERGUSON:

Q Who is best suited to determine the equity issue?

A Well I think the court suits are about equity. The claim is blacks are treated inequitably, low and moderate income people are being treated inequitably. It is certainly true in the Laurel Case. It was the NAACP who sued and it was up to the court to decide what does equity require.

I don't see that that is really a matter of expertise. Certainly not my expertise. I don't know whether that is an answer or not.

Q Ms. Nelson asked you one question and I think she was trying to get perhaps at least to what extent is the existing land use pattern in the suburban parts of

the State of New Jersey in which Bedminster is located the result of past history of exclusionary zoning functions?

A I can't tell you with Bedminster. All I can do is to make some judgments based on having looked at density patterns in a large number of metropolitan areas.

Let me say that one of the ways to attack this question is to ask whether there is a jump in the density pattern as you go across the central city boundary. Zoning of residential land uses -- I am excluding zoning which separates residential from nonresidential land use. Zoning, for example, minimum lot sizes and such things is much less important in central cities than it is in suburbs. If it is important, then there should be a jump as you go across boundaries.

A lot of people have calculated density patterns, land values patterns as they proceed out the middle of the metropolitan area and go across the central city areas and out into the suburbs. Almost none of these studies have found much in the way of discontinuities as you go across central city boundaries.

Some have addressed the question, is there a discontinuity as you go across the central city boundary and some of those have found small discontinuities, and the discontinuity you would find would be the one you would expect, namely, if the density pattern is declining smoothly

as you move toward the edge of the central city, then drops a little bit as you cross the boundary between the central city and the suburbs.

That suggests that the suburban zoning has an effect in reducing the residential zoning there and if you remove that zoning or loosen it, that you would increase the density there. But the studies that exist have suggested and indicated that those discontinuities are rather small. A discontinuity between what happens on one side of the central city and what happens on the other side of the central city boundary are quite small and that leads me to think that much of suburban zoning by no means at all is a matter of a group of people moving. They are deciding what kind of density they want to live in, building houses of that density and then zoning the place for that density.

Now that may have some effect because the next people who move in might like a different density. As the land values go up, they might like a lower density. If you take that view of suburban zoning, it helps to understand why the discontinuities are not very great as a result of suburban zoning. And that is my view of the subject, that suburban zoning has reduced the numbers of people, the density of people and the mixture of people that live in the suburbs and metropolitan areas, but not a great deal. That is a qualitative description of a quantitative matter,

but that is the best I can do here.

Q You and Mr. Gaver discussed a book by Kain and Quigley. What is Mr. Kain's thesis in that book basically and essentially on housing patterns and discrimination?

A He had done very good work on racial discrimination in housing and his conclusion is that blacks pay a premium for housing in metropolitan areas in the United States because of racial discrimination.

A lot of people have tried to estimate that premium. The best estimates are that there is a premium. Kain and Quigley, as well as those of other people. Most of the careful estimates put the premium in the range of five to 20 percent. That is to say a black family pays five to 20 percent more for housing than an otherwise similarly positioned white family, similarly positioned in terms of income and family size.

Kain probably believes that that premium is greater than most other people who have done careful studies of the subject.

One of the most recent studies which is based just on economic data done by Brian Berry, whose name I mentioned before, concludes that blacks pay less per housing than otherwise similarly positioned whites and his argument is simply that there has been just a vast suburbanization of

whites in the metropolitan economic area with so much new housing built in rather distant suburbs, that it has left a small demand on the housing in the inner cities and the result is housing prices are low there and the blacks get the housing, as it were, at a bargain.

That is a minority view and he has a lot of data and a lot of statistical analysis which some people have criticized, as some people criticized Kain's work.

My own professional guess, having read a lot of these studies is that Kain is closer to the truth than Berry. That is to say, if you ask me for a number, I would say my best guess would be on the average of urban blacks pay ten percent more than similarly positioned whites, simply as a result of discrimination. Nobody has ever shown that zoning has much effect on this. The issue that has been attacked is the unwillingness of white owners or landlords to sell or rent to blacks except at a premium. But it is my guess, that about ten percent is based on that.

I also make the guess that this kind of discrimination is getting less year-by-year. But that doesn't mean it is nonexistent.

Q Would discrimination in the housing market for black members of our society have any relationship to the employment opportunities of those people?

A I may not be listening. You said --

Q Does the housing market for black members of our society bear any relationship to the employment opportunities for those people?

A There is a history of literature on this subject which was really started by a paper by John Kain about ten years ago now in which he calculated the effect on unemployment rates of inner city blacks of housing segregation. That paper has inspired at least a dozen subsequent work papers and a couple of books.

Kain concluded that housing segregation rather dramatically increased unemployment rates among inner city blacks. My judgment having read most of this work is that he rather substantially overstated the case. That housing segregation is not nearly as important in raising black unemployment rates as he thinks it is.

Now most of the papers that have been written on that subject since Kain's paper have pointed out deficiencies in his approach, and have concluded that he overestimated the effect of housing segregation on black unemployment.

I believe that at the moment the best piece of work on the subject is a book by a man at MIT named Bennett Harrison. The exact title I cannot give you, but I can find it. And his conclusion is that the effect of housing segregation on unemployment rates among blacks have been quite slight.

Basically, it is a complicated statistical analysis in the book. Basically, the point is, although jobs have moved to the suburbs in substantial quantities, people also have toosand, therefore, the number of jobs left in the central cities relative to the number of blacks is not terribly different now than it was 25 years or 30 years ago. And that is because the exodus of jobs has been accompanied by an exodus of people, mostly white people.

The next stage of the argument is to ask, well, is the mix of experience and training and education of blacks who remain in the central cities, does it correspond with the jobs that remain in the central cities and that requires some more statistical analysis.

Harrison's answer is that the mismatch between skills, experience and education available and requirements of the jobs that remain is probably not worse than it was 20 years, 25 years ago.

My own judgment from all of this, I believe, an extraordinary complicated subject is the blacks are more segregated as a result of housing discrimination and that it is costly to them. My judgment is that it is not so much costly in terms of jobs as it is simply in terms of reduced living standards. Basically, because if a white person moving to the suburbs, he does so because housing is cheaper there and it is worth his while. If his job also moves to

the suburbs, he gets the best of both worlds and he gets the low cost of housing and the short commuting. If the jobs moved to the suburbs and the blacks remain in the central cities, the blacks have the option of either getting the worst of both worlds where he has to live in the cities where the housing is expensive and commute to the suburbs, or he has to take a less desirable job in the central city, which, of course, means that either his welfare or his income is reduced. In either case, he is worse off as a result of the housing segregation. But now because he is unemployed and my guess is that the unemployment effect is a relatively small part of the total.

Q His life is worse off?

A Yes. You can get a lot of differences of opinion on this very emotional subject, needless to say.

Q One other question. One of the articles you wrote, you mentioned a study by a man named Bruce Hamilton. What area did he work in?

A He is another former student of mine who is a specialist in urban economics and public finance.

Q Has he worked with exclusionary zoning also?

A Yes. In fact, he and another former student of mine and I have together written a paper which is in the book that I edited along with Wallace Oates and that paper is a kind of test of Tiebout Hypothesis. And we find there

is a considerable substance of the Tiebout Hypothesis.

MR. FERGUSON: No further questions.

MR. GAVER: I have nothing further.

(The above proceedings conclude at

2:30 P.M.)

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - SOMERSET COUNTY
DOCKET NOS. L-36896-70 P.W. and
L-28061-71 P.W.

THE ALLAN-DEANE CORPORATION, et als., :
:
Plaintiffs, :
vs. :
:
THE TOWNSHIP OF BEDMINSTER, et als., :
:
Defendants. :

CERTIFICATE

I, KATHLEEN FITZGERALD, a Notary Public and Certified
Shorthand Reporter of the State of New Jersey, do hereby
certify that prior to the commencement of the examination

EDWIN S. MILLS

was sworn by me to testify the truth, the whole truth and
nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true
and accurate transcript of the testimony as taken
stenographically by and before me at the time, place and
on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative
nor employee nor attorney nor counsel of any of the parties
to this action, and that I am neither a relative nor
employee of such attorney or counsel, and that I am not
financially interested in the action.



My commission expires A Notary Public of New Jersey
October, 1979.