

CH

General

21-May-1979

Deposition of Mary E. Brookes

re: housing needs surrounding
older central cities

Pg = 130

CH000057S

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

MORRIS COUNTY FAIR HOUSING :
COUNCIL, MORRIS COUNTY BRANCH :
OF THE NATIONAL ASSOCIATION :
FOR THE ADVANCEMENT OF COLORED :
PEOPLE and STANLEY C. VAN NESS, :
PUBLIC ADVOCATE OF THE STATE :
OF NEW JERSEY, :

Plaintiffs, :

vs. :

DEPOSITION OF :
MARY E. BROOKS

BOONTON TOWNSHIP, CHATHAM TOWN- :
SHIP, CHESTER TOWNSHIP, DENVILLE :
TOWNSHIP, EAST HANOVER TOWNSHIP, :
FLORHAM PARK BOROUGH, HANOVER :
TOWNSHIP, HARDING TOWNSHIP, :
JEFFERSON TOWNSHIP, KINNELON :
BOROUGH, LINCOLN PARK BOROUGH, :
MADISON BOROUGH, MENDHAM BOROUGH, :
MENDHAM TOWNSHIP, MONTVILLE TOWN- :
SHIP, MORRIS TOWNSHIP, MORRIS :
PLAINS BOROUGH, MOUNTAIN LAKES :
BOROUGH, MOUNT OLIVE TOWNSHIP, :
PARSIPPANY-TROY HILLS TOWNSHIP, :
PASSAIC TOWNSHIP, PEQUANNOCK TOWN- :
SHIP, RANDOLPH TOWNSHIP, RIVERDALE :
BOROUGH, ROCKAWAY TOWNSHIP, ROXBURY :
TOWNSHIP and WASHINGTON TOWNSHIP, :

Defendants. :

Morris Township, New Jersey
Monday, May 21, 1979

KNARR - RICHARDS, ASSOCIATES

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B E F O R E:

MARK SCHAFFER, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, at the MORRIS TOWNSHIP MUNICIPAL BUILDING, Morris Township, New Jersey, on Monday, May 21, 1979, commencing at 9:15 o'clock.

A P P E A R A N C E S:

THE PUBLIC ADVOCATE
BY: CARL C. BISGAIER, ESQ.

and

VERICE M. MASON, ESQ.,
Attorneys for the Plaintiffs.

MESSRS. WILEY, MALEHORN & SIROTA
BY: FREDERIC J. SIROTA, ESQ.,
Attorneys for the Common Defense.

MARK SCHAFFER, C.S.R.

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2046

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WITNESS

Mary E. Brooks
By Mr. Sirota

DIRECT

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1 M A R Y E. B R O O K S, previously sworn.

2 CONTINUED DIRECT EXAMINATION BY MR. SIROTA:

3 Q Why is the reduction in the concen-
4 tration of housing opportunities by dispersing
5 alternatives necessary to a fair share plan?

6 A The fair share plan itself is designed to
7 expand housing opportunities for low and moderate
8 income persons and in doing that to provide hous-
9 ing opportunities where they are not now concen-
10 trated and thereby reducing the concentrations.

11 Q Why isn't it a feasible alternative
12 to assume that housing needs of lower income
13 persons can be met within older central cities?

14 A We talked about that on Thursday. The
15 limitation of land and other restrictions on
16 housing in central cities makes it difficult to
17 provide for the amount of housing that is needed
18 so that all low and moderate income persons would
19 be housed adequately.

20 MR. SIROTA: Could you read back
21 the answer, please.

22 (The last answer is read.)

23 Q What restrictions did you refer to
24 in that answer? A The cost of

25 land in central city areas, the necessity to--

1 often to assemble parcels of land of sufficient
2 size to construct housing would be a couple of
3 examples.

4 Q What other restrictions would there
5 be? A In some instances now there

6 are environmental restrictions that make it more
7 difficult to construct the housing. Those are
8 the major ones I can think of.

9 Q Does land in the cities cost more
10 than land in the suburbs?

11 A Sometimes.

12 Q With respect to the region you have
13 delineated in this case or D.C.A.'s Region 11, is
14 land in Jersey City or Newark more expensive per
15 housing unit than land in the defendant munici-
16 palities? A I don't know.

17 Q Do you know anything about the cost
18 of land in Newark or Jersey City?

19 A I've not studied it, no.

20 Q Do you know anything about it?

21 A Not specifically, no.

22 Q Do you know what other central cities
23 there are in the region the D.C.A. has proposed
24 other than Jersey City and Newark?

25 A Central cities by whose definition?

1 O Your definition.

2 A In Region 11?

3 Q Yes. A I would include
4 Paterson and Elizabeth probably, Newark and Jersey
5 City.

6 Q Does your definition of central
7 city differ from that of D.C.A.?

8 A I don't know.

9 Q What is your definition of central
10 city? A I listed the cities that in

11 1970 were over 50,000 population and served as
12 the focus of standard metropolitan statistical
13 areas.

14 Q How did you choose 50,000 as a
15 minimum population of a central city?

16 A That's what the Census uses.

17 Q As a definition of central city?

18 A For an S.M.S.A.

19 Q And is that nationally?

20 A Yes.

21 Q And is the central city under the
22 Census whose population must be at least 50,000
23 limited to one municipality only? In other words,
24 can a conglomeration of cities whose aggregate
25 population exceeds 50,000 be a central city?

1 A I'm not certain. As I recall, the Census
2 makes reference to a circumstance such as a twin
3 city. I don't recall reference to a number of
4 cities serving that function.

5 Q Such as Minneapolis-St. Paul or
6 Kansas City, Missouri and Kansas?

7 A That's true.

8 Q And are Minneapolis-St. Paul
9 considered a central city together?

10 A For the purposes of definition of an
11 S.M.S.A.?

12 Q Yes. A I believe so,
13 but I'm not certain.

14 Q And what of the two Kansas Cities?

15 A I don't know.

16 Q Dallas-Fort Worth?

17 A I don't know.

18 Q San Francisco-Oakland?

19 A I believe so.

20 Q So is it your understanding that a
21 central city can be more than one municipality?

22 A Again, you are referring to reference
23 within an S.M.S.A.?

24 Q Yes.

25 A I don't think I'd put it as simply as you

1 did. I think in the sense it is used by the
2 Census, there is a definite relationship that
3 exists between those two entities and they're a
4 blend or almost a merger into one city is the
5 reason for which they allow more than one city
6 to be--to act as the center of an S.M.S.A.

7 Q And for your own definition of a
8 central city, would you be governed exclusively
9 or would you be governed at all by municipal
10 boundary lines? A Generally, yes.

11 Q If Newark were divided into ten
12 separate municipalities, would that no longer be
13 a central city for your purposes?

14 A No, I would think it could serve as a
15 central city.

16 Q Why? A Well, the
17 essential character of population and geographic
18 density would not have changed.

19 Q Well, then is it fair to say that
20 the important questions relating to what is a
21 central city in your own estimation would not be
22 tied to a municipal boundary line which may or
23 may not be a geographic or demographic fiction?

24 A Is that a question?

25 Q Yes. A Could you

1 repeat it?

2 (The last question is read.)

3 A I'm not sure whether you are referring to
4 a specific municipal boundary or the use of
5 municipal boundaries altogether.

6 Q I am not referring to a specific
7 municipality. My question relates to your con-
8 cept of central city and whether it's dependent
9 or pitted upon municipal boundary lines.

10 A Yes, it is.

11 Q Isn't that in conflict with your
12 answer relating to Newark?

13 A But you divided Newark into ten munici-
14 palities.

15 Q Yes. A In my answer,
16 I said I thought it acted in the same way as
17 Newark would as it exists now.

18 Q But what if--

19 A But I still have the municipal boundaries
20 of those ten divisions.

21 Q I see. Perhaps my question was not
22 clear. Can a central city under your definition
23 be more than one municipality?

24 A We just went over this. In terms of the
25 definition of a central city for an S.M.S.A., it

1 can be more.

2 Q Can it, from your understanding of
3 a central city? A For the pur-
4 poses of an S.M.S.A., yes.

5 Q Well, do you have a definition of
6 a central city other than those cities which have
7 been declared to be central cities by the Census?

8 A I think that's a useful distinction.

9 Q I do not understand the answer.

10 A I think the definition used by the Census
11 is a useful one and commonly used and it is the
12 one I would use.

13 Q You have accepted it then. Is that
14 correct? A Yes.

15 Q And the Census has determined, has
16 it not, that Newark is a central city?

17 A Of the Newark S.M.S.A., yes.

18 Q Jersey City is a central city?

19 A Yes.

20 Q Paterson is a central city?

21 A Yes, the S.M.S.A. is defined as the
22 Passaic-Clifton-Paterson S.M.S.A. in that instance.

23 Q Is Elizabeth a central city?

24 A No.

25 Q It is not a central city?

1 A It's an S.M.S.A.

2 Q The Newark S.M.S.A.?

3 A Yes.

4 Q Which S.M.S.A. is Morris County in?

5 A Newark.

6 Q All of Morris County?

7 A Yes, it is.

8 Q How is that made?

9 A The Census has a definition that it uses
10 in delineating S.M.S.A.'s. It includes a central
11 city of 50,000 population or more and surrounding
12 related areas. And they use a number of socio-
13 economic factors to determine that relationship.

14 Q What socio-economic factors?

15 A The one factor that is most important is
16 the commuting patterns.

17 Q And how do they determine commuting
18 patterns?

19 A They identify the
20 proportion of resident population commuting from
one area to another.

21 Q How do they do that? By comparison
22 of where people live and where people work and
23 Census reports?

A Yes, yes.

24 Q Do they ever divide counties be-
25 tween two separate S.M.S.A.'s?

1 A I'm not sure, but I don't think so.

2 Q So they do not take into considera-
3 tion the distinctions within the particular
4 county as to commuting patterns, but rather look
5 at the overall countywide commuting pattern?

6 A I believe that's true.

7 Q And did D.C.A. accept the Census
8 figures with respect to commuting in its deter-
9 mination of region?

10 A I don't know. I'm not aware of their
11 challenging it.

12 Q I missed the last word of your

13 answer. A I don't know if they
14 accepted it. I'm not aware of their challenging
15 it.

16 Q Did D.C.A. use commuting patterns
17 to identify the region for housing allocation?

18 A Yes, it did.

19 Q Do you know whether they used the
20 Census information exclusively for that purpose?

21 A I don't believe so. On Thursday I identi-
22 fied for you the report that they depended on and
23 one of their background reports for commuting
24 patterns.

25 Q Would you remind me which report

1 that was? A It's information from
2 the Department of Labor and Industry. Its title
3 is Journey to Work: The Case of the New Jersey
4 Footloose Commuter by Shirley Goetz, G-o-e-t-z,
5 and Henry Watson, W-a-t-s-o-n.

6 (A discussion is held off the record.)

7 Q With respect to the last paragraph,
8 Page 9 of your March report, which is DB-1--

9 A I'm sorry. I missed the page number.

10 Q Page 9. Is there a direct relation-
11 ship between the employment opportunities or
12 available zoned areas for commercial and industrial
13 uses and housing opportunities and the allocation
14 assigned to that particular jurisdiction?

15 A Are you referring to the New Jersey D.C.A.
16 plan in particular?

17 Q Yes. A They use in
18 allocating prospective housing needs an average of
19 four different factors and one of those factors is
20 employment growth.

21 Q And if their projections of employ-
22 ment growth were too high, there would need be a
23 resultant decrease in allocation?

24 A The employment growth that they use is not
25 projection. It's employment growth data from a

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period of--

Q Is that 1964 through--

A No, I think it's '69 through '76. Yes, it is.

Q And is it implicit in utilization of that time period that D.C.A. feels that that time period is indicative of the growth in the municipality over a longer history and into the future?

A I think that it is true. I think it's also true that they attempted to use the most current reliable data that they could obtain.

Q But it is a necessary implication, is it not, that they feel that that particular period of time correctly portrays the growth in the community of industrial or commercial employment, for example, and it is not an aberration?

A It is, in fact, what occurred in employment growth during that period of time. It is not particularly necessary that it accurately reflects either trends before that period, and that it is used as one factor in allocating housing--prospective housing need.

Q But it is used for prospective housing need, not present housing need. Is that

1 correct? A That is true.

2 Q So that it forms the basis, does it
3 not, of a presumption of future need?

4 A No, that's the distinction I was trying to
5 make. It is not used as a way to estimate future
6 housing need. New Jersey D.C.A. estimates pro-
7 spective housing need in an entirely different
8 way. The four factors that they use for allocat-
9 ing the units are used to determine the suitability
10 and other factors for distributing the need that
11 has already been identified.

12 Q But in part when one municipality's
13 allocation, that is the size of the allocation
14 relates to its employment growth during the rele-
15 vant period. Is that correct?

16 A No, that is not correct.

17 MR. BISGAIER: Could you read that
18 question and answer again, please.

19 (The last question and answer are
20 read.)

21 A I'm sorry. I'm wrong. Yes, that is correct.
22 Do you want me to re-explain it if you are confused?

23 Q No, I understand that. I was con-
24 fused by the initial answer.

25 A I'm sorry. I thought you said need instead

1 of allocation. Thank you.

2 Q So that if employment growth during
3 the relevant period was historically an aberration,
4 the allocation would reflect that aberration.
5 Is that correct?

6 A Yes.

7 Q Now, in that last paragraph, Page
8 9, you say that "there need not be a blind
9 inclusion of all areas where housing for lower
10 income persons has heretofore not been made
11 available." And you say that "one consideration
12 with respect to that is the balance between
13 employment opportunities or available zoned areas
14 for commercial and industrial uses and housing
15 opportunities." Would you explain that more
16 fully, please?

17 A The discussion is in reference to the
18 definition of the region and that it is one of
19 three elements that result from the definition of
20 that region. And in that paragraph, I am referring
21 to the total area within which those housing
22 units are going to be dispersed and identifying
23 that there is within that region-to-region
24 relationship among those jurisdictions. That
25 particular reference refers to one way in which

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that relationship could be evaluated.

Q Is it fair to read that reference to mean that greater density and greater housing opportunities have to be provided as you get closer to employment opportunities?

A That's not an accurate interpretation of that paragraph, no.

Q What do you mean by the balance between high density and development and the resultant demand on public services and facilities on developing growth areas?

A The relationship between those areas that are substantially developed and fully utilizing public services and facilities in those areas that are undergoing growth or development.

Q What is the relationship?

A I'm not talking about the relationship there. I'm setting up the two extremes on a spectrum that we are balancing in the same sense that we talked about employment opportunities.

Q Well, how do you balance the two extremes?

A The relationship is set up very much in the same way that New Jersey D.C.A. did by identifying where there are housing needs and where there is vacant developable land.

1 Q Well, how do you balance on the one
2 hand high density in development and on the other
3 hand resultant demand on public service and
4 facilities in developing growth areas? In other
5 words, does that have a recognition that we have
6 high density in the development, you are going to
7 have great demand on public services and facilities?

8 A The attempt in that example is to identify
9 the difference between these areas that are
10 developed and those areas that are developing
11 very much in the same way that New Jersey D.C.A.
12 did in their allocation plan where they identified
13 areas of housing need and areas where there exists
14 vacant developable land to meet those needs.

15 Q I simply do not understand your
16 sentence. Perhaps is the comparison between the
17 balance between high density and development and
18 resultant demand on public services and facilities
19 on the one hand and on the other hand developing
20 growth areas? A Yes.

21 Q And you feel that D.C.A. has
22 effectively balanced these factors?

23 A As I indicated, New Jersey D.C.A. used as
24 one of its major criterion in delineating the
25 regions, the balance between where there were

1 housing needs and where there was vacant develop-
2 able land. They did strike a balance there in
3 the sense that I'm talking about in here. I
4 think there are alternatives they could have
5 considered, but--

6 Q What were the alternatives?

7 A Well, they ignored all the housing needs
8 of New York City for one.

9 Q You are not suggesting here, are
10 you, that there aren't the resultant demand on
11 public services and facilities in developing areas?

12 A No, I'm not.

13 Q The next phrase, you mention sta-
14 bility. What do you mean by stability in that
15 phrase? That is on the top of Page 10.

16 A The reference is to the stability that's
17 provided to a municipality by there being a variety
18 of housing types and costs available to a popula-
19 tion within that municipality so that households
20 at various stages of a life cycle can choose to
21 remain within that municipality if they wish.

22 Q Within the municipality or within
23 the region? A Within the municipality.

24 Q So it is your understanding that
25 each municipality must have sufficient variety of

1 housing to permit all persons who care to reside
2 in the municipality to remain residing in the
3 municipality when their needs change?

4 A Your question to me was in terms of what I
5 meant by stability. And my answer actually refers
6 to the ability of a municipality to accommodate
7 persons or households at various stages of their
8 lives. Such as an elderly couple may want to
9 move out of a large single-family home within
10 which they raised their family and move into a
11 smaller apartment, being on a fixed income; that
12 there have been indications and, in fact, data
13 that show where municipalities have a singular
14 type of housing supply, that the characteristics
15 of that population indicate that, for instance,
16 elderly couples may be forced to move out of that
17 municipality, that new households forming may not
18 be able to stay in the municipality; and that
19 there are certain demographic characteristics
20 that result from the lack of a variety of housing
21 type. Now, that's what I'm referring to in the
22 use of the word stability.

23 Q Generally is it important that those
24 persons find housing within the municipality or
25 within the region?

1 A In this discussion, both. In talking
2 about how a municipality maintains the stability
3 as I'm referring to it here, it is important that
4 households be able to stay within that jurisdic-
5 tion if they would like to.

6 Q I have broadened that question now
7 as to refer not only to the context of the state-
8 ment contained in your report, but generally.
9 That is, is it necessary for each municipality
10 within the region to provide the housing to meet
11 the changing needs of its present population?

12 A Could you repeat that question, please?

13 (The last question is read.)

14 A I'm not sure what you mean by necessary.
15 I certainly think it's desirable.

16 (A discussion is held off the record.)

17 (The last question and answer are
18 read.)

19 Q Would that be the most desirable
20 situation, that is, that each municipality within
21 the region met the needs of its own population?

22 A No.

23 Q Well, in what sense is it desirable?

24 A It's desirable to the extent that a house-
25 hold that wishes to remain within a jurisdiction

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has the opportunity to do so.

Q And what if there is a conflict between those who wish to remain within a jurisdiction and those who wish to settle in that jurisdiction from another jurisdiction within the region? How does one balance the equities in that situation?

A I don't understand the question.

Q Well, what if there are 100 units of senior citizen housing available and there are 100 persons or families within the jurisdiction which would desire to utilize that available housing and there are also 100 families outside the jurisdiction which would like to utilize that housing. Who in your estimation gets to utilize that housing?

A It would be on a first-come-first-serve basis.

Q Well, is it your goal that everyone will be able to obtain just the type of housing in just the location that they desire?

A I think that's a desirable objective.

Q Is that your goal?

A A goal with reference to what?

Q Well, with respect to your expert's report in this matter.

1 A I don't understand that question.

2 Q Well, is that the desired result of
3 your report in this litigation?

4 A That each person be able to live where he
5 or she chooses?

6 Q Yes. A That would be
7 one way of stating it, yes.

8 Q I am sorry. I did not hear the
9 answer.

10 MR. SIROTA: Could you read it back,
11 please.

12 (The last answer is read.)

13 Q You think that will actually happen?
14 In other words, do you consider that realistic?

15 A Well, I think it's going to be very diffi-
16 cult, but I think it's possible.

17 Q You do not think that people are
18 going to have to compromise where they live or the
19 type of unit they obtain when selecting a housing
20 unit? A Yeah, they may have to.

21 Q But you would consider that undesir-
22 able? A It's less than optimum.

23 Q But it's a reflection of reality;
24 is it not? A Yes.

25 Q In fact, upper income persons are

1 faced with that same sort of compromise; are they
2 not? A Sometimes.

3 Q But even upper income persons have
4 not reached that ultimate or optimum state; have
5 they? A Well, it's certainly true

6 that a greater proportion of them have and it's
7 certainly true that they are much closer to it.

8 Q Presently?

9 A Presently.

10 Q You describe on Page 10 of your
11 report Method 1 and Method 2. Is it fair to say
12 that the D.C.A. report is essentially a Method 2
13 plan? How would the D.C.A. report be changed if
14 Method 1 were utilized?

15 A Instead of identifying present prospective
16 housing need for low and moderate income house-
17 holds, they would identify the total sum of
18 assisted housing resources available within a
19 certain time period and allocate those resources
20 to the various jurisdictions.

21 Q And given the current amount of
22 federal and state subsidies that are available,
23 wouldn't that result in lower allocations?

24 A Probably.

25 Q And if one accepted the concept

1 that low and moderate income housing is presently
2 in the foreseeable future impractical without such
3 subsidies, wouldn't Method 1 be more realistic
4 than Method 2? A Realistic in
5 what sense?

6 Q With respect to and in comparison
7 to a relationship to the amount of housing that is
8 least cost housing to be utilized by low and
9 moderate income persons as opposed to least cost
10 housing to be used by persons other than low and
11 moderate income? A Given--If I
12 understand this correctly, the restriction that
13 you stated, that low and moderate income housing
14 would be provided only with the use of government
15 assistance, it would be more realistic only to the
16 extent that there were not methods available to
17 developers, let's say, where--that government
18 assistance could be used in creative ways to pro-
19 vide low and moderate income housing. So that
20 there might not be a direct translation that would
21 be available from the resources available to the
22 actual number of units produced.

23 Q You are hypothesizing a complicated
24 relationship between the amount of subsidy avail-
25 able and the amount of housing that is built or

1 perhaps an indirect result of the available sub-
2 sidy which would create housing for low and
3 moderate income families. Is that correct?

4 MR. BISGAIER: You are not taking
5 into consideration filtering down. You are
6 not taking into consideration what the
7 realities of the marketplace would be like
8 if there was overzoning.

9 MR. SIROTA: Mr. Bisgaier, if I have
10 questions for you, if you have an objection
11 or you have a statement, I will be more
12 than happy to make it. However, the ques-
13 tion I posed was for the witness.

14 MR. BISGAIER: I just thought I
15 would be helpful.

16 MR. SIROTA: Well, I appreciate
17 your help, but I also appreciate having an
18 answer from the witness. Could you read
19 back the answer (sic).

20 (The last question is read.)

21 Q Well, let's assume for the purposes
22 of my question that Method 1 is done in a reason-
23 ably sophisticated fashion so as to result in an
24 allocation based upon the available resources in
25 what you would consider to be a fair way. I am

1 not looking to minimize in this question or my
2 hypothetical the amount of resources that are
3 available. So I think you can assume for the
4 purposes of this question that I am not seeking
5 to minimize the amount of resources. And once
6 again assuming that low and moderate income
7 housing will not be built without these resources
8 or at least that very little will be built with-
9 out these resources, I am asking whether given
10 those assumptions, whether utilizing allocations
11 based upon Method 1 would not reduce the amount
12 of least cost housing built which would benefit
13 other than low and moderate income persons.

14 A Could you repeat that, please?

15 (The last question is read.)

16 A That's the question you meant to ask?

17 Q Yes. A Well, I really
18 don't see any relationship between your question
19 and the hypotheticals that you set up, but to the
20 extent that there are income limits to programs
21 that are governmentally assisted, then those house-
22 holds benefiting from that housing are guaranteed
23 to be of a certain income.

24 Q Let me amplify further. Given all
25 the assumptions that I mentioned before and

1 assuming that the zoning which reflects this local
2 allocation of Method 1 and Method 2 were strongly,
3 quote, "biased in favor of low and moderate income
4 housing" such as, for example, requiring a federal
5 or state subsidy to get the much more dense use,
6 a density bonus, in that event isn't it likely
7 that the problem of the developers getting the
8 benefit of the Mount Laurel-type situation or
9 allocation, in lieu of that benefit being made
10 available to low and moderate income persons,
11 reduced?

12 MR. BISGAIER: Is that the end of
13 your question?

14 MR. SIROTA: Yes.

15 (A discussion is held off the
16 record.)

17 A Let me make sure I understand your ques-
18 tion in the interests of saving time.

19 Q I am very interested in saving time.
20 Any time you have a question about one of my
21 questions, do not hesitate to ask.

22 Q Whether there is a significant
23 difference in the two allocation methods and the
24 number of low and moderate income persons that
25 actually benefit from the housing that is produced?

1 Q Well, you can answer that question.
2 Let me ask you this: Isn't there a difference
3 in the percentage of the allocation actually used
4 by low and moderate income persons in the two
5 methods? A In allocating the
6 resources, most of those programs have income
7 limits attached to them and so there is some
8 degree of guarantee about who takes advantage of
9 the production of those units. In the second
10 alternative, those guarantees do not necessarily
11 exist.

12 Q If a municipality zoned to meet its
13 allocation under Method 1 in such a manner as to
14 make it highly desirable that they be built,
15 aren't they likely to be built given the alloca-
16 tion is based upon available subsidies?

17 A I would think so.

18 Q And if a municipality zoned for its
19 allocation under Method 2, but without any recog-
20 nition or bias in favor of subsidized housing,
21 isn't it less likely that the subsidized housing
22 will be built? A I don't think
23 there is any demonstration of that. The same
24 resources are available.

25 Q In my hypothetical, I have

1 established that there is no benefit tied directly
2 to subsidization in the municipality's zoning for
3 Method 2 allocation.

4 A I understand that, but the same--In either
5 allocation method, the resources--assisted govern-
6 mental resources that are available are available
7 in both instances. In the second instance, there
8 is the additional advantage of a developer being
9 able to use those resources in combination with
10 other techniques that might be made available to
11 them.

12 Q You really think developers are
13 going to utilize subsidies if they can make money
14 on housing, as much money on housing, without
15 subsidy?

16 A Developers have always
17 used the subsidies that are available.

18 Q By developers, you are also refer-
19 ring to governmental entities, municipal entities
20 using the subsidies?

21 A Give me a for instance.

22 Q Well, the Newark Housing Authority?

23 A Yes.

24 Q That would be an entity that would
25 utilize subsidies? Is that correct?

A That's correct.

1 Q But what if there were no public
2 entities involved? Would all these subsidies
3 be utilized? A They generally are,
4 yes.

5 Q Well, why aren't they being used in
6 Morris County today?

7 A I suspect there are certainly reasons.
8 One, developers are not encouraged to use them.
9 There is not in many instances the zoning avail-
10 able that allows a developer to construct the
11 housing that would use those funds.

12 Q In none of the 27 municipalities is
13 there zoning available which would permit develop-
14 ers to utilize subsidies?

15 A As I indicated earlier, I have not studied
16 the zoning ordinances of the municipalities.

17 Q So you do not know?

18 A No.

19 Q So how do you know they are not
20 being utilized? A You asked me
21 my opinion. I gave you that.

22 Q Based upon no specific knowledge?

23 MR. BISGAIER: You asked a specula-
24 tive question. You got a speculative
25 answer.

1 Q Based on no specific knowledge?

2 A It was certainly based on my general know-
3 ledge of the county and the housing circumstances.

4 Q What general knowledge?

5 A The way the housing has been developed in
6 the past, the type of housing that's been con-
7 structed.

8 Q But no specific knowledge as to why
9 more subsidized housing has not been constructed?

10 A I guess that's true.

11 Q And it is your feeling generally
12 that developers will utilize subsidies even when
13 they can make money without the subsidies?

14 A Yes.

15 Q In the middle of Page 11 of your
16 report, you refer to a vacancy rate of three to
17 six percent. Now, that is on the right-hand side.
18 Do you see that? A Yes.

19 Q Is that for a rental or owned homes,
20 housing units? A In that speci-
21 fic instance, it's a range that's used commonly
22 for the housing stock totally.

23 Q Is that sort of a United States
24 average or does that figure apply equally well
25 to all regions within the United States?

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A It's considered a rule of thumb for a desirable vacancy rate.

Q Is it a desirable vacancy rate for rental housing? A The desirable vacancy rate for rental housing would fall within that range, yes.

Q And is it a desirable vacancy rate for single-family residences, owned?

A You mean for owned units?

Q Yes. A The same is true.

Q Does that mean at any given time three to six percent of owned homes should be vacant? A That's what the vacancy rate means, yes.

Q You do not consider that a high number? A Do I?

Q Yes. A No.

Q Do you consider six percent a high number? A For homeowner units?

Q Yes. A That would be high, on the high side.

Q Why is it desirable that further concentrations of low and moderate income housing units be avoided? A As development

1 patterns continue to result in a concentration of
2 low and moderate income housing units, the range
3 of opportunities afforded to those households
4 continues to be limited.

5 Q Well, what if the housing were
6 concentrated near employment opportunities?
7 Would you object to the concentration of housing
8 in that instance? A As I have
9 indicated, I think there is a desirable relation-
10 ship between employment opportunities and housing
11 opportunities. However, I would object to con-
12 centration on the grounds that I stated earlier.

13 Q So you would have housing available
14 away from applicable employment opportunities?

15 A Possibly.

16 Q Why? A Persons may
17 want to live in other locations.

18 Q Is it fair to say that that is your
19 chief concern, that people be permitted to make
20 the judgment of where they want to live on what-
21 ever basis they make that decision?

22 A I think that's an important concern, yes.

23 Q But we can only plan for the
24 rational decisions that people might make. Is
25 that correct? A Well, we could

1 plan for other ones, but we tend to plan only for
2 the rational ones, yes.

3 Q Do you think that is legitimate?

4 A In housing planning?

5 Q Yes. A Yes.

6 Q So that we cannot plan for those
7 persons who want to live away from all possible
8 employment opportunities; can we?

9 A There are other rational reasons for
10 selecting the location of one's house such as
11 school opportunities, desirability to be next to
12 a golf course.

13 (A discussion is held off the record.)

14 Q You suggest in your report that no
15 area should receive in a fair share plan more
16 units than it can support within standards for
17 protecting the health, safety and general welfare
18 of the public. Which standards or what standards
19 are you referring to?

20 A Well, I'm referring to basic standards for
21 protecting health and safety that are determined
22 acceptable.

23 Q What standards?

24 A I really was not making reference to
25 specific standards.

1 Q Who determines whether they are
2 acceptable? A Well, obviously that
3 goes on in a variety of ways. Those standards
4 are being discussed in this very case. There are
5 minimum property standards that have been estab-
6 lished.

7 Q By whom?

8 A The Department of Housing and Urban
9 Development.

10 Q That is a maximum density, maximum
11 number of persons per room type standards?

12 A I believe those are included.

13 Q What other standards are included
14 in H.U.D.'s standards?

15 A They're lengthy and I'm not familiar with
16 details.

17 Q Are you an expert in health, safety
18 and general welfare concerns which interface with
19 the zoning requirements?

20 A No.

21 Q But this statement reflects, does
22 it not, that you are cognizant that any zoning
23 has to reflect these concerns?

24 A I'm sorry. Could you repeat the question?

25 (The last question is read.)

1 A Yes.

2 Q But you have no expertise or know-
3 ledge with respect to how one balances housing
4 needs with the necessary standards for protecting
5 the health, safety and general welfare of the
6 public within a given jurisdiction?

7 MR. BISGAIER: Do you use the term
8 balances? Is that what you said?

9 MR. SIROTA: Would you read the
10 question back, please.

11 (The last question is read.)

12 A That seems to be a different question than
13 you asked before. The housing allocation plan
14 does, in fact, deal with that, so I am certainly
15 aware of the issues and concerns that are
16 considered in that balance.

17 Q You are referring now to the
18 sentence that the D.C.A. plan uses 12 percent
19 slopes as a factor for eliminating land from
20 available vacant land, that sort of thing?

21 A That would be an example, yes.

22 Q Well, you wrote a book entitled
23 Housing Equity and Environmental Protection:
24 The Needless Conflict. How so? Why is it need-
25 less? A The book was written to

1 initiate consideration of the relationship between
2 the environmental protection movement and what is
3 referred to in the book as the housing equity
4 movement and attempts to identify how there are
5 concerns of mutual interest to those movements.

6 Q Well, what is the conflict or what
7 is the perceived conflict which you addressed your-
8 self to?

9 A There is a substan-
10 tial amount of conversation and study into the
11 effects of environmental protection regulations
12 on the costs of housing and the production of
13 housing altogether.

14 Q And did you consider the effects of
15 these regulations upon the cost of housing and
16 the production of housing?

17 A That issue is discussed.

18 Q And what statements did you make
19 with respect to that issue?

20 A There are studies that indicate that
21 environmental protection regulations do add to
22 the cost of housing.

23 Q Are these quantified? Do these
24 studies quantify the effect of environmental
25 protection regulations on the cost of housing or
on the effect of the production of housing?

1 A Some studies have done that. I'm not sure
2 that they're cited in that book.

3 Q Which studies have done that?

4 A I can't recall the names of the studies.
5 I really haven't looked at them for a while.

6 Q And why is it a needless conflict?

7 A Well, it strikes me that it is unfortunate
8 that two otherwise worthwhile movements or objec-
9 tives are spending time, energy and money battl-
10 ing on another when they could be working coopera-
11 tively.

12 Q How could they be working coopera-
13 tively? A Excuse me. I didn't

14 hear the question.

15 Q How could they be working coopera-
16 tively? A There are some, let's

17 say, land user development objectives that would
18 satisfy the concerns of both movements such as
19 clustering development in a way that allows for
20 the housing units to be constructed less expen-
21 sively and it also allows for preserving open
22 space and using that land that is most develop-
23 able.

24 (A discussion is held off the
25 record.)

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1 (The last answer is read.)

2 Q What other techniques would be
3 appropriate to resolving problems between environ-
4 ment and I think what you referred to as the
5 housing equity movement?

6 A They're not really techniques used to
7 resolve the conflict. They are objectives that
8 would be mutually supported. But another example
9 would be the provision of public water and sewer
10 facilities which often protect certain vulnerable
11 areas and allows for higher density housing.

12 Q Doesn't current E.P.A. thinking
13 oppose extension of sanitary sewers as opposed to
14 smaller concepts like package plants or septic
15 systems? A I don't know.

16 Q Do you know whether there is a
17 school of environmental thought which opposes the
18 extension of sanitary sewers in suburban and
19 exurban areas? A I don't know
20 what you mean by a school of environmentalists.
21 There are those that might oppose those extensions
22 on what they claim to be environmental grounds,
23 yes.

24 Q What do you say are what they claim
25 to be environmental grounds? I underline the

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word claim. A It may or may not be for reasons that are strictly preservation of environmental quality.

Q What other reasons would there be?

A Those arguments have been used in the past for the purposes of protecting lower density development patterns.

C Well, do you feel that there is a valid reason or reasons to oppose extension of sanitary sewer lines for environmental concerns or based upon environmental concerns?

A There may be in a specific situation.

Q Have you studied the situation in Morris County with respect to sanitary sewer lines?

A No.

C Do you have any familiarity with the situation in Morris County relating to sanitary sewer lines? A Only generally.

Q What knowledge do you have generally?

A Some familiarity with those areas where public water and sewer are not presently available.

Q What areas are those?

A Well, for example, generally the portion-- western portions of the county and some of the northwestern portions.

1 Q Do you know what arguments have
2 been made with respect to the extension of sani-
3 tary sewer lines in those parts of the county?

4 A No.

5 Q Do you have any knowledge at all
6 with respect to the Rockaway Valley Regional
7 Sewerage Authority project?

8 A No, I'm aware of it, but not specific
9 knowledge.

10 Q How about any other sewer projects
11 or sewer extensions either built in the past,
12 presently being built or contemplated in the
13 future within the county? Do you have any know-
14 ledge about those? A No, I have
15 studied the discussions of it by the Morris County
16 Planning Board.

17 C Which discussions have you studied?

18 A That discussion contained within its Mas-
19 ter Plan and the extent to which it is discussed
20 in the water quality management plan for the
21 northeast part of the state.

22 C Who published that latter plan?

23 A The Department of Environmental Protection
24 for the State of New Jersey.

25 Q And when is that dated?

1 A '78 or '79, it's on that list of materials
2 I gave you.

3 Q Is there an Areawide Housing
4 Opportunity Plan for an area encompassing Morris
5 County? A No. Excuse me. I
6 assume you mean an approved one?

7 Q My next question is is there a pro-
8 posed Areawide Opportunity Plan?

9 A The Tri-State Regional Planning Commission
10 has been working on one.

11 Q When did they commence working on
12 one? A They started at least, oh,
13 a year-and-a-half or maybe two years ago.

14 Q And this is a plan for Morris County
15 exclusively? A No, it's a plan for
16 the tri-state region, which includes Morris County.

17 Q Have they worked with the Suburban
18 Action Institute or yourself with respect to this
19 plan? A No.

20 Q Who have they worked with with
21 respect to this plan?

22 A Tri-state Regional Planning Commission has
23 several mechanisms that they use to coordinate
24 their work with the agencies throughout the region
25 and the three states. They have, for instance--

1 Well, for one, they have an executive commission
2 that has representatives from the three states.
3 They also have what they call a Technical Advisory
4 Group which is made up of representatives from
5 any jurisdiction, county or state in the tri-
6 state region.

7 Q Is there a representative from
8 Morris County? A As I understand
9 it, the Technical Advisory Group is open to any
10 representative who wishes to attend and it varies
11 at each meeting of that group.

12 Q You mean they are open meetings?

13 A Yes.

14 Q Who gets invitations to the meetings?

15 A I'm virtually certain that each county or
16 regional planning area, which is the designation
17 in Connecticut because they don't use county, the
18 planning department or whatever of that county
19 gets an invitation. I'm not sure who else does.

20 Q Do the municipalities?

21 A I don't think so, but I'm not sure.

22 Q Has the S.A.I. ever attended any of
23 those meetings or any representatives of S.A.I.?

24 A Yes.

25 Q Have you? A Yes.

1 Q How many meetings have you attended?

2 A Of the Technical Advisory Group?

3 Q Or any other group or meeting

4 associated with this proposed Areawide Housing

5 Opportunity Plan. A Something over

6 five and under 30.

7 Q That precise?

8 A Yes.

9 Q Was this lawsuit ever discussed in
10 any of those meetings?

11 A I don't know. I have not attended all of
12 the meetings of either the Technical Advisory
13 Group or any other body of the Tri-State Regional
14 Planning Commission.

15 Q Was the housing situation in Morris
16 County ever discussed in those meetings?

17 A I don't know.

18 Q Well, was either the lawsuit or
19 housing opportunities in Morris County ever dis-
20 cussed at any of the meetings that you attended?

21 A I don't recall the court case being discuss-
22 ed. Housing circumstances generally were discuss-
23 ed and Morris County would have been included
24 within that discussion. I don't recall specific
25 reference to Morris County.

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Q Did you use any of the information gathered by Tri-State or discussed at these various meetings in your report?

A I have indicated to you prior to this question the information I've used in the preparation of the reports. The New Jersey Department of Community Affairs has relied on information from the Tri-State Region Planning Commission in some instances. In those instances, however, I obtained the information through the New Jersey Department of Community Affairs.

Q Does Tri-State have a particular date set for completion of this report?

A Of the Housing Opportunity Plan?

Q The Areawide Housing Opportunity Plan.

A I would assume it does and that there's a deadline for submissions.

Q Do you know when that is?

A I believe it's sometime in September. I'm not sure that deadline's been established.

Q How would the promulgation of such a plan directly impact on housing in Morris County?

A If the Tri-State Regional Planning Commission's Areawide Housing Opportunity Plan were to be approved by the Department of Housing

1 and Urban Development, it would mean that, one,
2 a certain proportion of the jurisdictions within
3 the tri-state region had agreed to participate
4 and support that Areawide Housing Opportunity Plan.
5 It would mean that the data used and presented in
6 that Areawide Housing Opportunity Plan would be
7 encouraged by H.U.D.--I'm saying this backwards.
8 But that the jurisdictions within that region
9 would be encouraged by H.U.D. to use the data
10 developed in that Areawide Housing Opportunity
11 Plan or that their own data be consistent with
12 that plan particularly in the preparation of a
13 housing assistance plan as part of an application
14 for Community Development Block Grants. It might
15 also mean that bonus funds for Section 8 housing,
16 for Community Development Block Grants and for
17 the Comprehensive Planning Assistance Program
18 would be available to jurisdictions throughout
19 the tri-state region.

20 Q And those funds are not available
21 because there is no plan in effect now?

22 A The bonus funds, that's true.

23 Q Could you describe how an Areawide
24 Housing Opportunity Plan is adopted? That is,
25 is it promulgated by Tri-State and then must

1 receive agreement of a certain proportion of the
2 jurisdictions? A That's true.

3 Q Could you be more specific?

4 A That's about as specific as it is. The
5 Tri-State Regional Planning Commission either--
6 well, generally under the direction of the
7 Commission itself, prepares a Housing Opportunity
8 Plan. There are a number of requirements that
9 guide the development of that plan. And there are
10 a number of requirements that must be met in
11 order for the plan to be submitted. And some of
12 those requirements refer to the participation and
13 agreement of jurisdictions within the region.

14 Q What percentages must come into
15 agreement before the plan comes into effect?

16 A Before it is submitted?

17 C Yes. A It must include
18 I think 50 percent of the jurisdictions and cover
19 geographic area that includes 75 percent of the
20 population. I'm really not sure that's right,
21 but that's as I recall.

22 Q So theoretically or perhaps in
23 reality, this can be imposed upon Morris County
24 without Morris County's agreement? Is that correct?

25 A What do you mean by impose?

1 Q Could become with respect to Morris
2 County without Morris County agreeing to the Area-
3 wide Housing Opportunity Plan?

4 A That's true.

5 Q Now, you said once the plan is
6 adopted, H.U.D. encourages jurisdictions within
7 the plan area to utilize it or to adopt it, to
8 utilize the same figures used in the plan. How
9 do they encourage that?

10 A They encourage it, one, by stating it.
11 H.U.D. is not uninfluential in the extent to
12 which jurisdictions pay attention to what it says.
13 But in addition to that, there are specific
14 requirements within the Community Development
15 Block Grant Program so that if a jurisdiction is
16 preparing a housing assistance plan which is a
17 required component of an application for Community
18 Development Block Grants, and there is an approved
19 Areawide Housing Opportunity Plan that covers that
20 jurisdiction, it is required to use the data pre-
21 sented with that plan in the submission of its
22 application.

23 Q Well, would an Areawise Housing
24 Opportunity Plan establish for H.U.D.'s purposes
25 the housing needs within a particular jurisdiction?

1 A Excuse me. Would a Housing Opportunity
2 Plan do that?

3 Q Yes. A I believe so.

4 Q Would it establish the needs for
5 the region, Region 11, for example?

6 A Well, the Tri-State Regional Planning
7 Commission would establish it for its own region.

8 Q Which is the New York metropolitan
9 area? A I don't know what you mean
10 by New York metropolitan area.

11 Q Well, what is the region of the
12 Tri-State of which Morris County lays?

13 A In New Jersey, it includes all of Region
14 11 plus Monmouth County and then portions of New
15 York.

16 Q What portions of New York?

17 A All of New York City, Nassau, Suffolk
18 County, Westchester County, Rockland County,
19 Putnam County. That's all I can remember. And
20 portions of Connecticut.

21 Q You said all of New York. Did you
22 mean the City of New York?

23 A Yes.

24 Q Portions of Connecticut being
25 Fairfield County?

1 A They go by planning--regional planning
2 areas in Connecticut. And I think there are five
3 regional planning areas of Connecticut that are
4 included in the tri-state region.

5 Q And would this plan, that is, the
6 Areawide Housing Opportunity Plan, contain an
7 allocation of need amongst the jurisdictions
8 within the region?

9 A I believe in order to meet the requirements
10 that it would, yes.

11 Q Then it is a fair share plan?

12 A Yes.

13 Q And would the receipt of H.U.D.
14 funds by the constituent jurisdictions be tied
15 to that jurisdiction's acknowledgement or agree-
16 ment to the allocation contained in the Areawide
17 Housing Opportunity Plan?

18 A Not necessarily. As I mentioned, H.U.D.
19 encourages it. There is a process called A-95
20 Review, which allows--which sets up a procedure
21 for designated clearinghouses to review the
22 applications for federal funds from any govern-
23 mental entity. And part of that review process
24 is to comment on the conformance among plans with-
25 in the region.

1 Q And what if the particular juris-
2 diction does not conform? What is the impact of
3 that?

4 A The clearinghouse could, in
5 making comments on the application for funds from
6 the jurisdiction, include in its comments that
7 that jurisdiction was not conforming to the
8 region's plan. And it could recommend that that
9 jurisdiction not receive federal funds. It is an
10 advisory rule.

11 Q And have such recommendations been
12 made?

13 A I believe so.

14 Q And have municipalities been denied
15 H.U.D. funds as a result of their failure to con-
16 form with the Areawide Housing Opportunity Plan?

17 A I don't know if jurisdictions have been
18 denied funds on the basis of not conforming to an
19 Areawide Housing Opportunity Plan in that most
20 instances where those Areawide Housing Opportunity
21 Plans are developed, the jurisdictions have a
22 sense of cooperation with that plan. There have
23 been recommendations in other instances where I
24 believe the funds have been denied.

25 Q What instances are those?

A I can't recall any specific ones.

Q So that I understand this completely,

1 you know, I have never gone through this process,
2 perhaps you can amplify it. Would it be a case
3 where a municipality or county applies for H.U.D.
4 funds that they make a statement in areas where
5 there is an Areawide Plan in existence, quote,
6 "We have complied or we acknowledge the alloca-
7 tion made in the Areawide Housing Opportunity
8 Plan"? A I'm not aware of an
9 instance where that statement is required of a
10 jurisdiction.

11 Q Well, in what way do they have to
12 acknowledge the plan when they apply for funds?

13 A Well, it actually goes into the reverse.
14 When the Housing Opportunity Plan is submitted,
15 the regional body would indicate those jurisdic-
16 tions that have signed an agreement or a statement
17 of cooperation or support with the plan. Another
18 way in which the relationship might be indicated
19 to H.U.D. would be the extent to which a jurisdic-
20 tion shows support of that plan in its housing
21 assistance plan or the use of the data as I indi-
22 cated earlier as required in the preparation of
23 its housing assistance plan.

24 Q All right. Are you saying in part
25 that H.U.D. knows who has accepted the plan, who

1 has not accepted the plan, and that those public
2 entities who have not accepted the plan do not
3 have to keep repeating it in each application
4 they made, but just that when the application is
5 received, H.U.D. knows that they have not accept-
6 ed the plan? A That information is
7 available to H.U.D., yes.

8 Q And it can be brought up by the
9 entity making comment upon the particular appli-
10 cations. Is that also correct?

11 A That's true.

12 Q What is the impact of this upon
13 Morris County or any of the municipalities within
14 Morris County that receive H.U.D. funds or upon
15 the Housing Authority?

16 A The impact of the Housing Opportunity Plan?

17 Q Failure of the County to adopt it
18 or failure of any of the municipal entities with-
19 in the county to adopt it? I guess it would be
20 the County; would it not?

21 A The impact is a fairly serious one. At
22 one level, it may mean as it did, in fact, for
23 the Tri-State Regional Planning Commission that
24 they would not be able to submit the Housing
25 Opportunity Plan for not having agreement by a

1 sufficient number of jurisdictions. It might also
2 mean that the Areawide Housing Opportunity Plan
3 might be approved, but not be of sufficient
4 strength to convince H.U.D. to make those bonus
5 funds available. And those bonus funds are an
6 important additional source of providing for
7 assisted housing.

8 Q And those bonus funds are not
9 available currently in the New York metropolitan
10 area? A That's true.

11 Q Well, what would be the impact on
12 Morris County if the plan were adopted by 90
13 percent of the jurisdictions, but not Morris
14 County? How would it impact upon their applica-
15 tion for funds? Is it less likely they are going
16 to acquire the funds because this is a negative
17 against them? A It is more

18 likely in my knowledge of how H.U.D. operates
19 that the funds may not be denied the County,
20 although that's possible, but that H.U.D. would
21 identify a series of conditions or suggestions
22 as to actions the County should take to ensure
23 continuation of receiving those funds.

24 Q Such as what?

25 A Cooperating with the Areawide Housing

1 Opportunity Plan.

2 Q Accepting the plan?

3 A Yes.

4 Q So, in other words, there is at
5 least the threat that they are not going to get
6 federal funds because of their failure to accept
7 the plan? A I would say that

8 threat is there, yes.

9 Q And that plan includes an alloca-
10 tion for the County, a housing allocation for the
11 County, and for the municipalities within the
12 County? A I believe so.

13 Q And when you spoke of the September
14 date, that is the date which this plan will be
15 submitted to the various constituent entities for
16 their consideration or is that the date they are
17 shooting to submit it to H.U.D. as approved?

18 A I believe that's the date for submission
19 to H.U.D.

20 Q Well, what public entities within
21 the New York region or the region that you des-
22 cribed earlier as being parts of Connecticut, New
23 Jersey and New York have approved the proposed
24 plan? A I don't know.

25 Q Do you know if any have?

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A Well, I know that a good number approved an earlier draft. I don't know what the status of the current one is.

Q What kind of a published documentation is there in respect to this Tri-State Area-wide Housing Opportunity Plan or any of the draft plans that have been in existence?

A Throughout the process, Tri-State made a variety of drafts available to the public and including a substantial amount of background data. At this time, they have published a report entitled Dwellings and Neighborhoods--I've forgotten the exact title of it. That is their basic housing plan and reference is made in that document to the Housing Opportunity Plan.

Q So am I correct in saying that in the event such a plan is promulgated without the acceptance or acknowledgment by Morris County, that is, by the other constituent political entities, there is a threat that Morris County will lose the H.U.D. funds it currently receives for housing support and subsidy?

A I didn't understand the first part of the question.

Q In the event this plan is adopted

1 without Morris County agreeing to it or acknow-
2 ledging it, that is, whatever the required portion
3 of constituent public entities that is required
4 is obtained, that is, they acknowledge and agree
5 to it but not Morris County, in that event, is
6 there not a threat that Morris County will lose
7 the H.U.D. funds it is receiving now for subsi-
8 dized housing? A I think that
9 question is more complicated than you intended it
10 to be. There is a threat. There is a conceivable
11 threat that the County's receipt of Community
12 Development Block Grant funds would be withdrawn
13 or a condition given the circumstance that you
14 identify in your question.

15 Q So it is just those particular
16 H.U.D. funds that would be withdrawn?

17 A No.

18 Q Just Community--

19 A It is conceivable that any federal funds
20 that the County applied for could be given a
21 negative review, for instance, by the A-95
22 clearinghouse on the basis of its lack of
23 cooperation with the Areawide Housing Opportunity
24 Plan, that review being just a recommendation,
25 but which presumably could result in the failure

1 to receive the funds by Morris County.

2 Q So in what sense was my question
3 not so simple? Isn't it the case that Morris
4 County could lose H.U.D. funds as a result of
5 its failure to accept an Areawide Housing Oppor-
6 tunity Plan promulgated by the other political
7 entities within the group and accepted by H.U.D.?

8 A Yes.

9 Q Is there a housing assistance plan
10 in effect in Morris County?

11 A Yes.

12 Q Which political entities have such
13 a plan in effect?

14 A The County itself applies for Community
15 Development Block Grant funds. And I'm not sure
16 of the extent of applications by jurisdictions in
17 the county.

18 Q But each municipality that applies
19 for a block grant must have such a plan in effect?

20 A The development of a housing assistance
21 plan is a requirement of that application, yes.

22 Q Do housing authorities also apply
23 with Community Block Grants?

24 A No.

25 Q Only municipal or county entities?

1 A Yes.

2 Q Could you describe such a plan to
3 me, please? A An assistance plan?

4 Q Yes. A The housing
5 assistance plan is one part of the application
6 required for Community Development Block Grant
7 funds. The regulations have changed over the
8 period under which that program was, being, in
9 effect, the most current regulations, which may
10 not have governed the last application submitted
11 by Morris County, state that the housing assist-
12 ance plan is to identify a strategy for the
13 provision of housing for low and moderate income
14 persons. It must identify the condition of the
15 housing stock. It must identify the needs of--
16 Excuse me, the housing needs of low and moderate
17 income households.

18 Q Within that municipality?

19 A Yes.

20 Q Or within the jurisdiction?

21 A Yes, including a factor which H.U.D.
22 identifies as expected to reside housing needs,
23 which includes persons in need of--low and moder-
24 ate income persons in need of housing because of
25 existing or planned employment within the

1 jurisdiction. Those households may or may not
2 reside--in fact, do not reside in the jurisdic-
3 tion.

4 Q So is it fair to say it is a mini-
5 fair share plan?

6 A It has that element to it. In addition
7 to that, the jurisdiction is required to identify
8 goals for meeting the needs for low and moderate
9 income housing and the steps which it will take
10 to meet those goals. That is a very general
11 survey of what's included in the housing assist-
12 ance plan. The regulations are very detailed.

13 Q You said this is newly required
14 this year. Is that correct?

15 A No, I said the regulations have changed
16 over the course of the Housing Community Develop-
17 ment Act which was passed in 1974.

18 Q Has Morris County submitted such an
19 application and plan? A Yes.

20 Q And does this plan include alloca-
21 tions of fair share amongst the municipalities?

22 A I believe so.

23 Q Have you reviewed the applications?

24 A I don't believe I have looked at the most
25 recent one.

1 Q Which one have you looked at?

2 A I may or may not have looked at one in the
3 past and I really don't recall.

4 Q Do you recall whether the plan you
5 looked at establishes a need for low and moderate
6 income housing in the county?

7 A I would assume that it did and that that's
8 what the requirement is.

9 Q Does it quantify the need?

10 A Yes.

11 Q Countywide or municipality?

12 A It may have done it countywide. It may
13 have been representative of the need of those
14 jurisdictions that participated in the Urban
15 County application. Not all jurisdictions
16 necessarily participate in that application.

17 Q Do you know which jurisdictions
18 participated in that application?

19 A No, no, I would have to check the applica-
20 tion.

21 Q Now, references now will be to
22 DB-3 for identification, which is your April 1979
23 report entitled Preliminary Report on Adjustments
24 to New Jersey Department of Community Affairs,
25 "A Revised Statewide Housing Allocation Report

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for New Jersey."

A What is it called? I am sorry. I mean the number, identification number.

Q That is DB-3. And with respect to Page 4 which you have entitled Definition of Low and Moderate Income Households, I have a number of questions. Why did D.C.A. choose \$8,567 per year in 1970 for definition of low and moderate income households?

A I have to check their background report to give you a detailed answer. As I recall, they studied income and living cost factors in deriving that limit.

Q What income and living cost factors?

A I don't know and I'm not sure they identified that.

Q But it was the determination that in 1970, a family making at or below \$8,567 was low or moderate?

A For the purposes of this plan, yes.

Q Well, only for the purposes of this plan?

A I'm not aware of them using it in another instance. They may have.

Q So you do not know that it was limited to this plan?

1 A No, although as I understand it, they
2 developed the limit in preparation for this plan.

3 Q Now, the Section 8 plan, more
4 specifically the Section 8 Housing Assistance
5 Program, establishes various income levels, does
6 it not, or income limits?

7 A Yes.

8 Q Do they relate to any particular
9 size household? A Yes.

10 Q What size households do the figures
11 shown on Page 4 of your report relate to?

12 A A family of four.

13 Q And does the \$8,567 of D.C.A. also
14 relate to a family of four?

15 A I don't believe New Jersey D.C.A. identi-
16 fies whether or not it does.

17 Q Have you assumed it does?

18 A Not particularly.

19 Q What does the Section 8 Housing
20 Assistance Program call a family of four in the
21 Newark S.M.S.A. which makes less than \$9,478 per
22 year? A The Section 8 Program refers

23 to that I believe as a lower income household.

24 Q Do they use the designation moderate?

25 A No, they use the designation very low

1 income--Wait. It's either very low or low income
2 and lower income.

3 Q So they concern themselves, is that
4 correct, with-- A The former--
5 What they consider lower income is 80 percent of
6 the median, as I indicated here. The other
7 category is 50 percent of the median income.

8 Q And do you consider 80 percent of
9 the median what D.C.A. was looking for when they
10 established low and moderate income as their
11 standard? A What do you mean,
12 what they were looking for?

13 Q Well, were D.C.A. and people who
14 put together the Section 8 Housing Assistance
15 Program looking to describe the same person or
16 family or household?

17 A I don't think their concerns were exactly
18 the same, if that answers your question.

19 Q How do they differ or perhaps what
20 were the concerns of each is more precisely the
21 question.

22 A Well, I'm just not
23 sure that they're distinguishable. New Jersey
24 D.C.A. developed its plan as we talked about ear-
25 lier with a lot of considerations in mind such as
the executive order, the existence of the Mount

1 Laurel decision and other factors. And those
2 concerns may or may not have influenced H.U.D.'s
3 decision to identify 80 percent of the median as
4 its number.

5 Q You said that you are not sure that
6 they are distinguishable. Do you mean that or do
7 you mean that you are not sure that they are com-
8 parable? A No, I mean distinguish-

9 able.

10 Q We started this series of question-
11 ing with your comment to the effect that you were
12 seeking to describe different households. It was
13 my understanding that you testified that the
14 Section 8 people and the D.C.A. people were seek-
15 ing to describe different types of households.

16 Is that accurate? A Not necessarily.
17 What do you mean by different types of households?

18 Q Well, were they trying to describe
19 the same kind of household, each of them?

20 A I think they were each trying to identify
21 a set of housing needs that exist. I don't know
22 if that answers your question.

23 Q Well, presumably it requires X
24 amount of money as an income to provide for Y
25 amount of housing. Obviously that is very broad.

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Was Y the same for the Section 8 people as for the D.C.A. people? A Y being the amount of housing?

Q Y is incredibly broad. It means not only the amount of housing, but the type of housing, the standards for the housing.

A No, as I indicated, I think in both instances, they were looking to the need that existed for housing, those households that need housing.

Q Well, why did they come up with different numbers than H.U.D.?

A Well, my best guess is that given the consideration that each used in identifying the limit for low and moderate income housing, they came out with different conclusions about the income limit that marked whatever degree of difficulty they were after in identifying the need for additional housing.

Q Can you describe or are you familiar with the manner in which each of these groups, both of these groups, arrived at these income levels? A No.

Q Either?

A No more than the conversation we've had

1 here, no.

2 Q Does a low or moderate income per-
3 son in the conception of D.C.A. equal I believe
4 it was lower income household in the conception
5 of the Section 8 Program?

6 A I'm really not sure what you mean by con-
7 ception. I think in both instances, those par-
8 ties are attempting to identify a limit which
9 establishes households in need of low and moderate
10 income housing.

11 Q If these two terms were describing
12 other than income, would the descriptions be the
13 same, that is, D.C.A. is low and moderate income
14 and Section 8 is lower income?

15 A I really don't know.

16 Q In the numbers you have given for
17 Section 8, are they 1974 numbers or are they some-
18 how computed backwards?

19 A No, as I indicated, the Section 8 Program
20 was not in existence in 1970, so I used the formu-
21 la that they use currently, which they have used
22 throughout the term of the program, and applied
23 it to 1970 income figures.

24 Q How did you do that precisely?
25 What is the formula?

1 A It isn't complicated at all. It is not
2 abusive of their formula. Their definition is
3 80 percent of the median. They used it in 1974.
4 They used it in 1975. They used it in 1976.
5 They used it every year. So I only applied that
6 80 percent figure to the median income in 1970.

7 Q What is 80 percent of the median
8 income in Region 11 for 1970?

9 A It would be as indicated on Page 4 of this
10 document. The figure for the New York-northeast
11 New Jersey S.C.A., the New Jersey portion, is
12 \$9,476. However, you should understand that these
13 Section 8 Program income limits are not computed
14 on a geographic basis that's equivalent to
15 Region 11.

16 Q What subunits in--

17 A The Section 8 income limits are computed
18 for S.M.A.S.'s and for areas outside of S.M.S.A.'s
19 separately.

20 Q What areas outside of S.M.S.A.'s?

21 A Well, it would be any area using Section
22 8 funds that are not within an S.M.S.A.

23 Q Okay. So then they are computed
24 for the Newark S.M.S.A. which includes Morris
25 County. Is that correct?

1 A That's correct.

2 Q Now, are you saying that your figure
3 for New York-northeast New Jersey S.C.A. (New
4 Jersey portion) equals Region 11?

5 A That area equals Region 11. The number is
6 fictional in the sense that no one else would
7 compute that number. I did it only for compari-
8 son here.

9 Q In other words, you took the median
10 income of the counties composing Region 11 and
11 that figure is 80 percent of that median income?

12 A I took 80 percent of the median income for
13 the region, yes.

14 Q For Region 11?

15 A Yes.

16 Q Okay. And that median income is
17 just for Region 11? It does not include Monmouth
18 County or Rockland County or Orange County?

19 A That's correct.

20 Q But Section 8 does not do that. Is
21 that correct? A That's correct.

22 Q Now, you make a comment that it is
23 conceivable that the provision for least cost
24 housing could be targeted to the lower 60 percent
25 of the population. First of all, what do you

1 mean by least cost housing in that perspective,
2 in that statement?

3 A In that sentence, I was specifically refer-
4 ring to least cost housing as it has been used to
5 my understanding in New Jersey.

6 Q And in that sentence, does that
7 include low and moderate income housing or is it
8 limited to low and moderate income housing?

9 A It would include it.

10 Q And are you saying that the lower
11 60 percent of the population by income would
12 benefit from least cost housing?

13 A I'm not sure what you mean by benefit, but
14 yes, if you are using that the way I would.

15 Q You said targeted. You said least
16 cost housing could be targeted to the lower 60
17 percent of the population. What do you mean by
18 that? A I mean that in identifying

19 the responsibilities of jurisdictions to provide
20 least cost housing, we may be talking about as
21 much as 60 percent of the population in terms of
22 income.

23 Q How do you arrive at that income?
24 Did you finish answering that question?

25 A Yes.

1 Q How do you arrive at the figure 60
2 percent? A One, it's purely an
3 estimate on my part, a feeling that when one
4 compares the need for housing on a cost basis to
5 the incomes of households in the state, that need
6 may be represented by as much as 60 percent of
7 the population.

8 Q And how do you define need in that
9 context? A As I just indicated,
10 by the relationship between the cost of housing
11 and the income.

12 Q That is what percentage of their
13 income people devote to housing?

14 A Yes.

15 Q But don't people voluntarily devote
16 more than whatever number it is that you think is
17 proper? A Some do, yes.

18 Q So those people would be included
19 within the 60 percent?

20 A Not necessarily, although that's possible,
21 yes.

22 Q So that you could have people making
23 40 or 50 or more thousand dollars a year who would
24 be within that group targeted, that is, if they
25 bought some huge house which takes more than a

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1 certain percentage of their income to support--

2 A No, because we are talking about 60 percent
3 of the population in terms of income. And as I
4 indicate here in the report, if that basis were
5 used, the income limit would be a little over
6 \$13,000.

7 Q At what point do you reach when the
8 percentage of income devoted to housing which is
9 your threshold level begins to look like it is
10 inappropriate? In other words, what is the per-
11 centage you use of income that is directed to
12 housing that is reasonable?

13 A We talked about that earlier.

14 Q Yes, I recall.

15 A It's two, two-and-a-half times income for
16 housing.

17 Q Okay. If everyone is spending more
18 than that, then that figure is unreasonable;
19 isn't it? A I'm not sure what you

20 mean by unreasonable. It's possible that that
21 figure would alter over time, yes. I mean in
22 terms of what we consider reasonable.

23 Q Well, isn't it just as a matter of
24 fact unreasonable if, in fact, everyone is spend-
25 ing more than that percentage of their income for

1 housing? A But the fact is that
2 everyone is not.

3 Q But I am saying if everyone were.

4 A Then it would not represent reality.
5 That's true.

6 Q Well, isn't it important that your
7 benchmark represent reality?

8 A To some extent reality is also the result
9 of, in my estimation, inflated housing costs that
10 are unnecessarily high and could be reduced.
11 Therefore, that figure that you are calling
12 reality is alterable also.

13 Q You are saying that zoning affects
14 housing costs and thereby affects the percentage
15 of income someone pays towards housing?

16 A That is true.

17 Q But still when you have 100 percent
18 or even 90 percent of persons paying more than
19 that benchmark, presumably including large, large
20 numbers of persons who could have smaller homes
21 or smaller rental apartments, then isn't that
22 benchmark contradicting that household's own
23 perception of what they can afford in housing is?

24 A Well, that's not really blanketly true in
25 that, one, we're dealing with households of low

1 and moderate income who have limited flexibility
2 with their income.

3 Q That is correct, but--

4 A And we are talking about something that
5 would be reasonable for those households. They
6 do not have the option of often selecting to
7 spend 30 or 35 percent of their income for housing.
8 Or if they do find themselves in a situation
9 where they are forced into that option, it takes
10 money away from the other items that their limit-
11 ed incomes go for.

12 Q You are obviously not charmed by my
13 hypotheticals. My hypothetical was that 100 per-
14 cent of the households spent more for housing
15 than your benchmark. In that instance, there is
16 certainly an amount, certainly an appreciable
17 amount, that could spend less than they are now
18 spending and yet they choose not to. My question
19 is does that suggest that the benchmark is unreal-
20 istic? That is, that if 100 percent of the people
21 were willing to pay more, doesn't that suggest
22 that the benchmark is unrealistic?

23 A No, because we are not talking about what
24 a household is willing to do. Obviously the
25 wealthier households are willing to do a lot of

1 things with their money. We are talking about
2 what is desirable in trying to provide housing
3 for low and moderate income persons. And the
4 rule of thumb today is that it is desirable that
5 that be at two to two-and-a-half times their
6 income.

7 Q So you are saying there are no
8 objective standards by which we can judge the
9 reasonableness of the two to two-and-a-half times
10 income benchmark?

11 A We can look at what households are paying
12 and, in fact, if one does that now, one finds
13 that that benchmark is not that unrealistic,
14 although as you have indicated, there are house-
15 holds that choose to pay a greater portion of
16 their income for housing costs. The standard
17 itself is also related to the rule of thumb that
18 is used by savings and loans and other lending
19 institutions for the granting of a mortgage to a
20 household. So it is also realistic in that sense.

21 Q But do you know if that rule of
22 thumb is actually utilized in deciding whether a
23 savings and loan or other financial institution
24 makes a mortgage?

25 A I know that it is in instances utilized,

1 yes.

2 Q But how do we judge whether two to
3 two-and-a-half times or rather more than two to
4 two-and-a-half times actually produces an onerous
5 situation in a household? In other words, from
6 whence does this number come?

7 A As I indicated, it comes originally as I
8 understand it from the criteria set up by savings
9 and loans and other lending institutions as what
10 they consider to be a risk they are willing to
11 take in granting a mortgage.

12 Q But that rule of thumb has been
13 around for decades; has it not?

14 A I'm not sure how long it's been around.

15 Q And if you had 60 percent of the
16 population paying more than two to two-and-a-half
17 times, don't you think that reflects the fact
18 that people can pay more than that and find it
19 acceptable? A I feel certain that
20 households can pay more than that and find it
21 acceptable.

22 Q Is it your point that 60 percent,
23 low and moderate, cannot pay more than two to
24 two-and-a-half times or cannot find housing at
25 two or two-and-a-half times income?

1 A I think that's possible, yes.

2 Q I am seeking to avoid the term
3 whimsy. If you can provide me with another term,
4 that would be appreciated. This 60 percent figure,
5 is it fair to say that it is your musing? It is
6 not based upon any substantive data; is it?

7 A It's not based on any specific study that
8 I did in this instance. It's based on a general
9 knowledge of income and housing costs. I have
10 seen, for instance, a study that indicates in
11 Westchester County in New York that figure would
12 reach 80 percent.

13 Q What study is that?

14 A It was an article--It was referred to in
15 an article in the New York Times and that's the
16 most that I recall at this point. It was some-
17 time ago.

18 Q Which would mean that essentially
19 nobody could afford housing as it is constituted
20 in Westchester County or at least four-fifths
21 cannot? A Eighty percent.

22 Q But am I correct in saying that
23 despite your comments upon a definition of low
24 and moderate income households, you made no adjust-
25 ment as a result of your criticism of the D.C.A.

1 definition of low and moderate income households?

2 A I made no adjustment in the income. That's
3 correct.

4 Q And you do not plan to make any
5 adjustment; do you? A No.

6 Q Why not?

7 A As I indicated in the report, I believe
8 there are a series of assumptions that were very
9 basic to the plan. While I may or may not have
10 been in agreement with them, it so substantially
11 altered the plan that I felt for the purposes
12 here, it was better to make those most minimal
13 changes that I felt possible.

14 Q So you are not proposing it to the
15 Court or to the defendants. Is that correct?

16 A No, I'm making it very clear that I think
17 the income limit is too low, but I'm not proposing
18 any adjustment or I have not made an adjustment
19 to the D.C.A. plan on the basis of the income.

20 Q So it is fair that the defendants
21 can take the position and make it reasonably in
22 court that this part of your report is an academic
23 exposition? A In part it also

24 indicates to the extent that the New Jersey D.C.A.
25 allocations are acceptable, they are acceptable

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within a restricted definition of low and moderate income.

Q So this is a sort of a left-handed way of supporting the D.C.A. figures; that is, it is a way to say to the Court and, of course, you will be addressing yourself to the Court, that these are very conservative figures and any attempt to attack them, that is, the definition of low and moderate income housing, would be unreasonable?

MS. MASON: I am not sure I understand the question.

MR. SIROTA: Would you repeat the question, please.

(The last question is read.)

A That isn't characterizing at all what I'm doing here, no.

Q Why not?

A I myself have criticized the income limits. And I have indicated the grounds upon which I criticize them and the fact that the resulting allocations are, therefore, restrictive ones.

Q But if the defendants attack them as being too high, isn't this a way which you will be supporting the D.C.A. figures?

1 A I'm not sure. I mean I don't understand
2 why I would be in a situation of supporting them.
3 I have criticized them for the limit that they
4 are.

5 Q Well, you are an expert witness
6 being presented by the plaintiffs in this matter.
7 Is that correct? A Yes.

8 Q And you strike me as a goal-
9 oriented person. Is that correct?

10 A I'm not sure.

11 Q You are not a goal-oriented person?

12 A I have not categorized myself one way or
13 the other.

14 Q Well, how do you define goal?

15 A A long-range objective.

16 Q Professionally, do you have a goal
17 with respect to housing?

18 A Housing for myself or--

19 Q A goal for Region 11.

20 A I can identify a goal that I think would
21 be appropriate for Region 11.

22 Q And is that what you are doing as an
23 expert witness? A I think that is
24 part of what developing a housing allocation plan
25 is about.

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Q Okay. And since you are not taking this criticism of D.C.A.'s definition of low and moderate income housing any further, is it fair to say that you are adopting it for the purposes of your testimony to the extent to which your testimony will reach an allocation?

A I just wouldn't characterize it as adopting. I am leaving it alone.

Q You are using it?

A That's correct.

Q And so to the extent that you are using it, you want it supported. Is that correct?

A I think I've made it clear that my preference is that a more reasonable limit be established.

Q But you are not carrying that forward to your allocations, assuming you do complete an allocation plan?

A That's correct.

Q And so for the purposes of this matter and as you have defined your involvement in this matter, you are going off on their definition of low and moderate income housing; correct? Rather low and moderate income as a definition?

A The adjustments I am making to the New Jersey D.C.A. housing allocation plan are made within the limitations of the

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1 definitions that they have established.

2 Q So you are using that definition?

3 A In making the adjustments, yes.

4 Q And you would consider it a nega-
5 tive result if the Court would rule a definition
6 which was \$3,000 less?

7 A As a substitute for these income limits in
8 the housing allocation plan?

9 Q That's correct.

10 A Yes.

11 Q So you want the Court to accept
12 this definition of low and moderate income house-
13 holds?

14 A As I've indicated to
15 you, I think the income limits are low and I think
16 they should be adjusted.

17 Q But you are not proposing that they
18 be adjusted? A I am not making that
19 adjustment.

20 Q Okay. Within the confines of your
21 testimony then, you want the Court to accept
22 D.C.A.'s low and moderate income definition?

23 A At this point, I have not asked anyone to
24 either accept or reject them. I have indicated
25 that I think they are low limits.

Q But presuming you come up with an

1 allocation, it will be based upon this definition;
2 correct? A That's the intention
3 at this point, yes.

4 Q Why do you say this is the inten-
5 tion at this point? Didn't you just advise me
6 that you were not going to make the adjustment
7 for this definition?

8 A That's correct.

9 Q So then it is your intention not
10 only at this point but forever?

11 A I intend at this point in making adjust-
12 ments to the New Jersey D.C.A. plan, to make
13 those adjustments within the limitation of the
14 income limits that are defined by New Jersey
15 D.C.A.

16 Q So then it would be to your dis-
17 advantage or would be contrary to your recommenda-
18 tion if the Court reduced the \$8567-figure. Is
19 that correct?

20 A I can't answer that question.

21 Q Well, presuming you come up with
22 allocations, it will be based on \$8567. Is that
23 correct? A It will be using
24 those figures, yes.

25 Q And if \$8567 is reduced, that, in

1 effect, given everything else equal, will be a
2 reduction in the allocations?

3 A Probably.

4 Q So then assuming that you support
5 your own allocations and presuming that you reach
6 them, you would not want them reduced; would you?

7 A On the basis of the income limits?

8 Q Correct.

9 A No, I would not.

10 Q So in that sense, you are support-
11 ing this D.C.A. income limit at least with
12 respect to--

13 A I think you keep draw-
14 ing the same conclusion that I have explained
15 five times.

16 MS. MASON: I think Miss Brooks
17 said she does not intend to alter the
18 limits expressed in her report. There is
19 no further way she can answer. You are
20 making suppositions. She has already
21 stated that she is not going to make any
22 changes in the report, so your suppositions
23 would be inappropriate at this point.

24 Q But your testimony must have a pur-
25 pose. You are not criticizing the report acade-
mically; are you; that is, the definition of low

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and moderate income household?

A No, I am criticizing it because I think it's too low.

Q But why criticize it at all if you are not going to utilize it in coming out with an allocation? A Because I think an improved allocation report could be prepared.

Q But you are not going to prepare that report? A That's correct.

Q Do you think by proposing that the \$8567-figure is conservative, that that argues against the Court reducing the \$8567-figure?

MS. MASON: I think that you are asking for a legal conclusion as to what the Court would do. I do not think that Miss Brooks is in a position to make that kind of determination.

MR. SIROTA: I will rephrase the question.

MS. MASON: Thank you.

Q Do you think a reasonable person reviewing your--

MR. SIROTA: Read me back the question.

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(The last question is read.)

Q I would like you to answer that question. I do not think it is in any way improper and in no way asks for a legal conclusion. In any sense that you think it asks for a legal conclusion, do not answer it. Could you read the question back, please.

(The last question is read.)

A That so inaccurately characterizes the argument here that I can't answer that. I have--

Q Well, was that any part of your intent in producing this argument, to insulate the \$8567-figure from attack as being too high?

A No, it was not.

Q You mean you just studied the figure with no purpose in mind?

A I obviously have a purpose in mind of the New Jersey D.C.A.'s housing allocation being the most appropriate plan that I think it can be. And I think in order for that plan to be appropriate, the income limit should be altered.

Q But you are not doing that?

A No.

Q So why did you put this in your report?

A Because, in fact, I

1 think it should be altered.

2 Q Are you going to testify to that?

3 A That I think it should be altered?

4 Q Yes. A I think it's
5 very clear in the report that I mean that.

6 Q But you are not going to alter it?

7 A No.

8 Q But that is not goal-oriented.

9 What conclusions can anyone draw if you are not
10 going to tell us it should be altered?

11 A I think I have indicated that it should be
12 altered.

13 Q How? A I gave a
14 couple of indications on why I think it is low.
15 I have not indicated--

16 Q I withdraw the question. If you
17 want to answer it, you can, but I have withdrawn
18 it.

19 I have one more question in this section
20 and we will go on to the next.

21 A Sure.

22 Q Now, you have included an estimate
23 of the effect of such a change for Region 11,
24 have you not, in your report?

25 A Yes.

1 Q And that is in the appendix?

2 A Yes.

3 Q Well, why have you included this in
4 the report if you do not intend to use it?

5 A The example is to show the difference that
6 would possibly result by using a different income
7 limit and thereby illustrate the importance of
8 the point.

9 Q Why possibly result? Why do you
10 say possibly result?

11 A The appendix, if you look at it, indicates
12 a comparison based on the different income limits
13 for the estimate of housing needs that would
14 result, thereby it indicates the housing needs
15 themselves, not the allocation.

16 Q But the housing needs would trans-
17 late into allocation?

18 A That's correct.

19 Q You refer to it as an estimate.
20 Is that correct, an estimate of the change?

21 A Yes.

22 Q Why do you refer to it as an esti-
23 mate? A There was, as I indicate on

24 Page 17, an approximation that I had to make in
25 some of the data that I had available. And while

1 I feel it's a close approximation and justified,
2 it's not as precise as it would have been had
3 other data been available.

4 Q So that is the case, that these
5 numbers are not supported in such a manner as to
6 permit you to testify to their validity?

7 A I can testify to their validity as I've
8 just explained it to you and as it is explained
9 on Page 17.

10 Q But they are not exact enough to
11 permit you to call for their inclusion in the
12 D.C.A. formula; that is, revision of the defini-
13 tion? A Their exactness did not play

14 a part in whether or not I incorporated those in
15 the adjustments I made.

16 Q Well, what did?

17 A I already explained that to you. I did
18 not make adjustments in the income limits because
19 of the role that I felt that played as a basic
20 assumption in the plan itself.

21 Q So the only reason you did not
22 interject the new definition in was that it would
23 blow apart the D.C.A. plan or was so out of line
24 with the plan as to cause the viability of the
25 plan to be questioned?

1 A That's not what I said. I said I treated
2 the income limits as a basic assumption of the
3 plan and chose to retain that basic assumption
4 as I did in other instances.

5 Q Why? Why did you choose to retain
6 this assumption of the plan?

7 A The income limits were in my estimation an
8 estimate made by New Jersey D.C.A. related to the
9 policies established for the plan and were--I
10 don't know what other word to use other than
11 basic in the development of the housing alloca-
12 tion plan itself. As I indicated in the report
13 of the adjustments made, most of them were direct-
14 ed to the manner in which New Jersey D.C.A.
15 estimates the housing need itself.

16 Q Well, is it fair to say that it is
17 impossible to change this definition without
18 changing every facet of the plan; that is,
19 completing a separate new fair share plan of your
20 own as opposed to modifying D.C.A.'s?

21 A An adjustment on the income limit would
22 merely have required adjusting the income limit
23 and three or four steps in the allocation method
24 that they already used.

25 Q I am sorry. I still do not

1 understand why then you did not do it. You say
2 you chose to accept that assumption, this income
3 assumption of D.C.A. And I am afraid I do not
4 understand why.

5 A I've explained it the best I can several
6 times now. I treated that and believed it was a
7 basic assumption by D.C.A. in the development of
8 the plan. Those basic assumptions that I felt
9 had policy assumptions associated with them, I
10 did not alter.

11 Q So you did not alter assumptions
12 which had policy assumptions connected with them.
13 What policy assumptions were connected with this
14 definition? A I mean it's not

15 probably as precise as you want. The definition
16 of an income limit seemed to me to be a very
17 basic step in the development of the housing
18 allocation plan and that I could make the minimum
19 alterations that I felt were necessary in the
20 D.C.A. plan and illustrate simply how those
21 adjustments should be done and that an adjustment
22 in the income limit was basic enough that it
23 would have an effect on the outcome of the entire
24 plan and that that adjustment could be made at
25 any point by New Jersey D.C.A. using, in addition

1 to that, the adjustments that I do, in fact, make
2 in this report.

3 Q You are saying that anyone could
4 have made this adjustment or can make this
5 adjustment? A It can be easily done,
6 yes.

7 Q I still do not understand why you
8 did not do it. I mean making this adjustment
9 would have a net effect of having a higher allo-
10 cation? A It probably would.

11 Q And you have not done it because it
12 was a basic policy consideration of D.C.A. which
13 you felt was apparently an absolute prerequisite
14 of the plan? A That's stating it
15 very strongly. I felt it was a basic assumption
16 of the plan as I've indicated.

17 Q And you felt it was necessary to
18 live with that if you were going to live with the
19 D.C.A. plan? A I don't think it is
20 necessary to live with that as I indicated to you
21 before. I think the income limit should be alter-
22 ed. I felt it was the simplest way to illustrate
23 the adjustments that I felt should be made in the
24 New Jersey D.C.A. plan not to alter the income
25 limits.

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Q The reason you did not alter it was because it was the simplest way to make the alterations in the plan that you felt were necessary. Is that correct?

A I felt without altering those income limits, it was easier to understand the adjustments that I did make in the plan as illustrated in the report.

MR. BISGAIER: Do you want to take a break now?

MR. SIROTA: I would like to finish this line of questioning.

MR. BISGAIER: All right.

MR. SIROTA: All right. Why don't we come back after lunch.

(The luncheon recess is taken.)

THE WITNESS: In just looking over material or thinking about some of the questions, there were two questions that I thought I ought to clarify where I thought either my answer wasn't complete enough or clear enough. And one of those was how New Jersey D.C.A. identified dilapidated units as a part of present housing needs.

1 I do not think my answer was mis-
2 leading. It wasn't necessarily as clear
3 as I think it probably should have been,
4 that that need is based on a relationship
5 that New Jersey D.C.A. drew between the
6 number of housing units that existed in
7 1970 to three criteria that they developed
8 in their background report. And they draw
9 a correlation between substandard and
10 dilapidated units and reach their final
11 allocation for--I'm sorry, estimation for
12 dilapidated units.

13 The second issue is at some point
14 you asked me the persons with whom I spoke
15 regarding information in my reports. And
16 I identified that I spoke to people at
17 New Jersey D.C.A. I had also, and I had
18 forgotten about it, talked to persons at
19 various housing authorities within Morris
20 County. I had talked to them by phone.

21 Q Who did you speak to?

22 A I don't have individuals' names at all.
23 I spoke to someone in the Morristown Housing
24 Authority and Dover and one other one I'd have to
25 check.

1 Q What did you speak to them about?

2 A The dates of when the housing units were
3 constructed.

4 Q In Morristown and within Dover?

5 A Yes, within their jurisdictions, yes.

6 Q How is that relevant?

7 A I was interested in whether or not those
8 units had been constructed at or before the date
9 of the plan.

10 Q Which plan?

11 A I'm sorry, the New Jersey Housing Alloca-
12 tion Plan.

13 Q What did you learn?

14 A Most of them were constructed prior to the
15 development of the plan.

16 Q Have any of the municipalities in
17 Morris County met their allocation under the
18 D.C.A. plan; that is, their application relevant
19 as of 1979? A I don't know that
20 that's been determined.

21 Q Have you determined that?

22 A No.

23 Q With respect to Page 5, Present
24 Housing Needs, of your report, what are the more
25 expensive components of housing needs that you

1 referred to? A Could you identify--

2 Q Yes, it is under the paragraph
3 entitled Critique. I believe it is the second
4 sentence where that reference is made.

5 A Those items that I identified in the follow-
6 ing paragraph?

7 Q I am having some difficulties,
8 perhaps the Reporter is, hearing the end of your
9 sentences. You have a tendency to trail off.
10 So if you could keep it in mind, thank you.

11 Do you know why D.C.A. did not include
12 those households paying excessive amounts of their
13 income for housing costs for the purposes of
14 determining the present housing needs?

15 A As I recall, they identify in their back-
16 ground report that the data is difficult to obtain
17 and they questioned the relevance of including a
18 number of factors when the plan is directed to
19 new construction.

20 Q You think that is a fair conclusion
21 on their part; that is, not including this factor
22 if their plan is directed towards new construction?

23 A No, as I state in this report, I think
24 that ought to be included.

25 Q What was the basis of your

1 understanding of their position that it should
2 not be included because the plan is directed
3 towards new housing?

4 A The housing need that they identify is
5 basically replacement housing need. And they
6 state themselves it is an estimate of very mini-
7 mum housing needs within the state and that they
8 did not incorporate a number of other factors
9 that could have been incorporated to identify
10 housing need for low and moderate income families.

11 Q Isn't replacement a reasonable
12 objective when you are talking about present
13 housing needs?

14 A There are hous-
15 ing needs that exist presently that would not be
16 met by a concept of merely replacement housing.

17 Q And, for example, you would seek to
18 relieve the burden upon those who pay, as I under-
19 stand it, an excessive amount of their income for
20 housing costs?

21 A Could you
22 repeat that question?

23 MR. SIROTA: Would you read it back,
24 please.

25 A Yes.

Q Well, do you necessarily have to
construct new units of housing or construct any

1 housing to relieve that burden as you see it?

2 A You would not necessarily, no.

3 Q So federal or state subsidies, when
4 applied to this particular concern, would elimi-
5 nate the need to construct new housing to meet
6 this concern. Is that accurate?

7 A No, I don't believe that's accurate.

8 Q Why is it not accurate?

9 A The assistance that is available to alle-
10 viate that need is not sufficient to meet the
11 need that exists, for one.

12 Q What are the others? You said for
13 one.

14 A It also assumes that house-
15 holds given assistance would be able to find a
16 unit which they could afford within that criterion.

17 Q You are saying that the subsidy
18 could be insufficient?

19 A It could be.

20 Q Is that what you are saying?

21 A In that example, yes.

22 Q So what you would propose to do with
23 respect to these people is take them out of the
24 housing unit they are currently in, place them in
25 another housing unit which would be priced higher?

26 A If they so choose to do that, yes.

1 Q Well, but you would include housing
2 for them in your allocation of housing to be
3 built in a particular jurisdiction?

4 A That's correct.

5 Q What happens to the housing they
6 are in presently? A If it is suit-
7 able housing, it would enter the housing market
8 and be available to another houser.

9 Q Someone other than persons of low
10 and moderate income?

11 A Could be, yes.

12 Q What is the actual vacancy for
13 owner units in New Jersey presently?

14 A I don't know.

15 Q Do you know what it is in any
16 jurisdiction? A No.

17 Q Do you know what it is at any
18 period of time in any jurisdiction?

19 A Not without checking material that I don't
20 have with me.

21 Q Do you know what it is in Morris
22 County either precisely or approximately?

23 A No.

24 Q Does it include seasonal housing?

25 A It does not normally.

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Q So that if a summer home were occupied three months out of the year, that would not affect the vacancy rate in any way?

A Vacancy rate is usually calculated on year-round units.

Q Do you know what the vacancy rate is for rental housing in Morris County?

A No.

Q New Jersey?

A No.

Q Any other jurisdiction?

A No.

Q Presently or at any other time?

A No.

Q Well, then you are saying what it should be. Is that correct? You do not know what it is presently?

A That's correct.

Q Are there available any figures establishing what the actual vacancy rate is in low and moderate income housing in Morris County or New Jersey?

A Not that I know of.

Q How about elsewhere?

A Not that I know of.

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1 Q Would you please explain the adjust-
2 ment you made which is the subject of the first
3 two full paragraphs on Page 6?

4 A The adjustment that's made is to correct
5 for New Jersey D.C.A. having estimated the
6 additional units needed to accommodate a stan-
7 dard vacancy rate to account for those units that
8 would be for low and moderate income households.
9 New Jersey D.C.A. had calculated the additional
10 number of units to accommodate the vacancy rate
11 on the total housing supply, not that supply that
12 would have been available to low and moderate
13 income persons.

14 Without the precise data available on the
15 cost of the housing units, the adjustment was
16 made by taking the proportion of the population
17 in 1970 in each county that was low and moderate
18 income and using that as a proportion of the total
19 number of additional units estimated to maintain
20 the vacancy rate that was estimated by New Jersey
21 D.C.A.

22 Q Doesn't that assume that the pro-
23 portion between low and moderate income persons
24 to the population at large is the same as the
25 proportion of the low and moderate income housing

1 to the amount of housing available at large?

2 A It doesn't quite assume that, but you are
3 correct in that if the assumption does anything,
4 it's a lenient estimate of the needed vacancy
5 rate for low and moderate income units.

6 Q And what was the number the D.C.A.
7 came up with, the vacancy rate?

8 A For what jurisdiction? For Morris County?

9 Q Well, for Morris County.

10 A The needed vacant units for Morris County
11 estimated by New Jersey D.C.A. is 1,710 units.

12 Q What is the percentage, the rate?

13 A They used 1.5 percent for owner units and
14 five percent for renter units.

15 Q And what is your adjustment to that?

16 A I did not adjust that.

17 Q You accepted those rates?

18 A Yes.

19 Q You criticized them, but you accept-
20 ed them?

A That's correct.

21 Q Now, is there a place in your
22 report where you have the calculations supporting
23 the statement in the last line of the result
24 paragraph, the statement that says the present
25 physical housing need is often four times the

1 estimate for dilapidated units alone for counties
2 in Region 11? A It's on Page
3 16.

4 Q What is included within physical
5 housing need, in that term? Is that D.C.A. plus
6 needed vacant units and physical housing need?

7 A No, it's a comparison between the dilapi-
8 dated housing need as identified by New Jersey
9 D.C.A., which is one component of its estimate
10 of present housing need, and a more inclusive
11 estimate of physical housing need which was also
12 made by New Jersey D.C.A. in its report of
13 analysis of low and moderate income housing need
14 in New Jersey. And that includes deteriorated,
15 dilapidated and units lacking plumbing facilities.

16 Q What was the date of that latter
17 report? A I'm not certain.

18 Q Do you know approximately?

19 A If it's based on 1970 data, it would have
20 been since then.

21 Q So you are saying that over and
22 above-- A Excuse me. It's

23 identified in the reports I listed for you.

24 Q Over and above the dilapidated
25 housing need, this report would include housing

1 with inadequate plumbing?

2 A Yes.

3 Q What other items did you say?

4 A Deteriorated.

5 Q Deteriorated housing. And how is
6 deteriorated housing determined, identified?

7 A I'd have to check that report to give you
8 a precise definition.

9 Q Okay. Why didn't D.C.A. utilize
10 the physical housing need instead of dilapidated
11 housing need?

12 A I believe they
13 identified the reasons for not doing so again
14 being difficulty of using the data and their
15 interest in new construction.

16 Q What is the difficulty in utilizing
17 the data?

18 A They did not identify
19 that specifically. The Census as it reports on
20 the condition of the housing stock has varied
21 decade-by-decade and the conditions that it
22 reports of the housing stock and has not identi-
23 fied certain characteristics in the 1970 census.

24 Q Did you utilize the same data?

25 A As I indicate here, I used the data
identified or developed by the New Jersey
Department of Community Affairs.

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Q Have you made an adjustment to the present housing needs or have you just criticized the determination of the present housing needs?

A Only the critique is included here.

Q Well, have you made an adjustment?

A Based on one factor?

Q Yes. A No.

Q You have not made an adjustment in this factor so that--

A As illustrated in the appendix on Page 16, I have not.

Q Do you intend to?

A No.

Q Why? A Exactly the same reasons as we discussed on the income.

Q That is that this is a basic tenet of the plan, the D.C.A. plan?

A It was a basic assumption of the plan, yes.

Q Have you consistently not made adjustments to things which you judged to be basic assumptions of the D.C.A. plan?

A As I indicate in the beginning of this report, there were three major areas in which I made no adjustment that I consider to be basic assumptions. Those are identified on the first

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page.

Q Are there any areas that you consider to be basic assumption which you did adjust?

A I don't think so.

Q Well, do you want to take a look at your report? You do not think so or you did not?

A I did not.

Q So that you simply left basic assumptions alone? A Yes.

Q With respect to starting on Page 7 in your chapter entitled Prospective Housing Needs, do you anticipate the proportion of low and moderate income housing in Region 11 to increase?

A Could you repeat that question, please?

(The last question is read.)

A I think that would be a possible outcome.

Q Of what?

A Of implementation of a housing allocation plan.

Q Why is that?

A There are presently insufficient supplies of low and moderate income housing to meet the need that exists and a housing allocation plan as we discussed earlier has as one of its objectives increasing the supply of such housing.

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Q So presumably there would be a net migration of low and moderate income households from outside Region 11 into the region?

A That would not necessarily be true.

Q What is the other explanation of the proportion?

A Unless I misunderstood your question, I thought you asked me about low and moderate income housing.

Q Yes, I did.

A If the housing allocation plan were implemented, the result might be more low and moderate income housing units than exist within Region 11 at this point.

Q Would the proportion of low and moderate income housing units or housing units in general increase?

A It could, yes.

Q Do you expect it to?

A If the plan is implemented, yes.

Q Why? A Because presently there are insufficient supplied of low and moderate income housing. And if the need for low and moderate income housing were met, I think it's not unreasonable to assume that the overall

1 number of low and moderate income units would
2 increase. And it is possible that the proportion
3 of low and moderate income housing units within
4 the total housing stock would also increase.

5 Q What do you mean by possible?

6 Possible in my understanding is a very broad word
7 in the sense that anything can be possible. What
8 is the likelihood? A Well, the pro-
9 portion would depend on the growth of the total
10 housing stock altogether, not just the increase in
11 low and moderate income housing units.

12 Q But you object, do you not, to
13 D.C.A.'s utilization of the proportion of low and
14 moderate income housing to the housing stock in
15 general as a basis for prospective housing needs?

16 A My objection to New Jersey D.C.A.'s use of
17 the proportion of low and moderate income housing
18 in 1970 to a prospective need figure was that the
19 present proportion reflects among the various
20 counties the lack of low and moderate income
21 housing units and that given the implementation
22 of a housing allocation plan, those proportions
23 might well change in the future and to use 1970
24 proportions in projecting the prospective housing
25 need for low and moderate income housing units

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was inaccurate.

Q Aren't all the housing units containing low and moderate income persons in Region 11 being counted or weren't they counted as of 1970, be they acceptable or not?

A I don't understand that question.

Q Well, as I understand it, D.C.A. used a proportion ratio between the number of low and moderate income households in the state to the number of households in general. Is that correct?

A The projected household growth from 1970 to 1990 by county. And in order to identify the proportion of that projected population that would be of low and moderate income, they multiplied it times the 1970 proportion of low and moderate income households within that county. So it varied county-by-county.

Q Well, why should the proportion of low and moderate income households increase in 1980 over 1970?

A It may increase. It may decrease. But their development of a statewide housing allocation is on the assumption--or with the objective that distribution might change.

Q Distribution of the number of

1 households would change? Why?

2 A Presumably if the housing allocation plan
3 were implemented, there would be in some counties
4 a greater proportion of low and moderate income
5 housing units available to the population.

6 Q But in Region 11 as a whole?
7 Wouldn't there be a same proportion in Region 11
8 of low and moderate income households as the
9 population as a whole?

10 A It's possible that within the region it
11 would stay the same.

12 Q And isn't it fair to plan upon that
13 within the region?

14 A That might be reasonable. New Jersey
15 D.C.A. did not do that.

16 Q They planned it by the county?

17 A Correct.

18 Q Is it the case that you would see
19 a population shift within the county leaving the
20 ratio regionwide the same but the ratio as far as
21 the counties are concerned possibly different?

22 A That's possible.

23 Q Well, you would plan for it; would
24 you not? Isn't that what you are saying in the
25 next-to-last full paragraph on Page 7?

1 A Well, I'm not quite sure if you and I
2 would use "plan for" in the same way. That is
3 the estimate that I used in the judgment on the
4 prospective housing need. I used a statewide
5 figure.

6 Q What is the relevance of a state-
7 wide figure? A I felt the statewide
8 figure was a more reasonable reflection of the
9 proportion of the population that is made up of
10 low and moderate income households.

11 Q Why? A I felt it was
12 a more realistic or reasonable estimate of the
13 proportion of the population for which low and
14 moderate income housing units were being provided.

15 Q But doesn't that suggest that their
16 region, Region 11, is inappropriate?

17 A I don't think so at all.

18 Q Well, you are using a statewide
19 figure instead of regional figure for this. Why
20 not for other things?

21 A Well, here we are making an estimate of
22 the projected population that would be served by
23 a housing market and given a statewide housing
24 allocation plan, I felt the statewide figure was
25 more reasonable.

1 Q Well, did you just pick figures out-
2 side the region when you felt that they were more
3 reasonable?

4 MR. BISGAIER: It is an argumenta-
5 tive and obnoxious way to ask a question.
6 If you want to know why she did it, ask
7 why she did it.

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

10 (The last question is read.)

11 MR. SIROTA: All right. One, I do
12 not think the question is in any sense
13 obnoxious. Two, I do not think it is in
14 any sense unreasonable. And three, I
15 would ask the witness to answer the question.

16 MR. BISGAIER: I will withdraw the
17 objection. I was referring to Mr. Sirota's
18 attitude, not the question itself.

19 MR. SIROTA: I was not aware I had
20 any attitude other than asking a reasonable
21 question. The attitude is perhaps Mr.
22 Bisgaier's.

23 A No, I obviously didn't pull figures out of
24 the state whenever I felt like it.

25 Q I did not say that.

1 A As I have indicated, I used a statewide
2 figure in the belief that we were talking about
3 a housing market and the provision of housing to
4 a proportion of the population. And in the
5 development of a housing allocation plan that
6 covered the entire state, I felt the use of a
7 statewide figure identifying the proportion of
8 low and moderate income persons was reasonable.

9 Q And the Region 11 figure was
10 unreasonable?

A I did not
11 consider and reject the Region 11 proportion.

12 Q Well, isn't that what D.C.A. used,
13 the Region 11 proportion?

14 No, as I indicated to you, they used a
15 county-by-county proportion.

16 Q Couldn't that have been translated
17 into a regional proportion?

18 A It could have been, yes.

19 Q Did you compute the regional pro-
20 portion?

A Not that I recall.

21 Q Can you more specifically describe
22 why you felt the statewide proportion was more
23 reasonable?
24 A No more specifically
25 than I identified already.

Q How meaningful is the number of

1 units that be taken off the market due to demoli-
2 tions, fires, et cetera?

3 A Well, it's significant enough that it is
4 normally included in a projection of prospective
5 housing need. New Jersey D.C.A. itself identi-
6 fies that factor as one that they might have
7 included.

8 Q Well, do you know why they did not
9 include it? A They identify that
10 they didn't include it because of the unavail-
11 ability of the data.

12 Q Is that accurate?
13 A I don't quite understand that in that the
14 data that I used to include that factor was
15 material developed by New Jersey D.C.A.

16 Q And where does that come from?
17 A New Jersey D.C.A. State Housing Programs
18 and Policies: New Jersey's Housing Element with
19 the date of 1977.

20 Q And does that report establish the
21 time periods during which a unit has to be taken
22 off the market to be included within that category?

23 A Their projection is based on the same time
24 period as the housing allocation plan, to 1990.

25 Q What is the definition of a housing

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unit being taken off the market due to fire?
Does that have to burn down to the ground? Is
that permanently being taken off the market or
included within that is when someone has a fire
and it takes three months to restore it?

A Well, I'm not certain of this, but I think
it means it's no longer occupied, occupiable.

Q For what period of time?

A I believe it means permanently.

Q Is there a consideration given in
either D.C.A.'s report or your modifications to
units that are rehabilitated or where one housing
unit is divided into more than one housing unit?

A No.

Q I am really referring to housing
units being added to the market that are not new
housing. Is there contemplation of a growth of
this type of housing?

A No, I understand what you are referring to
and the answer is still no.

Q Why is that?

A Well, as New Jersey D.C.A. discusses that
factor, they maintain the new construction con-
cepts that they have for the housing allocation
plan. Those factors are not usually identified

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1 in making estimates of prospective housing need
2 probably because of the difficulty in obtaining
3 the data, rehabilitation data.

4 Q But aren't they one manner in which
5 need is met? A Certain needs, yes.

6 Q What needs?

7 A The needs to rehabilitate a unit.

8 Q But without taking this into
9 consideration, isn't it possible that a munici-
10 pality or any given jurisdiction or jurisdictions
11 might be able to meet its allocated need without
12 building any new housing, theoretically, of
13 course?

14 A It's extremely unlike-
15 ly in that, as I mentioned earlier, New Jersey
16 D.C.A.'s estimate of housing need is its estimate
17 of housing need that would be met through new
18 construction. A rehabilitated unit is often
19 rehabilitated with a household still living there
20 and no additional unit is added to the housing
21 stock. Only the quality of that unit has improved.

22 Q You said often. That is not always
23 the case; right? A No, it isn't
24 always the case.

25 Q And isn't there, in fact, in Morris
County a tendency to rehabilitate old buildings

1 and often unused buildings into offices with
2 apartments above them?

3 A That does happen. It's also true and
4 important to note in rehabilitation that often a
5 unit's rehabilitated and the low and moderate
6 income household that was living there moves out
7 because they can no longer afford the unit.

8 Q Obviously theoretically it can cut
9 both ways. Isn't that true?

10 A Very definitely.

11 Q But the allocation assigned each
12 jurisdiction does not take into account or more
13 properly does not include units that will be made
14 available through rehabilitation?

15 A No, it does not.

16 Q Well, do you think it is fair not
17 to include rehabilitation?

18 A Yes.

19 Q Why? A For the reasons
20 I just identified. New Jersey D.C.A.'s estimate
21 of housing need is an estimate that would be met
22 through new construction. Their estimate of
23 housing need does not include all of those units
24 that are substandard and need to be improved.

25 Q When I refer to rehabilitation, I

1 am not only referring to rehabilitation of sub-
2 standard units. I am referring to abandoned
3 buildings which are being rehabilitated and being
4 utilized. Is it fair to exclude those buildings?

5 A If a jurisdiction receives an allocation
6 to meet a certain number of--to provide a certain
7 number of low and moderate income housing units
8 and they select to meet part of that need by
9 rehabilitating an abandoned building and making
10 those units available to low and moderate income
11 households and would like to count that toward
12 their meeting the allocation, I would think New
13 Jersey D.C.A. might accept that.

14 Q Would you?

15 A There are some considerations I would like
16 to make before accepting it.

17 Q What are those?

18 A The location.

19 Q How would the location be relevant?

20 A The extent to which a jurisdiction is
21 concentrating the low and moderate income housing
22 units that it provides.

23 MS. SIROTA: Could you read the
24 answer back?

25 (The last answer is read.)

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Q You mean you are also concerned where in the municipality the low and moderate income housing is built?

A I indicated I think that would be a consideration I'd like to make.

Q Would you consider the alteration of present housing stock from that unaffordable by low and moderate income housing to that affordable by low and moderate income persons a contribution towards the allocation?

A If that housing were put on the housing market I think I would.

Q Does D.C.A. maintain or establish a vacancy rate during the 1970 through 1990 period?

A No, it doesn't.

Q But it uses the present housing stock figures, does it not, for that projection?

A I don't understand that question.

Q Strike the question. Why didn't they use a vacancy rate when they projected housing need?

A They identify the same reason, the lack of data available.

Q And is it the case that the data sufficient to make those determinations is contained in the 1977 report, State Housing Programs

1 Policies: New Jersey's Housing Element?

2 A That's correct.

3 Q Did you ever question anyone why
4 they did not use it in light of the fact that the
5 report is in '77 and the first D.C.A. study is
6 about that time or earlier?

7 A I don't think I did.

8 Q You say commencing on Page 8 that
9 "for each county D.C.A. projected replacement
10 demand and vacancy demand which was added to the
11 projected household growth." Doesn't that indi-
12 cate that a vacancy demand was added to the
13 projection? A You are not reading

14 the sentence correctly. The sentence is "For
15 each county New Jersey D.C.A. projected--" I am
16 sorry. I am not reading it correctly. "The New
17 Jersey D.C.A. projected replacement demand and
18 vacancy demand was added to the projected house-
19 hold growth between 1970 and 1990." That's a
20 statement about what I did and not what New Jersey
21 D.C.A. did.

22 Q I see. The replacement demand
23 included, is that a synonym for those housing
24 units taken off the market due to demolitions,
25 fires, et cetera? A Yes.

1 Q And both the replacement demand and
2 the vacancy demand comes from the D.C.A. study?

3 A Yes.

4 Q 1977 study?

5 A That's correct.

6 Q Then you multiplied that by 39.4
7 percent, which was the statewide proportion
8 figure, is that correct, for low and moderate
9 income housing? A Yes, that's
10 correct.

11 Q What was the countywide 1970 for
12 Morris County? A 25.7 I believe.

13 Q And do you know what the proportion
14 was for the region as a whole?

15 A You asked me that and I don't.

16 Q So then your increase is not only
17 to include two categories providing additional
18 numbers, but also to provide for a greater number
19 of low and moderate income persons?

20 A Only in certain instances. As I indicated,
21 the proportion of low and moderate income house-
22 holds varied by county. Some of those counties
23 the proportion was higher than the statewide
24 proportion.

25 Q I am sorry?

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A And other counties, it was lower.

Q Yes, I will be more precise. A greater number than the Region 11 for 1970 be much greater than Morris County for 1970?

A Now, I don't understand the question.

Q By utilizing the state proportion of low and moderate income households in the state as of 1970, you used a number which was larger than Region 11 percentage as of 1970 and considerably larger than Morris County's percentages of 1970. Is that correct?

A It's larger for Morris County. As I indicated, I don't know what the proportion was for Region 11. My guess is that the statewide average is lower.

Q You are guessing that it is lower, but you do not know how much lower?

A No.

Q Now, was this an adjustment that you actually made to the D.C.A. study?

A Yes.

Q And is that shown on Page 9?

A Yes.

Q And that shows the adjustment both for present housing needs and prospective housing

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needs? A That's correct.

Q With respect to allocation of present housing needs, your first sentence of the critique, isn't that essentially saying that the D.C.A. study does not permit or does not require enough dispersion of housing stock to meet the present needs?

A The statement refers to the allocation of present housing needs based on present housing stock. And the statement is that that tends to place allocations where development has already occurred.

Q And as opposed to that, you would see more dispersion of that allocation presumably to increasing the load on areas that have not yet seen development of housing stock?

A I think that's reasonable, yes.

Q Why do you think D.C.A. has taken the position they have?

A I believe it was for the purposes of stating that to the greatest extent possible the present needs that exist within a jurisdiction would be met within that jurisdiction as opposed to prospective housing needs which are allocated on a different basis.

1 Q Why did they take that position?

2 A I don't know.

3 Q But you disagree with it?

4 A I think the plan would be improved if the
5 present needs were allocated in a manner closer
6 to the way the prospective housing needs are
7 allocated.

8 Q How is it normally done, if there
9 is a normality in fair share plans?

10 A I believe that the units would be allocat-
11 ed on a more distributed way as I have indicated
12 would be more appropriate.

13 Q Are there other fair share plans
14 that do it in this manner?

15 A Not that I'm aware of.

16 Q But you have made no adjustment
17 with respect to this criticism. Is that correct?

18 A That's correct.

19 (A discussion is held off the
20 record.)

21 Q Do you feel that farmland should be
22 included within vacant land? I am now referring
23 to the Allocation of Prospective Needs critique
24 commencing on Page 11 of your report, DB-3. It
25 is the report of April 1979.

1 A As I indicated, I think that's a restric-
2 tive--New Jersey D.C.A. itself identifies that
3 farmland may well be developed and, therefore,
4 does actually represent vacant, developable land.

5 Q But should it be included within
6 vacant, developable land as defined?

7 A I think that's reasonable.

8 Q Have you done so?

9 A No.

10 Q Why haven't you done that?

11 A I cannot make an adjustment on that mostly
12 because of the lack of available data and the
13 time that it would require.

14 Q Do you know if the State has a
15 policy with respect to preserving farmland?

16 A It states that it does.

17 Q It? A New Jersey
18 D.C.A. does in its plans for the state.

19 Q The State of New Jersey has such a
20 policy or the Department of Community Affairs?

21 A The State of New Jersey.

22 Q What are the limitations to data
23 comparability in the historical employment data
24 used by D.C.A.? You make mention of that in the
25 third paragraph from the bottom. Perhaps--

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A That data is reported annually in accordance with the jobs that are covered by the Unemployment Compensation Law and the items that are covered by that law has changed over time. So the comparisons would not be the same by the year.

Q Well, how would that affect the report?

A I don't know.

Q You mean you do not know if it would affect the report?

A That's correct.

Q But you are concerned that it might?

A It might, yes.

Q Could the kinds of employment included within those statistics affect the report?

A I don't quite understand the question, but I don't think so.

Q And what question do you have about the question?

A You say does it affect the report. Does it affect it how?

Q In any way.

A Well, the definition of the jobs that were covered would determine the number of jobs they would identify.

Q And how would the lack of

1 identification of certain jobs affect the
2 conclusions of the report?

3 A It would only affect it if it were certain
4 job categories that were not covered.

5 Q Well, aren't there job categories
6 not covered? A Nothing that I think
7 is significant.

8 Q Do you feel that D.C.A. did not
9 take into account future substantial growth in a
10 municipality? A Future what?

11 Q Substantial growth in a municipality.

12 A Would you identify where you are reading?

13 Q From the third paragraph from the
14 bottom. Perhaps you see it as the fourth, the
15 last sentence.

16 A That paragraph refers to the fact that a
17 municipality may be within an area where there is
18 employment growth, although that growth may not
19 be identified for that specific municipality, yet
20 that employment growth might affect that munici-
21 pality in a sense of households searching for
22 houses close to that employment.

23 Q Meaning a huge plant built on the
24 boundary between two municipalities?

25 A That's correct.

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Q But you made no adjustments, did you, with respect to the allocation of respective needs?

A I did not.

Q I see we are five minutes before our time we agreed to stop. This would be a good time to stop for me with your permission.

A That's fine.

Q And we will recommence at 9:15 Wednesday morning.

A I can hardly wait.

(The witness is excused.)

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

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MORRIS COUNTY FAIR HOUSING :
COUNCIL, et al,

Plaintiffs,

vs.

BOONTON TOWNSHIP, et al,

Defendants.

CERTIFICATE

I, MARK SCHAFFER, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, certify the foregoing to be a true and accurate transcript of the deposition of MARY E. BROOKS who was first duly sworn by me at the place and on the date hereinbefore set forth.

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

Mark Schaffer
A Notary Public of the State of New Jersey

Dated: 5/24/79