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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JANELL WINFIELD, TRACEY
STEWART and SHAUNA NOEL,
Plaintiffs,
-against-

Civil Action No.:
15CV5236(LTS)(KHP)

CITY OF NEW YORK,
Defendant.

-----x

VIDEOTAPED DEPOSITION OF SHAUN DONOVAN
New York, New York
June 1, 2018
11:00 a.m.

Reported by:
Maureen Ratto, RPR, CCR

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relate to the intersection between cities and race?

A. Yes.

Q. Are you considering at this point running for mayor of New York City in 2021?

MS. SADOK: Objection. You can answer.

A. It's not a decision that I've made at this point.

Q. My question was not whether you had decided to run for mayor, but whether you were considering running for mayor.

A. It's not something that I've decided to do. It's not something that I've decided not to do at this point.

Q. I understand that and maybe the third time will be a charm. I'm asking you whether you are considering it.

MS. SADOK: Objection.

Mr. Gurian, I don't see what the relevance of his considerations in

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the future have to do with what his experiences were while he was a HPD Commissioner.

MR. GURIAN: I appreciate that and that objection is preserved for the record, even if you hadn't expressed it.

Q. But would you answer the question, please, Mr. Donovan?

A. I believe I have answered the question.

Q. The question is, are you considering running for mayor in New York City in 2021?

MS. SADOK: Objection, asked and answered.

A. Again --

Q. That's a "yes" or "no".

A. I believe I have answered the question.

MR. GURIAN: Mark that for a ruling, please.

(Question is marked for a ruling.)

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MS. BLAIN: Thank you.

A. I -- I was not personally involved in the lottery process. I can't testify whether every single lottery that took place while I was HPD Commissioner was subject to the policy.

Q. But in general, they were? As a general rule, they were?

MS. SADOK: Objection.

A. Again, I don't remember whether there were specific examples that stood outside of it or not. I would generally agree that the lotteries we ran were subject to that policy.

Q. And the preference was for 50% of the affordable units, the preference going to households in the community district where the housing was being developed, correct?

A. That's my recollection.

Q. For shorthand -- we've done this throughout the case, so I just want to make sure you understand this, we refer to those households that lived

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inside the community district and were eligible for the preference as insiders and to applicants for affordable housing who were New York City residents living outside the community district where the housing was being developed as outsiders. Do you understand that distinction?

A. I know the policy as the Community Preference Policy and that is the way I refer to it.

Q. I understand that, but I'm going to be using terms which I've tried as clearly as I can to define for you. I'm not asking you whether it's your preferred nomenclature. I'm just asking you whether you understand the difference between what I'm calling insiders and what I'm calling outsiders?

A. I don't believe, given that that's the way I refer to it, that I necessarily understand what exactly you mean by that.

Q. Okay. Well, let's take a minute on it.

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People -- when there is a preference applied, the people who are eligible for that preference are people who live in the community district where the housing is being built, correct?

A. There is a preference for the community district and that is why we referred to it as a community preference.

Q. Okay. And I'm referring -- it's not a preference for the community, it's a preference for households who live in the community, correct?

A. I'm not sure I understand the difference.

Q. The difference is that a community doesn't apply for affordable housing, individual households apply for affordable housing. So I don't think this is a matter of controversy in any way whatsoever.

The individual households who apply who live in the community district where the housing is being built are the ones who get the preference, correct?

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MS. SADOK: Objection.

A. I think of a community as made up of people and so I don't see -- I don't understand the difference that you are trying to get to because a community is made up of people whom I --

Q. It's -- it's not a great sign. So let me try it this way.

You know that when there is a lottery or you knew when you were at HPD when there is a lottery households apply for apartments, correct?

A. Yes.

Q. And you knew when you were HPD Commissioner that if the applying household lived in the community district where the housing was being built that household would get a preference with respect to the affordable units, correct?

MS. SADOK: Objection.

A. That's right.

Q. Those households I'm referring to as insider households. Do you understand?

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A. I understand that you are referring to them that way, yes.

Q. Conversely, a household who applied for a lottery who did not live in the community district housing was being built did not get a community preference, correct?

A. I think that's correct.

Q. Those households I may be describing as outsider households. Do you understand?

A. Again, as I said before, I understand that those are words you are using. I don't see a distinction from calling it a Community Preference Policy.

Q. There is a Community Preference Policy and one group is treated differently from another group and I think that you understand how I'm going to describe those two groups.

Did you know when you were HPD Commissioner that New York City was characterized by a high level of residential racial segregation?

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you are itching to discuss those, and don't worry, we'll get to that.

When you were HPD Commissioner did you believe that the City had turned with all the purpose at its command to try to reduce and ultimately eliminate racial segregation in housing?

MS. SADOK: Objection.

A. I did.

MR. GURIAN: Ms. Wang, are you ready with that next clip?

MS. WANG: Yes. Ready.

MS. BLAIN: Can we mark this for the record, again? I'll mark it for the record.

MR. GURIAN: This is an earlier point in the same speech, approximately at the 16:40 mark of the speech.

(Whereupon, video clip is played on a laptop.)

"MR. DONOVAN: -- move to neighborhoods of opportunity. And for the first time we gave real

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MS. BLAIN: So, Mr. Gurian, as you know, I'm going to object as exceeding the scope of the Touhy authorization and not to answer to the extent the question seeks information concerning the time you were at HUD and thereafter.

A. I don't think that's a question I can answer without referring directly to my experience and knowledge from HUD.

Q. When you were HPD Commissioner were you aware of the term "Affirmatively Furthering Fair Housing?"

A. Given the direction I've been given, I think it is not possible for me to separate out, sitting here today, what I knew at HPD or didn't know about AFFH.

MR. GURIAN: Well, Ms. Blain, as you know, the case squarely involves what New York City and HPD did during Mr. Donovan's tenure. So those questions I think I'm able to ask and I'm going to ask you, Mr.

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Donovan, to try to recall what you already knew when you were HPD Commissioner about, first of all, the existence of the phrase "Affirmatively Furthering Fair Housing."

MS. SADOK: Objection.

A. Again, looking back more than a decade, given my subsequent experience, I don't believe that I can separate out and accurately describe precisely what I knew before I became HUD Secretary and since then.

MS. BLAIN: Mr. Gurian, I have a suggestion. Maybe perhaps if you focus in very specific ways or subjects, that may help. So, AFFH is broad, so maybe if you can get more narrow.

MR. GURIAN: Right. That's a -- that's a fine suggestion, but I'll proceed in another way.

Q. Are you saying, Mr. Donovan, that it's possible that you could have

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gone through your tenure at HPD without coming to know anything about Affirmatively Furthering Fair Housing?

MS. SADOK: Objection.

A. That is -- that is not what I said.

Q. So you believe that you knew something about Affirmatively Furthering Fair Housing while Commissioner of HPD, but you can't say what that is as distinct from what you learned about it later?

MS. SADOK: Objection.

Q. Is that right?

A. The way I would describe it is, I know that as HPD Commissioner I was actively working in a range of ways through a number of policies to promote economic and racial integration in New York City. I don't remember precisely what I knew or didn't know about the more technical requirements of the Affirmatively Furthering Fair Housing regulation and its implementation at HPD.

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It is simply, frankly, too hard for me, a decade removed, more than a decade removed, to remember precisely what I didn't -- what I knew or didn't know about the specifics of the regulation.

Q. Well, let's try it a little more basic.

Did you know that there was an Affirmatively Furthering Fair Housing obligation on New York City?

A. I'm not sure how that question is different than knowing the regulation, since if there was a regulation and its specifics it would obviously apply to New York City.

Q. I'm not asking you if you knew the details of the AFFH rules that pertained during your time. I'm just asking whether you had awareness of the rules to the extent of knowing that there was some AFFH requirement on New York City, and the question is limited to the time that you were HPD Commissioner.

MS. SADOK: Objection.

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A. Again, I'm not sure how this question is different from the prior one and I think I just got to answer it in the same way, which is that sitting here today, looking back ten years, I don't think it's possible for me to separate out precisely what I knew as HPD Commissioner versus learned afterwards.

Q. Even on the basic level of whether there was any affirmatively furthering obligation on New York City at all?

MS. SADOK: Objection.

A. I could presume and speculate here, but again, you are asking a precise question that is more than a decade removed and given the amount of time and focus I spent after leaving HPD on this issue, it is -- I just don't think it's possible for me to be precise in what exactly I knew or didn't know about AFFH while I was HPD Commissioner.

Q. Do you have any recollection of any of your responsibilities as HPD

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Commissioner?

A. That's an extremely broad question which seems -- I'm not sure what you are trying to get at there.

Q. Do you need the question read back?

A. I guess I'm asking if you could be more specific. It's an extremely broad question. Be clearer about what you are asking there.

MR. GURIAN: I'm -- well, could the reporter read it back.

(Pending question is read back by the reporter.)

A. So the question is --

Q. Of any of them.

A. The question seems to me self-evident. Obviously, I remember being HPD Commissioner and having responsibilities. So, again, I'm not sure what the question is trying to get to other than something that would seem obvious. Of course, I do.

Q. The great thing about obvious

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questions is they tend to be easier to answer.

So do you have any recollection of any specific responsibilities that you had at HPD?

A. Of course I do.

Q. Okay. As you look back at the job of HPD Commissioner, was it in your view important, from a perspective of a municipal official, for the HPD Commissioner to be fully aware of whatever affirmatively furthering regulations pertained at the time?

MS. SADOK: Objection.

THE WITNESS: Could you repeat the question?

MR. GURIAN: Read it back, please.

(Pending question is read back by the reporter.)

A. I guess I would generally say that there were many many regulations and rules that applied, in general. I did not see it -- I don't think it's typical for

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they're related.

Q. Was it a goal of New York City during your tenure as HPD Commissioner specifically to reduce residential racial segregation?

A. I'm not sure I can speak for the City at large in the way that you've asked the question. I can certainly say that it was one of my goals as HPD Commissioner.

Q. Do you know whether it was a goal of Mayor Bloomberg specifically to reduce residential racial segregation?

A. I believe it was.

Q. Let's start with the second part first.

MS. SADOK: Mr. Gurian, if I could interrupt for a minute, we'd like to take a break soon and it seems like you might be going on a long line of questioning. If it's short I'm happy to wait but if it's going to be long I'd like to take a break.

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MR. GURIAN: Let's precede for a few minutes and then take a break if that's okay.

MS. SADOK: Okay.

Q. Is the basis of your belief in respect to Mayor Bloomberg anything he communicated to you specifically about residential racial segregation or residential racial integration?

A. Given the time period we're talking about, I don't have a clear memory of conversations that happened back then. So I don't think I can answer that question specifically about what conversations or what precise words communicated that to me.

Q. Did he communicate to you a charge or task to you, as HPD Commissioner, to specifically try to reduce residential racial segregation to the maximum extent possible?

MS. SADOK: Objection.

A. Again, I don't -- my recollections of these are more general

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than being able to recall specific words or specific conversations.

Q. You said that it was your goal as HPD Commissioner to reduce, specifically, residential racial segregation. Is that right? Am I stating back the testimony correctly?

A. What I said was that I was certainly focused, as HPD Commissioner, on promoting economic and racial integration.

Q. So then I think there was something else you said. I'll ask you again -- for some reason this tends to happen right when Ms. Sadok asks for a break. I apologize. Was it your goal, as HPD Commissioner, specifically to reduce residential racial segregation?

A. I believe I just answered the question. I certainly saw it as an important part of the work that I was doing to promote racial and economic integration.

Q. Where, if anywhere, is the

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goal of either promoting residential racial integration or the goal of reducing residential racial segregation documented?

MS. SADOK: Objection.

A. I -- I'm not sure, given we're talking about more than a decade ago, I don't remember particular documents or -- or words that might have referred to that goal or not. It's just --

Q. You -- sorry to interrupt. Go ahead. Please. Sorry.

A. No.

Q. We have a little delay between the Coasts, so sometimes I start speaking too quickly.

So you don't remember, you can't point to any document in your tenure where the words "residential racial segregation" or "residential racial integration" were used in connection with there being a goal of the City?

MS. SADOK: Objection.

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A. You're asking me to remember words in documents from more than a decade ago and on any topic I'm not sure that I could recall specific words or documents that we produced more than -- more than a decade ago.

Q. Okay. Let's finish up with this. Let's change the question to be one where I'm asking you to remember whether there were any documents where the concept of reducing racial residential segregation, specifically and explicitly the "race" part of the segregation, was mentioned in any document?

MS. SADOK: Objection.

A. I think this question is the same as the one you just asked, which is I don't recall specific documents from more than a decade ago.

Q. Do you remember the New Housing Marketplace?

A. I remember that we had a -- absolutely that we had a plan called the New Housing Marketplace, yes.

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opposite, that it wouldn't surprise me that it might not be there from my time because we were more focused on the tactics, you know, what -- what specific housing strategies we were going to use to achieve the number of units, etcetera.

MR. GURIAN: More on this, but let's take a break.

MS. SADOK: Thank you.

VIDEOGRAPHER: Time is 12:37 p.m. and this marks the end of Media Unit 1.

(Recess is taken.)

VIDEOGRAPHER: The time is 12:52 p.m. and this begins Media Unit 2.

Q. Mr. Donovan, let me see if I understand your testimony correctly. Was reducing residential racial segregation a focus of HPD's work during your tenure as HPD Commissioner?

A. As I said earlier, I saw it as a goal of mine and for the Agency to promote racial and economic integration.

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Q. This question was whether it was a focus of HPD's work during your tenure, either reducing racial residential segregation or increasing racial residential integration --

MS. SADOK: Objection.

Q. -- was it a focus of the Agency's work?

A. I'm not sure I understand the difference between what I said and the word "focus". I certainly -- I don't see a difference.

Q. You don't see a difference between something being a goal and something being a focus?

A. If I have a goal, I focus on it. So I'm not sure I see the difference.

Q. All the goals that you had as HPD Commissioner you focused on equally?

MS. SADOK: Objection.

A. I can't imagine that would ever be true. So I didn't say that I focused on them all equally. What I said was I don't know that I understand the

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difference between a goal and focus.

Q. To what extent did you focus on your goal of reducing residential racial segregation while you were HPD Commissioner?

A. I would say a significant amount.

Q. Great. Did your staff know about this goal of yours?

A. We certainly discussed the issue and -- yeah. We certainly had significant discussions about it.

Q. About your goal of reducing residential racial segregation?

A. We certainly had significant discussions about promoting economic and racial integration.

Q. In any of the discussions -- did any of the discussions involve any explicit discussion of racial integration or racial segregation?

MS. SADOK: Objection.

A. As I've said before, going back more than a decade, it's hard for me

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to recall specific words and conversations. I have no doubt that we had conversations about promoting economic and racial integration.

Q. So who on your staff, who among the principal staff knew that a goal of HPD was to promote racial integration in housing?

A. I think you're asking me to recall -- to speculate about what other of my staff thought that -- I'm not sure that I can speak to their thoughts or beliefs.

Q. I'm not asking you that at all. You said you had discussions. Your discussions would have put your staff on notice that it was your goal for HPD to be trying to reduce residential racial segregation, correct?

A. What I said was I certainly had discussions with my staff about promoting economic and racial integration.

Q. So they would or they would

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not have known that it was your goal to promote residential racial integration from those discussions?

A. You are asking me to tell you what somebody else knew and particularly given that we're talking about more than ten years ago, and not remembering details of conversations, it's very hard for me to speculate what somebody else knew or didn't know at that point and particularly specific people.

What I'm saying is I certainly had conversations with them and it was an important focus. Beyond that, to go to specific recollections of people is not something that I can speculate about more than a decade removed.

Q. Well, who were your most senior deputies?

A. For a significant period, Raphael Sistero was my Deputy Commissioner, I believe Holly Light became Deputy Commissioner after that. I can't remember -- I believe she was when

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you hired her to be HUD Regional Administrator for HUD Region Two in or about January 2014?

MS. BLAIN: You can answer that question.

A. As a factual matter, Holly was the Regional Administrator at HUD. I don't remember precise dates when she started.

Q. Do you remember, as a factual matter, whether you hired her or approved her hire?

MS. BLAIN: At this point I'm going to direct the Witness not to answer to the extent this question elicits information about your role and procedures at HUD.

MR. GURIAN: Mark that for a ruling.

(Question is marked for a ruling.)

Q. Reflecting back on your HPD tenure, do you think it would have been wrongful in any way for HPD not to have

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had reducing residential racial segregation as a goal?

A. Given that I've said I thought it was an important goal to promote economic and racial integration, I'm not sure how that question is any different from what I've already answered.

Q. Well, the way it works, and I know it's very frustrating for the Witness, but your job today is not to critique or analyze my questions, it's to answer them.

So do you recall what the question was?

A. And that's exactly what I'm trying to do. I don't understand how it's different to say it would not have been -- I can't remember exactly how the question was phrased, but that sounds to me like the same question that you asked before in a different way and all I'm trying to do is clarify if it is, in fact, different how it is different. I'm honestly trying to be -- to understand

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your questions and to answer them accurately.

Q. Well, I can't do more than ask you. The previous questions had to do with whether something was a goal or a focus. This question has to do with your assessment of whether it would have been wrongful in any way for HPD not to have had reducing racial -- residential racial segregation as a goal?

I don't know the answer to your question. Your answer may be yes, it would have been wrongful, or no, it would not have been wrongful. That's why I'm posing the question.

MS. SADOK: Objection.

A. My answer to that is when I believe something is right, generally that means I believe not doing it is wrong. So -- and I see those as the same thing. So that's why, I'm not trying to be argumentative or anything, I'm just trying to understand what you are trying to get at with the question because it

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appears to me to be the same question as you asked before.

Q. That explanation that when you think something -- doing something is right, you think that not doing it is wrong, does that apply to the question that I posed about HUD having as a goal reducing residential racial segregation?

MS. SADOK: Objection.

A. Again, I'm trying to understand if you see -- if your question is focusing on a distinction there because I don't see one.

Q. So when you say that it was a goal to reduce residential racial segregation, as you understand things, as you construe things, that's the same as you saying it would have been wrongful for HPD not to have had that as a goal? Am I understanding that right?

MS. SADOK: Objection.

A. What I said was I don't understand a difference between those two. If you see a difference between

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those two and you are trying to get at a difference between those two, I would appreciate you explaining that.

Q. I'd appreciate your explaining or confirming that you see wrongful not doing as simply the flip side of the coin or the mirror image of you thinking that having a goal is the right thing. I'm asking what you think about those. Those are the same to you, right?

MS. SADOK: Objection.

A. I -- I don't understand what you mean by "wrongful." And given that this is a deposition, it is possible -- it seems possible to me that you are trying to get to a different point than I was making and you're not explaining that. So that's what I'm trying to get to.

Q. Okay. Let me help you here. My next question is, what do you understand the word "wrongful" to mean?

A. That's an extremely broad question, which seems to me highly

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context specific. So I don't think that I can answer it without more context.

Q. Okay.

A. There are legal senses. There are moral senses. There are lots of ways that I can use the word "wrongful."

Q. Okay. So you've identified legal, moral. Is one of them, as a matter of policy, there could be policies that are wrongful, is that right, in your view?

A. I could imagine a context where that would be true.

Q. Okay. So the context that I'm asking you to reflect on is the context where HPD did not have a policy to or goal to reduce residential racial segregation. Would that have been legally, morally, or as a policy matter wrongful?

MS. SADOK: Objection.

A. Given the discussion that we had earlier, I think it is impossible for me to separate out my work and knowledge

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as HUD Secretary in answering that question precisely.

MR. GURIAN: Let's mark that for a ruling and let me ask you something else.

(Question is marked for a ruling.)

Q. Why would it have been a bad idea, as you think it would have been a bad idea, for HUD -- for HPD -- excuse me -- not to have the goal of reducing residential racial segregation?

MS. SADOK: Could you repeat that question? Sorry. I didn't catch.

(Pending question is read back by the reporter.)

MS. SADOK: Objection.

A. If I understand the question, I think I would say that, as I've said before, I felt strongly as Commissioner that it was important that we promote economic and racial segregation -- integration and fight segregation. That

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it seems to me self-evident then that that was something we should have been doing and we did.

Q. Why is it important to fight residential -- why was it important to fight residential racial segregation in New York City, specifically?

MS. SADOK: Objection.

MS. BLAIN: Specifically the time during which he was HPD Commissioner?

MR. GURIAN: Specifically as the time of HPD Commissioner, New York City and residential racial segregation. Those are the confines.

A. I'm trying to isolate out what I knew as HPD Commissioner. I had studied and spent many years working in communities, studying the history of neighborhoods and understood, as I think was pretty widely understood at the time, that economically and racially segregated neighborhoods can tend to lower

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opportunity for families.

Q. When you say "opportunity",
what do you mean?

A. Broadly speaking, what I mean
is life outcomes such as earnings and
income, health, education, etcetera.

Q. Was it your view when you were
HPD Secretary that there was anything
independently negative about residential
racial segregation as opposed to
residential economic segregation?

MS. SADOK: Objection. And
did you mean HPD Commissioner not
Secretary?

MR. GURIAN: I did and I
apologize. HPD Commissioner.

A. As I said earlier, I think
economic and racial segregation are
intimately linked in this country, not
only in this country. And so I think the
question you're asking is a complex one.
Would I say that there's any independent
importance just on racial segregation? I
think my answer would be yes, but

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disentangling those is quite complex.

Q. When you were HPD Commissioner, did you make any efforts to try to disentangle those two things?

A. I'm -- given the length of time that we're talking about, I don't have precise recollections. I believe the answer to that is -- is yes, but it's a long time ago, so...

Q. What's that law that they teach you in high school mathematics where you put -- like you put one thing before the opening brackets and then it applies to everything within the brackets? That's not communicative law and I don't think it's associative law. I think there is one other. You don't recall that? This is by way of saying --

A. Are you asking this question because you know my son has his high school math exam today?

Q. That did momentarily did give you a little bit of an uneasy feeling to think that the level of scrutiny was that

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intense, but good luck to him and you on that. But you really made it clear for the record, that "it's been a long time" part. We could save a little time if there is not that preface on -- as to every question.

Did you, for example, during your HPD tenure as Commissioner, come to understand at least in general terms that there were some neighborhoods that had very similar economic profiles of their residents, but very different racial profiles of those residents?

MS. SADOK: Objection.

A. I certainly understood that there were -- that economic and racial profiles did not always correlate completely.

Q. Did you understand that there were neighborhoods where the economics were very similar, but that the racial composition was very different?

MS. SADOK: Objection.

A. I think I'm answering your

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2 question as best I can. I certainly
3 understood that there wasn't perfect
4 correlation between economic and racial
5 indices. I think that's different. I
6 don't think that's the same as saying
7 neighborhoods where the economic
8 characteristics were the same because
9 that's a very broad statement and there
10 is always variation on an economic level
11 between neighborhoods, there is always
12 racial differences between neighborhoods,
13 but I certainly understand that they're
14 not perfectly correlated across
15 neighborhoods.

16 Q. Well, I'm really asking if you
17 understand more than that. That, for
18 example, where a neighborhood where --
19 two neighborhoods where principally
20 household income is between 30 and
21 \$50,000 a year or was between 30 and
22 \$50,000 a year. So the household income,
23 the two neighborhoods being very similar
24 but vastly different in terms of racial
25 composition. You weren't aware of that

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kind of neighborhood differentiation,
where the differentiation was principally
by race and much less so by economics?

MS. SADOK: Objection.

MS. BLAIN: And again, this is
considering or focused on his time
as Commissioner at HPD?

MR. GURIAN: Yes.

A. I don't -- I don't see median
household income of \$30,000 as being
similar to a median household income of
\$50,000. So I don't think -- this is my
point, I don't think of those as
economically similar neighborhoods,
necessarily. And it's not just medians,
it's also the range of incomes.

You could have a median income
of 30 or 50 and if there's a dynamic
where incomes are rising or
gentrification is happening, those --
those start to separate out neighborhoods
very quickly.

So I think this is a highly
subtle and complex issue that you are

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2 trying to raise and putting it in broad
3 categories, I think, does a disservice
4 often to the subtleties and the
5 importance of understanding neighborhood
6 context.

7 Q. We'll get back to the
8 subtleties and complexities in a moment.
9 You grew up in New York City, is that
10 right?

11 A. I did.

12 Q. Where?

13 A. In -- I mostly grew up in
14 Manhattan. I lived in Brooklyn for about
15 15 years, as well.

16 Q. Where, not by address, only by
17 neighborhood, did you grow up in
18 Manhattan?

19 A. A few different neighborhoods
20 on the East Side and West Side.

21 Q. On the Upper East Side and
22 Upper West Side or --

23 A. Upper East Side and Upper West
24 Side.

25 Q. And in Brooklyn?

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2 A. In Boerum Hill.

3 Q. So let me just ask you again,
4 as HPD Commissioner, you weren't familiar
5 with what for shorthand might be called a
6 working class neighborhood in Brooklyn or
7 Queens that was overwhelmingly white and
8 another very economically similar working
9 class neighborhood in Brooklyn or Queens
10 that was overwhelmingly African-American
11 or Latino?

12 MS. SADOK: Objection.

13 A. That is not accurate and
14 that's not something I said before.

15 Q. Okay. Were you aware of the
16 existence of those neighborhoods that
17 were very similar economically and very
18 different racially?

19 A. Again, I think you're making
20 generalizations that don't -- I believe I
21 was familiar with neighborhoods across
22 New York City, and I think you are
23 describing neighborhoods in ways that are
24 generalizations that don't capture
25 important differences between them.

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Q. Capture for me two neighborhoods where the economics were similar but the racial composition was quite different, any two?

A. Again, this is your comparison. I don't think it's a useful comparison, necessarily and I can't speculate as to what you see as similar.

Q. I want to know what you see, two neighborhoods that you saw as economically similar, where you also saw them as racially very distinct from one another?

A. As I think I indicated, I didn't think about neighborhoods that way, and I tended to think of each neighborhood as individual with certain characteristics that might or might not be similar to other neighborhoods. But to say broadly a single neighborhood is the same economically as another one doesn't seem to me a useful -- it's not a comparison I would have made.

Q. Did you look at patterns of

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have a recollection of particular documents.

Q. I'm not asking you for particular documents. I'll ask the City to produce those. But do you recall that this desire or goal or program to enhance the access of minority group families to neighborhoods of opportunity, of higher opportunity, was written down anywhere?

MS. SADOK: Objection.

A. I think I've just answered the question. I don't have a recollection of specific documents.

Q. Right. That's why I moved onto another question, which was, without asking you to remember the specific, do you at least remember that somewhere that goal or policy was written down?

A. I don't see a difference in those questions.

Q. One asks for the specific, where it was written down, the other asks you to confirm whether or not it was written down anywhere.

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A. Confirming that would require remembering specific documents.

Q. No. It would just require you to know that there was someplace you documented this goal.

You don't know whether you documented that goal?

A. As I said, I don't recall specific documents from more than a decade ago.

MR. GURIAN: Move to strike as non-responsive.

MS. SADOK: The City objects to that motion to strike.

(Question is marked for a ruling.)

Q. Let me -- let me just ask you, if you think of things as there being different balances at different times between place-based strategies and mobility strategies, where was the balance during your time in the Bloomberg Administration? Wasn't much more of the focus on place-based strategies?

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2 all the high opportunity neighborhoods
3 where we did substantial rezoning,
4 included a very large number of
5 affordable units, and in fact,
6 inclusionary zoning, itself, is a
7 strategy that, generally, is most
8 effective in the highest rent
9 neighborhoods which tend to be highly
10 correlated with higher opportunity.

11 Q. And that would be because the
12 cross-subsidy from the market units is --
13 the cross-subsidy that's thrown off from
14 the units in those neighborhoods are
15 higher and thus, facilitates more -- the
16 creation of more affordable units more
17 easily. Is that right?

18 A. That's a reason but not the
19 only reason.

20 Q. So just to be clear, the
21 Bloomberg Administration opposed
22 proposals for mandatory inclusionary
23 zoning, correct?

24 A. When I became Commissioner we
25 created a new inclusionary zoning

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program. I think our view at the time is that a voluntary inclusionary program would lead to more affordable housing than a mandatory program would have.

Q. I understand your -- this may be a version of jeopardy. That certainly answers the question why, but just to confirm, there were proposals made outside of the administration for mandatory inclusionary zoning and the administration opposed them, correct?

A. I don't remember specific proposals that you may be referring to. We did -- we did have discussions and debates within the administration about voluntary versus mandatory and again, we believed that voluntary would lead to more -- ultimately lead to more affordable units than the mandatory proposal.

Q. I appreciate that, but without getting into any specific proposals, you remember there were proposals to create mandatory inclusionary zoning coming from

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outside of the administration, yes?

A. Again, I don't remember specific proposals or who might have -- they might have come from. What I remember is that there was a discussion about voluntary versus mandatory inclusionary zoning.

Q. You don't recall whether or not anybody outside of the administration made any proposal for mandatory inclusionary zoning while you were at HPD?

A. I -- as I said, I don't remember specific proposals and who might have made them.

MR. GURIAN: Move to strike as, again, unresponsive.

MS. SADOK: The City objects to such motion.

Q. As you sit here today, at the deposition, do you have any regrets that the City didn't adopt mandatory inclusionary zoning during your tenure as HPD Commissioner?

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people to remain in neighborhoods. That was the -- from my experience, that was the primary motivator of the discussions that we had.

Q. You were aware at the time that there was criticism of the scope and effectiveness of the City's efforts to prevent people from being displaced from their apartments. Is that right?

MS. SADOK: Objection.

A. Having served in government a long time, I would frankly say that there is always criticism of just about everything we do. And so, I would agree, yes, there was criticism.

Q. To clarify so that the record is clear, you were not trying to be dismissive of the criticism when you said just now you get criticized whatever you do, or were you?

A. I was simply stating as a fact that it wouldn't surprise me that there was criticism on the issue that you raised.

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Q. Well, I was asking you if you were aware, while you were HPD Commissioner, that the City's anti-displacement efforts were criticized by many people and from many sources?

A. I don't recall specific criticisms and so I can't speak to remembering specifically if there was criticism on that issue.

Q. Wait a second. You are saying you don't remember whether there was criticism of the City's anti-displacement efforts?

A. I don't recall specific criticisms about particular programs or initiatives at this point, is what I'm saying.

Q. Right. But to answer my question, do you remember that there were any criticisms of any aspects of the City's anti-displacement efforts, Mr. Donovan?

A. What is your definition of "anti-displacement efforts"?

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Q. What was your definition of anti-displacement efforts when you were at HPD? Did you have one?

A. The reason I'm asking is because I think I believe that there were many many aspects to what we did that fought against displacement. So it -- our efforts to build and preserve housing were related to displacement, our zoning efforts, just about everything we did was in some way related to displacement.

So that's why I'm not -- that's why I'm asking for clarification.

Q. Yeah. But, you know, Mr. Donovan, I think that you know that there were people who said that at the time the City is not doing enough to prevent displacement. Was that true at the time?

A. Again, as I said earlier, that is an extremely broad statement. Taken literally --

Q. I'm not going to argue with you, what I'm going to do is going to ask for more time, because this is a very

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somebody criticizing our displacement efforts. That's why I'm --

Q. Okay. I'm sorry to say that I don't think that's a good faith response to my question, and you've been doing this a lot now. So let me change the question.

Do you recall any newspapers coverage that indicated that there were criticisms that the Bloomberg Administration was not doing enough to prevent displacement?

MS. BLAIN: I would just ask that we refrain from personal attacks on the witness and, you know, proceed in a professional manner.

MR. GURIAN: The record is being created because more time is going to be needed from this witness who spent tremendous amount of time crafting questions that I didn't ask and commenting on the questions rather than answering the

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questions I did.

Q. Mr. Donovan, do you have an answer to the question that I just posed? Do you read it read back?

MS. SADOK: Mr. Gurian, I would object to that characterization of him being not responsive. He answered the questions. You may not be happy with them.

MR. GURIAN: I'm not going to burn time on this discussion.

Q. Mr. Donovan, do you recall the question that is on the table or do you need it read back to you?

A. I don't at this point recall specific newspapers articles that were critical. It is more than a decade since that time so I don't have a recollection of specific newspaper articles.

Q. Once again, I was not asking you about specific newspaper articles. I was asking you whether you recall that there were any newspaper articles

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reflecting criticism being leveled at the
administration regarding its
anti-displacement efforts?

A. I would expect that there
were.

MS. SADOK: I'd like to
interject that it's getting close
to two or after two. We've been on
the record again for a little over
an hour and we requested that we
have a 30 minute break.

MR. GURIAN: We'll be able to
get to that break but I need to
continue for a few minutes longer.
So --

MS. SADOK: Mr. Donovan, are
you okay with lunch?

THE WITNESS: Yes.

MS. BLAIN: Is the court
reporter okay with lunch?

THE REPORTER: Yes.

MR. GURIAN: Anything else?

Q. Looking back, was it a mistake
for the Bloomberg Administration not to

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adopt mandatory inclusionary zoning?

MS. BLAIN: Again, I'm going to repeat my objection that I made before to a similar question. To the extent this question calls for your opinions you formulated and data that you relied upon and things you learned while at HUD that would exceed the scope of the Touhy authorization, but to the extent you can answer without that knowledge, of course that's fine.

A. I don't think I can answer separating out that -- that issue.

MR. GURIAN: Mark that for a ruling.

(Question is marked for a ruling.)

Q. When you were HPD Commissioner did you work to strengthen State laws on rent regulation?

A. Obviously, as City Housing Commissioner I didn't have jurisdiction over laws so I didn't have direct

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to tighten the applicability of vacancy
decontrol?

A. I don't know which efforts you
are talking about specifically.

Q. Any efforts.

A. "Tighten" is a very broad
term. Again, I remember specifically our
work to insure that rent regulations
remained in place, that there were
certainly places where we strengthened
them. I don't recall specific examples of
us proposing to weaken them.

Q. Did the Bloomberg
Administration support or oppose efforts
to limit the time that major capital
improvements are permitted to add to a
tenant's rent?

A. I don't recall at this point a
specific example when we were asked or
weighed in on that issue.

Q. Well, you, meaning the
Bloomberg Administration, didn't have to
be asked before weighing in on State
legislative issues, did you?

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2 A. We certainly had conversations
3 with State officials on a regular basis.
4 So we could offer proposals or opinions
5 to them as we chose. Again, we didn't
6 have jurisdiction on those issues but we
7 could obviously express opinions to them.

8 Q. During your tenure did HPD
9 quantify the scope of displacement, if
10 any, occurring in the City?

11 A. I know that we, through the
12 housing vacancy survey and a range of
13 other tools, would examine the number of
14 rent regulated units and the amount of
15 affordable housing, the affordability of
16 that housing.

17 I'm not sure exactly what you
18 mean by "quantifying displacement", but
19 we certainly looked at a range of factors
20 that were related to displacement.

21 Q. Well, you know what the term
22 "quantify" means, right?

23 A. I believe I do.

24 Q. Okay. Did you have a working
25 definition of displacement of an

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time as HUD Secretary to my -- from my current thinking. I don't -- I don't think that's possible.

Q. I'd ask that you hand back number 2 to Ms. Wang and she'll hand you what has been previously marked as Plaintiff's 137.

(Plaintiff's Exhibit 137, having been previously marked, is shown to the Deponent.)

Q. Do you recognize that document?

A. I do not.

Q. Can you say what it purports to be?

A. It's a letter to me with the subject "Distribution Of Applications For Affordable Apartments" from you.

Q. From January 17th, 2006. I'll just represent to you that it was dispatched in the way that is indicated on the letter.

Can you read out loud the PS that is on that letter?

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2 A. "PS: The foregoing of course
3 does not deal with the broader problem of
4 neighborhood preference, (i.e., the
5 preference for existing community
6 district residents in respect to 50% of
7 vacancies at each development. Given how
8 strongly segregated almost every single
9 district in New York City is the
10 preference cannot help but result in
11 occupancy that is more segregated than
12 would otherwise be the case. A City-wide
13 program, by contrast, would be
14 segregation reducing, not perpetuating. I
15 mention this and some other issues
16 relating to the City's role in respect to
17 going housing segregation and
18 discrimination. In a discussion I had
19 last month with John Goering he suggested
20 that we sit down and I hope you can find
21 time to do so."

22 Q. Thank you. Did you know John
23 Goering?

24 A. I did.

25 Q. And in what context or

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contexts?

A. He was an academic in New York City and I met him, I think, through some housing-related event or events.

Q. If you had received this letter what would you, in the ordinary course of carrying out your duties, have done with the letter?

A. Typically, the HPD Commissioner doesn't review correspondence. There are probably hundreds of letters that arrive each day or week and so I would not typically review letters.

Q. The PS in that letter, did that raise an important issue?

MS. SADOK: Objection.

A. Umm, it raised an issue. I'm not sure whether I would describe it as one that should have changed the routing of this letter or whether I should have reviewed it, if that is what you are focused on.

Q. No. Let's stick with one

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question at a time. You confirm that it raises an issue. Thank you.

Given its substance and given your views at the time when you were HPD Commissioner, how would you characterize the issue; important? Potentially important? Trivial? What?

MS. SADOK: Objection.

A. I guess it would really -- it doesn't just depend from my perspective whether it's how significant it is, but it's also an issue of, in a letter like this, whether it's an issue that's come before us before, whether we considered and that would kind of determine how we would deal with it.

Q. You're describing the routing and dealing and again, that's not what I'm asking you. I'm asking you whether you would characterize this PS as raising a potentially important issue or if not, how you would characterize the issue?

A. I would say, generally, that this is an issue that relates to fair

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2 housing and fair housing was a
3 significant issue and so, in that sense,
4 it raises an issue that I certainly
5 wouldn't describe as trivial.

6 Q. You're prepared to go so far
7 as to say it's not a trivial issue. It is
8 specifically critiquing a policy of New
9 York City, right?

10 A. It is critiquing a policy of
11 New York City, correct.

12 Q. So wouldn't it be important to
13 figure out whether that criticism -- I
14 don't mean you, personally, but HPD --
15 figure out whether that criticism was
16 well-founded or not?

17 A. Again, it goes back --

18 Q. Criticisms are well --
19 criticisms are well-founded?

20 A. I agree with that. My point
21 earlier also stands, that if it's a
22 criticism that -- on an issue that's
23 important, but one that decisions have
24 been made on multiple times, it doesn't
25 mean that each time we heard that

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criticism we would have to go back and reevaluate or think about it again. And so I don't think its relative importance necessarily leads to a particular way of treating or dealing with this letter.

Q. Well, had the City made decisions over and over again as to whether or not the Community Preference Policy resulted in occupancy more segregated than would be the case if the lotteries were just run City-wide?

A. Again, as you asked earlier, I'm not aware of what analyses or not were done. This was a policy that was in place when I became HPD Commissioner, and so I don't know what analyses were done, and therefore, I -- I don't think I can answer whether analyses should have been done at the point this letter came or not.

Q. Did it occur to you, while you were HPD Commissioner, that given the segregated housing patterns of New York City it was likely that the pool of

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insider applicants who received preference would be racially and ethnically more homogeneous than the pool of outsider applicants who did not receive preference?

MS. SADOK: Objection.

THE WITNESS: Could you state the question again?

(Pending question is read back by the reporter.)

A. I don't recall a specific time where I had that concern.

Q. Do you recall having that concern generally -- well, actually, that was good. Stricken.

I didn't ask whether it was a concern, I asked whether it occurred to you.

So did it occur to you, even generally, at any time while you were HPD Commissioner, that the demographics of people applying to lotteries from the City, generally, outside the community district, would, of course, be more

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2 racially and ethnically diverse than the
3 pool of people who were applying within
4 one particular community district?

5 A. I don't remember specifically
6 what occurred to me or not in thinking
7 about that community preference at that
8 point. So I don't have a specific
9 recollection of that.

10 Q. Subsequent to leaving the
11 Federal government, have you had
12 communications about this case with
13 anyone outside of the Federal government?

14 A. The only communication I
15 recall was somebody reaching out to me to
16 put HUD in touch with me about -- in
17 order to get in touch with me for the
18 case.

19 Q. No other communications by any
20 means?

21 A. Not that I recall.

22 Q. Not with Ken Zimmerman?

23 A. Not that I recall.

24 Q. Not with Phil Tegeler?

25 A. Not that I recall.

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ruling.)

Q. Many rezonings in the Bloomberg Administration were carried out under the banner of preserving neighborhood character. Is that correct? Is that true, that many rezonings were carried out under the banner of preserving neighborhood character?

A. Again, my perspective is that in just about all the rezonings that I remember there were increases in density, decreases in density or creation of historic districts, a whole range of things. Some of that would have come under the category of preserving neighborhood character, but I don't -- I don't know that I characterize entire rezonings in one bucket or another because, you know, there are obviously examples in Manhattan where we were doing substantial up-zoning but also protecting neighborhood character on the side streets, for example. So I don't think these easily fall into either/or

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categories.

Q. Was preserving neighborhood character a slogan or a catchphrase that was used by the administration in connection with some of its rezonings?

A. Again, there were certainly aspects of rezonings that I worked that that were focused on neighborhood character. Whether it was a catchphrase or a slogan, I can't say.

Q. You don't know whether in City press releases rezonings, or part of them, were characterized commonly as part of the City's efforts to preserve neighborhood character?

A. I don't think on a regular basis I would have reviewed press releases around rezonings. So I don't recall specific examples of reviewing press releases on rezonings.

MR. GURIAN: We're going to take a little break, then come back for the balance of our time today.

VIDEOGRAPHER: Off the record.

1
 2 STATE OF Massachusetts)
 3) : ss
 4 COUNTY OF Middlesex)
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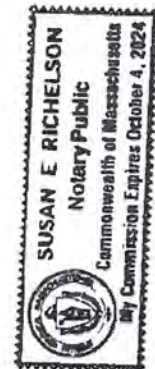
7 I, SHAUN DONOVAN, the witness
 8 herein, having read the foregoing
 9 testimony of the pages of this deposition,
 10 do hereby certify it to be a true and
 11 correct transcript, subject to the
 12 corrections, if any, shown on the attached
 13 page.

14 
 15 _____

16 SHAUN DONOVAN

17
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 19
 20 Sworn and subscribed to before me,
 21 this 27th day of July, 2018.

22
 23 Susan Richelson, Susan Richelson
 24 Notary Public
 25



C E R T I F I C A T E

I, MAUREEN M. RATTO, a
Registered Professional Reporter, do
hereby certify that prior to the
commencement of the examination, SHAUN
DONOVAN was sworn by me to testify the
truth, the whole truth and nothing but
the truth.

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

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



MAUREEN M. RATTO, RPR

License No. 817125

ERRATA

I wish to make the following changes, for the following reasons:

PAGE LINE

15 9 CHANGE: "from" to "for"

REASON: Clarify intent of statement.

31 18 CHANGE: "Current" to "Kerner"

REASON: Correct spelling.

44 23-24 CHANGE: "parting the waters" to "Parting the Waters"

REASON: Capitalize for book title.

44 25 CHANGE: "root" to "route"

REASON: Correct spelling.

55 4 CHANGE: "I" to "I've"

REASON: Clarify intent of statement.

74 22 CHANGE: "Raphael Sistero" to "Rafael Cestero"

REASON: Correct spelling of name incorrectly transcribed by reporter.

74 23 CHANGE: "Light" to "Leicht"

REASON: Correct spelling of name incorrectly transcribed by reporter.

75 11 CHANGE: "Sistero" to "Cestero"

REASON: Correct spelling of name incorrectly transcribed by reporter.

75 11 CHANGE: "Light" to "Leicht"

REASON: Correct spelling of name incorrectly transcribed by reporter.

76 11 CHANGE: "Sistero" to "Cestero"

REASON: Correct spelling of name incorrectly transcribed by reporter.

76 12 CHANGE: "Light" to "Leicht"

REASON: Correct spelling of name incorrectly transcribed by reporter.

76 15 CHANGE: "Light" to "Leicht"

REASON: Correct spelling of name incorrectly transcribed by reporter.

101 2 CHANGE: "is" to "was"

REASON: Clarify intent of statement.

109 9 CHANGE: "counsel" to "Council"

REASON: Correct spelling.

110 12 CHANGE: "It's" to "That's"

REASON: Clarify intent of statement.

118 25 CHANGE: "laws" to "State laws"

REASON: Clarify intent of statement.

122 8 CHANGE: "the" to "that"

REASON: Clarify intent of statement.

122 21 CHANGE: "they" to "we"

REASON: Clarify intent of statement.

135 6 CHANGE: "you're" to "your"

REASON: Correct spelling.

136 25 CHANGE: "learned as" to "learned in"

REASON: Clarify intent of statement.

140 12 CHANGE: "whether it's how" to "whether it's -- how"

REASON: Clarify intent of statement.

144 16 CHANGE: "HUD" to "HPD"

REASON: Deponent meant "HPD" but mistakenly said HUD.

151 15 CHANGE: "rezonings" to "rezonings,"


REASON: Clarify intent of statement.

156 8 CHANGE: "worked that" to "worked on"

REASON: Clarify intent of statement.

157 17 CHANGE: "plan YC" to "plaNYC"

REASON: Correct spelling.



WITNESS' SIGNATURE

7/27/18

DATE

SUBSCRIBED AND SWORN TO BEFORE ME THIS 27 DAY OF July, 2018

Susan Richelson
NOTARY PUBLIC

Susan Richelson

