

PR-50  
(52 FR 6980)

DOCKET  
USNRC

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OFFICE OF THE CLERK  
DOCKETING & SERVICE  
BRANCH

NOTE TO: Emile Julian, Docketing  
FROM: *JEH* Pamela Urban, OGC  
DATE: February 11, 1988  
SUBJECT: Supplemental Certified Index -  
Emergency Planning Rule

As we discussed yesterday, I am submitting to you today a May 14, 1987 transcript of a hearing before the Committee on Environment and Public Works, Subcommittee on Nuclear Regulation.

Please add this document to the record and list it on the Supplemental Certified Index as soon as possible. We intend to file the Supplemental Index by the end of this week.

Thank you.

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## SHOREHAM NUCLEAR POWER PLANT LICENSING ISSUES

THURSDAY, MAY 14, 1987

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON NUCLEAR REGULATION,  
*Washington, DC.*

The Subcommittee on Nuclear Regulation met, pursuant to notice, at 2:08 p.m., in room 406, Dirksen Senate Office Building, Hon. John Breaux (chairman of the subcommittee) presiding.

Present: Senators Breaux, Moynihan, and Simpson.

### OPENING STATEMENT OF HON. JOHN B. BREAU, U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator BREAU. The subcommittee will please come to order.

This afternoon the Subcommittee on Nuclear Regulation meets to receive testimony on allegations of improper external influences on the Nuclear Regulatory Commission's adjudicatory procedures in the Shoreham licensing process. In a nutshell, the subcommittee is meeting to address concerns that have been raised by the residents of Long Island that what the Long Island Lighting Company, LILCO, has not been able to achieve through formal NRC proceedings, that is, the granting of an operational license for the Shoreham nuclear plant, it has attempted to achieve through improper political influence and contacts. These concerns and allegations, if true, are serious matters, rightly within the jurisdictional purview of this subcommittee. Just last week this subcommittee launched an investigation into a number of other allegations concerning the Commission's coziness with the regulated industry. We simply cannot afford to have a nuclear industry in this country if the cost involves inadequate regulation of an industry that prospers at the expense of rules and regulations designed to protect public health and safety and the environment.

On the other hand, I think that we all recognize that legitimately held differing points of view are of value to our governmental system. Furthermore, I would hope that we all recognize that even within the formal procedures governing the NRC licensing process, that there exists room for certain types of communications that do not run afoul of adopted rules and regulations designed to protect the integrity of the process.

Because of what I perceive to be a great deal of uncertainty and confusion about the confines or scope of regulations governing the Commission's adjudicatory process, we have asked the NRC's Gen-

eral Counsel's office to outline for the subcommittee its ex parte rules. And while we have asked the NRC and other witnesses to provide us with extensive documentation related to this issue, the Chair recognizes that this request was formulated quite recently and will excuse those witnesses who have not had an adequate opportunity to search all their files and gather the requested data. We will, however, expect the witnesses to submit this data to the subcommittee unless, subsequent to the hearing, a decision is made to modify our original request.

With that I would recognize our colleague and good friend, Pat Moynihan, the Senator from New York, for any comments that he might have.

**OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. Thank you, Mr. Chairman. May I first thank you for honoring my request that these hearings be held today. It may not have been the easiest thing for you to arrange, and I'm more than conscious of that fact. You and I were involved much of last week and the week before with this whole question of assuring the integrity of the licensing procedure under the NRC, and I would like to take this opportunity to congratulate and compliment you on the strong, fair, and effective way in which you've dealt with the matters concerning Commissioner Roberts. It certainly raises my hopes that we can improve this whole regulatory process, or environment, if that's the better phrase, in the course of the 100th Congress.

Our focus today is not on the particular merits of a particular nuclear plant, but rather on the procedures by which the owners of this plant chose to operate here in Washington. I came upon the subject some time ago, and I know that my offices have always been open to the representatives of the industry and of the particular utility and the counties and the towns, and only late in this process did we learn that the utility involved was expending enormous amounts of money, for reasons that were not clear. A specific that we'll be dealing with today is that Mr. Lyn Nofziger, who was one of the political directors of President Reagan and who, after leaving the White House, and perfectly within his rights, established a consulting firm and was rather promptly engaged by LILCO which, in the course of a not very long period, paid Mr. Nofziger almost three-quarters of a million dollars in fees.

My question is, what did they think they were getting for that three-quarters of a million dollars? Did they think they were buying a license? If they didn't think they were buying a license, what did they think they were buying? The availability of information from this committee, our offices, was total, and there was no charge.

Mr. Nofziger is not going to be before us today. I believe he is the subject of an independent counsel, and we have no quarrel with Mr. Nofziger. I wish him well in the troubles he now has and we don't wish to compound them. And I believe, Mr. Chairman, that he has said that on advice of counsel that he can't appear.

Senator BREAUX. That's correct.

Senator MOYNIHAN. And that's perfectly understandable, taking the advice of counsel, and there the matter lies, at rest. But what we want to know is not what Mr. Nofziger thought he was doing, but what the management of the Long Island Lighting Company thought he was doing. Did they think that for three-quarters of a million dollars they were going to buy this town? Others have done that, to their grief. We will learn, sir.

Thank you very much for allowing me to be here.

Senator BREAUX. Thank you very much, Senator. I would note for the record that our colleague, Senator Simpson, is on his way and will be with us shortly.

We'd like to call up our first witness from the Nuclear Regulatory Commission, Mr. William Parler, who is General Counsel. Mr. Parler, we are pleased to have you here. You have heard our opening comments and we'd like to receive your testimony. Thank you.

**STATEMENT OF WILLIAM C. PARLER, GENERAL COUNSEL, NUCLEAR REGULATORY COMMISSION**

Mr. PARLER. Thank you very much, Mr. Chairman. I am very pleased to appear before the subcommittee this afternoon.

It is my understanding that I am supposed to outline the general background information about the Commission's ex parte rule and to answer questions about that rule to the best of my knowledge and ability, and I will try to do so.

Mr. Chairman, it may be helpful at the outset to identify for the record the relevant regulations and statutory provisions which are involved. I think it would be useful to do so because the bottom line here, although it's very important, is quite simple, and that is that with the formal trial-type proceedings that this agency is responsible for conducting, there can be no private communications, with off-the-record information received. Those communications are prohibited. If they are received, the rule says that they should be identified, made public, and served on the parties to the proceedings. So no matter where the discussion goes, that fundamental principle is what is involved here.

The regulations are in the Code of Federal Regulations, title 10, section 2.780, which deals with ex parte communications at the Commission and at its Appeal Board level. And 10 CFR section 2.719, entitled Separation of Functions, deals with ex parte communications at the presiding board level, the Licensing Board, the board that originally is charged with developing the facts, developing the record, and making the initial decision.

There is a statutory provision for ex parte communications which was included in the Administrative Procedure Act in 1976. This is 5 USC, section 557(d). For the first time, that provision provided a statutory basis prohibiting ex parte contacts, and the statute is of general applicability.

I might note that as early as 1962, the predecessor to the Nuclear Regulatory Commission, the Atomic Energy Commission, had an ex parte prohibition included in its rules.

There are related provisions in the APA: 5 USC, section 551(14) defines ex parte communications, and 5 USC Section 554(d) and 5 USC Section 556 (d) and (e) also include relevant provisions.

The final part of the background is that on March 26th, 1986, the NRC proposed a revision to its ex parte and separation of functions rules which were applicable to formal adjudicatory proceedings. This proposal was published at 51 FR, page 10393.

Mr. Chairman, if the subcommittee wishes I will be glad to provide for the record the pertinent regulations as well as the pertinent excerpts from the APA.

Senator BREAUX. I think we have that, don't we? Yes, we have that information.

Mr. PARLER. Mr. Chairman, a very important consideration in understanding the Commission's ex parte rule is an understanding of the types of proceedings which require formal, on-the-record hearings. Almost from the inception of the Commission's licensing and regulation of commercial nuclear plants—reactors—the Atomic Energy Act of 1954 has been consistently interpreted to require a formal, on-the-record adjudicatory hearing prior to the issuance of a license authorizing the construction of a nuclear power reactor. The same type of formal hearing is held if one is requested prior to the issuance of a license to operate the reactor.

The Atomic Energy Act also makes the Administrative Procedure Act applicable to its decision-making processes. The APA provides minimum procedural requirements to make sure that the proceedings are conducted fairly and to make certain that when a statute such as the Atomic Energy Act requires formal, on-the-record hearings, the decisions are made on the basis of the evidentiary record.

The Commission's regulatory staff, which is under the Executive Director for Operations, is a party to these formal proceedings, typically along with the applicant and also typically along with interested parties who intervene in the proceedings.

The Atomic Safety and Licensing Board is a statutory board which presides at the hearing and, as I've already noted, receives the evidence, presides over the making of the evidentiary record, and makes the initial decision.

Under the Commission's procedures there is a right of administrative appeal to an Appeal Board, which is an independent board comprised, usually, of three individuals, as is the Licensing Board. A party may petition the Commission to review a proceeding, or the Commission itself may undertake, on its own motion, to review a proceeding.

After the administrative process has been completed and a final administrative decision is rendered, that decision is subject to judicial review in the appropriate United States Court of Appeals under the Administrative Orders Review Act of 1950.

During this entire formal administrative process, procedures must be followed to assure that there are no unauthorized, "off-the-record" communications between any interested person with the decision-makers or their advisors. And that is the objective: to assure that there are no such communications or, if such communications are identified, that they are made public and are served on the parties. That is the objective of the ex parte rule and the separation of functions rule that I referred to earlier.

The Commission's current rule governing ex parte communications provides that Commission adjudicators, other than presiding

officers, are not to request or entertain from any party—including the NRC regulatory staff—any private evidence, explanation, analysis, or advice regarding any substantive matter at issue in formal, contested licensing or enforcement hearings. Under this rule, communications requested by the Commission concerning certain general health and safety problems and responsibilities and the status of proceedings are not considered ex parte.

A similar prohibition against ex parte communications, specifically applicable to licensing boards who preside over contested formal hearings, is found in 10 CFR section 2.719(b). The prohibitions of these rules apply when a formal proceeding has been noticed for hearing, or with regard to a matter on which a formal hearing has been requested.

Section 2.780 provides that written ex parte communications are to be placed in the public document room and served upon parties to the proceedings.

With respect to ex parte oral communications, the rule states that adjudicators to whom such an oral communication is attempted are to decline to listen and, if unsuccessful in stopping the communication, must make a written summary of the communication that is placed in the NRC public document room and served upon all the parties to the proceedings. NRC employees who violate the provisions of section 2.780 or 2.719(b) could, under the NRC's code of conduct regulations, be subject to disciplinary action. Parties outside the agency who engage in ex parte communications can, under the provisions of the Administrative Procedure Act, have their claim or interest in the proceedings dismissed, denied, disregarded, or otherwise adversely affected.

As I have earlier stated in the references I have provided, the Commission's regulations contain a separation of functions provision in section 2.719. This provision is modeled upon the separation of functions provision in section 554(d) of the Administrative Procedure Act. The rule precludes any Commission employee who is engaged in the performance of an investigative or prosecuting function in the case, or in a factually-related case, from advising in the initial or final decision in that proceeding, except as witness or counsel.

None of these rule restrictions restrict communications between outsiders, interested persons, including licensees, applicants and intervenors, and NRC regulatory staff personnel, such as the Executive Director for Operations and those staff members serving under him who do not perform adjudicatory functions. However, the regulatory staff under the direction of the Executive Director for Operations, cannot be used as a channel or conduit for such communications to the adjudicatory decisionmakers or to their adjudicatory advisors.

I have mentioned that on March 16th, 1986 the Commission published a notice proposing changes to its ex parte and separation of functions rules. Under the proposed rules, a separation of functions provision would control NRC staff communications with adjudicatory officials, while an ex parte provision would cover communications with persons outside the agency. This is the approach taken in the Administrative Procedure Act, and it avoids the confusion in the present NRC rules, where both separation of functions prohibi-



tions and ex parte prohibitions are intermixed in section 2.719 and 2.708 intermixed in 2719 and 2780.

Further, the proposed rule would revise the present rule in a number of ways in order to promote clarity and eliminate unnecessary restrictions on communications. Most importantly in that regard, the proposed rule would allow private Commission communication with NRC staff members—that is, staff members under the Executive Director for Operations—who have not been involved in a proceeding as investigators or as litigators. It also would conform the Commission's ex parte rule regarding communications between adjudicators and persons outside the agency more closely to the provisions of the 1976 amendment to the Administrative Procedure Act.

The comment period on the proposed rule ended on June 26th, 1986. Commission action on the final rule is likely in the summer of 1987.

The objective of both of these rules I've referred to—the ex parte rule and the separation of functions rule—is to preserve the integrity of a formal adjudicatory decisionmaking process by banning private communications that would expose adjudicatory decisionmakers or their adjudicatory advisors to off-the-record facts which are relevant to the merits of the proceeding or to bias viewpoints which are relevant to the merits of the proceeding.

In simplest terms, there should be no private communications which are relevant to the merits of an adjudicatory proceeding, and there should be public disclosure of any such prohibited communications.

Senator BREAUX. Thank you, Mr. Parler.

I will recognize Senator Moynihan first for his questions.

Senator MOYNIHAN. Thank you, Mr. Chairman, and thank you, counsellor. I think we have a clear understanding of the rules. They roughly equate to the rules which control the access to a jury or a judge in a normal judicial proceeding. A layman should understand them at about those terms, wouldn't you agree?

Mr. PARLER. I certainly would agree with that. Access to the judge or access to the judge's law clerks supports that, yes, sir.

Senator MOYNIHAN. My question to you, sir, is simply that to the degree that you have been able to inquire, can you tell us that there have been no improper approaches to the NRC by Mr. Nofziger or Department of Energy officials or other individuals or organizations with respect to this licensing of Shoreham?

Mr. PARLER. Senator Moynihan, I can assure you that there have been no communications of any kind with me. I am not aware of any improper communications. You are aware of our response of December 12, 1986 to your inquiry of December 4th. I am not aware that anything associated with that response has been changed.

The Commission is looking into the request dated May 8th that was received from Chairman Breaux and Senator Simpson. As the Chairman noted in his opening remarks, we certainly will provide the results of that search to the committee. That search has not yet been completed, so my answer to your question is that to the best of my knowledge, certainly with regard to the individual that you mentioned, I'm not aware of any improper contacts. That doesn't

mean that there were none; I'm just speaking to the best of my knowledge.

Senator MOYNIHAN. Fine.

Mr. Chairman, I wrote to the Chairman of the Commission on December 4th, as Mr. Parler has noted, and asked for the kind of record which Mr. Parler indicates is being compiled in response to the request which you and Senator Simpson sent. I'd like to ask if I can put this letter in the record at this point.

Senator BREAUX. Without objection.

[The letter referred to follows:]

DANIEL P. MOYNIHAN  
NEW YORK

# United States Senate

WASHINGTON, D.C. 20510

December 4, 1986

Dear Chairman Zech:

As you know, I have requested hearings in the Nuclear Regulatory Commission Subcommittee to investigate allegations that Mr. Lyn Nofziger, retained by the Long Island Lighting Company, attempted to influence the licensing proceeding for the Shoreham nuclear plant.

In that regard, I request that the members of their immediate staff, other NRC officials and employees who advise the Commissioners in the exercise of their quasi-judicial functions, members of the Atomic Safety and Licensing Boards and Atomic Safety and Licensing Appeal Boards and members of their staffs provide me and the Subcommittee with the following information immediately:

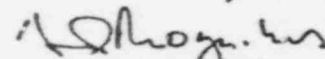
All records of direct or indirect contacts by Mr. Nofziger or his associates, including written communications, notes of conversations, telephone logs and other such materials.

All records of direct or indirect contacts since 1980 by present or former White House staff or employees of the Executive Office of the President, including Mr. Edward Rollins, or present or former members of the Department of Energy, regarding the Shoreham plant, including written communications, notes of conversations, telephone logs and other such materials.

In all cases, please note which, if any of these contacts, have not been placed into the public record.

I appreciate your prompt cooperation.

Respectfully,



Daniel Patrick Moynihan

Honorable Lando W. Zech, Jr.  
Chairman  
Nuclear Regulatory Commission  
Washington, D.C. 20555

Senator MOYNIHAN. I would simply say that it seems to me that my original request would have covered all of the matters that you're now covering. We received some documents; not many.

You're doing a complete search right now in response to the subcommittee's request?

Mr. PARLER. I have asked all of the Commissioners, all of the adjudicatory officials and their advisors, to conduct a complete search and to report to me as soon as possible but no later than May 18th.

Senator MOYNIHAN. No later than May 18th, which is next week? Well, that seems to me very handsome of you, sir, and very orderly. And certainly this Senator has complete confidence in the integrity of the counsel's office at NRC, and we will await your report.

Mr. PARLER. We thank you very much, and we will continue to strive to maintain that confidence.

Senator MOYNIHAN. Thank you, sir.

Senator BREAUX. I take it, Mr. Parler, that ex parte contacts are not improper or illegal if they are reported under the normal procedures for reporting ex parte contacts that are made part of the record, or whatever has to be done?

Mr. PARLER. Of course that, Mr. Chairman, is a cure for prohibited ex parte communications, to make them public and to serve them on the parties.

Senator BREAUX. Do you have any idea how many ex parte contacts have been made on the Shoreham case, for instance?

Mr. PARLER. I also had a search started there with regard to the contacts, such as from local officials and interested persons in the vicinity, school districts and folks like that.

Senator BREAUX. How about Members of Congress? Don't we normally fall into that category of making ex parte contacts? Not intentionally, I'm certain, but the normal contacting regarding the status of licensing procedures or whatever?

Mr. PARLER. Well, of course, communications regarding the status of proceedings are not prohibited by the ex parte rule. They do not fall into that category.

Senator BREAUX. Suppose I wrote you a letter and said, give me the status of it and I wish you would hurry up and make a decision?

Mr. PARLER. Well, if you had just stopped with "give me the status of it," the answer would have been easy. That would not be prohibited by the ex parte rule. When you get into the area of hurrying up and making a decision, that's one that's close. My understanding of the rule—and certainly the legislative history of the 1976 amendment to the APA suggests this—is that in case of doubt, call the communication an ex parte communication, put it in the public record, and serve it on the parties. And I believe that for a communication such as that, that's what I would do.

Senator BREAUX. Any members of your staff or the General Counsel's office ever publish any a legal memorandum which would outline what you would consider to be ex parte type communications which you would make available to, say, the companies and others, in order to give them guidance as to what they can and cannot do?

Mr. PARLER. We have not published a document as such. However, in the statement of considerations, certainly, for the proposed rule, we have approached the problem a different way, by trying to make it as clear as we can what are not prohibited ex parte communications. Perhaps we could improve it, but we haven't tried to identify in a document how the gray areas should be handled. That really seems to me to involve getting the facts and exercising judgment, and in case of doubt, putting the thing in the public record and serving it on the parties.

Senator BREAU. In your opinion, would the Director of FEMA be a decision-maker within the list of prohibited contacts?

Mr. PARLER. Not in my judgment. FEMA is not an adjudicator as far as the NRC licensing process is concerned.

Senator BREAU. Are contacts with FEMA that you would make note of ever sent over as potential ex parte contacts?

Mr. PARLER. Not that I know of. But, of course, contacts with FEMA that would be ex parte under our rules if they were made to our adjudicatory officials could not be communicated to our adjudicatory officials or to their advisors, through some channel.

Senator BREAU. If someone wrote FEMA a letter saying, I think that the Shoreham evacuation plan that's being considered is terrible and unworkable and I really would like you to do whatever you can to turn it down, is that, in your legal opinion, not an ex parte contact?

Mr. PARLER. That's not an ex parte communication under the NRC's rule. FEMA plays a very important role with regard to off-site emergency planning, but FEMA is not the adjudicator or the final decision-maker. The NRC is.

Senator BREAU. But isn't it true that FEMA plays a major role in giving advice and recommendations and counsel to NRC on an integral part of the process, that is, coming up with an accurate evacuation plan—

Mr. PARLER. They certainly do—

Senator BREAU [continuing]. Without which you can't get a license, of course?

Mr. PARLER. What's that?

Senator BREAU. And without that plan, you can't get a license. In your opinion, do you think FEMA, if it is not in the regs, should be included as a decision-maker in the process?

Mr. PARLER. I don't think they should be included as an adjudicatory decision-maker in the process. Perhaps further attention or additional attention should be given to private communications to FEMA in view of the special role that FEMA plays in our offsite emergency planning review and decision-making.

Senator BREAU. My last question is this. There is no exemption for either Members of Congress, the Secretary of Energy, or anybody in the President's cabinet from allowing them to make contacts with any of the NRC decision-makers, is there?

Mr. PARLER. No, sir, there is no exemption for anyone. A private communication which is prohibited is prohibited regardless of its source or regardless of the channel that is followed to get the communication to the adjudicators or to their advisors.

Senator BREAU. Okay. Mr. Parler, thank you very much. We appreciate your testimony.

Mr. PARLER. May I be excused?

Senator BREAU. You're excused.

Mr. PARLER. Thank you.

[A letter, with attachment, from Chairman Zech, NRC, to Senator Simpson follows:]



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

June 10, 1987

The Honorable Alan K. Simpson  
Subcommittee on Nuclear Regulation  
Committee on Environment and Public Works  
United States Senate  
Washington, D. C. 20510

Dear Senator Simpson:

I am responding to your May 8, 1987 letter requesting testimony at the May 14, 1987 hearing on external influence on the Nuclear Regulatory Commission's adjudicatory procedures in the Shoreham proceeding. Subsequent to the receipt of your letter, it was agreed that the Commission could respond by letter. Our General Counsel, Mr. William C. Parler, testified before your Committee on the nature of the Commission's ex parte restriction.

The Commission responded on December 12, 1986 to a similar request from Senator Daniel P. Moynihan. Senator Moynihan had requested all records of contacts, since 1980, with NRC adjudicatory employees by "Mr. [Lyn] Nofziger or his associates...by present or former White House staff or employees of the Executive Office of the President, including Mr. Edward Rollins, or present or former members of the Department of Energy," concerning Shoreham. Based on review of Shoreham docket files, files of the then-current Commission, Appeal Board, and Licensing Board, and files of the Office of the General Counsel, I forwarded four documents to Senator Moynihan. A copy of our response to Senator Moynihan, with attachments, is enclosed with this response. We have not included voluminous pleadings and other documents relating to the Palladino recusal issues referenced in the Moynihan response. Those documents will be forwarded separately if the Committee desires.

Each Commission office, the Office of the General Counsel, and the Chairmen of the Atomic Safety and Licensing Appeal Panel and Atomic Safety and Licensing Board Panel again have searched their files for any records of ex parte contacts during the Shoreham operating license proceeding. Other than the records described below, no such documents were found, and Commission adjudicatory officials and advisors can recall only one pertinent oral communication. Enclosed is a copy of a memorandum describing that communication from Lando W. Zech, Jr. to Samuel J. Chilk, May 22, 1987.

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The Commission's Office of the Secretary also performed a search of docket files -- which are public -- covering the period from September 1983 to May 1987. The Secretary's search produced documentation of one conversation that was treated as an oral ex parte communication. Also, there have been numerous written ex parte communications consisting primarily of correspondence from opponents of the plant, including Governor Cuomo, various New York State and Suffolk County officials, members of Congress, and concerned citizens. In accordance with the Commission's ex parte rules, these previously had been placed in the NRC Public Document Room or had been served on the parties to the Shoreham proceeding, or both. There also appears to be four documents that perhaps should have been served and placed in the PDR, but apparently were not. All the documents described in this paragraph are enclosed.

Sincerely,

*Lando W. Zech, Jr.*  
Lando W. Zech, Jr.

Enclosures:  
As Stated



INDEX - EX PARTE CORRESPONDENCE  
2/28/83 - 6/08/87

6/8/87 Memo To: William Parler, GC, from James Cutchin, Legal Assistant to Commissioner Roberts; re Request for Information on Ex Parte contacts in Shoreham proceeding

5/22/87 Memo To: Samuel Chilk, Secy., from Lando Zech, Chairman; re Conversation with Rep. Hochbrueckner

5/15/87 Memo To: William Parler, GC, from Bradley W. Jones, Legal Assistant; re Request for Documents/Information re Ex Parte Rule

5/15/87 Note To: William Parler, OGC, from Stephen Sohinki, OCM; re Shoreham Ex Parte Contacts in Shoreham

5/15/87 Memo To: William Parler, GC, from B. Paul Cotter, Admin. Judge; re Request for Documents/Information re Ex Parte Rule

5/15/87 Letter To: Rep. Robert T. Mrazek, from Chairman Zech; re April 16, 1987 letter

5/13/87 Memo To: William Parler, GC, from James Asselstine; re Request for Documents/Information re Ex Parte Rule

5/12/87 Memo To: Rosenthal, ASLAP, from Parler, GC; re: Request for Documents/Information re EX PARTE Rule

5/12/87 Memo To: William Parler, GC, from Alan S. Rosenthal, ASLAP; re Request for Documents/Information re Ex Parte Rule

5/5/87 Letter To: John Goudek, from Kenneth Carr, Commissioner; re Shoreham and Seabrook issues w/attch (3 pp)

5/4/87 Memo To: Docketing and Service Branch from Kathaleen Kerr, NRC; re Long Island Lighting Company OL-3, w/attch (3 pp)

3/30/87 Memo To: Docketing and Service Branch, from Kathaleen Kerr, NRC; re Long Island Lighting Company OL-3, w/attch (1 p)

## Ex Parte Correspondence

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3/06/87 Memo To: Docketing and Service Branch, from Kathaleen Kerr, NRC; re Long Island Lighting Company OL-3, w/attch (1 p)

3/5/87 Memo To: Boards and Parties Public Service Company of New Hampshire/Long Island Lighting Company; re Comments on Proposed Rule on "Licensing of Nuclear Power Plants Where State and/or Local Government Decline to Cooperate in Offsite Emergency Planning" which Reference to Seabrook and Shoreham Plants; w/attch (124 pp)

1/28/87 Letter To: William Catacosinos, LILCO, from Joseph Colby, Office of the Supervisor, Oyster Bay, N.Y.; re Emergency Evacuation Plan for Shoreham

1/14/87 Memo To: Docketing and Service Branch, from Kathaleen Kerr, NRC; re Long Island Lighting Company OL-3; w/attch (1 p)

1/8/87 Letter To: NRC from Edwin A. Valentine, Roslyn Water District Board of Commissioners; re LILCO Decontamination Site

12/23/86 Memo Docketing and Services Branch from Kathaleen Kerr; re Long Island Lighting Company OL-3 w/attach (8pp)

12/12/86 Letter To: Sen. Moynihan from Lando Zech, Chairman; re December 4, 1986 letter on NRC employee contacts

12/5/86 Memo To: Chairman Zech, et al., from Michael Blume, OGC, re Senator Moynihan's Request for Records of Executive Branch Contacts with the NRC on Shoreham w/attach. (1 page)

12/4/86 Memo To: Chief, Docketing and Services Branch from Kathaleen Kerr; re Long Island Lighting Company OL-3 w/attch (13 pp)

## Ex Parte Correspondence 3

11/21/86 Letter To: Rep. Edward J. Markay from Lando Zech; re response to questions and documents cited in October 28, 1986 letter on emergency planning exercise issues w/attch (100 pp)

11/18/86 Letter To: John Fry, Administrative Judge, ASLB from William Parler, GC; re LILCO Emergency Planning Contentions

11/17/86 Memo To: Chief, Docketing and Services Branch from Kathaleen Kerr; re Long Island Lighting Company OL-3 w/attch (5 pp)

11/6/86 Memo To: William Clements, Docketing and Services Branch from Kathaleen Kerr; re Long Island Lighting Company OL-3 w/attch (2 pp)

10/31/86 Letter To: Morton Margulies, Chairman, ASLB, from Louis Ferrara, Superintendent of Schools, Plainview-Old Bethpage Central School District, Plainview, N.Y.; re Designation as Relocation Center

10/31/86 Letter To: Rep. Edward Markey from B. Paul Cotter, Chief Administrative Judge; re 10/28/86 letter re Shoreham

10/30/86 Letter To: All Interested Parties from Jacqueline P. Farrell, Chief Deputy Clerk, County of Suffolk; re Sense of the Legislators w/attch (1 p)

10/20/86 Letter To: Fabian G. Palomino, Special Counsel to Gov. of State of New York, from Samuel Chilk, Secretary; re receipt of 10/14/86

10/17/86 Letter To: Senator Alfonse D'Amato from B. Paul Cotter, Chief Administrative Law Judge; re response to letter of October 14, 1986 10/14/86

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## SHOREHAM NUCLEAR POWERPLANT LICENSING ISSUES

### HEARING

BEFORE THE

SUBCOMMITTEE ON  
NUCLEAR REGULATION

OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

MAY 14, 1987

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Senator BREAUX. Let's welcome up the FEMA representative, Mr. George Watson, who is Associate General Counsel for the Federal Emergency Management Agency.

Mr. Watson, we are pleased to have you here and are pleased to receive your testimony.

STATEMENT OF GEORGE W. WATSON, ASSOCIATE GENERAL  
COUNSEL FOR PROGRAM LAW, FEDERAL EMERGENCY MAN-  
AGEMENT AGENCY

Mr. WATSON. Thank you, Mr. Chairman. I am George W. Watson, Associate General Counsel for Program Law, Federal Emergency Management Agency, commonly called FEMA. It is a pleasure to appear before you today in response to your request to the Director of FEMA for any information we would have on ex parte contacts with the Nuclear Regulatory Commission with respect to the Shoreham proceedings. I know of no such contact. FEMA's participation in the two Shoreham proceedings, the Emergency Planning Proceeding OL-3, and the Emergency Planning Exercise Proceeding OL-5, are under my jurisdiction within the Office of General Counsel.

Because these matters are in litigation they are, of course, subject to NRC regulatory procedures, including the rule governing ex parte contacts which appears at title 10 of the Code of Federal Regulations, section 2.780. The substance of the rule is that any contact with a Commissioner or employee of the Commission who acts in a judicial capacity must be on the record or be immediately made a part of the record. This rule, like the lawyer's ethical canon against ex parte contacts, is designed to prevent unilateral or secret attempts to influence the outcome of a matter in litigation. The rules against ex parte communications with members of the NRC and members of the Atomic Safety and Licensing Boards are strictly observed by FEMA. Based on a conscientious inquiry of the current FEMA leadership and staff, I can state on behalf of Director Becton that no ex parte contacts with members of the Commission, their immediate staff, or NRC judges have been made.

Because FEMA's usual role in NRC proceedings is to furnish witnesses supported by FEMA counsel on offsite preparedness issues, normal contacts are made by FEMA attorneys and program people with their counterparts at NRC in the regular course of conducting litigation. Such contacts would not violate the NRC ex parte regulations.

There are, of course, matters of mutual interest and concern between FEMA and NRC not related to specific issues under litigation which do require discussions between the respective staffs, including senior level contacts between the Executive Director for Operations of NRC and the FEMA Associate Director for State and Local Programs and Support. Again, such contacts would not violate the NRC ex parte regulations.

On rare occasions, the Director of FEMA and the Chairman of the Commission will consult on matters of mutual concern to the two organizations, but these discussions revolve around very general matters such as resource requirements placed on FEMA by its participation in the licensing process. On no occasion has there



been contact or discussions between Director Becton and the Chairman of the NRC on specific issues before the two Shoreham Atomic Safety and Licensing Boards, or on any other matter specifically related to Shoreham or other specific cases or litigation issues pending before the Commission or any of its adjudicatory forums.

As there have been no ex parte contacts, no logs, notes, or other information exist.

I would be glad to answer any questions you might have.

Senator BREAUX. Thank you very much, Mr. Watson, for your statement. We will take questions now from Senator Moynihan.

Senator MOYNIHAN. Mr. Chairman, I thank Mr. Watson. I don't have any questions. I think it's a very clear statement of the facts, that there have been no ex parte contacts, no logs, notes, or other information, none. There may be but you haven't found them, and you've certainly looked.

Senator BREAUX. Thank you, Senator.

Senator Simpson has joined us; he may have some opening comments in a minute. I'll let him get prepared.

Mr. Watson clearly stated that FEMA has made no ex parte contacts to anybody at the NRC. How many contacts has FEMA had by others—individuals or Members of Congress or what have you—regarding the Shoreham operation with regard to the emergency evacuation plan that is being considered, if any?

Mr. WATSON. Well, I wouldn't have any idea how many of these contacts might be made. We do get letters from Members of Congress, Senators, Members of the public from time to time, expressing one view or another. I don't have any notion as to how many there might be but they come in from time to time.

Senator BREAUX. Then your opinion as Assistant Counsel is like the General Counsel's, that is, that the regs do not cover FEMA with regard to any proposals which you have which are sometimes a publicly arrived-at proposal on an evacuation plan, for instance, where you take public comment?

Mr. WATSON. Yes, I certainly agree that the NRC ex parte rules would not cover such contacts.

Senator BREAUX. OK.

Does FEMA have any rules of its own with regard to this?

Mr. WATSON. No, we have no ex parte rules. Our role in this is that we serve as an advisor to the NRC and furnish witnesses. So we have no ex parte rules covering our role.

Senator BREAUX. Thank you.

Senator Simpson, any questions for the FEMA representative?

#### OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Mr. Chairman, I have a statement that I will submit for the record and just take a minute for a comment or two.

Mr. Chairman, I do thank you very much. You're doing a splendid job with your chairmanship of this subcommittee and it's a pleasure to serve as ranking member. Senator Moynihan and I dealt with this issue in my last months as chairman, and I have offered to assist in any way here in my willingness to conduct a

hearing to focus on those various allegations of improper ex parte contacts.

I'd like unanimous consent to put in the record the correspondence that Pat and I shared, which is public record anyway, but it might be helpful because it is a vexing thing. (See p. 35.) Now Lyn Nofziger falls into our eye or our ambit of attention with regard to other things, and I think it's just important to know that as we examined this several months ago, we didn't find the things that would have excited, perhaps, the various parties or proponents or opponents. But after an extensive staff investigation of the allegations of improper ex parte contacts, we found no evidence of that. We found no evidence of that improper activity, and now the independent counsel—and even if there had been some found, it was not activity that constituted criminal activity.

I'm not here to speak in behalf of Lyn Nofziger; that's separately going on. I think what created the interest of everyone is that he got paid a bale of money. But let me tell you, everyone has been paid a bale of money in this one. I've never seen more lobbyists on one issue in my whole experience, and they've all hired up an extraordinary array of expensive people. I think I've visited with all of them at various times, and eventually the old ratepayer will pay for that if they ever get the thing either on-stream or off-stream, so I understand it all. I really promise you I do. I'm not being a smart-aleck, but to me, it's an extraordinary sum to pay a lobbyist, and maybe we can all go into that line of work when we get out of here and get with it.

But finally, if we're talking about ex parte issues, the greatest offenders of that in this capital city are the Members of Congress. In going over my check of the NRC files, there have been at least a dozen contacts from various Members of Congress over the past couple of years. We are violating the rules of the Commission. We are violating the ex parte contact situation, if we're really looking at it in its most extraordinary correct form. I think it's helpful to remember that that rule covers that, and if we are thinking as correctly as we should be, then that, too, should be a consideration.

But I think that it is important to remember that it's big money. It's difficult to find whether it's behind-the-scenes influence peddling or in front-of-the-scenes influence peddling, but after spending \$60 million, as I read in this Newsday article, appropriately entitled, "The Meter Is Funning," maybe someday we'll resolve it. I did practice law; I wish I had practiced with much more vigor.

[Senator Simpson's statement and the correspondence referred to follow:]

#### OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Mr. Chairman, I should like to take just a few brief moments here at the outset to offer my thoughts on today's hearing—and to provide a couple of comments by way of background on the events leading up to this hearing. Late last year, my good friend from New York, Senator Moynihan, wrote a letter to me in which he raised a question about whether a well-known lobbyist retained by the Long Island Lighting Company, Lyn Nofziger, had sought to improperly influence the Nuclear Regulatory Commission in its deliberations on the Shoreham license application through what are technically referred to as "ex parte" contacts—or, in a more pejorative reference, "behind-the-scenes influence-peddling." In view of these allegations, the Senator asked for a hearing to focus on this issue.

Shortly after that, I responded to the Senator's request—as the then-chairman of this subcommittee—indicating my complete willingness to conduct a hearing to focus on the allegations of improper ex parte contacts. In addition, I directed the subcommittee staff, in cooperation with Senator Moynihan's staff, to investigate the allegations to determine whether any such improper contacts took place. At this point, Mr. Chairman, I would like to ask unanimous consent to include in the record both Senator Moynihan's initial letter of November 24 and my response of December 24.

Today's hearing is the culmination of the subcommittee's activities over the past six months on the matter originally raised by the Senator from New York. At this point, I think it would be helpful—particularly to those who have not followed this issue closely and who may not fully understand the gist of today's hearing—to “review the bidding”, if you will, on a number of important issues.

First, with the mutual agreement of all parties, we have decided not to call Mr. Nofziger before us today to testify. To the untrained eye, that may suggest that he has refused our request to testify or that he has something to hide. Quite to the contrary, two points need to be emphasized: First, after an extensive staff investigation of the allegations of improper ex parte contacts, we found absolutely no evidence that Mr. Nofziger engaged in any wrongdoing with regard to his lobbying on behalf of Lilco. In short, we found no evidence of any improper activity that warranted calling Mr. Nofziger before this subcommittee. Second, the Department of Justice was asked to appoint an independent counsel to investigate possible criminal wrongdoing by Mr. Nofziger in his representation of Lilco. It was subsequently determined that not only was there no evidence of any improper ex parte contacts by Mr. Nofziger, but that even if there had been, such activity would not have constituted criminal activity. Nevertheless, in view of the fact that an independent counsel has now been appointed on a wholly separate matter involving Mr. Nofziger, the Wedtech matter—and, in view of the fact, that the scope of the appointment is broad enough to encompass Mr. Nofziger's representation of Lilco—we have decided by mutual agreement that it would simply be unfair to call Mr. Nofziger to testify and, in effect, ask him to waive his fifth amendment rights—particularly when Mr. Nofziger appeared to be willing to testify here today if the Lilco matter had not been referred to the Justice Department.

The second major point that I think is worth remembering—in an effort to put this “ex parte” issue in its proper context—is that the worst violators of this rule are the Members of Congress. Every single letter received by the Commission involving contested cases such as Shoreham—whether “pro” or “anti”—is an ex parte contact and is prohibited by the Commission's rules. And according to my rough check of the NRC's files, there have been at least a dozen such contacts from various Members of Congress over the past couple of years. So I think it is helpful to remember just what this rule covers and who it applies to if we are all as serious as we appear—and as we correctly should be—in our efforts to ensure that cases such as Shoreham are decided “on the record.”

And finally, what I think we really come down to here today—and what I suspect the bulk of the testimony will focus on—is the fact that Lilco apparently paid Lyn Nofziger a truckload of money for the work that he did—\$700,000. We can all be stunned about that and vigorous in our denouncement of the arrangement, but amidst all of the hype and hysteria, I think it is worth pausing to reflect on the fact that huge sums of money have been spent by both sides in the Shoreham debate—both pro and anti—in an effort to get this plant licensed or to keep it from being licensed. Indeed, Newsday estimates that over \$70 million has been spent financing the two sides in the Shoreham battle—\$18 million by the principal opponent, Suffolk County. So we kid ourselves if we think that the “political lobbying” is all being conducted by one side, through only “well-connected” former Reagan administration officials. Indeed, I have sat in my office with representatives from both sides in this debate—people who are here to “lobby” the hell out of me on this issue and who have contributed to the \$70 million price-tag—and I can tell you from personal experience that the battle is being waged to the death on both sides. So as we get everybody whipped up here today, it might also be useful for us—and for the American public that will listen to and read about this hearing—to remember that fact.

[The correspondence between Senators Moynihan and Simpson previously referred to follows:]

David P. Moynihan  
New York

United States Senate  
Washington, D. C.

November 24, 1986

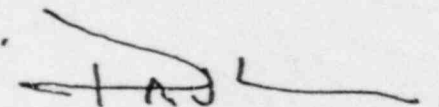
Dear Alan:

It has been reported in the press that Lyn Nofziger was hired by the Long Island Lighting Company in 1983 and subsequently lobbied Edward Rollins at the White House on behalf of a full-power license for the Shoreham nuclear facility.

If these allegations are true, they cast doubt on the integrity of the nuclear licensing process, and it is surely our responsibility, as members of the Subcommittee on Nuclear Regulation, to determine the facts.

I therefore ask that the Subcommittee schedule hearings on this matter as soon as possible.

Best,



Honorable Alan K. Simpson  
United States Senate  
Washington, DC 20510

ALAN R. SIMPSON  
SENATOR FOR NEW YORK



United States Senate  
WASHINGTON, D.C. 20540

December 24, 1986

The Honorable Daniel P. Moynihan  
United States Senate  
Washington, D.C. 20540

Dear Pat:

I just wanted you to know that I tried to reach you several times in the days just before Christmas in order to talk with you about your request for a hearing on Lyn Nofziger's lobbying activities on behalf of the Long Island Lighting Company -- but you and I are apparently clattering down different tracks.

The particular essential that I wanted to communicate with you is that I have always been ready, willing, and able to assist you in having a hearing to consider whether Mr. Nofziger engaged in any improper activities on behalf of LILCO -- and, specifically, whether he sought to influence the NRC's licensing proceeding for the Shoreham plant -- either directly or indirectly -- by improperly communicating with NRC decision makers in an "off-the-record", or ex parte, fashion.

I certainly agree with your concern that if such contacts took place, this would indeed raise legitimate questions about the independence of the NRC's licensing process -- a process that, under the NRC's regulations, is required to be conducted "on-the-record" and free of any "behind-the-scenes" efforts to influence the outcome. The concerns that you expressed in your November 24 letter to me are legitimate and proper areas of inquiry within the Subcommittee's jurisdiction, and I just wanted you to know that I was most willing to present you the opportunity to chair that hearing and to have my fine staff assist yours in setting it up. Please know that.

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Honorable Daniel P. Moynihan  
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If you should decide that you wish to proceed with a hearing, Pat, I would only respectfully ask that we be sensitive to two very real concerns. First, the Shoreham matter is still pending before the Commission for a final decision on LILCO's application for an operating license, with a number of contested issues still to be resolved. In the interest of complete fairness to all of the parties who are participating in this proceeding, I would suggest that we steer clear of those issues that are still being "contested", in order to insure that these issues may be impartially resolved by the Commission based upon the evidence presented in the Shoreham adjudicatory proceeding.

Second, with the Department of Justice now considering whether to recommend an Independent Counsel to investigate Mr. Nofziger's lobbying activities since he left the White House, I think we need to be especially sensitive to the fact that a separate criminal investigation of Mr. Nofziger is now under consideration -- and that the scope of this investigation may well include some of the very issues that you raised in your November 24 letter to me.

The pending criminal investigation does not, in my view, preclude us from conducting a hearing, but it does require us to be especially sensitive to the constitutional rights of those under investigation and to conduct a hearing that is fair and equitable for those who will be called to testify.

Accordingly, if at all possible, I would recommend that we might wait to schedule the hearing until after the Department of Justice and the special three-judge panel have reached a final decision on the appointment of an Independent Counsel, and then, if Mr. Nofziger's representation of LILCO is beyond the scope of the Counsel's mandate, proceed with a hearing at your pleasure. And you'll be in charge then anyway!

If, for whatever reason, it is your judgement that an earlier hearing is essential -- prior to resolution of the pending criminal investigation -- I would be most willing to discuss with you how we

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might best approach such a hearing, and at the same time, insure that the rights of those who are the subject of any pending criminal investigation are fully and fairly protected.

If you desire such an early hearing, there are a number of approaches that would, in my view, fairly balance the interests of the subcommittee and the rights of those who have been accused of criminal wrongdoing, and I would be most eager and willing to discuss these with you at your convenience.

You do know, Pat, that I am always most willing to work with you and your staff to address the concerns that you have raised and to make every effort to accommodate your request. You have always been an absolute delight to work with. You gave me extra special attention and consideration when I came here as a freshman Senator and you worked with me and "trained me up" on many issues and I have always been very deeply appreciative.

I, in turn, have always tried diligently -- whether in the majority or the minority -- to work with you and try to accommodate your every request. I think you will find that so. I will continue to enjoy working with you as we each assume our new roles.

You are a very special person and I enjoy you very, very much. I shall never allow our personal legislative and Senatorial relationship to disintegrate into one where simply staff is making the contacts.

Ann joins in sending our love to you and Liz and every good wish for the holiday season.

With best personal regards,

Most sincerely,

Alan K. Simpson  
United States Senate

AKS/jck

Senator BREAUX. Thank you very much, Senator.

Mr. Watson, I think we have no other questions for you at this time. We appreciate your testimony and your being here very much.

Mr. WATSON. Thank you, sir.

Senator BREAUX. I'd like to welcome up at this time the Chairman of the Board and Chief Executive Officer for the Long Island Lighting Company, Dr. William Catacosinos.

Doctor, we are pleased to have you here and we look forward to your testimony.

STATEMENT OF WILLIAM J. CATACOSINOS, CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER, LONG ISLAND LIGHTING CO., ACCOMPANIED BY ANTHONY EARLEY, GENERAL COUNSEL, LONG ISLAND LIGHTING CO.

Mr. CATACOSINOS. Thank you, Mr. Chairman.

Mr. Chairman, with your permission I'd like to introduce the gentleman alongside of me.

Senator BREAUX. Absolutely.

Mr. CATACOSINOS. This is Mr. Anthony Earley, who is the General Counsel of the Long Island Lighting Company.

Senator BREAUX. Okay.

Mr. CATACOSINOS. My name is William J. Catacosinos. I am Chairman and Chief Executive Officer of the Long Island Lighting Company, a position I have held since January 30, 1984. I am pleased to have an opportunity to discuss with you the problems which LILCO confronts in its efforts to license the Shoreham electricity plant, and the role Nofziger-Bragg Communications played in advising the company in its dealings with Government and the public.

In order to understand why LILCO hired Mr. Nofziger's firm, a decision which predates my tenure as Chief Executive Officer, it is essential to get a sense of the problems LILCO faced in 1983, the year it hired the firm of Nofziger-Bragg Communications. The company faces many of those same problems today.

As part of its obligation to provide a continuous and reliable source of electricity on Long Island, LILCO constructed the Shoreham plant. The project commenced in 1968 with the cooperation of local, State and Federal Governments. More than 75 local and State permits were required to construct the plant. Local and State governments granted every one of them.

It was not until 1983, when the construction of the plant was virtually completed, that Suffolk County suddenly reversed its long-standing support of emergency planning for Shoreham. In an attempt to prevent Shoreham from operating, county officials refused to participate in the emergency plan, a plan county personnel had developed in cooperation with LILCO. As you know, an adequate emergency plan is a Federal requirement of all nuclear plants. Furthermore, the county officials decided that the Federal requirements concerning nuclear plants were inadequate. The county maintained that Shoreham required a 20-mile emergency planning zone, in contrast to the 10-mile zone that is required of every nuclear plant in the country.



In 1983 New York State, under a new Governor, also reversed its long-standing support for Shoreham and announced that it would not override the wishes of the local government. The previous administration had indicated a willingness to cooperate in the emergency plan even without county participation.

By the time the State and the county reversed their positions, LILCO had invested billions of dollars constructing the Shoreham power plant, an investment made with the cooperation and encouragement of these same local and State governments. LILCO was placed in a position of having to license the plant in opposition to two powerful and well-funded governments. Meanwhile, the finance cost on the plant were accumulating at the rate of more than a million dollars each day. State and county officials took the position that LILCO shareowners should bear the cost of the plant, even though government opposition prevented the plant's operation.

LILCO improved on an emergency plan originally developed by Suffolk County, and the company implemented its own plan using its employees to substitute for Government workers, which is permissible under the rules of the Nuclear Regulatory Commission. Because of the uncertainty created by the opposition of State and local governments to the Shoreham plant, the financial markets closed to the company. As a result, LILCO experienced a cash shortfall despite annual sales of nearly \$2 billion.

The business of a utility is to provide electricity and gas to its customers. But the problems the company faced when local and State governments reversed their positions and started using the Shoreham plant for political purposes were beyond the expertise of the company. The company sought assistance to deal with the problems of politics, the press, communications strategies, advertising, and developing support for its powerplant. Nofziger-Bragg had an excellent reputation in this field, and the company sought their assistance and retained the firm in late 1983.

When I became Chairman of the company in 1984, I reviewed the consultants the company had retained and the performance of each. I decided to continue LILCO's relationship with Nofziger-Bragg because in my opinion their expertise in the communications field directly addressed the problems which the company confronted. Please remember that the reason the company was on the verge of bankruptcy was not because LILCO had trouble in the electric and gas business. Those businesses were booming as Long Island was enjoying a prosperous economy. The reason the company was going bankrupt was that LILCO was caught in the middle of an intergovernmental squabble with Federal regulations assuming that local and State governments would cooperate in emergency plans for nuclear plants, and local and State governments refusing to cooperate, substituting their own judgment about the feasibility of emergency planning.

The actions of Suffolk County and New York State have enormous consequences for national energy policy. By withdrawing from the emergency plan, these governments have held the Shoreham plant hostage even though the Nuclear Regulatory Commission deemed that the plant was ready for commercial operation nearly two years ago when it granted Shoreham an operating li-

cense, limited to 5 percent of full power because of the dispute over emergency planning. The Shoreham plant has satisfied all Federal regulations save those which result from the non-cooperation of the State and local governments. Regarding emergency planning, which is the only issue preventing the full operation of Shoreham, the Nuclear Regulatory Commission's licensing board concluded after lengthy investigation and deliberations that it did not find "anything unique about the demography, topography, access routes, or jurisdictional boundaries in the area in which Shoreham is located; to the contrary, the record fails to reveal any basis to conclude that it would be impossible to fashion and implement an effective offsite emergency plan for the Shoreham plant."

New York State and Suffolk County governments have provided every local and State government a formula for shutting down nuclear plants by simply withdrawing from the emergency plan. And we see that formula being applied in Massachusetts, Ohio, and North Carolina. The strategy is fraught with dangerous consequences for national energy policy.

But the strategy goes beyond national energy policy and jeopardizes national security. This Nation obtains more than 16 percent of its electricity from nuclear power plants, and these plants save hundreds of millions of barrels of oil each year. The Shoreham plant alone will save seven to nine million barrels of oil each year. New York State burns an inordinate amount of oil to produce electricity—approximately 25 percent of the oil burned in the United States to produce electricity. You and I know that increasing this country's dependence on oil threatens its national security.

The refusal of local and State governments to cooperate in emergency plans undermines the financial stability of utilities and deprives the stockholders of the value of their investment, investments made in good faith. Carried to its logical conclusion, the actions of these governments would force a utility to go bankrupt because power plants cost billions of dollars. The consequences of a bankruptcy of a major utility could seriously impair the economy of an entire region.

These are some of the problems which Nofziger-Bragg advised LILCO about, as well as keeping the company abreast of developments in Federal and State energy policy. The firm invested considerable time learning about the numerous issues relating to Shoreham, a necessary prerequisite before they could advise the company. In that effort, the firm reviewed documents and met with LILCO staff regularly. The firm made itself readily available to advise LILCO as the company encountered various financial and political crises. We valued that availability.

Nofziger-Bragg offered advice on dealing with the press, advertising, and support for the Shoreham plant. The firm suggested ways to frame issues for communicating with public officials and our customers about the Shoreham plant. LILCO relied on Nofziger-Bragg Communications for their assessment of the most appropriate method of communicating with Federal, State and local officials.

The firm advised the company concerning the circular nature of public fear about nuclear plants, politicians appealing to the fear of the public which leads to even more fear until the fear grows out of

proportion with reality. The firm advised the company on ways to translate national energy policy into a course of action acceptable to local public officials, always mindful of the difficulty in getting local public officials to support a plant publicly.

Nofziger-Bragg Communications assisted the company to set up a meeting with the Secretary of Energy so that I could talk with him about Shoreham's national implications. The firm also arranged a meeting between myself and the Administrator of FEMA to discuss the review of the Shoreham emergency plan and an exercise of that plan to assess its effectiveness. Another meeting was arranged with the Secretary of Treasury, at the time that the company was on the verge of declaring bankruptcy, where we discussed the financial health of the utility industry and national energy policy. On the same topic, a meeting was arranged with the Vice Chairman of the Federal Reserve Board. On another occasion, a meeting was arranged with Mr. Peter Cohalan, the Suffolk County Executive, where we discussed Shoreham's role in national energy policy. In all those meetings, I was present.

At the time I joined LILCO, the firm of Nofziger-Bragg Communications was receiving \$20,000 per month for the services they rendered. Since LILCO was on the verge of bankruptcy, I asked for a reduction in fees from all our consultants, and Nofziger-Bragg agreed to reduce their retainer to \$10,000 per month. The fee was subsequently restored to its original amount, and in April 1987 the fee was reduced to \$5,000 as the workload dropped.

By any calculation, these are great sums of money. But they are standard fees for this type of work, and they must be seen in the context of the enormous sums of money LILCO is paying for finance charges on the Shoreham plant, which are in excess of \$1 million a day. If the work of Nofziger-Bragg Communications moved the Shoreham plant even one day closer to commercial operation, the company would more than recoup the money it has paid to the firm. The LILCO shareholders are paying for the services of Nofziger-Bragg, and I wish we did not need such services. These fees must also be seen in comparison to the enormous sums of money that Suffolk County and New York State are paying to consultants to support their position. Suffolk County alone has spent approximately \$20 million of the taxpayers' money to fund their opposition to Shoreham. Given the importance of this issue to national energy policy, to the economy of Long Island, and to the financial health of LILCO, I believe I would have been remiss had I not retained someone of Mr. Nofziger's stature and competence.

In many respects the problems resulting from the actions of Suffolk County and New York State are more acute now than ever before. Long Island has enjoyed a prosperous economy over the past few years as its high technology, financial services, electronic, aerospace and defense industries have thrived. Peak demand for electricity on Long Island has increased by an average of 2.5 percent over the past four years. This year LILCO has a 400-megawatt shortage in its required electricity reserves. LILCO has gone to extraordinary lengths to prevent brownouts or blackouts this summer, but the company cannot assure its customers of a continuous supply of electricity.

Despite the fact that the positions of the county and the State are contrary to local and national energy policy, these governments have committed themselves to opposing Shoreham even though there is no factual basis for their opposition. I urge upon you, the Members of Congress, in the interests of energy policy and national security, to prevent local and State governments from holding nuclear plants hostage.

Thank you.

Senator BREAUX. Thank you very much, Mr. Catacosinos.

Senator Moynihan, questions?

Senator MOYNIHAN. Thank you, Mr. Chairman.

Dr. Catacosinos, we had a problem last week. I respect to a related matter. A senior partner of the firm of Munton & Williams came before us and, in discussing the LILCO matter, spoke of the "contagion" that he said had spread through Long Island. I asked him what kind of contagion he meant; he spoke of it as if it were a contagious disease. He said, yes, that's exactly what we think of it as, a contagious disease, which was not a very attractive way to describe the viewpoints of the elected officials and citizens of our State, but then he's not from our State. He's made \$14 million so far, as I gather—no, I'm sorry, \$13,292,000—to call us "disease-bearing creatures."

There's a certain tone here, sir. You said that "the problems the company faced when State and local governments reversed their positions and started using the Shoreham plant for political purposes were beyond the expertise of the company." How do you mean, they started using the Shoreham plant for political purposes? What political purposes?

Mr. CATACOSINOS. Senator, when I became Chairman of the company I spent a fair amount of time objectively evaluating the Shoreham situation and the need for the plant. And as you and I have spoken, I spent a lot of time dealing with State and local officials in the Shoreham issue. It became very clear to me as a novice to the utility business, because I'm not a utility executive—my businesses were involved with computers and electronics—that there was no logic or rational thinking behind the opposition that suddenly erupted in 1983 when Mr. Cohalan withdrew his support for emergency planning for the Shoreham plant. And therefore I concluded that the rationale for those actions was more political than rational or logical, and I maintain that position today.

Senator MOYNIHAN. And Mr. Cohalan was the elected County Executive of Suffolk County? I believe he was Republican, was he not?

Mr. CATACOSINOS. That's correct, sir.

Senator MOYNIHAN. And the newly-elected Governor in 1983 would have been Mr. Cuomo, who is a Democrat. Do you think his position was taken for political purposes?

Mr. CATACOSINOS. No, I do not believe that the Governor's position was done for political reasons. I spoke with the Governor—

Senator MOYNIHAN. Then why did you cite him? "Local and State governments reversed their positions and started using the Shoreham plant for political purposes."

Mr. CATACOSINOS. I believe that the county's position was reversed for political reasons.

Senator MOYNIHAN. And the State?

Mr. CATACOSINOS. And later, the issue within the State became a political issue.

Senator MOYNIHAN. Any matter in State government is to some extent a political matter.

Now, to continue. Did Governor Cuomo reverse the State's position for political purposes?

Mr. CATACOSINOS. No. As I said earlier, Senator, I did not believe that that was the case.

Senator MOYNIHAN. Then what did you mean by saying that "The State government reversed its position for political purposes"?

Mr. CATACOSINOS. I believe that—when we wrote that, we encompassed what has occurred since that time.

Senator MOYNIHAN. And what has occurred since that time?

Mr. CATACOSINOS. I believe that since that time, that this issue has become a political issue in the State of New York and in the County of Suffolk, and is becoming a political issue in the County of Nassau.

Senator MOYNIHAN. Doctor, I don't have to tell you that the word "political" is not banned in the halls of Congress. We accept it as an honorable matter. But to say that it was reversed for political purposes obviously adds a pejorative quality to that statement.

Well, all right. But Mr. Cohalan reversed his position for political purposes; the State of New York did it for political purposes, the Governor did not, being somehow disassociated from the State of New York.

So you turned to Nofziger-Bragg, which advised you on this extraordinary phenomenon of public fear about nuclear plants, "politicians appealing to the fear of the public, which leads to even more fear until the fear grows out of proportion"—you paid money for that kind of advice?

Mr. CATACOSINOS. We paid money for a lot of advice from the firm of Nofziger-Bragg that goes beyond—

Senator MOYNIHAN. I admire your candor, sir. "Nofziger-Bragg assisted the company to set up a meeting with the Secretary of Energy."

Mr. CATACOSINOS. Yes, sir.

Senator MOYNIHAN. "Assisted the company to set up a meeting with the Secretary of Treasury. Assisted the company in arranging a meeting with the Vice Chairman of the Federal Reserve Board. And so on. I see later on here you engaged Mr. Clark Clifford, who "assisted you in getting a meeting with the Speaker of the House of Representatives."

Do you find anything unseemly about that? First I'll do something that shows my distinguished Chairman that I am not a lawyer, because I ask a question to which I don't know the answer. Did you pay anybody to assist you to arrange meetings with me?

Mr. CATACOSINOS. No, sir.

Senator MOYNIHAN. Was the word around that you didn't have to pay people to meet with me?

Mr. CATACOSINOS. You were kind enough to accept my visit to your office.

Senator MOYNIHAN. I was happy to meet with you.

Mr. CATACOSINOS. Yes, you were.

Senator MOYNIHAN. And I would be happy to meet with you tomorrow, as I would have done yesterday. Why did you pay three-quarters of a million dollars to get a meeting with the Secretary of Treasury? I could arrange that meeting by picking up the phone.

Mr. CATACOSINOS. It was more than just those meetings, Senator, as we've outlined in our presentation. It was a lot more advice on different kinds of issues that Nofziger-Bragg Communications—

Senator MOYNIHAN. But you know, the kind of advice—what hurts me—we've had Mr. Nofziger up here. We have nothing against Mr. Nofziger in this hearing, and as I said earlier—and you were here, I believe—we wish him well in his present difficulties, and they have nothing to do with this. But he talked with us with a kind of candor that we've known and admired him for. He's a political man and has every right to be. So we know what his politics are. He was saying that there's a good chance that there will be two or three major utilities in this country that would file for bankruptcy in the next months, thus creating a politically-explosive issue for the Administration in the middle of the election campaign.

Mr. Nofziger's advice was to scare the hell out of the Republican Administration, and into giving a license. You don't have to know much about that kind of statement, and I don't blame him for thinking up that kind of tactic and that kind of approach to it. It's perfectly within the range of his rights to go in and say to a Secretary of Energy, "Good God, man, give them the license or we'll lose Nassau and Suffolk Counties." But is it good judgment on your part to pay hundreds of thousands of dollars for that kind of advice?

Mr. CATACOSINOS. Well, as I pointed out earlier, Senator Moynihan, the advice was much broader than just that, and it was in areas that went beyond introducing—

Senator MOYNIHAN. Give us some advice.

Mr. CATACOSINOS. Well, for example, the company has a public perception problem, and it has had that problem for a number of years. The question was, how can we frame the issues in a manner or a way in which we can change that? Because it's not true, but it's a perception. And I spent a fair amount of time with Mr. Nofziger trying to develop a program that would allow us to get the message to the public in such a manner that we would become believable, and that's very important to us.

Senator MOYNIHAN. Fair enough. Fair enough. But let's be candid here, because we're just trying to bring the behavior of all the parties to a level of civility and openness that I would expect of you as a respected scientist.

You have an image problem, you say?

Mr. CATACOSINOS. That was one of our problems, Senator.

Senator MOYNIHAN. Is it a problem here in Washington?

Mr. CATACOSINOS. No. That problem is on Long Island.

Senator MOYNIHAN. And Mr. Nofziger is a well-known authority on Long Island?

Mr. CATACOSINOS. He's a well-known authority on communication problems, and that's what we were dealing with.

Senator MOYNIHAN. I'm not going to question your judgment, much less your word, but what Lyn Nofziger advised you on was



not on how to persuade Newsday to change its editorial policy, or Mr. Cohalan to reverse his or the Suffolk County Legislature to reverse theirs. Mr. Nofziger's specialty was scaring the hell out of the Secretary of Energy. What did Mr. Clark Clifford provide you in the way of counsel?

Mr. CATACOSINOS. I visited Mr. Clifford to review the situation on Long Island in terms of the need for energy, the fact that we have a finished nuclear plant that's a quality plant that's met all those requirements, that in my view if that plant were not licensed it would affect our national energy policy, and I was concerned. And I reviewed with him the previous Administration's policy on energy and how that links with the current Administration's policy on energy.

Senator MOYNIHAN. It's just so painful. And he suddenly had an inspiration; he said, let's go meet Tip O'Neill, he'll have some thoughts?

Mr. CATACOSINOS. He didn't have a sudden inspiration. We had a long discussion.

Senator MOYNIHAN. What did you think you were getting in the meeting with the Speaker?

Mr. CATACOSINOS. I wanted to understand what the policy of this government was concerning nuclear plants, whether our energy policy would continue or would not continue. I had a company that was on the verge of bankruptcy. I had a community I had to serve that was running out of energy. I had very few alternatives, and I needed—

Senator MOYNIHAN. Yes, sir, but you had a senior Senator who is perfectly able to open any door in this city for you, perfectly willing to do it, and you didn't ask him—you didn't ask me.

Mr. CATACOSINOS. Senator, I came to visit with you, and you were kind enough to meet with me. We had a nice discussion, and I had a sense of your view concerning LILCO, which I appreciated, and you have been helpful to us. When we had problems on tax financing legislation, you were kind enough to assist us and to assist the ratepayers on Long Island in getting that legislation passed, and we came to you for help and you provided it.

Senator MOYNIHAN. You surely did, and I was perfectly willing to do it.

Mr. CATACOSINOS. And we thank you for that.

Senator MOYNIHAN. You're talking of some major provisions of the tax bill.

Mr. CATACOSINOS. Yes, sir.

Senator MOYNIHAN. Had you no sense, sir, that someone who is perfectly prepared to help you, as I was, openly, in tax measures and so forth, would be offended and hurt and feel at unease—a genuine unease. I haven't spent a third of a century in public life not to know when to feel uneasy and when not to feel uneasy, to find you engaging a political consultant in this town who took you around to the Secretary of Treasury and the Federal Reserve Board and the Secretary of Energy, and have someone else take you around to the Speaker—didn't you know that this suggests that you've got a problem with your case? People don't do that unless they have problems. We're your representatives. We represent Long Island. A call to Mr. Hodel, a call to Mr. Volcker, a call

to Mr. Baker, a call to the Speaker—you didn't have to pay me three-quarters of a million dollars. You dare not.

Mr. CATACOSINOS. I wouldn't try, Senator.

Senator MOYNIHAN. I'm sure you wouldn't. I'm sure you would not try.

Mr. CATACOSINOS. I would not.

Senator MOYNIHAN. But you know, you've done something wrong and I don't think you see it, and I don't think perhaps that you intended it. But it just looks awful. I am not in any sense an enemy of your company. I am on this committee the eleventh year now, with these issues. I feel very strongly that you have to have State and local cooperation in an emergency evacuation plan, but, oh, Heaven—you have a counsel who is drawing \$13 million, and the contempt with which that man last week spoke of the people of Long Island as having a contagious disease.

You can't avoid it. The term, "for political purposes," has a pejorative quality to it. Alas, the word "political" typically has been like that in our history.

Mr. Chairman, I don't want to seem to torment Dr. Catacosinos. I just wish this hadn't happened. This has jeopardized the company; it just has, and it's just painful.

Thank you, Mr. Chairman.

I'm sorry to have to say that, Doctor. I leave with this upon you: I wish you had come to me and asked.

Mr. CATACOSINOS. Well, I am going to come to you after this and discuss this issue with you.

Senator MOYNIHAN. Well, you'll be welcome to do that.

Mr. CATACOSINOS. Fine. Thank you.

Senator BREAUX. Let me ask you, Doctor, when your company retained the Nofziger firm, did you have a contract with them?

Mr. CATACOSINOS. We had a letter of agreement with them, yes, sir.

Senator BREAUX. Did the letter of agreement outline those areas that you were employing Mr. Nofziger—the services that he was supposed to perform?

Mr. CATACOSINOS. It was not done specifically, Mr. Chairman. I wasn't involved when the contract was drawn up; it was done before my time. But we used their boiler plate language for the description.

Senator BREAUX. Did the contract call for various contacts among public officials? Did you spell that out in the contract letter?

Mr. CATACOSINOS. No, sir.

Senator BREAUX. When you renewed the contract did you use the same format and not spell out what you wanted them to do in that contract letter?

Mr. CATACOSINOS. We didn't renew it. We just allowed it to continue in its existing form.

Senator BREAUX. Did your contract spell out for the Nofziger firm what activities they were not to do?

Mr. CATACOSINOS. Not specifically.

Senator BREAUX. You've got a whole battery of lawyers that I presume were aware of the ex parte regulations, and your firm had, I take it, prepared some kind of agreement with the Nofziger



firm. Why did you not at that time spell out to the Nofziger firm that they were specifically prohibited by your contract of employment from engaging in ex parte activities or in any activities that the regulations covered and prohibited?

Mr. CATACOSINOS. That was a given, from our point of view. And that's something within the company that we know.

Senator BREAUX. Well, that's a given for your company, but you were employing a public relations firm that was to be involved in communications on behalf of your firm to educate the public.

Mr. CATACOSINOS. Yes, sir.

Senator BREAUX. You were not employing a firm with specialty of background or expertise in nuclear regulatory matters. Would it not have been appropriate and proper for your attorneys and for you to include in that contract specifically the things that you knew by law were prohibited? Say, I'd like to do this, that and the other, but you can specifically not do these things that are prohibited by the ex parte rulings?

Mr. CATACOSINOS. Well, why don't I turn to my General Counsel and ask him to respond to that, if I may?

Senator BREAUX. Was that done?

Mr. EARLEY. Mr. Chairman, our investigations indicate that in discussions with Mr. Nofziger, when the company first started to employ his services we made it clear that it was our intention that there be no improper ex parte contacts—that was not what we were looking for. So we did lay it out. It was not included in the written contract, but from what we can tell from our investigations—neither Dr. Catacosinos nor myself were with the company at the time—but our investigations indicate that he was told that at meetings when the representation started.

Senator BREAUX. Can you tell us who from LILCO met with Nofziger and discussed that?

Mr. EARLEY. I believe the representative of LILCO was a Mr. Freilicher, who is one of the company's vice presidents.

Senator BREAUX. So from your statement it's clear that the LILCO company made it very clear and certain to the Nofziger firm that you were employing them for a certain type of communications assistance, etc., but that they were specifically told by LILCO that they were not to be involved in anything that would be prohibited under the cover of ex parte proceedings and contacts?

Mr. EARLEY. Absolutely, Mr. Chairman. Our investigation convinces us that throughout the relationship we used Mr. Nofziger's firm's services for many things, but made it clear that he was not to engage in any improper ex parte contacts. And as far as our investigation can tell, there were none.

Senator BREAUX. Let me just ask you this out of curiosity. Are other employees of LILCO made aware of the illegality of ex parte contacts with NRC officials?

Mr. EARLEY. Yes, sir.

Senator BREAUX. And how are they made aware?

Mr. EARLEY. Generally, for officials that have routine contacts with public officials, myself or other lawyers on my staff or outside counsel will periodically review the ex parte requirements and regulations with those people.

Senator BREAUX. But you did not do that with Nofziger's firm?

Mr. EARLEY. As I said, I was not personally with the firm at the time. I think the company did review with him, in the initial meetings, the fact that the company did not intend any violation of ex parte requirements.

Senator BREAUX. I guess it's a key point in the sense that someone actually sat down with the people that were hired at the rate at which you were hiring them, and outlined for them what you wanted them to do, but also covered specifically that there were certain activities that they could not do by law, and that LILCO did not intend them to go any further than what the law allowed.

Mr. EARLEY. Of course, we did not intend them to go beyond what the law allowed—

Senator BREAUX. I understand.

Mr. EARLEY. As Dr. Catacosinos said, the discussions with the firm included advice and consulting on a wide range of issues, many of which had nothing to do with contacts with public officials. Some of them had, as Dr. Catacosinos said, to do with communications to the public.

Senator BREAUX. I realize that your company did not intend them to do anything that was illegal, but I also feel that the company, in hiring someone to relate to the nuclear regulatory industry on this question of the Shoreham plant—the company, I think, has an obligation to let your employees know—in this case, let Nofziger know—what the boundaries were, what the rules were. This is not something that they were experts at as far as the rules and regulations of this industry are concerned. I think what I'm trying to determine is whether LILCO in fact specifically made the Nofziger firm aware, through your counsel's office, of the activities that were prohibited by ex parte rules and regulations.

Mr. EARLEY. Mr. Chairman, as I said, I think the company did make Mr. Nofziger aware of those rules and the company's intention that he not violate those rules through the initial discussions that representatives of the company had—

Senator BREAUX. But there's no letter sent to him? There's nothing in the contract or agreement of employment with the Nofziger firm that says, here's what you cannot do, and by the way, it's the law?

Mr. EARLEY. No, sir, there is nothing in writing.

Senator BREAUX. Let me ask you about two things, just for your comments on them.

In the statement of one of the witnesses on the panel following this panel, representing an organization called "Citizens to Replace LILCO,"—and I ask you this now because you won't be here when they testify—points to what they say is a strange event relative to when Suffolk County attempted, in July 1986, a takeover of LILCO.

The county's plan was not even finalized—when a high U.S. Treasury Department official, J. Roger Metz, wrote to Suffolk County Executive Cohalan. In the letter, Metz cast serious doubts on the plan's legality and the tax-free status of the county's proposed borrowing. He also threatened an IRS audit, move of questionable legality. Stranger yet, Metz then sent a copy of his letter out on Unifax, which is a financial wire service.

My question is, was this action taken, Doctor, after you and Mr. Nofziger met with the Secretary of Treasury?

Mr. CATACOSINOS. I met with the Secretary of Treasury in 1984, so this event took place at least 2 years after that.

Senator BREAUX. Do you remember discussing with the Secretary anything about the tax-free status of the county's proposal?

Mr. CATACOSINOS. No, sir. My discussions with the Secretary of Treasury were really informative. I outlined for him our financial situation; what I believed was going to occur within the next 30 to 60 days—that was the bankruptcy of the company; that I had done everything I could to conserve cash, but we were still short about \$100 million in terms of our needs, and that we probably would not have a choice but to file for bankruptcy. And I felt it was important that he be aware of it because there were other utilities in similar straits as LILCO, and I had a deep concern not only for my company but for what might occur as a result of our bankruptcy.

Senator BREAUX. Was there any discussion at that time that you might remember about Suffolk County's proposal to take over LILCO?

Mr. CATACOSINOS. That proposal, at that time, had not occurred, Mr. Chairman. It occurred later.

Senator BREAUX. OK.

This same person says:

LILCO's emergency evacuation drill on February 13, 1986, which was monitored by FEMA's Regional Director, Frank Petrone—they say he would not delete a sentence from his report, stating that because there was no local governmental participation in the drill, FEMA could not give reasonable assurance that the public could be protected. He was later fired from his job.

Do you know if this occurred after you and Mr. Nofziger met with the FEMA Director?

Mr. CATACOSINOS. That occurred much after.

Senator BREAUX. So you met with the FEMA Director prior to the firing of the FEMA Regional Director?

Mr. CATACOSINOS. No, I had met with the FEMA Director at least a year and a half before that drill took place.

Senator BREAUX. Did you discuss with him, if you remember, any problems that you were having with the FEMA Regional Director, Mr. Petrone?

Mr. CATACOSINOS. We did not discuss Mr. Petrone.

Senator BREAUX. OK.

Senator, do you have any questions?

Senator MOYNIHAN. Thank you, Mr. Chairman. I have no questions. I would also say I have no doubts this was very badly advised, sir, but we'll go on to the next thing. Thank you, Mr. Chairman.

Senator BREAUX. Doctor, thank you very much for your answers.

Mr. CATACOSINOS. Thank you.

Senator BREAUX. I'd like to welcome next Mr. Gregory Blass, who is Presiding Officer of the Suffolk County Legislature, and he is accompanied by one of his colleagues, whom he will identify for the record.

Mr. Blass, we are pleased to have you here.

Senator MOYNIHAN. Mr. Chairman, may I just make a personal remark to say how much I welcome Mr. Tony Bullock to these hearings since he is an old and good friend and an extraordinarily capable legislator. Since I almost didn't recuse myself from any

questions, I am so disposed to agree with whatever Mr. Bullock thinks.

Mr. BULLOCK. Thank you, Senator.

Senator BREAUX. Mr. Blass.

STATEMENT OF GREGORY J. BLASS, PRESIDING OFFICER, SUFFOLK COUNTY LEGISLATURE, LONG ISLAND, NY. ACCOMPANIED BY TONY BULLOCK, SUFFOLK COUNTY LEGISLATURE, AND MEMBER, SUFFOLK COUNTY LEGISLATURE ENERGY AND ENVIRONMENT COMMITTEE; AND HERBERT H. BROWN, ESQ., KIRKPATRICK & LOCKHART, WASHINGTON, DC

Mr. Blass. Thank you, Mr. Chairman. I would like first to, for the record, take this opportunity to introduce Legislator Tony Bullock who is a member of our Legislature's Energy and Environment Committee, who is on my far right, and seated next to me is counsel to the Legislature on Shoreham-related licensing proceedings, Mr. Herbert Brown of the Washington, D.C. law firm of Kirkpatrick & Lockhart. Inasmuch as some of our presentation relates to issues in litigation, he will probably be responding or adding to our testimony.

I would also like to add for the record, sir, that we have received the subcommittee's request for written documentation with regard to ex parte communications. We received that letter on May 12, and we are already in the process of complying with it. We assure the subcommittee that information as requested will be supplied in an expeditious manner.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear today on behalf of Suffolk County concerning external influences on the NRC's Shoreham proceedings. This is an important subject, and we commend the subcommittee for its efforts.

During 5 years of participating before the NRC, Suffolk County has seen repeated lapses in the NRC's objectivity. For example, we have witnessed the NRC "harmonizing" out of existence a fundamental safety criterion that stood in LILCO's way; bending regulations so that LILCO need not confront adverse evidence; changing rules to give LILCO another chance, and putting greater procedural burdens on the county than on LILCO. On one occasion, the NRC's bias against Suffolk County and New York State was so extreme that we had to win a U.S. District Court order to restrain the NRC from snuffing out our constitutional rights.

Among the large number of prejudicial actions taken by the NRC toward Suffolk County since 1982, here are a few that have happened recently.

One, the staff of the Nuclear Regulatory Commission was caught cribbing—literally copying—portions of LILCO's brief and claiming the plagiarized words and ideas as the staff's own. The staff did this after secretly getting an advance copy of LILCO's brief.

Two, the Executive Director of the staff made up what he claims to be facts about the position of Suffolk County officials. His claim is contrary to the sworn affidavit of the County Executive. When confronted with having effectively called elected County officials liars—and indirectly, also embracing the Governor of New York

State within that label—the Executive Director simply stood on his so-called “belief.”

Three, the Executive Director of the NRC staff refuses, without justification, to meet in public with the Suffolk County Legislature concerning what the county finds to be the staff's blatant favoritism toward LILCO.

Four, at this moment—at this very moment, gentlemen—the NRC is absolutely prejudicing the rights of Suffolk County. LILCO has asked the Commissioners to review its request for a license to operate Shoreham at 25 percent power. While the question of whether—of whether—the staff should be permitted to review LILCO's request is awaiting a ruling by the Commissioners, the staff and its contractors are in large numbers already doing the review. What greater show of the Commissioners' bias against Suffolk County is there than having its own staff do exactly what LILCO wants while the issue of whether the staff should do it is pending before the Commissioners?

The question for the county, once again, is what to do. Are we to be forced to secure our rights by having to go to court? Can we not expect the NRC to follow even the most fundamental standard of due process?

Suffolk County's experiences leave for us no conclusion: but that the Commission has given up objectivity for LILCO's cause. In short, we can infer only that either overtly or by a wink-and-nod, the Commission has signalled its staff to run interference for LILCO.

The county has found it impossible to explain charitably the contradictions at the Nuclear Regulatory Commission. The Commissioners claim impartiality, but they act as LILCO's partisan. The staff professes safety first, but helping LILCO is what it shows. Even the words of the President of the United States are made into but an echo at the Commission. In October 1984, the President pledged that his Administration does not favor the licensing of Shoreham over State and county objections. Yet, the Secretary of Energy openly repudiates these words by working with LILCO for the licensing of the Shoreham plant, and the Commission itself proposes to change its regulations in defiance of the President's words.

Is this the product of NRC or Administration cynicism? Or the product of someone—perhaps even many people—trying to wire the system to license Shoreham? Suffolk County does not have the answer, but we know that something is awry at the Commission.

As this subcommittee examines the facts it will observe a disparity between how LILCO approaches the Shoreham case and how the county does. We have used our resources to try to make the NRC follow its own rules and apply the law. Our efforts have been overwhelmingly before administrative tribunals and courts. LILCO, on the other hand, has devoted large resources to trying to get around the law and to change the rules.

Suffolk County has read that the NRC Commissioners have decided to retain a special counsel to investigate the conduct of the Commission and staff in several matters. The county believes very strongly that the conduct of the Commission and staff concerning the licensing of Shoreham is a matter that should be added to the special counsel's mandate.

That concludes my statement gentlemen.  
[An attachment to Mr. Blass' statement follows.]

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Commission

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station,  
Unit 1)

Docket No. 50-322-OL

SUFFOLK COUNTY AND NEW YORK STATE MOTION FOR  
COMMENCEMENT OF INDEPENDENT INVESTIGATION OF DEPARTMENT  
OF ENERGY INFLUENCE ON SHOREHAM PROCEEDINGS

Documents described in the attached New York Times article, dated March 27, 1985, disclose efforts of the Department of Energy to influence the outcome of NRC proceedings concerning the Shoreham Nuclear Power Plant. Among other things, these documents reveal DOE's effort to:

- "Lobby NRC and FEMA to amend, interpret, issue opinions, or adopt presumptions regarding their regulations and rules which are favorable to DOE's policies."
- "Force NRC and FEMA to accept (change rule?) utility exercise of EP without local cooperation or presumption that local authority will act in a real emergency."

Such approaches of DOE to "lobby" and "force" the NRC to take actions which affect the outcome of the Shoreham proceeding are repugnant to the NRC's adjudicatory process and, particularly, are unlawful under the governing Administrative Procedure Act.

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Atomic Energy Act, and NRC regulations. The Shoreham proceeding is an on-the-record adjudication. DOE's off-the-record initiatives with the NRC to alter the established legal framework and to sway the direction and context of NRC decisionmaking are an obstruction of the lawful regulatory processes.

Moreover, the documents described in the Times article reveal DOE's approach to influence actions of the Federal Emergency Management Agency. For example, in a March 8, 1985 letter from DOE Secretary Herrington to FEMA Director Giuffrida, DOE urges FEMA to conduct an exercise of LILCO's offsite emergency plan. The conduct of such an exercise is a contested issue in the Shoreham proceedings. Secretary Herrington does not even reveal that the New York State Supreme Court on February 20, 1985 declared LILCO's plan to be illegal. Thus, DOE is urging FEMA to join with LILCO to attempt to achieve an unlawful objective.

FEMA, as the NRC's evaluator of offsite emergency preparedness, plays a significant role in the adjudicatory process as a purportedly impartial participant. The apparent efforts of DOE behind-the-scenes to influence FEMA's on-the-record representations and opinions undercut the integrity of the Shoreham adjudicatory proceedings. At this point, it is therefore not clear if the NRC and FEMA have been acting for themselves or, at times, as the surrogates of DOE and DOE's undisclosed agenda for the outcome of the Shoreham proceedings.

Accordingly, to bring fully to public light the extent of DOE's involvement at the NRC and the influence of DOE on the content and direction of the NRC's Shoreham proceedings, and to



establish the foundation on which action might be taken to cleanse any taint which has resulted from DOE's activities. Suffolk County and New York State hereby move the NRC immediately to commence an independent investigation of DOE's activities. This investigation should be aimed at disclosing DOE's lobbying, for- ing, influencing, or any other actions which might affect or already have affected the content, direction, or outcome of the NRC's Shoreham proceedings.

Respectfully submitted,

Martin Bradley Ashare  
Suffolk County Department of Law  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11788

*Herbert H. Brown*

Herbert H. Brown  
Lawrence Coe Lanpher  
Karla J. Letsche  
KIRKPATRICK & LOCKHART  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036

Attorneys for Suffolk County

*Fabian G. Palomino*

Fabian G. Palomino  
Special Counsel to the Governor  
Executive Chamber, Room 229  
State Capitol  
Albany, New York 12224

Attorney for Mario M. Cuomo,  
Governor of the State of New York

April 1, 1985

[From the New York Times, Mar. 27, 1985]

# REPORTS SHOW U.S. ROLE IN DISPUTE AT SHOREHAM

(By Matthew L. Wald)

Officials of the United States Department of Energy have been actively conferring with each other and counterparts at other departments to find ways to help license the Shoreham nuclear power plant, according to department documents.

The Secretary of Energy, John S. Herrington, testified recently that the department was doing nothing about the dispute over emergency planning at Shoreham. He said he supported a pledge by President Reagan in October not to impose a Federal solution on the licensing problem over the objections of state and county governments.

But the newly released documents indicate that the department has been looking for ways to help Shoreham's builder, the Long Island Lighting Company, overcome the refusal of Suffolk County and New York State to participate in emergency planning.

That issue threatens to block licensing of the \$4.2 billion reactor, which is on the North Shore of Long Island, 55 miles east of New York City.

## NO COMMENT FROM ENERGY

Philip D. Kief, deputy press secretary of the department, said yesterday afternoon that the department would have no immediate comment on the situation.

The documents were released by the energy conservation and power subcommittee of the House Energy and Commerce Committee, which questioned the Secretary closely earlier this month on the department's activities.

Lilco has developed an emergency plan using meter readers, linemen, and other employees of the utility in the roles usually filled by police, fire and other emergency personnel, and Lilco would like to test the plan.

Among other activities, the Department of Energy appears from the documents to have been active in supporting Lilco's request, and in exploring strategies to lend Federal authority to the utility's plan.

For example, the documents show continuing contact between the department and the Federal Emergency Management Agency, which is responsible for evaluating emergency plans, grading emergency drills, and advising the Nuclear Regulatory Commission on the state of preparedness.

In a March 8 letter to the Director of the Emergency Management Agency, Louis O. Giuffrida, the Energy Secretary, Mr. Herrington, wrote, "The Department of Energy will continue to support the testing of the Shoreham plan as soon as possible."

## NEED FOR TEST SOON

An internal Energy Department memorandum dated May 4, 1984, said, "The clear gap at this time is the need for a test of the Lilco plan."

If the Federal Emergency Management Agency were to help develop the plan and test it, the document said, "there is a high probability that it would be a sufficient basis for licensing Shoreham."

"We encourage FEMA to develop and test the plan," the memo said.

Another memo included a draft of a proposed executive order intended to solve the problem of Lilco's legal authority to put the plan into effect.

It described an interagency task force—directed by the President's science advisor and including officials of the Emergency Management Agency, the Nuclear Regulatory Commission and the Department of Energy—which was studying plants "held hostage" by local objections to emergency planning.

After the Three Mile Island accident, in March 1979, the N.R.C. insisted that all new plants had to have emergency plans before they opened.

## CHALLENGE BY JUDGE

A justice of New York State Supreme Court ruled in March that Lilco did not have the legal authority to exercise the plan, because employees of a private utility could not assume police powers and governmental functions like directing traffic, blowing emergency sirens, or deciding when to declare an emergency and advise the public to take shelter or flee an area.

The documents indicated that the department knew it was acting against the position of the county and state.



An Energy Department summary of Shoreham's status that appeared to have been written in late December or January speculated that the state or county "might attempt to enjoin the conduct of such an exercise on the basis that Lilco would be violating some state law."

Another department memo, undated but evidently written after May of last year, listed "short term" tasks for the agency, including "Lobby NRC and FEMA to amend, interpret, issue opinions, or adopt presumptions regarding their regulations and rules which are favorable to DOE's policies."

#### COMPLAINT FROM THE HOUSE

The subcommittee chairman, Representative Edward J. Markey, a Massachusetts Democrat, complained in a letter sent yesterday to Mr. Herrington that the department's activities were "at odds with President Reagan's and your own pronouncements on this issue."

"It raises a serious concern as to whether the task force is out of control," he said.

Mr. Herrington, testifying before the energy conservation subcommittee on March 13—five days after his letter to the head of the Emergency Management Agency—was asked by Representative Markey, "What, if anything, is D.O.E. doing with respect to Shoreham's emergency plans?"

Mr. Herrington replied, "I don't think we are doing anything."

Mr. Markey, pressing the new Secretary for details, asked him to submit documents describing the department's involvement in Shoreham's emergency plans if any were discovered later.

The department's response was to allow the committee staff access to its files. The documents it released were taken from the department's task force on nuclear construction projects.

#### UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

#### COMMISSIONERS:

Nunzio J. Palladino, Chairman  
Thomas M. Roberts  
James K. Asselstine  
Frederick M. Bernthal  
Lando W. Zech, Jr.

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Docket No. 50-322 OL

In the Matter of  
LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station)

#### ORDER

In a Motion dated April 1, 1985, Suffolk County and the State of New York requested the Commission to investigate the U.S. Department of Energy. In support of their motion, movants attach a March 27, 1985 New York Times article describing DOE documents which, according to movants, reveal DOE's effort to improperly "lobby" the NRC and FEMA, and to "force" the NRC to license Shoreham. The State and County assert that these activities are "repugnant" and "unlawful."

We deny the motion. Our reading of this motion is that the "unlawful" conduct of which movants complain involves some unspecified ex parte contacts. However, movants have provided no evidence of improper ex parte communications between DOE and the Commission, and we are aware of none ourselves.

It is so ORDERED.



For the Commission

*Samuel J. Chalk*  
SAMUEL J. CHALK  
Secretary of the Commission

Dated at Washington, D.C.  
this 5<sup>th</sup> day of June 1985.

Senator Breaux. Thank you very much, Mr. Blass, for being here with us.

Senator MOYNIHAN, any questions?

Senator MOYNIHAN. Again, Mr. Chairman, I'm going to demonstrate that I'm not a lawyer by asking a question, the answer to which I don't have.

Mr. Blass, are you a Democrat or a Republican?

Mr. BLASS. I'm a Republican, sir.

Senator MOYNIHAN. A Republican. I know that Mr. Bullock is a Democrat, so this is a bipartisan matter that comes before this committee.

Again, the previous remarks by Dr. Catacosinos were about the county and the State having reversed their position for political reasons. I wonder if I could ask you, sir, and Mr. Bullock—what do you suppose was intended by that remark, followed by a quick exemption of the Governor from anything that the State might have done, which is a curious dissociation?

Mr. BLASS. If there's any contagion, Senator, it's—

Senator MOYNIHAN. Well, wait. First of all, do the citizens of Suffolk County suffer from some contagious disease?

Mr. BLASS. Absolutely not, sir. Absolutely not. The fact is that the citizens of Suffolk County, and with increasing awareness the citizens of Nassau County, are concerned about safety, public health and safety, in the event of a radiological accident.

Senator MOYNIHAN. Would you think that an attorney who has collected some \$13 million in fees was prudent in describing a concern for safety as a "contagious disease"?

Mr. BLASS. This, Senator, is the kind of outrageous comment that we've heard from the Long Island Lighting Company for quite some time, usually at the expense of the ratepayers as it is aired or summarized in statements of counsel. But the reversal of position is something else that I think deserves to be explained on the record.

Suffolk County and the State of New York did not reverse any position at all. What happened clearly was that as a result of the Three Mile Island accident in 1979, which was long after the Shoreham plant had started to be built, the County of Suffolk was allowed to participate in emergency response planning as the regulations of the NRC, which were changed after Three Mile Island, provided. And we did participate, and we participated extensively. Many hours of hearings, which I sat through as a member of the Legislature, hearing witnesses and testimony on all sides of the issue; reams of documentary evidence; days and days of hearings again, and we concluded quite openly and publicly—and properly, I might add—that Long Island does not lend itself to an evacuation in the event of an emergency at a nuclear plant, no matter how remote certain proponents of the nuclear plant might argue an accident might be. We did not reverse anything.

Senator MOYNIHAN. If I could ask Mr. Bullock to expand on that. Do I take it to be the judgment, and the bipartisan judgment of the County Legislature that when, in the aftermath of Three Mile Island and the new regulations which were prompted by hearings held by this subcommittee of which I was then a member, and I am today, that in the aftermath the county found itself required to

conduct evacuation drills, whereupon you came upon a set of facts which persuaded you that the conditions, the realities, were such that it wouldn't work?

Mr. BULLOCK. Well it would seem, Senator, that anyone who lives on Long Island might think that getting home for Jeopardy is an emergency, with the condition of our road systems there. Without a doubt, the Three Mile Island incident brought serious attention to the nuclear industry at large and concern over safety and evacuation. But as Mr. Blass said, the county never reversed its position with regard to the plant. We had strong opposition throughout the county to the Jamesport plant, which LILCO attempted to build prior to Shoreham. There has been long-standing opposition and a realization that emergency planning on Long Island is a very, very difficult thing to accomplish.

Furthermore, I truly feel that the attempts to characterize the attention to safety and evacuation planning as a political ploy—a political football, if you will—is both unfair and unflattering to those elected officials at the town and county level who are very concerned and representing widespread concern among their constituents.

Senator MOYNIHAN. In that same connection, how does it feel as elected officials of a democratic part of our country—it's been there a long time, and I understand you were mostly settled from New England in that part of Long Island. We have a border with Rhode Island; very few people know it, that there's a border between Suffolk County and Rhode Island.

How do you feel about a public utility entirely confined to the two counties of Nassau and Suffolk coming down to Washington and engaging a former White House operative for three-quarters of a million dollars to arrange meetings with the Secretary of Treasury and the Administrator of the Federal Emergency Management Agency, Mr. Blass?

Mr. BLASS. It is definitely, Senator, a red flag, a red flag symbolized by the numerous meetings—of which we have evidence—that took place between Long Island Lighting Company officials and NRC officials, White House officials, FEMA officials—

Senator MOYNIHAN. White House officials?

Mr. BLASS. Absolutely.

Senator MOYNIHAN. White House officials?

Mr. BLASS. We are aware of these meetings having taken place, and we know that subsequent to these meetings actions occurred which showed remarkably extraordinary favoritism toward the Long Island Lighting Company in the Shoreham issue. And as a result of that, we think that the matter merits much more serious investigation, and we're hopeful that the subcommittee will pursue that. We believe that the Long Island Lighting Company's favored status by the regulatory process probably would not have resulted had it not been for the interference on the part of Mr. Nofziger, and we think that the information has to be obtained because we don't have it. We can't get it, but we do have the tip of the iceberg with all of these meetings occurring, and chronologically and in sequence, all these favored acts taking place.

Senator MOYNIHAN. Could you—Mr. Brown—I see you're consulting with your attorney.

Mr. BLASS. It's certainly not our intention to limit it to Nofziger. It's on the company as a whole; a number of individuals we think are involved in what we've seen as favored status for a utility that can't meet the regulations as they exist and cannot provide for evacuation planning, as our courts have ruled that they cannot.

Senator MOYNIHAN. If I could ask you, Mr. Bullock, if you were the elected official of your county and came to this city looking for someone to arrange for a meeting with a member of the Federal Reserve Board, would you have hesitated to have come to my office or Senator D'Amato's office?

Mr. BULLOCK. Not at all, sir.

Senator MOYNIHAN. Wouldn't it have been a normal thing?

Mr. BULLOCK. It would be the first thing I would think of.

Senator MOYNIHAN. I mean, do you think you have to buy your way into the offices of the Federal Reserve Board member?

Mr. BULLOCK. I wouldn't think that would be necessary.

Senator MOYNIHAN. I would hope that the reputation of the Federal Government is better than that. I don't mean to impugn the motives of others, but access to public officials in this city is open and democratic and is most readily arranged by representatives from the Congress when the matter is in the Executive Branch.

Mr. Blass, you would not have felt it inappropriate to ask any Member of Congress, either from the House or the Senate, to arrange meetings for you, would you?

Mr. BLASS. No, sir. We think it would be most appropriate.

Senator MOYNIHAN. And on political advice about the local image of a company, would you have come to Washington?

Mr. BLASS. No, sir.

Senator MOYNIHAN. Is there nobody on Long Island?

Mr. BLASS. We know enough about the image of the company on Long Island not to seek advice, and pay three-quarters of a million dollars for it, in Washington.

Senator MOYNIHAN. So you used the words "red flag." You wouldn't have done that if you weren't involved with things you ought not to have been involved with. Is that what you're trying to say?

Mr. BLASS. Yes, sir.

Senator MOYNIHAN. Mr. Bullock.

Mr. BULLOCK. Well, I think the retaining of the Nofziger firm in 1983 indicates to a certain degree that, unlike Dr. Catacosinos' characterization of the need to retain that firm, it was not so much because local government or State government had reversed their positions. It was because the public had begun to lose confidence in the Long Island Lighting Company, and that loss of confidence was reflected, I think, in the elected officials who represent the company. This loss of confidence is the result of a long litany of incidents which I will not go into at this time, but problems with the plant, the escalation of costs, the time delays, the concern for the evacuation drill, and so forth. It really is, I think, a totally unfair characterization to say that the loss of confidence in the Long Island Lighting Company was the result of a few elected officials. It's the result of their own mismanagement, in my opinion.

Senator MOYNIHAN. And just to make the point, because we had someone last week from Connecticut who is part owner of the Sea-

brook in New Hampshire speak of this being a country of heroes, but there are cowards; and obviously cowards are not among his favorite people, and he withdrew the statement when asked to name one.

But this was a gradual process in the county, one event after another caused you to learn more and began to think differently. Isn't that right?

Mr. BULLOCK. And indeed, sir, the public, in reviewing a recent poll conducted by Penn & Showen for the eastern end of Long Island, which has been more opposed to the plant, perhaps, than the western end of Suffolk and Nassau Counties, in 1981 there were 70 percent of the public that felt the plant should open, and perhaps 16 percent were opposed. That figure is now 70 percent opposed and 16 percent in favor. The figures have reversed themselves in a few short years.

Senator MOYNIHAN. Well, it certainly does not suggest great confidence—it is just very painful to see a utility behaving the way this utility has behaved. Some of the people, and I include the president, Dr. Catacosinos, are of much higher quality than this, but there's a pattern of technical incompetence and then misjudgment. I think your image, Mr. Blass, "red flag," is a very good one.

You will give this committee those names and dates that you do have?

Mr. BLASS. Yes, sir, we will.

Senator MOYNIHAN. I thank you very much, Mr. Chairman, and I thank these two attractive young legislators. I can't doubt that they'll probably be running against each other for my seat one of these days.

Senator BREAUX. Thank you very much, Senator.

I think one thing that is clear is that too much money has been spent on this whole effort by lawyers and PR firms and everybody. The LILCO testimony that was received earlier said that Suffolk County alone has spent approximately \$20 million of the taxpayers' money to fund their opposition to Shoreham. Could you comment on what that money was used for and where it came from?

Mr. BLASS. Certainly, sir. The money was used for not only the retaining of counsel and technical experts for the various proceedings that have occurred in relation to the Shoreham licensing over many years, but also on the economic front, one of which was a prudency hearing conducted by the State Public Service Commission. That went on for quite some time and resulted in a ruling that was unprecedented, nationwide, declaring and finding that the Long Island Lighting Company imprudently incurred \$1.55 billion in costs at the Shoreham plant as the result of mismanagement. Therefore, that amount of money shall not be placed in the rate base and charged to the ratepayers. We view that as paying back our investment significantly, but that was also part of the expense, paying several law firms, not just one; and also proceeding with the various consultants we've had on the acquisition of the Long Island Lighting Company through a tender offer. In other words, the public utility study and analysis that we've done, it was included in that, too. Our cooperation in joining with the State in analyzing the feasibility of a public utility in place of the Long Island Light-



ing Company—monies were expended for that, as well, all in that figure over a period starting in about 1979 or 1980, up until now.

Senator BREAUX. The money for these expenditures would just come out of your general revenues, tax base from Suffolk County?

Mr. BLASS. I'm sorry I didn't answer that part of your question. Yes, sir, it came from operating expenses.

Senator BREAUX. Did Suffolk county ever find itself employing any people to work on this issue, other than lawyers and technicians?

Mr. BLASS. No, sir. We have not hired any lobbyists. We have a lobbyist in Washington that represents the county, but his work in regard to the Shoreham issue has been quite limited. Counsel has provided, in response to inquiry by the committee, a list of actions that they've taken that relate to meeting with Members of Congress and members of FEMA, members of the NRC. All these were by no means ex parte; they were quite the opposite.

Senator BREAUX. Did any of your lawyers or anybody on the county government discuss with your attorneys the proscriptions and prohibitions under the ex parte rules and regulations?

Mr. BLASS. Yes, sir, we had discussions like that.

Senator BREAUX. From your attorneys with the county officials, telling you what you can and can't do?

Mr. BLASS. Yes, sir. We've had expert advice and have benefitted by it greatly.

Senator BREAUX. Did the counties ever ask their attorneys to set up meetings with officials in Washington to discuss the Shoreham licensing?

Mr. BLASS. We haven't asked them to do it for us. We've talked to them about it. We've consulted with them, but we have not asked them to set the meetings up for us, other than those meetings we've had with them here in Washington, with the lawyers themselves.

Senator BREAUX. Did your lawyers engage in meetings with any officials in Washington regarding the Shoreham licensing?

Mr. BLASS. Let me ask Mr. Brown to answer that directly.

Senator BREAUX. Sure. Mr. Brown.

Mr. BROWN. I'm sorry, Mr. Chairman. That might require correction.

We met with a number of—there have probably been three or four hearings on the Shoreham case over the last five years, and before several of those there were meetings—courtesy calls paid by those who had testified with the chairman of the committee, and perhaps others on the committees, and I might well have set up a couple of those. I don't recall off the top of my head, but it certainly wouldn't surprise me if I was the one to do it. If I hadn't been the one to do it, it would have been someone in the county calling the Congressman from his district and having it done.

Senator BREAUX. That would be meetings between some of the lawyers with whom?

Mr. BROWN. These would have been meetings with the people testifying for the county, and the analogy would have been Mr. Blass and Mr. Bullock meeting yesterday with you and Senator Moynihan, with me there present.

Senator BREAUX. Were there any meetings between you or your lawyers or county officials with any officials in Washington?

Mr. BROWN. With public—

Senator BREAUX. Well, other than the witnesses. I think you were talking about the witnesses that you all had met with and prepared and worked with for their testimony.

My question is, did you all set up any meetings with people receiving testimony or talk to any of the people receiving testimony?

Mr. BROWN. Well, the members of the committees before whom we would appear, yes.

Senator BREAUX. Are we talking about congressional committees or NRC committees?

Mr. BROWN. Congressional committees. There were other—I listed—the counties have not had an opportunity to reply to your letter yet. I did, as perhaps you know, submit a letter this morning to the committee, and it mentioned the meetings at which I was present. And there were some that did not involve Congress, yes.

Senator BREAUX. And who would they have involved?

Mr. BROWN. Well, there were—I would have to refer to the letter. There were a couple of meetings with FEMA officials, with county officials, again; virtually every meeting, I was there to accompany county officials who were making their position known. One was with the Secretary of Energy. The County Executive read in the newspaper in the spring of 1984, in a front-page New York Times story, that the Secretary of Energy—or the Department of Energy—had been meeting in the White House with LILCO and with FEMA officials, and that this planning that was going on there was for the purpose of figuring out ways to get Shoreham on line.

He was outraged. He wrote a letter immediately to Secretary Hodel and demanded a meeting—he requested a meeting with Secretary Hodel. The meeting was granted, and we came to Washington. We met at the Secretary's office. There were, I'd say, a half a dozen meetings.

Senator BREAUX. Did you ask the Secretary to take any action or to do anything?

Mr. BROWN. The point was to tell the Secretary not to do what he was doing, and to make plain to him—I was not the one who relayed the words to the Secretary; the County Executive did—he made plain to him, as the Secretary summarized those words after their private meeting, that Suffolk County would not adopt or implement a plan because the county had concluded that safe evacuation was not possible. I had sat in the anteroom with the two Deputy County Executives and three assistants to Secretary Hodel. We told them precisely the same thing and gave them some facts. They were puzzled, incidentally, by some of the facts, and there was an enormous release of documents by Congressman Markey a couple of years ago. And I found it curious, and chuckled somewhat, to see that immediately after the meeting one of Secretary Hodel's assistants instructed his superior to find out if we had told the truth with one of the facts. And a note came back to a Mr. Gelde saying that indeed, it was. And the fact was this. We pointed out that it was a fantasy for Mr. Hodel and others to speak about an accident occurring on Long Island where there are three roads



and just a few people trying to evacuate; that in fact, everyone—virtually everyone, a very large number, in fact, 1.2 million people or more would seek to evacuate; that's what our studies showed. And to lend credibility to that we said, that's precisely what happened at Three Mile Island where the evidence was that Governor Thornburg advised 2,500 people to evacuate, and 144,000 people evacuated.

They didn't believe that. The note went to the subordinate of Mr. Gelde saying, "Check this out." We have the note that came back, which Mr. Markey made public, saying something along the lines, "Believe it or not, these guys are right; 144,000 did."

Senator BREAUX. I didn't understand one way or the other. Did you say that the Secretary had indicated that the evacuation or emergency plan was not workable?

Mr. BROWN. No, he reflected what the County Executive had said to him. They met privately for 10 minutes, perhaps. The Secretary walked out, cordially summarized the meeting in the presence of the County Executive to the five of us who had remained in the anteroom, to say accurately what had been said by the County Executive. We all shook hands and departed.

Senator BREAUX. Did he indicate that he would take any action based on that information?

Mr. BROWN. No.

Senator BREAUX. Did you ask him to do anything, or just drop by to tell him about it?

Mr. BROWN. I didn't speak to him, nor did the Deputy County Executives. I do not know if anything else was said to him. The only thing I know was said to him is what he reflected had been said to him.

Senator BREAUX. Mr. Blass and Mr. Bullock. Do either of you know if the county requested the Secretary to take any action based on the information that was presented?

Mr. BLASS. All that we are aware of is that we asked that those meetings that we had read about in the Times stop, and we also clarified—or the County Executive at the time—clarified the county's position on evacuation planning and the difficulties we had with it.

Mr. BROWN. Mr. Chairman, if I might add something that's relevant.

The problem of an inexplicable bias at the NRC in the Shoreham proceedings goes back a number of years. The record demonstrates a great deal of hostility and adversity in this proceeding against Suffolk County and against New York State.

I've been on all sides of regulatory proceedings, in the Government, outside the Government, representing oil companies in California, Louisiana, other places; the polluters, in those instances. I've been on the environmental side for States; I think every side there is. I have never experienced an agency that has demonstrated in a proceeding such hostility, such slantedness, and such partisanship as is being done institutionally by the NRC in this proceeding. I do not make blanket accusations against the Nuclear Regulatory Commission here. I take a rifle with a scope, and I say, there's something wrong.

We were so appalled at one point that on—I believe it's April 1, 1985—we were so appalled at a New York Times article that revealed documents that had been released by a Congressional committee showing that the Department of Energy had memoranda which stated the following. Among other things these documents, which were just released by the New York Times, revealed DOE's efforts to "lobby NRC and FEMA to amend, interpret, issue opinions, or adopt presumptions regarding their regulations and rules which are favorable to DOE's policies to force NRC and FEMA to accept"—and then in parentheses it says, "change rule?"—"utility exercise of emergency plan without local cooperation or presumption that local authority will act in a real emergency."

We wrote that such approaches of the DOE to lobby and force the NRC are repugnant to an adjudicatory case, which indeed is a courtroom. We filed a document styled "Suffolk County and New York State Motion for Commencement of Independent Investigation of Department of Energy Influence on Shoreham Proceedings." We took the only documents we had. We took the history of our experience in the NRC, which in fact is more slanted than anything I have seen or other counsel, who are experienced with what I speak of. We laid it before the Commission, and on the 5th of June a simple order came out stating, "We deny the motion." This is the NRC. "Our reading of this motion is that the 'unlawful' conduct of which movants complain involves some unspecified ex parte contact. However, movants have provided no evidence of improper ex parte communications between DOE and the Commission, and we are aware of none ourselves."

Now, none of us is so naive or unsophisticated as to walk away from a statement coming out of DOE saying, "We intend to lobby NRC and to force the NRC and FEMA to accept a rule change," and to accept the NRC's misconstruction of that as though we are alleging some kind of ex parte conduct. Or more importantly, none of us in this room is so naive as to think that this doesn't constitute the biggest "red flag" of the sort that Mr. Blass referred to earlier. What more does it take, I ask?

Well, it must take a lot more for the NRC to look at its own processes.

Senator BREAUX. Were there any other contacts with any other Government officials other than the Secretary of Energy, made by you or by the attorneys?

Mr. BROWN. We met at meetings at which LILCO was present, and the NRC was present, where FEMA was present. These were major meetings.

I'm searching my mind. The meetings we had at which other parties were not present involved the one I referred to with DOE; I believe two or three meetings with FEMA. One meeting was a private meeting with FEMA; immediately afterwards, LILCO met with the same FEMA officials. They apparently preferred to have the meetings separately, and that was the protocol.

The second meeting was a meeting with all the parties at LILCO's headquarters.

The third meeting was at LILCO's headquarters with FEMA, and a fourth meeting was a private meeting we held in 1983 or 1984

with three FEMA officials dealing with the utility plan which LILCO had then submitted.

That's the extent of those meetings.

Mr. BLASS. I should add, sir, that during the situation involving the possibility of the formulation of a public utility for Suffolk County, after that strange sequence of events with the Secretary of Treasury's office and the Under Secretary or Assistant Secretary—I forget his exact title—we requested and, after much difficulty, obtained a meeting with him, members of our Legislature and members of our financial advisory staff, to discuss what the tax problems would be with our public utility discussions, but these are not related to the licensing proceedings or with any adjudicatory problem.

Senator BREAU. Senator Moynihan, any questions?

Senator MOYNIHAN. Just one remark. I think it should be clear, as I take it from Mr. Blass, that the county has a person here in Washington on a full-time basis, or whatever, who represents the county with respect to legislative matters and executive matters, which is a very routine arrangement that cities have and States have. He's involved with Shoreham, too.

Mr. BLASS. He's been involved as our lobbyist. We have had very little—

Senator MOYNIHAN. But you have not engaged any firm?

Mr. BLASS. No, sir.

Senator MOYNIHAN. It was routine. He was there before and he'll be there afterwards.

Mr. BLASS. Nor does he specifically deal with the Shoreham issue for us.

Senator MOYNIHAN. Right.

And just for comment, in that question of Shoreham's tactics in this matter, you must have heard of the Citizens for Shoreham Electricity.

Mr. BLASS. Oh, yes, sir.

Senator MOYNIHAN. Which has cost some \$2.2 million. Were you given to understand at this point that this was a spontaneous citizens' organization?

Mr. BLASS. They advertise themselves to be. I recall newspaper ads urging people to join, and they had citizens' names. They conveyed—or attempted to convey—a grass roots movement, which was entirely contrary to the grass roots reaction to the Shoreham issue on Long Island.

Senator MOYNIHAN. And the reality is that this citizens' group was paid for by Shoreham?

Mr. BLASS. I understand it's \$1 million or \$2 million a year goes from Long Island Lighting Company to the organization.

Senator MOYNIHAN. From the Long Island Lighting Company. I'm sorry; that was my mistake.

Mr. BLASS. Yes, sir.

Senator MOYNIHAN. Is that appropriate behavior for a public utility which is granted a public monopoly?

Mr. Bullock?

Mr. BULLOCK. I would have to say it's outrageous behavior for a public utility, and it really signals the major distinction between the monies that have been expended by Suffolk County to see that

the law is adhered to and that the safety of our residents is secured, and the monies expended by the Long Island Lighting Company to get the plant open at all costs. They have engaged public relations firms, advertising campaigns in the tens of millions of dollars. These sorts of manipulative—

Senator MOYNIHAN. Manipulative is a very gentle word. Deceptive might be a better word.

Mr. BLASS. Yes, sir. I think there's a big difference between the county spending money on attorneys and specialists in the field of rate reductions and so forth, and the Long Island Lighting Company's retaining of Lyn Nofziger and advertising firms and major media blitzes which they are presently involved in, in both radio and television and print media, in the millions of dollars, which will serve no public information purpose whatsoever.

Senator MOYNIHAN. Mr. Chairman, I just have to tell you that I find it baffling. I mean, we do remember that this is a public utility that was given a monopoly. Some standards of behavior are expected. Everywhere we look, we find efforts to manipulate; we would expect open advocacy, yes, but manipulation no, and deception, certainly not.

Thank you, gentlemen, very much.

Thank you, Mr. Chairman.

Senator BREAU. Just looking at this whole issue I've about decided that we're all in the wrong business, except, Mr. Brown, maybe you.

I'm looking at that Newsday article—the people are really paying for both sides of the issue. The taxpayers in Suffolk County, the utility users in that area—Mr. Brown, Kirkpatrick & Lockhart, your firm is listed as having been paid \$9,511,349. You're not doing as well as the firm for LILCO; they were paid \$13,292,469 for providing legal counsel on this issue. They paid the Impel Corporation of Atlanta, nuclear consultants, \$16 million. The fees are absolutely astronomical, and I must say that's true on both sides of the issue.

I don't think Congress realized we were creating a jobs program like we did when we started this. And the truth of the matter is, both sides are doing the same thing. I don't think the system really calls for that, but that's what has happened, and that's the unfortunate thing.

Mr. BLASS. Sir, I think the system is working the way it should as far as the county side is concerned because it is the taxpayers' money, and the people of Suffolk County by overwhelming margins—not only as they have expressed it in the electoral process for the county government races, but also in public opinion polls and elsewhere—overwhelmingly support the expenditure of what is necessary—

Senator BREAU. I'm not arguing with that. It's a good point. But the problem is, they're saying that Long Islanders are paying \$70 million in this fight, supporting both sides. That's the unfortunate thing, and it's unfortunate for the citizens in the area.

Mr. BLASS. Sir, I would respectfully ask the subcommittee to consider the impact on the economy of Long Island if the Shoreham nuclear plant goes on line, because then we have no choice and the whole \$5 billion becomes our expense.

Senator BREAUX. But the ironic thing is that some of those same people are paying to support the other side of the issue.

Mr. BLASS. The minority, sir.

Mr. BROWN. Mr. Chairman, you make a very good point. I'd like to add something to that.

The Shoreham case is probably the largest administrative legal battle that is going on. There is truly no reason for this battle to have gone beyond the 24th day of February, 1983. On that day, we filed a motion with the Nuclear Regulatory Commission, and the motion said that Suffolk County, after the most exhaustive analyses that have been done and a litany that we did before you last week of studies and analyses and hearings, has concluded that it would not be possible to evacuate the public safety in the event of an accident.

We then said the following in the motion: "Federal law requires that there be either a State or local implementable plan or utility plan." Actually, there was not even a question of a utility plan then as I recall; there had to be State or local involvement, in any event, was what the law made clear in our judgment. We filed a motion to terminate the case and send it to court. We told the NRC, why should we waste everybody's money quibbling? Put it in the court and we'll have an answer in a few months.

LILCO objected to that. The NRC staff objected, and the Commission ruled 3 to 2 not to terminate the proceeding. Had the proceeding been terminated as the county—this county alone, at that point—asked, the matter would have been long gone.

Senator BREAUX. On the other side, we could probably say that if you hadn't sued it would probably been all over a long time ago, but that's your right to sue, and that's their right to proceed under the procedures. And the whole thing is a mess.

Mr. BROWN. The whole thing is a mess because of the fact, if one boils it down, it literally becomes one of the company not being willing to accept the will of the people; 80 percent of the people are against it. Local and State government is against it. The United States Court of Appeals for the Second Circuit is upholding the county. The U.S. District Court is upholding the county. The New York State Court of Appeals is upholding the county. What more can someone do than resort to court and win the case time and time again?

Senator BREAUX. Well, there are always legal disputes, and we're going to keep paying lawyers. That's what we've got now.

I'm not saying that you've done anything wrong. Heck, I'd be proud to earn a \$9 million fee, but it just seems like the situation is an incredible mish-mash. And I think the hearings have brought that out.

Thank you very much. You all have been very helpful. I think you have answered all the questions.

Senator BREAUX. I'd like to welcome up Mr. Maurice Barbash, Chairman of the Citizens to Replace LILCO.

Mr. Barbash, the committee welcomes you very much. We are looking forward to your testimony.

# STATEMENT OF MAURICE BARBASH, CHAIRMAN, CITIZENS TO REPLACE LILCO, LONG ISLAND, NY

Mr. BARBASH. Thank you, Senator. I guess we're the people that are paying all that money.

I want to thank you for the invitation to testify, and thank especially Senator Moynihan, to whose office we went without hiring a lobbyist to get some look-see into the situation which we have found abysmal and appalling.

We have got 10,000 members, sir. We're registered all over the State of New York, God knows how many registrations, to do our business, which was to propose to replace the Long Island Lighting Company with a public power authority. We're not anti-nuclear, sir. Some of our members may be; I certainly am not. We're not little old ladies and we're not "not on my block" people. We're just regular, normal citizens who come to this for a variety of concerns—economic, which was my starting point; safety, which I think most people are concerned with, and environmental. LIPA, by the way, Long Island Power Authority, was enacted into State law July 2 of last year, and activated on January 15th. It is currently proceeding with its final study to determine whether there are sufficient ratepayer savings to go ahead and acquire the Long Island Lighting Company.

We are especially appreciative of this invitation because we have spent \$86,000 to date—run up a legal bill of \$86,000—defending our right of free speech against a LILCO attack the minute we opened our mouths and made our perfectly legal proposal. Thankfully, that suit has been adjudicated in our favor. And, as Senator Simpson would say to us, \$86,000 is a bale of money.

Looking at me, you know I'm not a young guy. I'm an old, conservative businessman; been in business on Long Island for many, many years as a residential developer. The testimony I gave cites the number of things I've done besides that in the public area.

I originally got interested around 1983, although a lot of my friends had previous interests, including my brother-in-law, but he couldn't get me involved in it. I got interested because I looked at the escalating costs of Shoreham and decided that a lot of my fellow businessmen, the people who make machine tools and do printing, were going to leave Long Island; they couldn't afford it.

As the result of my interest and the interest of Suffolk County, I was appointed to a businessman's committee to help the accounting firm of Touche Ross study what alternatives there could be regarding the financial impacts of Shoreham, and we did a \$250,000 study—more money, by the way.

As a result of that I got a little more involved in the safety issue because you can't just look at Shoreham as an isolated economic thing. Once you start looking at Shoreham you look at all the problems, and I started to read the NRC's own assessment of what would happen on Long Island in case of a meltdown: 40,000 deaths, 75,000 injuries, etc., etc., and so on, and I read LILCO's own testimony in the Jamesport hearing which, incredibly, said that besides all the other catastrophic events that would happen in case of a meltdown on Long Island, our water supply—the Magafee Aquifer—



fer—would be contaminated for decades and decades, perhaps as much as a century.

Well, it doesn't take much to frighten the businessman, all of whose landholdings and apartment holdings are around Long Island, when he's confronted with that. And looking into the insurance situation—and as a prudent businessman, I did—I saw there was nothing available for me. And based on the damage assessment of the NRC's own study, your Price-Anderson Act wouldn't cover anything. You know, we were being asked to assume a risk without any compensation, without any insurance whatsoever, and that's kind of a "no win" bet. I mean, Nick the Greek wouldn't take a bet like that. It was a crazy bet.

Well, that's why we think this proceeding to license a nuclear plant should be absolutely beyond reproach. And I can tell you very honestly, from our own personal experience, it sure as hell ain't beyond reproach.

Why are we worried about Shoreham in particular? Previous testimony alluded to the \$1.4 billion Public Service Commission penalty against the Long Island Lighting Company for mismanaging Shoreham. Read it. Read the PSC testimony, then read the letters from the Chernobyl engineers on what went wrong in the construction of Chernobyl. If you mixed the letters up, you wouldn't know which was Shoreham and which was Chernobyl. Sure, there might be a little different technology involved; there's no graphite in Shoreham, but the comments about drunkenness on the job, about engineering drawings being done after the pipes went in—you get a little worried about that. And you wonder, where was the NRC all this time? How did that happen under the noses of the NRC? Is this another Zimmer plant, where it took some whistle-blowers to point out that there were inherent deficiencies in the construction of Zimmer? How can we be guaranteed that the NRC looked at this thing?

The county, by the way—nobody mentioned it—asked for permission to have a real in-depth look at the construction of Shoreham and have repeatedly been denied that privilege. And incidentally, if you don't know it, Zimmer—which is now being converted to a gas electrical generating operation—is the subject, or was the last time I read about it, of a \$1 billion lawsuit by the sponsors of that plant in Ohio against General Electric Company, claiming that the GE MARK-2 containment is defective, and not only that, but that GE knew that fact and hid the fact from the company. And it doesn't make us feel any more comfortable, sir, to know that we have a GE MARK-2 containment.

Back in the 1970's the senior NRC advisor—I think his name was Steven Hannauer—said, "Hey, you know, we ought not let GE sell this product any more," and he was overruled by one Joseph Hendrie who appeared before you last week as a former NRC Commissioner and said, "Well, the rule should be changed," but never told you, sir, that he is a paid consultant for the Long Island Lighting Company. I think it's a helluva breach of ethics.

Yes, sir, Mr. Hendrie is a paid consultant—just for a few thousand dollars, sir—for the Long Island Lighting Company, and I don't think he told that to this committee. And I find that incredi-

ble. On my hospital board if some board member pulled a deal like that, he'd be off in the morning.

Well, we first found out that Mr. Nofziger might have something to do with this kind of a mess when Newsday published a thing on July 24th, 1984, that he was getting \$20,000 a month. And in that same article, by the way, there's a sentence where the reporter said that LILCO said that they have no written memoranda from Mr. Nofziger. Well, what the hell was he doing all that time, with all these things that Dr. Catacosinos said he was doing for them? There wasn't one shred, no memoranda in their files? I find that incredible.

And you asked, sir, Mr. Chairman, about his expertise on Long Island. They didn't need him on Long Island. They had Winter-Wagner Associates who were running that phony front for them, Citizens' Front, and paid them millions of dollars, along with contributions from other nuclear utilities and other utilities. I mean, we were snowed and snowed under. They paid plenty, and they had a lot of local, good PR advice, which may still be going on.

One of the problems we have is that we have a County Executive who was elected on a one-issue platform. He was against Shoreham; he believed you couldn't evacuate Long Island. We didn't know it, but Lyn Nofziger and Bill Catacosinos met with Peter Cohalan twice in secret. We never knew a darned thing about it; February, March. At the same time, by the way, it is admitted that Mr. Nofziger was in the White House, speaking to people there.

Now, Mr. Cohalan suddenly switched. I mean, he ruined his political career. He can no longer win renomination for that office. Nobody could ever find out why he switched. The ostensible reasons are various. Mr. Catacosinos said something about energy sufficiency, which is a lot of malarkey on the local level, believe me.

One of the ostensible reasons was that LILCO had unethically withheld a couple of years of taxes from Suffolk County, and Mr. Cohalan said, "Well, I needed the money." And so he was actually—if you believe that—"coerced" into switching his position because he had to collect the taxes.

I pay a lot of real estate taxes, sir. And when I make a mistake and I don't pay them for one year, I wind up paying 17 percent in interest. You give me that legal tax lien that Suffolk County had on the Shoreham property and I'll peddle it and I'll borrow money for a helluva lot less than 17 percent and make money on it. That was a spurious, phony reason.

We think it is a serious matter. We were disenfranchised, sir. We think this committee should hold everybody up who was present at those meetings—Catacosinos, Nofziger, Cohalan, and the guy in whose home that was held, Walter Conlon, and find out what happened there. I think maybe it's not ex parte anything, but it's a legitimate function. Since you guys set the regulatory rules, you should know how this game is being played. You should know everything about it, not just about who saw who down here. We think we were disenfranchised, and we'd like a real hard look at that.

You've already heard testimony about the FEMA drill. It's ironic that the very thing that Frank Petrone was fired for now seems to be the present position of FEMA if I hear it correctly, and I attended last week's hearings, that they're not qualified to make a judg-



ment anymore because of the lack of local participation. They can't say yes or not that LILCO's plan is going to work. That's what Frank Petrone said, "I can't make a judgment." He was fired. And you know who Mr. Nofziger was meeting with all this time.

Nobody said it, but actually, we're not the only ones that have been lied to in Suffolk County. Congressmen have been lied to. Mr. Markey was lied to. John Herrington said, in a response to a question on what he was doing about Shoreham, said, "Well, I don't know that we're doing anything." Simultaneously you discover tons of documents about, gosh, dammit, we've got to do something about Shoreham; we've got to force the NRC; we've got to lobby the NRC. Is the Congress used to that kind of dissembling? Are you going to take that kind of thing without looking into it further?

The matter of the Treasury Department. I looked at that very carefully, and I talked to the financial advisors. They could have changed, and they were changing, the Suffolk County proposal to meet all of Mr. Metz' alleged objections.

Mr. Blass didn't tell you that he had to go up to Vice President Bush to get a meeting with Metz, but LILCO had the meeting before. And it might not have been Nofziger and it might not have been Catacosinos, but there's a sentence in there that Metz did have input from LILCO. Well, how was it so easy for LILCO to get Metz to set out a letter like this before even consulting with the county's experts to see what the thing was all about? Was it final form, which it wasn't yet? How was LILCO able to do that and get a U.S. official to intervene on their behalf, and then run and hide until he was forced to meet with these people, who are our people, the public's people? We think that this is an item that really bears a lot of scrutiny, and we'd like to see Mr. Metz brought before this or an appropriate committee to find out what kind of hanky-panky was going on.

And then there's all this nonsense about two NRC boards deciding that if the local people say no, then there's no way of doing this, and then NRC issues another ruling. They sent a bunch of guys up there to listen to us. We sat there three days to testify; a week later, they removed the judges from the case and they put them someplace else. And they said, "Well, the new judges can read your testimony." Well, I don't know how many people take the time to read all the testimony, but there's nothing like eyeball contact in my book.

It goes on and on. You've heard about the letter from President Reagan guaranteeing that there would be no Federal overriding on safety on the evacuation issues. There's another letter in your file that I just put there; it's almost a paraphrase by Secretary Hodel. At the same time the letter was written, they were turning handsprings. I mean, it's just total, outright lying to the people of a county. And I submit to you, gentlemen, that in the long run this is counterproductive to the national interests, to the national energy policy, and to the nuclear industry itself. I think we've all seen time and time again that big executives, no matter how high an office they hold, when they stonewall the American people long enough and they do things that are perhaps a little extra-legal, sooner or later the roof comes down on them and we start all over again. I would not like to see that happen.

A fellow I met a couple of years ago is a very advocate nuclear proponent. He's a bureau chief for Time magazine. In a very fine book that he wrote he makes a statement that I think is very pertinent today, which you ought to be looking at, and it's the only thing I want to read from this: "The most important thing that Government can do is be honest, both with itself and with the American public. It can begin this task by recognizing that it can no longer play a dual role with regard to nuclear power. It can't function as a booster or act as a sort of nuclear Chamber of Commerce if it also is going to function as a regulator and guarantor of safety. One role conflicts with the other. There is only one way in which the Government can resolve its conflict. It has to make the choice, and there's no question what that choice should be. The Government must abandon the role of cheerleader and leave the task of selling nuclear power to the industry. It must choose to regulate; more importantly, it must regulate well, placing the safety of the public before the economic health and welfare of the industry. It must show the public that it is concerned about safety, and it must do so by actions and not words."

You know, I'm a member of the National Association of Home Builders. Would that they had the genius to write an act for us on building as has been written for this industry, sir. You know, we have a national housing policy. Would that I could get away with doing anything I damn well please in my neighbor's back yard without going to the local town and saying, "Is this consistent with your master plan? Does this conflict? Is it going to increase traffic?" By God, we turn through hoops trying to get permits to build, but we build. We go out and we go to the neighbors and we say, "Hey, this is a good plan," and we sell it to them, and a lot of stuff gets built in the United States.

I don't buy that nonsense by the nuclear industry that if we give people too much input regarding their own safety we're not going to have a nuclear industry. I think you'll have a better one because the public will have a lot more confidence in it. And I would beseech you, sir, to get to the bottom of this mess and maybe, after that, take a look at how you can improve the regulatory process.

Thank you.

Senator BREAUX. Thank you, Mr. Barbash.

Senator Moynihan.

Senator MOYNIHAN. Mr. Barbash, you have been an extraordinary advocate in this matter for the very longest time. I know your views and deeply share your judgment that Peter Steller's assessment is becoming so clear. If you wish to destroy the nuclear industry in this country, destroy confidence in its integrity. I mean, you tell me there's not a single memorandum from the Nofziger firm in—

Mr. BARBASH. On the date when that was disclosed, sir, the article that's in your testimony, sir, in Newsday, they said in response to a question that they did not get a single document from Nofziger.

Senator MOYNIHAN. Mr. Hendrie did not disclose his affiliation, and he should have done so. I'm sorry about that.

At the end there you have some thoughts about what we should do. I hope you will find time to put them in writing and send them to us.

Mr. BARBASH. We figured first things first, sir, but we'd be very happy to work on that with you. We understand that some of these proposals might be reacted to by the nuclear industry. They say, "See, you're trying to kill the industry." That's not our intent. We just say that any realist who knows the American system knows that this can't go on forever, and sooner or later we're going to have to have some reforms, sir.

Senator MOYNIHAN. Mr. Barbash, thank you very much, sir.

Senator BREAUX. Thank you very much, Mr. Barbash. I appreciate your being with us. I used some of your materials in asking some of the questions, and we appreciate your bringing it to our attention.

Mr. BARBASH. I certainly appreciate your invitation, sir.

Senator BREAUX. Thank you.

With that, this hearing will be concluded, and the subcommittee is adjourned.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

[Responses to the subcommittee's May 11 letter follow:]

QUENTIN R. BURCKE, NORTH DAKOTA, CHAIRMAN  
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 DALEY CHASE, SENIORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
 WASHINGTON, DC 20510-4178

May 11, 1987

The Honorable John S. Herrington  
 Secretary  
 U.S. Department of Energy  
 Washington, D.C. 20585

Dear Mr. Secretary:

On May 14, 1987 the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works will conduct an oversight hearing on external influences on the Nuclear Regulatory Commission's (NRC) adjudicatory procedures in the Shoreham proceeding.

Specifically, the hearing will focus on allegations that persons outside the NRC may have improperly contacted Commission decisionmakers with regard to matters being contested in the Commission's adjudicatory proceeding on the application of the Long Island Lighting Company to receive an operating license for the Shoreham Nuclear Power Plant.

To assist the Subcommittee in performing its oversight responsibilities in this area, we request that you provide the Subcommittee with written answers to the following questions prior to the hearing:

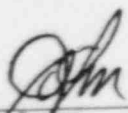
1. Have you or any representative of the Department of Energy ever made or attempted to make an ex parte communication, as defined by 10 C.F.R. 2.780, in NRC's Shoreham proceeding?
2. Has any person requested that you or any representative of the Department of Energy make or attempt to make an ex parte communication in NRC's Shoreham proceeding?
3. Has any representative of any party involved in the Shoreham adjudicatory proceeding, including but not limited to Mr. Franklyn C. Wolfziger, ever contacted you regarding any issues surrounding the licensing of the Shoreham Nuclear Power Plant? For purposes of this question, do not limit your response to ex parte communications. Please fully explain and provide a detailed summary of any such contacts, including a description of any actions taken by you as a result of such contacts.

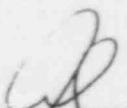
The Honorable John S. Herrington  
May 11, 1987  
Page Two

In addition, please provide all documents, memoranda, notes, records, recordings, tapes, logs, calendars and diaries containing information relevant to the above questions. This request includes both agency and personal records.

Thank you for your cooperation.

Sincerely yours,

  
John Breaux  
Chairman  
Subcommittee on Nuclear  
Regulation

  
Alan K. Simpson  
Ranking Minority Member  
Subcommittee on Nuclear  
Regulation



Department of Energy  
Washington, DC 20585

May 13, 1987

Dear Mr. Chairman:

Thank you for your letter to Secretary Herrington of May 11, 1987 requesting documents and written responses to certain questions regarding the Subcommittee's scheduled May 14, 1987 oversight hearing to be directed to Nuclear Regulatory Commission proceedings concerning the Shoreham Nuclear Power Plant.

Secretary Herrington is out of the country on business, and will not have returned by the May 14, 1987 date specified in your letter. I will, of course, bring this matter to his attention promptly on his return.

In the meantime, I have requested the Department's Office of Congressional Affairs to transmit to the Subcommittee all additional documents on the subjects raised in your letter that we have been able to locate by the May 14, 1987 hearing date. As you may recall, the Department did provide documents to Senator Moynihan last January. The Subcommittee's current request may embrace materials that were not within the scope of the Department's previous response.

I hope this information will be helpful to you and to the Subcommittee.

Yours truly,

  
Joseph F. Salgado  
Under Secretary

Honorable John B. Breaux  
Chairman  
Subcommittee on Nuclear  
Regulation  
Committee on Environment  
and Public Works  
United States Senate  
Washington, D. C. 20510

INDEX OF DOCUMENTS SENT TO  
SENATORS BREAUX AND SIMPSON

1. Letter to Louis Giuffrida, Director, Federal Emergency Management Agency from Secretary Herrington dated March 8, 1985 with incoming letter dated February 8, 1985.
2. Letter to New York Governor Mario Cuomo from Secretary Herrington dated April 1, 1985 with incoming letter dated March 29, 1985.
3. Letter to Peter F. Cohalan, Suffolk County Executive from Secretary Herrington dated May 29, 1985.
4. Telecommunication message to Peter F. Cohalan, Suffolk County Executive from Secretary Herrington dated May 31, 1985.
5. Mailgram to Secretary Herrington from Peter F. Cohalan, Suffolk County Executive dated May 31, 1985.
6. Letter to Louis Howard, Presiding Officer, Suffolk County Legislature from Secretary Herrington dated June 5, 1985 with incoming dated May 10, 1985.
7. Letter to New York Governor Mario Cuomo from Secretary Herrington dated July 17, 1985 with incoming letter to President Reagan dated May 21, 1985.
8. Letter to Secretary Herrington from New York Governor Mario Cuomo dated August 2, 1985.



THE SECRETARY OF ENERGY  
WASHINGTON, D.C. 20585

March 8, 1985

Honorable Louis O. Giuffrida  
Director, Federal Emergency  
Management Agency  
500 C Street, SW  
Washington, DC 20472

Dear Jeff:

Thanks for your kind note.

I share your interest in resolving the issues surrounding nuclear power generally and the Shoreham Nuclear Power Plant in particular. To succeed in this effort, our agencies should continue to work together in a spirit of cooperation and shared objectives. Regarding the testing of the Shoreham Emergency Plan, it is my understanding that some progress has been made although we have yet to schedule an actual test. This matter is of vital importance if we are to avoid similar problems on other nuclear plants nearing completion. The Department of Energy will continue to support the testing of the Shoreham plan as soon as possible.

Being new to the Department of Energy, and facing an extremely heavy schedule of Congressional hearings, I am not going to be able to devote the amount of personal time to this issue that I would like. I would appreciate it very much therefore if you could meet with my Deputy Secretary, Danny Boggs, in my stead. It is very important that we promptly resolve this matter, and Danny has my full confidence in working with you on it.

Yours truly,

  
John S. Herrington





## FEDERAL EMERGENCY MANAGEMENT AGENCY

WASHINGTON

February 8, 1985

RECTOR

Honorable John S. Herrington  
Secretary of Energy  
1000 Independence Avenue, SW  
Washington, DC 20585

Dear Mr. Secretary:

Congratulations on your confirmation as Secretary of Energy. As you know, the Department of Energy and the Federal Emergency Management Agency (FEMA) have been working together recently on issues related to the Shoreham Nuclear Generating Station located in Suffolk County, New York.

Given the importance of the Shoreham issue, both in its own right and as a general nuclear policy issue, and given FEMA's key role in offsite preparedness, I believe it is important for us to discuss the issues surrounding nuclear power, generally; and FEMA's perspective on the Shoreham Generating Plant, particularly.

I look forward to hearing from you so that we may arrange a meeting.

Sincerely,

Louis O. Giuffrida

THE SECRETARY OF ENERGY  
WASHINGTON, D.C. 20585

April 1, 1985

Dear Governor Cuomo:

In response to your letter of March 28, 1985, on the Shoreham Nuclear Plant, I have reviewed the Department's activities on this issue and believe our actions are consistent with the President's policy as stated in his letter of October 11, 1984, and do not contravene the decision of the New York State Supreme Court.

The Department has simply advocated that a test occur as expeditiously as possible and has not attempted to force any jurisdiction to participate in an exercise of an emergency evacuation plan for the Shoreham Nuclear Plant.

I appreciate the opportunity to clear up any misunderstanding on this issue.

Yours truly,

John S. Herrington

Honorable Mario M. Cuomo  
Governor of New York  
Albany, New York 12224



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MARIO M. CUOMO  
Governor

March 28, 1985

Dear Mr. Secretary:

In an article which appeared today in the New York Times, you were quoted as having recently written the Director of the Federal Emergency Management Agency that, "The Department of Energy will continue to support the testing of the Shoreham [emergency] plan as soon as possible." I am writing to object to such federal advocacy for two reasons. First, on February 20, 1985, this plan was ruled unlawful by the New York State Supreme Court. Therefore, DOE's support of this plan amounts to advocating the achievement of an unlawful objective.

Second, your Department's support of LILCO's plan is in direct contradiction of the policy statement of President Reagan in October 1984 concerning the emergency preparedness issue at Shoreham. The President stated,

... this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham.

The emergency preparedness situation concerning the Shoreham plant is the result of scrupulous and deliberate decisions of the County of Suffolk and New York State not to adopt or implement an offsite emergency plan for Shoreham. These governmental decisions were reached through the exercise of police powers which are vested inherently in the State government and the local governments to which the State has delegated those powers. The efforts of your Department to promote LILCO's emergency plan over the constitutionally sound objections of the State and local governments is an affront to the sovereignty of New York State and an injury to the people of New York.

- 2 -

I trust that you will promptly reconsider your Department's support of LILCO's objectionable emergency plan in light of the ruling of the New York State Supreme Court and the policy statement of President Reagan. I would appreciate receiving your written assurance that the Department of Energy will terminate its support of LILCO's offsite emergency plan.

Sincerely,

*Mario M. Cuomo*

The Honorable John S. Herrington  
Secretary  
Department of Energy  
1000 Independence Avenue, Southwest  
Forrestal Building  
Washington, D.C. 20585



THE SECRETARY OF ENERGY  
WASHINGTON, D.C. 20585

May 29, 1985

The Honorable Peter F. Cohalan  
Suffolk County Executive  
H. Lee Dennison Building  
Veterans Memorial Highway  
Hauppauge, New York 11787

Dear Peter:

On May 19, I visited your community in order to personally inspect the Shoreham nuclear power plant and speak directly with the plant managers and operators. During an extended tour of what was clearly a well-designed and maintained facility, I observed many new safety features and modifications that have been incorporated at Shoreham under Nuclear Regulatory Commission guidance. I came away from my visit convinced that Shoreham is one of the finest nuclear generating stations in this country. And as you are aware, it is certainly among those that have received the closest scrutiny by the NRC and other public and quasi-public bodies, including New York State's own Marburger Commission.

I particularly noted a new \$5 million structure housing three state-of-the-art diesel generators, there solely to provide triple redundancy for emergency power. In addition, in conversations with the control room supervisor and other workers it became clear to me that the utility has spared no effort to build a safe plant and staff it with dedicated, experienced operators.

Yet this facility, representing a \$4 billion investment in the economic future of Long Island, sits idle while foreign oil is burned to provide electricity for your community. Even with an uninterrupted supply of oil, Long Island and indeed all New York State Public Service Commission warned of brownouts or even selective blackouts during peak periods this summer.

I believe it is crucial to the citizens of Long Island that the Shoreham plant play the role in their economic and energy futures that it was designed to play. And with a potential for 100 percent replacement for foreign oil, Shoreham is also important to the energy future of this nation and to this nation's national security. As Secretary of Energy, I cannot ignore that importance.

- 2 -

Therefore, I am committed to a process of consultation and cooperation with you and local officials in order to achieve a satisfactory resolution of current disputes and get Shoreham on line. I am willing to meet with you or other responsible parties at your convenience so that we may, in a spirit of compromise, resolve the few issues that remain and develop a plan that will satisfy you and your constituents.

Yours truly,

*John S. Herrington*  
John S. Herrington

DD FORM 1, 1-68  
Rev. 1-68

Replaces DD FORM 1, 1-68, and DD FORM 1, 1-68, both of which are obsolete.

1. INSERT ABOVE CLASSIFICATION LEVEL, UNCLASSIFIED OR OFFICIAL USE ONLY		3. MESSAGE CONTAINS WEAPON DATA? (If appropriate, see Message Center and Mail Receiving Center instructions.) <input type="checkbox"/> YES <input type="checkbox"/> NO	
4. PRECEDENCE DESIGNATION (If appropriate, see FOR NORMAL USE ACTION: <input type="checkbox"/> Routine <input type="checkbox"/> Priority <input type="checkbox"/> Immediate <input type="checkbox"/> FLASH INFO: <input type="checkbox"/> A Mail <input type="checkbox"/> D Mail <input type="checkbox"/> OM Mail <input type="checkbox"/> USAP		5. TYPE OF MESSAGE (If appropriate, see <input type="checkbox"/> Single Address <input type="checkbox"/> Multiple Address <input type="checkbox"/> This Address <input type="checkbox"/> Both Messages	
6. FROM JOHN S. HERRINGTON SECRETARY OF ENERGY		7. OFFICIAL BUSINESS (TIME) A.M. P.M. Signature of authorizing official 8. DATE May 31, 1985	
9. TO HONORABLE PETER F. COMALAN SUFFOLK COUNTY EXECUTIVE B. LEE DENNISON EXECUTIVE OFFICE BUILDING VETERANS MEMORIAL HIGHWAY HAUPPAUGE, NEW YORK		10. COMMUNICATION CENTER ROUTING	
DEAR PETER,  ON BEHALF OF THE PRESIDENT AND THE DEPARTMENT OF ENERGY, I WISH TO CONGRATULATE YOU ON YOUR DECISION TO SUPPORT A TEST OF THE EMERGENCY RESPONSE PLAN FOR THE SHOREHAM FACILITY.  YOUR ACTION YESTERDAY REPRESENTS SOUND JUDGMENT AS WELL AS A STRONG COMMITMENT TO THE SAFETY AND ECONOMIC HEALTH OF ALL CITIZENS IN THE NORTHEAST. COMMERCIAL OPERATION OF THE PLANT WILL REDUCE DEPENDENCE ON IMPORTED OIL AND WILL GENERATE ELECTRICITY AT LOWER COSTS THAN ALTERNATIVE FUELS IN THE DECADES AHEAD.  I AFFLAD YOUR IMPORTANT CONTRIBUTION TO AMERICA'S ENERGY FUTURE AND NATIONAL SECURITY.  YOURS TRULY,  BE BRIEF - ELIMINATE UNNECESSARY WORDS			
11. DERIVATIVELY CLASSIFIED INFO NATIONAL SECURITY OPTIONAL Classification: Secret Declassify on: OADR Derivatively Classified by: [Signature]		12. ORIGINALLY CLASSIFIED INFO NATIONAL SECURITY OPTIONAL Classification: Secret Declassify on: OADR Derivatively Classified by: [Signature]	
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JOHN S. HERRINGTON  
SECRETARY OF THE DEPT OF ENERGY  
1000 INDEPENDENCE AVE SOUTHWEST  
WASHINGTON DC 20585

(FOLLOWING MESSAGE WAS SENT TO PRESIDENT REAGAN)

I WANT TO LET YOU KNOW THAT AS COUNTY EXECUTIVE, I HAVE ISSUED AN  
EXECUTIVE ORDER WHICH DIRECTS SUFFOLK COUNTY OFFICIALS TO ASSUME THE  
COUNTY'S RESPONSIBILITIES WITH RESPECT TO EMERGENCY RESPONSE PLANNING  
FOR THE SHOREHAM NUCLEAR POWER STATION.

I BELIEVE THE COUNTY'S STRONG FIGHT HAS MADE SHOREHAM SAFER. I KNOW  
HOW STRONGLY YOU BELIEVE IN DETERMINATION BY LOCAL GOVERNMENT AND NOW  
THAT THE COUNTY HAS MADE THIS DECISION TO MOVE FORWARD, I EMPLOY YOU  
TO GIVE US A STRONG COMMITMENT FOR THE EXTRAORDINARY RESOURCES WE  
WILL NEED TO DEVELOPE AN ADEQUATE AND IMPLEMENTABLE EVACUATION PLAN  
BECAUSE OF OUR UNIQUE GEOGRAPHY.

PETER S. COMALAN  
SUFFOLK COUNTY EXECUTIVE

09103 EST

MENCOMP





THE SECRETARY OF ENERGY  
WASHINGTON, D.C. 20585

June 5, 1985

Dear Mr. Howard:

On behalf of the President and the Department of Energy, I wish to thank you for your support of the opening of the Shoreham facility.

You have been a supporter in the effort to open Shoreham for many years; you had the courage to persist in your convictions in the face of strong opposition.

Commercial operation of the Shoreham plant will aid in reducing our dependency on imported oil and, in the decades ahead, will generate electricity for Long Island at lower costs than alternate fuels.

Your support has contributed to America's energy future and national security. I applaud your foresight and your steadfastness on this issue.

Yours truly,

*John S. Herrington*  
John S. Herrington

Honorable Louis Howard  
Presiding Officer, Suffolk  
County Legislature  
Legislative Building  
Veterans Memorial Building  
Hauppauge, New York 11788

U.S. DEPARTMENT OF ENERGY CORRESPONDENCE CONTROL FORM OFFICE OF THE EXECUTIVE SECRETARY		TF-80 men	
ACTIVITY CHANGE SOURCE CODE: 50 STATE OFFICIAL		DO NOT DETACH FROM ORIGINAL CORRESPONDENCE	
SPEC INT: _____		CONTROL NO: 6305-887619	
DATE CORR: 85/18/85		DATE RECD: 85/15/85 DATE CNTRL: 85/15/85 DATE DUE: 07/22/85	
LETTER: X MEMO: TWX: OTHER: _____		TO: SECY: X DEP SEC: UN SEC: OTHER: _____	
FROM: HOWARD, LOU SUFFOLK COUNTY LEGISLATURE		LEG NY 0	
SUBJ: NUCLEAR POWER PLANTS LILCO/SHOREHAM LICENSING, EVACUATION		REMARKS: <i>dup'd in CCC spo</i>	
ACTION TO: <u>FILE</u> <u>REPLY</u>		TYPE ACTION: <u>Prep &amp; Final</u> <u>Copy</u>	
CONCURRENCE: TP/SS		SIG OF: _____	
INFORMATION: S PS QUEL IN MA/79 00-1 17/1 02 0000		CONTROL ANALYST: <u>Tom C. [unclear]</u>	
FILE CODE: SHRT 6305887619			

ALL DOCUMENTS FOR ONE PRINCIPAL  
MUST BE FORWARDED TO E3 FOR FINAL PROCESSING

## COUNTY OF SUFFOLK



COUNTY LEGISLATURE

LOU HOWARD  
PRESIDENT OFFICER

May 10, 1985

Mr. John S. Herrington  
United States Secretary of Energy  
Forrestal Building  
Washington, D.C. 20585

Ref: Suffolk County - Shoreham Nuclear Facility - Litco

Dear Secretary Herrington:

I have reviewed your recent comments concerning the failure of the nuclear power industry and Nuclear Regulatory Commission to adequately develop support for the safe, workable, and relatively inexpensive use of nuclear power in this country.

More specifically, I am interested in your statement that you hope to conduct a cabinet level review of the nuclear power industry in general and the Shoreham Nuclear Power Plant on Long Island in particular. As you probably know, I have been the sole public figure in Suffolk County consistently supporting the opening of the Shoreham Nuclear Power plant for the past twenty-six months. I view the opening of this plant as critical to the power needs of the residents of this county and as essential to the protection of this county's economic base and future prosperity.

In fact, I am currently the sole sponsor of a local piece of legislation which would authorize the county of Suffolk to participate in a test run of a viable evacuation plan to be developed by FEMA in conjunction with the Suffolk County Planning Department. This legislation is intended to test the feasibility of an evacuation plan and to obtain empirical data which will either confirm or refute the two conflicting positions on the issue of implementation of an orderly evacuation plan in Suffolk County.

In light of recent fiscal developments within this county which entail the imminent danger of a 40% to 50% real property tax increase for all residents within this county, I believe that the time has come for all responsible public officials involved in the Shoreham issue to face up to the financial crisis that threatens the long-term economic viability of this county.

It is my hope and expectation that your cabinet level study will get underway very quickly and will include participation by elected officials from this county.

It is critical that your study highlight the economics of the Shoreham/Suffolk gridlock and focus attention on remedies which will prevent financial ruin and economic devastation from overtaking the citizens of this county.

In this vein, I extend an offer to attend any meetings you may deem necessary either here in Suffolk County or in Washington, D.C., to resolve this problem as expeditiously as possible.

Sincerely,



Lou Howard  
Presiding Officer  
Suffolk County Legislature

LH/pb



STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MARIO M. CUOMO  
Governor

May 21, 1985

Dear Mr. President:

This is in regard to the Shoreham Nuclear Power Plant in Suffolk County, New York, a matter of great importance to public safety and to preserving the lines of sovereignty between the Federal Government and the State.

A recent article in Nucleonics Week (May 16, 1985) indicates that in a "cabinet level review" your Administration may be requested to initiate action regarding emergency response planning for Shoreham, the purpose being to promote operation of the Plant over the objections of the State of New York and the County of Suffolk. New York State would consider any such action an affront to its sovereignty and a reversal of your previous personal assurance.

On October 11, 1984, you wrote the following to Congressman William Carney:

On a matter of particular concern to you and the people of Eastern Long Island, I wish to repeat Secretary Hodel's assurance to you that this Administration does not favor the imposition of Federal Government authority over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham. Your concern for the safety of the people of Long Island is paramount and shared by the Secretary and me.

The independent decisions of Suffolk County and New York State against adopting or implementing an emergency plan for Shoreham were made to protect the safety and welfare of the public and followed extensive analysis and deliberations. The lawfulness and rationality of these decisions have been upheld by the New York State Supreme Court and the United States District Court.

The same article suggests that such review may result in a direction from you to the Nuclear Regulatory Commission to take actions which will result in the opening of the Shoreham facility. I trust that will not happen. Such direction would be inappropriate as it would impair the integrity of the Commission's functions as an independent adjudicating body.

Respectfully,

*Mario M. Cuomo*

The President  
The White House





STATE OF NEW YORK  
EXECUTIVE CHAMBER  
ALBANY 12224

MARIO M. CUOMO  
GOVERNOR

August 2, 1985

Dear Secretary Herrington:

This is to acknowledge receipt of your letter of July 17, 1985, in response to my letter to President Reagan of May 21, 1985, expressing my concerns to him about both preserving the lines of sovereignty between Federal and state government with respect to emergency planning for the Shoreham nuclear plant, and preserving the integrity of the Nuclear Regulatory Commission as an independent adjudicative body.

I am pleased that you agree that the integrity of the NRC should be preserved. However, I believe that the best way to do that is for you to refuse to meet with nuclear industry representatives who publicly suggest that such meeting may result in directions from you to the NRC to take actions which will result in the opening of the Shoreham facility; and, for you to publicly disavow any motion that you or anyone in your agency would seek to suggest to the NRC how it should interpret its regulations or decide cases.

Your letter states:

"The County Executive, Mr. Cohalan, has agreed to assume the command and control functions for a ~~test~~ of the Shoreham plan which will assure that the emergency plan is properly structured."

That may have been Mr. Cohalan's intention when he issued Executive Order 1-1985 on May 30, 1985. However, on June 10, 1985, Mr. Justice Doyle of the New York State Supreme Court ruled that County Executive Cohalan did not have the power to assist LILCO in such exercise (that power was vested in the County Legislature which opposed the opening of Shoreham). Justice Doyle's order also nullified Executive Order 1-1985 and, among other things, enjoined Mr. Cohalan and all persons acting in concert with him from assigning or expending any funds or resources "...or

John S. Herrington

-2-

August 2, 1985

directing any County personnel to review, test or implement the LILCO plan or a radiological emergency response plan for the Shoreham nuclear plant without securing a resolution adopted by the County Legislature...". That decision and injunction was affirmed by the highest court of New York State, the New York State Court of Appeals, on July 9, 1985, approximately a week and one-half before your letter was written. If Mr. Cohalan were to seek to assist LILCO in an exercise, as asserted in your letter, at a minimum he would be subjecting himself and those acting in concert with him to punishment for contempt of that injunction.

We in New York State do not share your view as to Shoreham's importance to the State or the Nation. LILCO's own representatives testified before the Marburger Commission that the power to be generated by Shoreham would not be needed for ten years. Others said that this period would be 13 or more years. Moreover, there are adequate alternative sources of the power Shoreham would generate which present no threat to the health and welfare of the residents of Long Island and New York State, and which will be available long before that power is needed. In addition, the New York State Energy Office has advised me that the reduction in the use of imported oil that would result assuming Shoreham went on-line and operated continually (except for refueling) could be achieved by converting LILCO's E. F. Barrett and Port Jefferson power plants from oil to coal. Indeed, that Office informed me that LILCO sought such coal conversions and thereafter abandoned those efforts.

Contrary to your assertions, the treatment by New York State and local authorities of other nuclear power plants as compared to Shoreham is not disparate with respect to emergency planning. Nuclear power plants are not fungibles with respect to emergency planning, and differences in treatment are not necessarily disparities. Because of the configuration of Long Island, the limited East-West roadway network, its climatology, the fact that only safe evacuation may be to the westward, the density of population involved, and other factors, Shoreham is a unique case. The independent decisions by the Suffolk County Legislature (which is vested with power to make such determination) and New York State against adopting or implementing an emergency plan for Shoreham were not disparate, but rather the result of sound and deliberative action necessary to protect the safety and welfare of the inhabitants of Suffolk County and New York State. Their lawfulness have been upheld by the New York State Supreme Court and the United States District Court. I reiterate that New York State would consider efforts by your agency to promote the operation of that plant over those objections to be an affront to the sovereignty of New York State, and a reversal of the policy established by

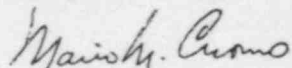
John S. Herrington

-3-

August 2, 1985

your Administration not to impose the Federal Government's authority "over the objections of state and local governments in matters regarding the adequacy of an emergency evacuation plan for a nuclear power plant such as Shoreham" (letter from President Reagan to Congressman William Carney, October 11, 1984).

Respectfully,



Honorable John S. Herrington  
Secretary of Energy  
Washington, D. C. 20585

QUENTIN K. BURDICK, NORTH DAKOTA, CHAIRMAN  
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LARRY PRESSLER, SOUTH DAKOTA

PETER D. PROWITT, STAFF DIRECTOR  
BAILEY GUARD, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
WASHINGTON, DC 20510-4178

May 11, 1987

Mr. Louis Giuffrida  
1800 K Street, N.W.  
Suite 605  
Washington, D.C. 22206

Dear Mr. Giuffrida:

On May 14, 1987 the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works will conduct an oversight hearing on external influences on the Nuclear Regulatory Commission's (NRC) adjudicatory procedures in the Shoreham proceeding.

Specifically, the hearing will focus on allegations that persons outside the NRC may have improperly contacted Commission decisionmakers with regard to matters being contested in the Commission's adjudicatory proceeding on the application of the Long Island Lighting Company to receive an operating license for the Shoreham Nuclear Power Plant.

To assist the Subcommittee in performing its oversight responsibilities in this area, we request that you provide the Subcommittee with written answers to the following questions prior to the hearing:

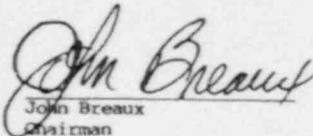
1. Have you, or to the best of your knowledge has any representative of the Federal Emergency Management Agency, made or attempted to make an ex parte communication, as defined by 10 C.F.R. 2.780, in NRC's Shoreham proceeding?
2. Did any person request that you, or to the best of your knowledge request that any representative of the Federal Emergency Management Agency, make or attempt to make an ex parte communication in NRC's Shoreham proceeding?
3. Did any representative of any party involved in the Shoreham adjudicatory proceeding, including but not limited to Mr. Franklyn C. Nofziger, ever contact you regarding any issues surrounding the licensing of the Shoreham Nuclear Power Plant? For purposes of this question, do not limit your response to ex parte communications. Please fully explain and provide a detailed summary of any such contacts, including a description of any actions taken by you as a result of such contacts.

Mr. Louis Giuffrida  
May 11, 1987  
Page Two

In addition, please provide all documents, memoranda, notes, records, recordings, tapes, logs, calendars and diaries containing information relevant to the above questions. This request includes both agency and personal records.

Thank you for your cooperation.

Sincerely yours,



John Breaux  
Chairman  
Subcommittee on Nuclear  
Regulation



Alan K. Simpson  
Ranking Minority Member  
Subcommittee on Nuclear  
Regulation

*Louis O. Giuffrida*  
Suite 605  
1800 K Street, N.W.  
Washington, D.C. 20006

Telephone (202) 293-2013

May 27, 1987

Senator Alan K. Simpson  
Ranking Minority Member  
Senate Committee on Environment  
and Public Works  
Washington, D.C. 20510-6175

Dear Senator Simpson:

This letter concerns the Committee's letter to me dated 11 May 1987, regarding its review of NRC licensing procedures at the LILCO facility on Long Island, New York.

As I informed the Committee staff, your letter was not delivered to me until 21 May 1987, which made it impossible for me to respond prior to your hearing date of 14 May 1987.

On 1 September 1985 I resigned as the Director of FEMA in order to return to the private sector. At this time I have little if any personal recollection about FEMA's role in the LILCO licensing procedures, principally because FEMA procedures called for the management of these activities by an Agency Associate Director and the FEMA Regional Director involved.

All records about FEMA activities on the licensing process for all nuclear power plants, including LILCO, are available through the Agency itself, including records of my participation. Accordingly, while I do want to be cooperative, I have no reasonably available means to respond adequately to the questions in your letter.

I do wish to assist the Committee as best I can and will attempt to adjust my schedule to permit participation in future hearings you may hold.

Sincerely,



Louis O. Giuffrida

cc: Senator John Breaux

QUENTIN N. BURDICK, NORTH DAKOTA, CHAIRMAN  
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 HARRY W. ROSS, NEVADA  
 BOB BRADMAN, FLORIDA

PETER D. FROST, STAFF DIRECTOR  
 DALEY GUARD, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6178

May 11, 1987

Herbert H. Brown  
 Kirkpatrick, Lockhart, Will, Christopher & Phillips  
 1900 M Street, N.W.  
 Washington, D.C. 20036

Dear Mr. Brown:

On May 14, 1987 the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works will conduct an oversight hearing on external influences on the Nuclear Regulatory Commission's (NRC) adjudicatory procedures in the Shoreham proceeding.

Specifically, the hearing will focus on allegations that persons outside the NRC may have improperly contacted Commission decisionmakers with regard to matters being contested in the Commission's adjudicatory proceeding on the application of the Long Island Lighting Company to receive an operating license for the Shoreham Nuclear Power Plant.

To assist the Subcommittee in performing its oversight responsibilities in this area, we request that you provide the Subcommittee with written answers to the following questions prior to the hearing:


1. Please describe the nature and extent of your or your firm's interest or involvement in all issues related to the licensing of the Shoreham nuclear power plant.
2. Have you or any member of your firm ever made or attempted to make an ex parte communication, as defined by 10 C.F.R. 2.780, in NRC's Shoreham proceeding?
3. Have you or any member of your firm ever contacted the Department of Energy, the Federal Emergency Management Agency or the Congress regarding any issues surrounding the licensing of the Shoreham Nuclear Power Plant? For purposes of this question, do not limit your response to ex parte communications. Please fully explain and provide a detailed summary of any such contacts, including a description of any actions sought by you or any member of your firm as a result of such contacts.


Herbert H. Brown  
 May 11, 1987  
 Page Two

In addition, please provide all documents, memoranda, notes, records, recordings, tapes, logs, calendars and diaries containing information relevant to the above questions.

Thank you for your cooperation.

Sincerely yours,

  
 John Breaux  
 Chairman  
 Subcommittee on Nuclear  
 Regulation

  
 Alan K. Simpson  
 Ranking Minority Member  
 Subcommittee on Nuclear  
 Regulation



## KIRKPATRICK &amp; LOCKHART

SOUTH LOBBY - 9TH FLOOR  
1800 M STREET, N.W.  
WASHINGTON, D.C. 20036-5891

TELEPHONE (202) 778-9000  
TELEX #40009 KL DC US  
TELECOPIER (202) 778-9100

EXCHANGE PLACE  
55 STATE STREET  
BOSTON, MA 02109  
(617) 227-4000

1428 BRICKELL AVENUE  
MIAMI, FL 33131  
(305) 374-8111

1500 OLIVER BUILDING  
PITTSBURGH, PA 15221-5179  
(412) 375-4500

HERBERT H. BROWN  
(202) 778-9075

May 14, 1987

The Honorable John Breaux, Chairman  
The Honorable Alan K. Simpson, Ranking Minority Member  
Subcommittee on Nuclear Regulation  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Senator Breaux and Senator Simpson:

This is in reply to your letter of May 11, 1987, requesting information as to this firm's representation of our client, Suffolk County, concerning the NRC's Shoreham licensing proceedings. We have discussed your letter with our client and are replying pursuant to the client's authorization and direction.

In authorizing this reply, Suffolk County wishes to make clear that it is not waiving any privilege associated with the attorney-client relationship. Accordingly, the County has instructed this firm to avoid disclosure of matters subject to the workproduct and attorney-client privileges.

Answer to Question 1: Kirkpatrick & Lockhart was retained in February 1982 as legal counsel to represent Suffolk County in matters related to the licensing of the Shoreham Nuclear Power Station. Our activities on behalf of the County have principally been before Federal and State Courts and the NRC, including the initiation and the defense of lawsuits concerning the actions of Suffolk County, LILCO, or the NRC. It has also involved representing the County before NRC Licensing Boards, Appeal Boards, and the Commission on a large number of technical nuclear safety issues, security issues, and emergency preparedness issues. The firm has also assisted in representation of the County's interests before State agencies and the Congress.

Answer to Question 2: No member of this firm has made or attempted to make an ex parte communication, as defined by 10 C.F.R. Section 2.780, in the NRC's Shoreham proceeding.

## KIRKPATRICK &amp; LOCKHART

May 14, 1987  
Page 2

Answer to Question 3: The firm received your letter on May 11 and has not had sufficient time to do a review of the files. The following is therefore a chronological summary provided to the best of the recollection of attorneys in this firm.

Attorneys in this firm do not recall any contacts with DOE in 1982 concerning the NRC's Shoreham licensing proceedings, and only one such contact with FEMA. The FEMA contact was a meeting at LILCO headquarters attended by the Deputy Suffolk County Executive accompanied by an attorney of this firm. The Deputy County Executive stated that the County was working on preparation of a draft emergency plan.

In Spring 1983, the Deputy County Executive, accompanied by attorneys in this firm, met twice with FEMA personnel, once at FEMA headquarters in Washington and once at LILCO's headquarters on Long Island. At both meetings, the County told FEMA that LILCO's offsite emergency plan was unworkable. Also, the Deputy County Executive, accompanied by attorneys in this firm, met either in 1983 or early 1984 with FEMA personnel at Suffolk County's office. The County again told FEMA that LILCO's plan is unworkable.

From May through October or November 1983, attorneys in this firm assisted in the presentation of Suffolk County's position before the State Commission established by Governor Cuomo to examine the Shoreham issue. A FEMA representative was a member of this Commission, and he was accompanied by counsel from FEMA headquarters. Attorneys of this firm discussed Shoreham-related matters with these FEMA personnel.

In May 1984, the Suffolk County Executive and two Deputy County Executives, accompanied by the undersigned, attended a meeting at DOE Secretary Hodel's office. The meeting was held at the County Executive's request for the purpose of objecting to secret meetings that had been held by DOE with LILCO, FEMA, and the White House Office of Science and Technology Policy. The County stated that it would not adopt or implement an emergency plan for Shoreham because it concluded that safe evacuation was not possible.

In Spring 1984, the undersigned wrote letters to Samuel Speck, former Associate Director of FEMA, attempting to arrange a meeting of County officials with Mr. Speck. Mr. Speck refused to meet because the County insisted that a transcript or recording of the meeting be made.

KIRKPATRICK &amp; LOCKHART

May 14, 1987

Page 3

Attorneys in this firm are in frequent contact with counsel for FEMA, principally to discuss matters related to pending litigation, such as document production, deposition schedules, and witness availability. Such contacts are routine and also occur regularly with LILCO counsel and NRC Staff counsel. In January 1987, attorneys in this firm deposed a DOE employee, who served as an "evaluator" at the February 13, 1986 LILCO emergency planning exercise, in connection with the ongoing NRC litigation concerning the exercise. The deposition was also attended by counsel for DOE. Also, attorneys in this firm met socially about four times with the former Director of FEMA and twice with the former Regional Director when they were in office. References were at times made to Shoreham. No substantive discussions took place.

The undersigned and representatives of New York State and the Town of Southampton met with FEMA officials at a public meeting on February 12, 1986, in Suffolk County. The County, State, and Town objected to the exercise of LILCO's emergency plan scheduled for the next day.

Since being retained in 1982, attorneys of this firm have on numerous occasions been contacted by, or have contacted, Congressional staff personnel. The subjects have generally been factual or legal issues related to Shoreham, inquiries related to news reports about Shoreham or LILCO, or new developments that affect the status of Shoreham. Attorneys of the firm have met occasionally with members of Congress, principally prior to Congressional Committee hearings concerning the Shoreham plant. In general, such meetings have involved courtesy calls by Suffolk County officials scheduled to testify and explanation of the County's position concerning Shoreham.

Sincerely,



Herbert H. Brown

QUINTIN H. BURDICK, NORTH DAKOTA, CHAIRMAN  
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 SALLY GUARD, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
 WASHINGTON, DC 20510-4176

May 11, 1987

Mr. Edward Rollins  
 Russo, Watts, and Rollins  
 655 15th Street, N.W.  
 Suite 250  
 Washington, D.C. 20005

Dear Mr. Rollins:

On May 14, 1987 the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works will conduct an oversight hearing on external influences on the Nuclear Regulatory Commission's (NRC) adjudicatory procedures in the Shoreham proceeding.

Specifically, the hearing will focus on allegations that persons outside the NRC may have improperly contacted Commission decisionmakers with regard to matters being contested in the Commission's adjudicatory proceeding on the application of the Long Island Lighting Company to receive an operating license for the Shoreham Nuclear Power Plant.

To assist the Subcommittee in performing its oversight responsibilities in this area, we request that you provide the Subcommittee with written answers to the following questions prior to the hearing:

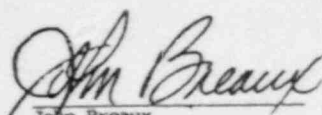
1. Have you made or attempted to make an ex parte communication, as defined by 10 C.F.R. 2.780, in NRC's Shoreham proceeding?
2. Did any person request that you make or attempt to make an ex parte communication in NRC's Shoreham proceeding?
3. Did any representative of any party involved in the Shoreham adjudicatory proceeding, including but not limited to Mr. Franklyn C. Nofziger, ever contact you regarding any issues surrounding the licensing of the Shoreham Nuclear Power Plant? For purposes of this question, do not limit your response to ex parte communications. Please fully explain and provide a detailed summary of any such contacts, including a description of any actions taken by you as a result of such contacts.

Mr. Edward Rollins  
May 11, 1987  
Page Two

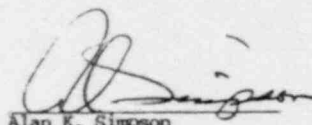
In addition, please provide all documents, memoranda, notes, records, recordings, tapes, logs, calendars and diaries containing information relevant to the above questions.

Thank you for your cooperation.

Sincerely yours,



John Breaux  
Chairman  
Subcommittee on Nuclear  
Regulation



Alan K. Simpson  
Ranking Minority Member  
Subcommittee on Nuclear  
Regulation

**Russo Watts+ Rollins, Inc.**  
Washington, D.C. - Sacramento

May 20, 1987

Senator John Breaux  
Senator Alan K. Simpson  
United States Senate  
Committee on Environment and  
Public Works  
Washington, D.C. 20510-6175

Dear Senators:

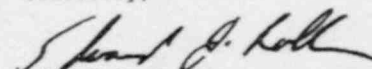
In response to your letter of May 11, 1987 regarding the Subcommittee on Nuclear Regulation oversight hearing on external influences on the Shoreham proceeding, the answer to your questions are as follows.

1. During my tenure at the White House, January 21, 1981 through October 17, 1983 and February 1985 through October 1985 I never made or attempted to make an ex parte communication regarding the Shoreham Nuclear Power Plant.
2. To the best of my knowledge no person ever requested that I make or attempt to make an ex parte communication in regards to this issue.
3. In early 1985 Franklyn Nofziger talked to me regarding the Shoreham Nuclear Power Plant. During that conversation he explained that the Department of Energy supported the opening of the Shoreham plant and asked if I could assist in obtaining local and county officials help in this regard. The only action I took was to ask my Deputy, Mr. Mitch Daniels, Director of Intergovernmental Affairs, to look into the matter. Mr. Daniels reported back to me that the issue was controversial with the local officials and he recommended that the White House not interfere. No further action was taken.

In reference to your request for documents, memoranda, notes, records, etc., my communication with Mr. Nofziger and Mr. Daniels on this topic was verbal.

I hope that this information will be of help to the committee.

Sincerely,



Edward J. Rollins

QUENTIN H. BURDICK, NORTH DAKOTA, CHAIRMAN  
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 LARRY PRESSLER, SOUTH DAKOTA

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
 WASHINGTON, DC 20510-4176

May 11, 1987

Mr. Samuel Speck  
 65175 Casin Hill Road  
 New Concord, Ohio 43762

Dear Mr. Speck:

On May 14, 1987 the Subcommittee on Nuclear Regulation of the Committee on Environment and Public Works will conduct an oversight hearing on external influences on the Nuclear Regulatory Commission's (NRC) adjudicatory procedures in the Shoreham proceeding.

Specifically, the hearing will focus on allegations that persons outside the NRC may have improperly contacted Commission decisionmakers with regard to matters being contested in the Commission's adjudicatory proceeding on the application of the Long Island Lighting Company to receive an operating license for the Shoreham Nuclear Power Plant.

To assist the Subcommittee in performing its oversight responsibilities in this area, we request that you provide the Subcommittee with written answers to the following questions prior to the hearing:

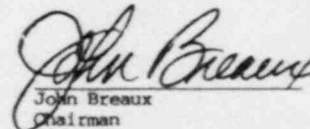
1. Have you, or to the best of your knowledge has any representative of the Federal Emergency Management Agency, made or attempted to make an ex parte communication, as defined by 10 C.F.R. 2.780, in NRC's Shoreham proceeding?
2. Did any person request that you, or to the best of your knowledge request that any representative of the Federal Emergency Management Agency, make or attempt to make an ex parte communication in NRC's Shoreham proceeding?
3. Did any representative of any party involved in the Shoreham adjudicatory proceeding, including but not limited to Mr. Franklyn C. Nofziger, ever contact you regarding any issues surrounding the licensing of the Shoreham Nuclear Power Plant? For purposes of this question, do not limit your response to ex parte communications. Please fully explain and provide a detailed summary of any such contacts, including a description of any actions taken by you as a result of such contacts.

Mr. Samuel Speck  
 May 11, 1987  
 Page Two

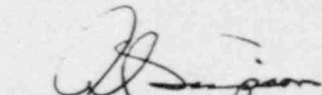
In addition, please provide all documents, memoranda, notes, records, recordings, tapes, logs, calendars and diaries containing information relevant to the above questions. This request includes both agency and personal records.

Thank you for your cooperation.

Sincerely yours,

  
 John Breaux  
 Chairman

Subcommittee on Nuclear  
 Regulation

  
 Alan K. Simpson  
 Ranking Minority Member  
 Subcommittee on Nuclear  
 Regulation





## MUSKINGUM COLLEGE

NEW CONCORD, OHIO 45742 • PHONE (614) 924-8211

May 29, 1987

Senator John Breaux  
 Senator Alan K. Simpson  
 United States Senate  
 Committee on Environment and  
 Public Works  
 Washington, DC 20510-6175

Dear Senator Breaux and Senator Simpson:

This responds to your letter of May 11, 1987, and follows up on my letter of May 21. My answers to your three questions are as follows.

1. No
2. No
3. Over the course of 1984 through August of 1986, I had discussions with all of the parties involved in the Shoreham offsite energy planning issue. Shoreham presented a unique situation for FEMA. It was the first time that the principal local and the state governments both withdrew from participation in offsite emergency planning at a commercial nuclear reactor. It also represented the first time FEMA was called upon to evaluate a utility company offsite emergency plan under specific Congressional language providing for such an alternative approach. A great deal of discussion took place to try to understand the positions of the various parties and under what conditions and what time frame they might participate in or assent to the development and exercise of an offsite emergency plan. There was also a great deal of discussion about what could and should be done if a utility plan was to be used as the basis for offsite emergency planning. There was also discussion concerning what Congressional actions might be encouraged to assist FEMA in dealing with the so called "hostage" issue on a more generic basis, "hostage" meaning where local and/or state governments refuse to participate in offsite emergency planning and exercising.

More specifically, I met with representatives of the state of New York on a number of occasions. At least four of these involved Dr. David Axelrod, New York State Secretary of Health. On one occasion there was a brief discussion with the Governor.

I also communicated with representatives of Suffolk County either in person or by phone on a number of occasions. The principal point of contact was John Gallagher, the Chief Deputy County Executive. On one occasion I held a joint press conference involving the Suffolk County Chief Executive, Peter Cohalan.

Meeting and phone communications also took place between me and representatives of Lilco. These contacts included William Catacincos, President of Lilco and Ira Freilicher, a Vice President of Lilco.

There were also contacts with legal firms representing the various parties involved in the emergency planning issue. Specifically, these were representatives of Kirkpatrick and Lockhart (for opponents of Shoreham) and Hutton and Williams (for Lilco). King Mallory and Edward Milne were the principal persons with whom there were discussions with Hutton and Williams.

At various times there were communications with the White House concerning Shoreham. These involved inquiries into the status of Shoreham so that they could respond to communications they received from the parties involved and members of Congress. At one point the Office of Science and Technology under Dr. Jay Keyworth was taking an active interest in what FEMA was doing regarding Shoreham (asking to be briefed and urging FEMA to do whatever it could to keep the nuclear power option viable).

The Department of Energy also took an active interest in the Shoreham issue, urging FEMA to move with all deliberate speed on the issue.

When I came to FEMA in December, 1983, I quickly concluded that there was a need to improve communication and cooperation with the Nuclear Regulatory Commission. Thus, the NRC director of operations and I began to get together over an informal lunch on a relatively regular basis. The two people involved were William Dircks and his successor, Victor Stello. Shoreham sometimes came up at these lunches, but it was not the primary purpose or focus of them. I also had lunch on one occasion with the NRC chairman, Lando Zech, and breakfast (at a FRERP exercise) with Commissioner Asselstine (and a number of exercise participants).

There were many contacts with individual members of Congress over Shoreham and also several hearings. The former involved briefing the members, themselves, and members of their personal and committee staffs. At least one Congressman, Representative Markey, requested and was given FEMA files pertaining to Shoreham. If there was any place from which I received any "pressure" concerning Shoreham, it was from members of Congress. Congressman Markey used his position as chair of FEMA's House oversight committee regarding nuclear issues to pressure FEMA to not move ahead with a Shoreham

exercise while Congressman Boland, who chaired FEMA's budget subcommittee wrote language into the agency's budget report urging FEMA to move ahead with such exercises.

Finally, with respect to Franklyn C. Nofziger, I was asked in late 1984 by the former director of FEMA, Louis Gluffrida, to phone Mr. Nofziger to brief him on how FEMA saw the situation regarding offsite planning at Shoreham. After that, Mr. Nofziger and I had several phone conversations concerning what was happening regarding Shoreham. We also both attended a breakfast at which representatives of Lilco were present where the Shoreham issue was discussed, especially with reference to getting the county, if not the state, to participate in an exercise.

These communications with Nofziger were essentially exchanges of information on who was thinking and doing what regarding the offsite emergency planning. He conveyed his perspective on where New York State, Suffolk County, and Lilco were on the issue and I did likewise.

These are my best recollections. I left my calendar at FEMA when I resigned. All official correspondence, memoranda, and other records were also left. My office did not keep telephone logs.

Finally, with all due respect let me say that trying to follow the will of Congress on nuclear power was the most frustrating experience I have had in many years of government service (I was in the Ohio legislature for thirteen years and chaired the Senate Energy, Environment, Natural Resources Committee). Why? Because Congress has failed to develop a clear, precise policy and mandate for administrators on how to handle the hostage issue. The result is that any administrator is subject to constant whipsawing by members of Congress. Whether you decide that nuclear power is too risky to pursue or that the risk of forfeiting the nuclear option is too great, I implore you to have the integrity and perseverance to develop a clear policy that an administrator can follow without having his integrity and intelligence constantly impugned. It is clearly appropriate that you should investigate whether anyone was trying to bring inappropriate influence to bear on decision making on Shoreham. It is infinitely more important (and more difficult) to come forward with a forthright policy on nuclear power, whatever you decide that policy should be. If Congress had done its policy making job more effectively in the first place, you probably would not have to hold the kind of hearings you are now holding.

Sincerely,

*Samuel W. Speck*

Samuel W. Speck  
Assistant to the President and  
Associate Professor of Political Science

paj

COUNTY OF SUFFOLK



COUNTY LEGISLATURE

GREGORY J. BLASS  
PRESIDING OFFICER

May 14, 1987

The Honorable John Breaux, Chairman  
The Honorable Alan K. Simpson, Ranking Minority Member  
Subcommittee on Nuclear Regulation  
Committee on Environment and Public Works  
United States Senate  
Washington, D.C. 20510

Dear Senator Breaux and Senator Simpson:

Thank you for your letter of May 11, 1987, inviting me to testify on behalf of Suffolk County at the Subcommittee's May 14 hearing on external influences affecting the NRC's Shoreham licensing proceedings. I will present the County's testimony at the hearing.

The County did not receive your May 11 letter until the evening of May 12. Accordingly we have not had the opportunity to respond or search our files to obtain the documents you have requested. The County, of course, will cooperate with the Committee's request and provide a response and documentation in accordance with your letter.

Sincerely,

*Gregory J. Blass*  
Gregory J. Blass  
Presiding Officer

STATEMENT OF MAURICE BARBASH  
 CHAIRMAN  
 CITIZENS TO REPLACE LILCO  
 BEFORE  
 SENATE COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS  
 SUBCOMMITTEE ON NUCLEAR REGULATION  
 MAY 14, 1987

Statement of Maurice Barbash, Chairman, Citizens to Replace LILCO

I am the Chairman of Citizens to Replace LILCO (CRL), a not for profit organization of approximately 10,000 members, registered in New York State. We are a coalition of Long Island businessmen, homeowners and other rate payers. Most of us are neither anti-nuclear nor "not on my block" zealots. Our members' concerns regarding the Shoreham nuclear plant vary from economic to safety to environmental. CRL successfully sponsored the state legislation which established the Long Island Power Authority (LIPA). LIPA is now considering the public acquisition of the Long Island Lighting Company (LILCO).

We thank you for the invitation to testify, especially in view of the fact that our right of free speech had been challenged by LILCO in federal court, and we have incurred legal fees of \$86,000 in the time consuming, but successful defense against that attack.

To identify myself, I am a conservative Long Island businessman and have been a residential building developer for over 36 years. My public activities include 16 years as a Director, past Presiding Chairman and present Planning Chairman of a large Diocesan hospital, founding trustee and current Vice President of the Long Island Philharmonic, as well as Chairman of the Citizens Committee for a Fire Island National Seashore. In the latter capacity from 1962 to 1964, I worked with many of your predecessors here in the halls of Congress.

My interest in this issue originally stemmed from concerns over the economic effects of Shoreham's rising costs. In 1983, then Suffolk County Executive Peter Cohalan appointed me to assist in an economic

Statement of Maurice Barbash, Chairman, Citizens to Replace LILCO

study of Shoreham, which was done by the accounting firm of Touche Ross, Inc. This experience broadened my concern to all of Shoreham's ramifications, safety as well as economic. These growing concerns and those of other Long Islanders led to the founding of CRL in mid 1985.

As a result of our experience since that time, we tell you quite frankly that we fear that the nuclear regulatory process has been compromised and contaminated by private and political interest. The unquestioned integrity of this process, however, is necessitated by the risks that the public is asked to assume. Regarding Shoreham, the Nuclear Regulatory Commission's (NRC) own study of the potential health and property damage effects at that plant are staggering. (Copy of report attached herewith). LILCO's own witness before an NRC hearing admitted potential catastrophic damage, including the radioactive contamination of Long Island's water supply for decades or more. True, a meltdown is only a remote possibility BUT, there is no meaningful insurance available to compensate us for these potential catastrophic losses. Therefore, no matter what the "nuclear experts" say about the safety of nuclear plants, the insurance experts are not buying it. This makes us suspicious and uneasy.

Shoreham, in particular makes us suspicious and uneasy. In 1985 the New York State Public Service Commission (PSC) disallowed 1.4 billion dollars of Shoreham's costs, due to mismanaged construction. If you read the PSC report it can cause you great alarm. And, if you compare the report with a letter from a Chernobyl engineer printed in a Kiev newspaper a month before that accident, you can have nightmares. The plants may be somewhat different, but the stories of sloppy

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construction are identical in many details. We ask, where was the NRC all the time this mess was going on? How do we know that this is not another Zimmer, a monumental NRC goof? Incidentally, the Zimmer sponsors are now suing General Electric (GE) for a billion dollars, claiming that Zimmer's GE Mark II containment design was defective, and that GE knew and concealed that fact. Shoreham is a GE Mark II model, which does not make us feel any better. Considering all of the above, absolute unvarnished integrity should be the regulatory order of the day, but what has actually happened?

Confronted with difficulties in obtaining an operating license from the NRC, LILCO hired White House insider Lyn Mofsigier in November 1983 at \$20,000 per month. The public was unaware of LILCO's payments to Mofsigier until the Long Island newspaper Newsday broke the story on July 24, 1985. At that point, LILCO said that it paid Mofsigier for his counsel and advice. According to Newsday (11/19/86), LILCO Chairman William Catacinos denied that Mofsigier did any lobbying for LILCO. That statement proved to be untrue. Events have forced subsequent admissions by Catacinos indicating that Mofsigier lobbied strenuously for LILCO, and that he met with a large number of White House personnel and federal agency heads to win support for LILCO. (Newsday 12/18/86)

Let's start at the beginning. Newsday reported (7/24/85), that Mofsigier met twice in the early spring of 1985 with then Suffolk County Executive Peter Cohalan, in the presence of LILCO Chairman Catacinos. At approximately the same time Mofsigier consulted with people in the White House. (Newsday 11/19/86). Cohalan had been elected on a strong anti-Shoreham platform, but incredibly, after the meetings with



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Nofsiger, switched his stance in such a manner as to help LILCO. Did Nofsiger say things to Cohalan that caused the change? Did he convey pressure or offers from the White House? There are published rumors that blackmail was involved. Messrs. Nofsiger, Cohalan, Catacinos and Walter Conlon, in whose home the meetings were held, should be compelled to disclose, under oath, what happened at those meetings. This much is owed to the voters of Suffolk County, who in a sense, were disenfranchised by Cohalan's reversal. (Mr. Cohalan, incidentally, ruined his political career by his action, and left politics).

Next, consider LILCO's emergency evacuation drill of February 13, 1986, which was monitored by the Federal Emergency Management Agency (FEMA). FEMA Regional Director, Frank Petrone, would not delete a sentence from his report, stating that because there was no local governmental participation in the drill, FEMA could not give "reasonable assurance" that the public could be protected. For this, he was fired from his job. (Ironically, FEMA is now embracing a position similar to Mr. Petrone's). It now turns out that Nofsiger had met with FEMA officials as well as Department of Energy (DOE) chiefs Donald Nodel and John Herrington, on behalf of LILCO. Was Petrone's firing influenced by Nofsiger and/or White House contact with FEMA? Further, in March 1985, Congressman Markey released DOE documents proposing that the DOE "lobby" the NRC to change its rules so as to help LILCO get a quick Shoreham license. This after DOE Chief Herrington told Mr. Markey that FEMA was doing nothing about Shoreham. Did Nofsiger's meetings with DOE chiefs prompt this blatantly improper plan to influence the NRC's proceedings?

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proceedings?

Another strange event happened in July of 1986, when Suffolk County attempted a takeover of LILCO. The county's plan was not even finalized when a high U.S. Treasury Department officer, J. Roger Mentz, wrote to Suffolk County Executive Cohalan. In the letter, Mentz cast serious doubts on the plan's legality and the tax-free status of the County's proposed borrowing. He also threatened an IRS audit, a move of questionable legality. Stranger yet, Mentz sent a copy of his letter out on Munifax, a financial wire service. In fact, Wall Street got the news even before Cohalan got the letter, thus chilling prospects for the county effort. Then Mentz suddenly got too busy to meet with the county's representatives, until he was forced to do so by repeated demands. Actually, Mentz had been in touch with LILCO and made up his mind without even seeing the final county plan or consulting the county's experts. In other words, a private company succeeded in enlisting the help of a federal agency while the public's elected representatives had to fight for a hearing. Who engineered this favorable treatment for LILCO?

More suspicious behavior. Two separate NRC boards decided that LILCO did not have the legal authority to implement its evacuation plan without local participation. The NRC promptly issued a ruling which sidestepped and effectively nullified those decisions. As if that weren't enough, it then shifted two judges off one of the boards immediately after those judges had heard three days of testimony from Long Islanders. Just as FEMA had done by firing Frank Petrone, the NRC was taking no chances with honest dissension within its ranks. Is this a fair way to conduct a licensing proceeding? How has LILCO been able

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to obtain such favorable treatment?

The list of examples of federal agencies acting on LILCO's behalf goes on and on. President Reagan, in his October 1984 letter to then Representative Carney, pledged that his administration did not favor the federal government's overruling of local authority regarding a Shoreham evacuation plan. A recent DOE letter to Long Islanders ignores the pledge completely. Not only that, it even supports LILCO's position against a public takeover, a matter completely up to the voters of New York and not to any federal agency. How did LILCO gain so much control over so many agencies of the federal government? Is the payment of \$750,000 to White House insider Nofsiger part of the answer?

Stonewalling the American public, as the NRC has been doing, is never successful in the long run. And, although lobbying is a recognized and respected profession, influence peddling should have no role in the nuclear plant licensing process. For everyone's benefit, including the industry's, this committee should conduct a thorough investigation of this matter. As a result, you may uncover the need for a new approach towards regulation of the nuclear industry.

One of nuclear power's strongest advocates is Time Magazine Bureau Chief Peter Stoler, who is right on target in his book "Decline and Fall". In the concluding chapter he states: "The most important thing the government can do is be honest -- both with itself and the American public. It can begin this task by recognizing that it can no longer

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play a dual role with regard to nuclear power. It cannot function as a booster, or act as a sort of nuclear chamber of commerce, if it is also going to function as a regulator and guarantor of public safety. One role conflicts with the other. There is only one way in which the government can resolve this conflict. It must make a choice, and there is no question as to what that choice must be. The government must abandon the role of cheerleader and leave the task of selling nuclear power to the industry itself. It must choose to regulate. More important, it must regulate well, placing the safety of the public before the economic health and welfare of the industry. It must show the public that it is concerned about safety, and it must do so by its actions, not its words."

Our committee has developed some ideas to implement what we feel are needed changes and we will be happy to discuss these with you. First, however, we urge you to conduct an aggressive investigation, taking sworn testimony from and subpoenaing the records of Mr. Nofsiger, Mr. Catacarinos, and all federal personnel contacted by Mr. Nofsiger regarding Shoreham. Only then will we understand what may have gone wrong in this process, and how to correct it. Thank you.