

ORIGINAL

# UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:

LONG ISLAND LIGHTING COMPANY )  
(Shoreham Nuclear Power Station, )  
Unit 1) )

Docket No.  
50-322-OL-3

EVENING SESSION

PAGES: 21175 through 21290

PLACE: Bethesda, Maryland

DATE: July 11, 1988

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1 UNITED STATES NUCLEAR REGULATORY COMMISSION  
2 ATOMIC SAFETY AND LICENSING BOARD

3 In the Matter of: )  
4 ) Docket No.  
5 LONG ISLAND LIGHTING COMPANY ) 50-322-OL-3  
6 ) (Emergency Planning)  
7 (Shoreham Nuclear Power )  
8 Station, Unit 1) )

9 EVENING SESSION Monday,  
10 July 11, 1988

11 East-West Towers Building  
12 4350 East-West Highway  
13 Bethesda, Maryland

14 The above-entitled matter came on for further  
15 hearing at 6:01 p.m.

16 BEFORE: HON. JAMES GLEASON, Chairman of the Board

17 For the Board:

18 JUDGE JERRY KLINE  
19 JUDGE FRED SHON

20 APPEARANCES:

21 On behalf of Applicants:  
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25

C O N T E N T S

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
1					
2	<u>WITNESSES:</u>				
3	Panel:				
4	James D. Papile				
	Donald A. DeVito				
5				21271	
	By Ms. Young				
				21276	
	By Mr. Cumming				
6				21284	
	By Mr. Lanpher				

E X H I B I T S

	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>DESCRIPTION</u>
9	<u>EXHIBITS:</u>		
10	LOCA		
	Discovery:		
11			
	No. 13	21205	June 11, 1980 Status Report
12			
	No. 14	21211	21211 Pages K02056, K02057, K02076
13			
	No. 15	21212	May 1, 1981 letter to Regan from Horton
14			
	No. 16	21221	July 5, 1988, "State oof New York's Response to LOCA's Third Set of Interrogatories and Request for Production of Documents"
15			
	No. 17	21225	June 28, 1988, "Government's Response to Board Order of June 24, 1988"
16			
	No. 18	21231	Notice of Deposition and Deposition dated April 29, 1988
17			
	No. 19	21242	Guide to Local Government Disaster Planning
18			
19			
20			
21			
22			
23			
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EXHIBITS

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<u>EXHIBITS:</u>	<u>IDENTIFIED</u>	<u>RECEIVED</u>	<u>DESCRIPTION</u>
LOCA Discovery:			
No. 20	21243		Guide for Preparing a County Comprehensive Emergency Management Plan in New York State
No. 21	21243		Basic Plan Component of a County Comprehensive Emergency Management Plan
No. 22	21250		Annex B
No. 23	21252		Guide for Development of State and Local Emergency Operations and Plans
No. 24	21252		Interim Guidance
No. 25	21260		Radiological Intelligence Annex K, August 1976
No. 26	21264		Emergency Communications Development Plan, State of New York, County of Suffolk

1 Q I'll ask you to turn a little bit forward into the  
2 section that's entitled "General, Number 2, Basic Plan",  
3 prepared by the state, and turn to page 3 of the document.

4 There is a listing on that page which refers to  
5 the types of disasters. Under the disaster types, under  
6 Item 1, it lists "natural disasters include but are not  
7 limited to flood, drought, abnormal tide, fire, hurricane,  
8 earthquake, tornado, wind storm or other storm, landslide or  
9 other catastrophe".

10 Under Item 2, it refers to "manmade disasters  
11 included but are not limited to nuclear facility accidents,  
12 rail, truck or aircraft accidents, accidents at chemical,  
13 fuel or explosive production plans", so forth.

14 There's then a listing under Item 3 for nuclear  
15 attack.

16 Now, Mr. DeVito, doesn't that appear to you to be  
17 a plan which encompasses comprehensive responses to  
18 emergencies and not simply civil defense plans?

19 MR. Lanpher. Judge, please, can I object to this,  
20 the question, and to this line of questioning? Two bases.

21 Number one. Mr. DeVito has said that he has not  
22 reviewed this plan and, thus, these questions are asking for  
23 the witness to speculate.

24 Number two. This line of inquiry does not relate  
25 to the issues that this Board defined for interrogation in

1 this proceeding, even with the leeway that the Board feels  
2 it must give. He has not tied this to any discovery issue.

3 MR. GLEASON: Your second point may be valid. I  
4 just cannot evaluate it at the present time, Mr. Lanpher.

5 The first point, this man is in a very, very  
6 responsible position in the state of New York with respect  
7 to emergencies, and he's certain to be asked for his opinion  
8 of that section.

9 MR. LANPHER: Then, I request that he be advised  
10 to read this entire section of the document to get a full  
11 understanding because he's being --

12 MR. GLEASON: One page and he went over natural  
13 disasters, manmade disasters, nuclear attack. If you'd like  
14 some time to read it, why, please ask for it. I'll  
15 certainly grant it.

16 MR. LANPHER: Judge, please, with all respect,  
17 this state-prepared portion is twenty-one pages, I believe.

18 MR. GLEASON: He was just asking him about a  
19 certain section.

20 MR. LANPHER: Well, but there are other portions  
21 about statutory authority and Item 3 right below goes to  
22 civil defense matters. So, there's a lot of inter-related  
23 things, and if you want to get his opinion and have them  
24 have any substance at all, I think you have to review it  
25 all. He hasn't done that.

1 MR. GLEASON: Let me -- this may be a good time to  
2 take a review as to where we are, and I don't want to  
3 interrupt this, but I do want to see where we're heading as  
4 far as the time is concerned.

5 MR. SISK: Judge Gleason, I am, unfortunately,  
6 proceeding much more slowly than I had hoped to. I have, I  
7 believe, approximately ten more documents, ten or twelve  
8 more, to show this witness, and where I'm trying to go with  
9 this is to show the states and SEMOs likely had knowledge of  
10 the existence of a sub-battalion plan of some sort for many,  
11 many years, and I believe it may implicate state knowledge  
12 of the Suffolk County Emergency Operations Plan.

13 MR. GLEASON: If you will just go with me a  
14 minute, we'll go off the record. I think I heard thunder.

15 MR. LANPHER: Would you consider taking a short  
16 break, also?

17 (Discussion off the record.)

18 MR. GLEASON: It appears to us, if I could have  
19 your attention a moment, that Mr. Sisk has ten more  
20 documents that are going to take some time, and I wonder  
21 whether -- we think maybe we ought to take an hour and go  
22 have some dinner and come back, if we can get out there  
23 without being thunder struck.

24 MR. LANPHER: Maybe someone ought to go look and  
25 see if it's possible.

1 MR. GLEASON: I don't know how we're going to be  
2 able to get to the third witness tonight.

3 MR. LANPHER: What is the Board anticipating the  
4 schedule is for tonight, if I may ask?

5 MR. GLEASON: Well, we'd come back and we would  
6 run certainly until we got through with Mr. DeVito. As much  
7 time as that takes and then we'll have to see where we are  
8 with respect to the remaining witnesses. It doesn't appear  
9 to me like we're going to be able to get to Mr. Jamano  
10 tonight.

11 MR. SISK: Judge Gleason, I doubt that we will be  
12 able to get to Mr. Jamano tonight. I would suggest that  
13 perhaps we take a ten or fifteen minute break, catch our  
14 breath, and try to finish. I will try to move as fast as I  
15 can, but I do have a number of documents that I think are  
16 important to the questioning, and I don't believe it will  
17 take as long for Mr. Jamano.

18 I have spoken with Mr. Spivey, who will be  
19 questioning the three county witnesses tomorrow. If we  
20 start with Mr. Jamano first thing in the morning, we think  
21 we can conclude tomorrow upon the schedule of witnesses.

22 MR. IRWIN: I also have a report from the front  
23 which is that it's coming through at a rapid clip and  
24 there's large powerful wind and heavy rain outside, and I  
25 don't think anybody wants to go anywhere right now.

1 MR. ZAHNLEUTER: I think Mr. DeVito would  
2 appreciate it if we would continue. I think he would like  
3 to leave for Albany tonight if it's possible.

4 Mr. Jamano, however, informed me that after we all  
5 decide that the state's three witnesses would be appearing  
6 here today, that he made commitments for tomorrow, and those  
7 commitments are in Albany, and I'm not too sure without  
8 talking to him of what the nature of the commitments are.

9 I don't think he's available tomorrow.

10 MR. GLEASON: That is up to the state. That is  
11 your problem. Once this thing starts, why, you're obligated  
12 to produce witnesses.

13 (Pause)

14 MR. GLEASON: Mr. Sisk, can you give a kind of a  
15 upward bound as to how long it will take you to conclude Mr.  
16 DeVito?

17 MR. SISK: Judge Gleason, if I'm able to proceed  
18 by way of showing him documents without going into detail as  
19 to the content of the documents, if there are -- if we're  
20 not interrupted by where the documents come into the record,  
21 which has not been our experience so far, I think I have  
22 between an hour and an hour and a half. That's my guess.

23 MR. GLEASON: Let's take a fifteen-minute break  
24 and then we'll resume.

25 (Whereupon, a recess was taken.)

1 MR. ZAHNLEUTER: Judge Gleason, Mr. Jamano is  
2 outside waiting, and he has told me that his commitments  
3 tomorrow are important. He's teaching and there's a large  
4 group of people, sixty people, that are attending his  
5 lecture.

6 What I'd like to propose is that Mr. Jamano return  
7 on Thursday morning and provide his testimony at that time.  
8 Thursday is a lighter day with Dr. Axelrod and Mr. Kelly  
9 being the only witnesses scheduled. I think that would be a  
10 convenient reasonable solution to this problem.

11 MR. SISK: Judge Gleason, so long as the  
12 sequestration order remains in effect throughout the time we  
13 have.

14 MR. GLEASON: If you would advise him again of the  
15 terms of that sequestration order, that he's not to be  
16 talking to any witnesses.

17 MR. ZAHNLEUTER: About the subject matter of this  
18 inquiry.

19 MR. GLEASON: Well, about anything that's  
20 transpired during this session.

21 MR. ZAHNLEUTER: If I may take a minute and I'll  
22 tell him and he'll be on his way.

23 MR. GLEASON: All right.

24 MR. ZAHNLEUTER: I'll be very quick.

25 (Pause)

1 MR. GLEASON: All right, Mr. Sisk.

2 BY MR. SISK:

3 Q Mr. DeVito, I believe the last question was can  
4 you tell from reviewing the Suffolk County Emergency  
5 Operations Plan and the particular sections that I've shown  
6 you earlier whether this is what appears to be in your  
7 professional judgment a strictly nuclear attack plan.

8 A No, it does not. Upon reviewing some of these  
9 pages, counsel, it appears to me that what we have here is  
10 an excerpt of what was probably an earlier version of the  
11 state's disaster preparedness plan.

12 That suspicion hit me as you were talking and I  
13 was reviewing the first couple of pages. So, I compared it  
14 even with some of the language in the documents you gave me  
15 that is the current version, and I noticed some similarities  
16 in language.

17 So, what I would assume has occurred is that in  
18 part of its own local effort to develop an emergency  
19 operations plan, that what Suffolk County did was it took a  
20 portion of that document, the older version of the state's  
21 disaster preparedness plan, where it thought that it suited  
22 its purpose for its document, and I can't get into the mind  
23 of the Suffolk County planners, decision-makers, and  
24 apparently they substituted that as a portion here.

25 Your Honor, if I may, it became -- at least it

1 seemed to me and forgive me if I ramble a little bit, that  
2 there is some confusion that exists with respect to what in  
3 the hell all these problems are with respect to civil  
4 defense and other types of emergency planning.

5           And if I may, I would like to clarify that, at  
6 least attempt to clarify that, and I have some difficulty  
7 understanding it sometimes myself.

8           The first goes to an issue that you raised a  
9 moment ago, Mr. Sisk, about the state having this document  
10 or should have been aware that it had this document, the  
11 alleged Suffolk County plan. The state did not have it. The  
12 State Emergency Management Office did not have that document  
13 prior to May 6th and there's no reason for it to have had  
14 that document prior to May 6th.

15           Let me clarify. The system that was developed  
16 years ago with respect to this entire area of concern was  
17 exclusively civil defense-oriented. Now, I can't speak to  
18 what the historic experience was with the development of  
19 plans and the numbers that may have existed out there and  
20 whether they were or were not filed with the State of New  
21 York. I'm not aware of any requirement to do that, and to  
22 my knowledge, there is no such file of plans for local  
23 governments at the state.

24           But going back to the time that I came on board  
25 and this whole planning effort was singularly focused, there

1 was no attempt within the Office of Disaster Preparedness,  
2 other than in meeting its responsibilities to the  
3 Commission, to provide staff services at the -- under the  
4 direction of the Secretariat.

5           There was no attempt to do widespread planning.  
6 There was an understanding of the need to do planning and,  
7 in fact, Article 2(b) of the Executive Law says that, but it  
8 does not mandate that planning, and the state has never  
9 provided funds to do that planning.

10           So, it was left to each jurisdiction to do its own  
11 plans in satisfaction of Article 2(b) of the Executive Law.

12           Now, whether they did or did not do those, the  
13 state office, not having responsibility in that area, did  
14 not attempt to apparently catalog and to ensure that there  
15 was on hand copies of any local government plans that may  
16 have existed.

17           The focus, as I said, at the state level was  
18 strictly on this technical nuclear attack preparedness  
19 issue, the crisis relocation planning effort.

20           When I got involved in the process, there was a  
21 change in attitude on the part of the Federal Emergency  
22 Management Agency with respect to policy interpretation, and  
23 sections, I guess, of the federal law in which Congress said  
24 that you can use these monies, these monies meaning the  
25 civil defense funds, for the purposes of doing other things

1 that might enhance public safety, provided those other  
2 things did not detract from, and there's more language than  
3 that, but that's the essence of it, detract from the civil  
4 defense effort, it was okay to do those things, and thus  
5 began this process that I talked about, the integrated  
6 emergency management system process.

7 That process gave us the opportunity to dovetail  
8 the suggestions within Article 2(b) of the Executive Law  
9 that each municipality should have an emergency plan with  
10 the funded process, one hundred percent federally funded  
11 process, that heretofore had been single-issue oriented, and  
12 now it could be made more general.

13 So, we married those two up, and it was somewhere  
14 in the time frame of '84, perhaps '85, but somewhere in that  
15 time frame, 1984. From our perspective then, that is the  
16 first time that the State Emergency Management Office, at  
17 least under my tenure, became focused on emergency plans  
18 developed at the county level.

19 I emphasize county because there are other EMA  
20 jurisdictions, outside emergency management assistance  
21 programs, whereby municipalities get funding from the  
22 Federal Government, that are not counties. There are, in  
23 fact, I believe, nine cities that are so engaged.

24 Our focus had to be, we thought, on the county  
25 level first, and to incorporate any city concerns within the

1 county construct, and we began a schedule of working with  
2 various counties, using the federally-funded population  
3 protection planning staff, to work with local government  
4 emergency management assistance-funded staff, to develop  
5 what we believe would be credible emergency operations  
6 plans, addressing all issues, including the attack issue,  
7 the nuclear attack issue, which was the centerpiece of why  
8 the Federal Government had this program to begin with.

9           So, a schedule was worked out and agreed upon with  
10 the Federal Emergency Management Agency. For those counties  
11 that had been completed and not all counties are  
12 participants, so we don't have all county plans at this  
13 juncture, for those counties that had been completed, we  
14 probably have plans in the office. Those would be the  
15 completed emergency operations plans pursuant to this new  
16 program.

17           For those counties that had not yet been completed  
18 or were not EMA participant programs, we wouldn't have a  
19 copy of the plan and we wouldn't be requesting a copy of the  
20 plan, no interest, until we could get the funds to start the  
21 planning effort in that particular locality.

22           This year began the effort in Suffolk County,  
23 among others, and that's the first time we became aware that  
24 there was a document called an Emergency Operations Plan,  
25 previously developed, in Suffolk County, and we accepted

1 that document delivered to us as a base for examining  
2 compliance with the federal guidelines, and that where  
3 deficiencies would exist, then my staff working with the  
4 county staff would enhance, upgrade, expand, modify,  
5 whatever was necessary, those deficiencies to bring it into  
6 compliance with our interpretation of the FEMA guidance as  
7 contained in the appropriate civil preparedness guides.

8 I say ours because there is no certification  
9 process. I do not go forward to FEMA and say, this plan is  
10 acceptable to the state of New York in satisfaction of this  
11 requirement. What I simply do is accept the plan in  
12 satisfaction of the requirement and make its presence aware  
13 to FEMA. They may choose or not to come in and examine  
14 that plan to determine what their impression or  
15 interpretation of is as regards compliance with the  
16 appropriate civil preparedness guide.

17 To my knowledge, there is no federal certification  
18 of those plans as having met the guidance, at least I have  
19 never received any formal document from FEMA saying County  
20 X's plan is hereby determined to have satisfied the federal  
21 guidance. It just doesn't happen that way, not that  
22 formalized program, and I remind you, it's a federal  
23 program.

24 Our concern is that the municipality, which is,  
25 after all, the front line in any disaster emergency

1 situation, is dealing with the issue as they deem  
2 appropriate to deal with the issue.

3 Our concern is that the federal guidelines have  
4 been satisfied.

5 I hope that clears up whether or not we had or  
6 should have had a Suffolk County plan. We did not have and  
7 there was no reason for us to have it prior to the initial  
8 staff contact with Suffolk County on this year's population  
9 protection planning effort.

10 Q Mr. DeVito, didn't you state earlier that Suffolk  
11 County had been receiving federal funds from FEMA as long as  
12 you've been with either the Office of Disaster Preparedness  
13 or --

14 A Emergency Management Assistance funds, yes.

15 Q Since at least 1982?

16 A Since at least my tenure, yes.

17 Q And do those funds flow directly from the Federal  
18 Government to the locality?

19 A They go through the state office as an  
20 administrative agent, but the funds are earmarked for local  
21 government.

22 In fact, there is a distribution formula, if you  
23 will, that says that the state is entitled only to a maximum  
24 of one-third with two-thirds of the funds being disbursed to  
25 participating emergency management assistance communities.

1 Q Okay. And that allocation that you're talking  
2 about is an allocation that the Federal Government  
3 determines?

4 A For each municipality?

5 Q Yes.

6 A The allocation to the state is a Federal  
7 Government determination and inherent within that allocation  
8 to the state is the two-thirds share for local governments.

9 Q Okay. So, then, the state determines how much of  
10 the two-thirds share will go to the local governments, is  
11 that right?

12 MR. LANPHER: I object to the question.

13 Judge Gleason, we've gone a long time on this, and  
14 now we're back into the funding. I don't think this relates  
15 whatsoever to the issue identified by the Board to be  
16 examined, namely whether there was compliance with discovery  
17 requirements.

18 The hour is getting late and I think LOCA has had  
19 long enough on this. So, I object.

20 MR. GLEASON: Where are you heading, Mr. Sisk?

21 MR. SISK: Judge, I'm heading where I said I was  
22 before the break.

23 MR. LANPHER: Well, is there any reason to  
24 disbelieve what Mr. DeVito just attempted to explain very  
25 forthrightly, that the state didn't have this document

1 before they got it in May and they produced it?

2 MR. GLEASON: Well, let him continue.

3 BY MR. SISK:

4 Q Mr. DeVito, does the state or does FEMA determine  
5 the allocation of funds to particular local governments?

6 MR. LANPHER: I object. That's the exact same  
7 thing, Judge, and I thought we were going off at least on  
8 some different tangent. This funding is just not relevant.

9 MR. GLEASON: Well, let him answer and let's see  
10 if it is or not.

11 THE WITNESS: To understand that, you have to go  
12 back a number of years before we got into this cooperative  
13 agreement situation.

14 BY MR. SISK:

15 Q I'd rather not do that, if you can answer my  
16 question directly. I'd rather just know whether the state  
17 emergency management office determines which local  
18 governments will get how much money out of those federal  
19 funds.

20 A It's not quite as simple as that, Mr. Sisk.

21 Q Does it change over time?

22 A Because there is an historic precedent that  
23 establishes a base, and that base may have absolutely  
24 nothing to do with objective factors, such as population or  
25 level of risk or things of that nature.

1 Q All right. Well, let's start in 1984 then. As of  
2 that time, was FEMA the agency that decided how much money  
3 would go to any particular local?

4 MR. LANPHER: I object Judge. He's not connected  
5 --

6 MR. SISK: This is the date of the state's initial  
7 document production.

8 MR. GLEASON: Well, I'm going to deny the  
9 objection. Let him continue because I don't know where it's  
10 heading, Mr. Lanpher. Let's just see, please.

11 Go ahead. Answer if you can.

12 THE WITNESS: The point of whether or not the  
13 state determines is an academic exercise because there is,  
14 as I was trying to say, the historic precedent back to a  
15 time when there was more money available for civil defense  
16 that, when funding was made available to localities, those  
17 who chose to participate and provided their share of the  
18 funding up to a maximum of fifty percent, is what the  
19 Federal Government imagined, they received virtually  
20 whatever they asked for, and there was no real connection to  
21 my mind, and again this predates my tenure, between  
22 population base, level of risk, vulnerability, perhaps not  
23 even to the quality of effort, but again that's a value  
24 judgment, and I'm looking back historically.

25 So, a certain base line was established for those

1 communities that chose to participate in the EMA program,  
2 Emergency Management Assistance program.

3           As funding became less, as there was reductions on  
4 the federal side, as more participants got involved in the  
5 EMA program, then a particular municipality's share would be  
6 lessened, and what we attempted to do in that situation was  
7 to share the pain since we try to be as equitable as we can  
8 in reduction.

9           BY MR. SISK:

10          Q     Mr. DeVito, if I may, I don't really care about  
11 the mechanics, what I care about is who the decision-maker  
12 is.

13                     , the state determine whether the local  
14 governments get the federal money for local disaster  
15 planning?

16          A     Only in the sense of our judgment as to whether or  
17 not the state -- the locality is making a best faith effort  
18 to accomplish the work plans within the guidelines  
19 established by FEMA in the cooperative agreement.

20          Q     And the work plan involves planning for  
21 emergencies in some sense, is that correct?

22          A     Might involve an emergency operations planning  
23 effort under the population section planning program,  
24 depending upon the year in question.

25          Q     Are they able to pass funds through to a local if

1 it's not engaging in any emergency planning?

2 MR. LANPHER: I object to the question.

3 Mr. Sisk ought to call FEMA as a witness if he  
4 wants to pursue this.

5 Judge, you defined the issue. You said the basic  
6 issue is whether state and county emergency plans may have  
7 been withheld during the proceeding, and if such plans were  
8 withheld, what were the circumstances surrounding the  
9 withholding. That's at 2924. Those were your words, Judge  
10 Gleason.

11 I think we have to live within the words.

12 MR. GLEASON: I had those words in mind and  
13 recited them three different times. The objection is  
14 denied. I don't know where he's going, but I'm trying to  
15 give him an opportunity to get there and get somewhere  
16 that's meaningful.

17 Please proceed.

18 BY MR. SISK:

19 Q Mr. DeVito, does the Federal Government permit the  
20 state to pass on through to a local government that is not  
21 engaging in emergency planning in accordance with FEMA  
22 guidelines?

23 A If a jurisdiction that is a recipient of EMA  
24 funding chooses not to do an emergency operations plan and  
25 they are not all scheduled in any given year, it is a

1 piecemeal operation dependent upon the number of resources  
2 and funds available, if they choose not to do it, then I  
3 don't know what FEMA would do since we have no historical  
4 precedent in that regard.

5           As far as EMA assistance funding is concerned, any  
6 recipient of EMA funding must eventually do a population or  
7 an emergency operations plan under population protection  
8 planning effort.

9           Q     Mr. DeVito, was anyone within the Office of  
10 Disaster Preparedness -- do I have the title correct?

11          A     The predecessor organization?

12          Q     Yes.

13          A     SEMO? Yes, you do.

14          Q     Was anyone within the ODP or SEMO aware of the  
15 existence of any Suffolk County disaster plan prior to May  
16 of 1988?

17          A     Apparently not, at least not in terms of the  
18 executive office nor in terms of the planning section  
19 because there was no expectation that Suffolk County would  
20 deliver that document on May 6th of 1988. So, there was no  
21 awareness that it existed. It was provided to staff.  
22 That's our first indication of that.

23                 I asked if anybody had been aware of that document  
24 at the time that it was delivered to me, and that was when I  
25 got the answer that the first time we became aware of it was

1 May 6th.

2 Q So, is your answer that, to your knowledge, no one  
3 that you have discussed the matter with at SEMO was even  
4 aware of the existence of any type of Suffolk County  
5 emergency plan until May of 1988?

6 A That is correct, to my knowledge.

7 Q Now, why did Mr. Horton -- strike that.

8 Did Mr. Horton travel to Suffolk County on May  
9 6th, 1988, simply not knowing whether there was any Suffolk  
10 County disaster plan or emergency plan of any kind?

11 A It would be irrelevant as to whether there was or  
12 wasn't. He would travel there anyway to initiate the  
13 process of an emergency operations plan development. That's  
14 part of the process, to meet with county officials, to make  
15 known to them the requirement and then to establish with  
16 them a working relationship to the development of the  
17 product.

18 In this case, when Mr. Horton went there, he was  
19 provided by someone a copy of this alleged Suffolk County  
20 ECP.

21 Q Mr. DeVito, do you have any idea how Suffolk  
22 County obtained the portions of the plan which we have just  
23 looked at, the introduction prepared by the state and the  
24 basic plan prepared by the state, do you have any idea how  
25 Suffolk County would have obtained this material?

1 A I have no idea how or where they got it at all.

2 Q Do you know whether the Office of Disaster  
3 Preparedness was at that time, that is in 1979 or 1980,  
4 providing any kind of assistance or guidance to local  
5 governments for preparation of disaster plans?

6 A Not to my knowledge, no.

7 Q And is that because you simply don't know?

8 A And I wouldn't think so because, again, remember  
9 what I had said earlier, that was the period of time when  
10 the focus was on crisis relocation planning and Suffolk  
11 County was not one of the counties that was involved in that  
12 process at that time.

13 Q Do you know when Suffolk County first became  
14 involved in crisis relocation planning or did they ever  
15 become involved?

16 A No. This is the first planning effort pursuant to  
17 federal programs that we have undertaken with Suffolk  
18 County.

19 MR. GLEASON: How about with the other counties?

20 THE WITNESS: I'm sorry, sir?

21 MR. GLEASON: I say how about with other counties  
22 in the state?

23 THE WITNESS: Did we work with them on other  
24 plans?

25 MR. GLEASON: Emergency plans.

1 THE WITNESS: Yes, sir, as part of this same  
2 planning effort.

3 MR. GLEASON: When did that start?

4 THE WITNESS: Well, I don't know what the real  
5 genesis of the crisis relocation planning effort was. It  
6 was in existence when I came on board, but it was --  
7 obviously had not progressed very far since part of that  
8 process had only delivered at best one prototype plan and  
9 three drafts in three metropolitan areas.

10 So, in any event, it was terminated and we began  
11 the process in other counties, and with the exception of  
12 non-EMA jurisdictions, we should be completed this year with  
13 EMA participants, and then we'll be working with FEMA as to  
14 where the planning program goes beyond that.

15 BY MR. SISK:

16 Q Mr. DeVito, the Suffolk County plan, as you  
17 testified, is literally now being reviewed and revised and  
18 rewritten by Suffolk County and your personnel within SEMO,  
19 is that correct?

20 A It's being reviewed now and in the not too distant  
21 future, I would hope within the next couple of weeks or so,  
22 my staff will again visit Suffolk County to meet with  
23 officials there to discuss their view as to where the plan  
24 meets the federal guidelines, where it does not meet the  
25 federal guidelines, and the recommended course of action to

1 bring it in to full compliance with the federal guidelines.

2 Q And did you say earlier that crisis relocation  
3 planning had not advanced very far when it came to the  
4 Office of Disaster Preparedness in 1982?

5 A That's correct.

6 Q Did you also say that it's no longer a viable  
7 concept as of today?

8 A That is correct.

9 Q So, it was sort of a transitory phenomenon in  
10 time, is that correct?

11 A There seems to have been a great deal of that in  
12 this business.

13 Q But that did involve evacuation planning?

14 A That was part of the focus of that particular  
15 effort. Movement of people at risk to areas of lesser risk.

16 Q Now, you stated that the State Emergency  
17 Management Office -- I'm sorry. You stated that Article  
18 2(b) of the Executive Law did not mandate local planning, is  
19 that correct?

20 A That's my personal view. It does not mandate it.

21 Q It does, however, mandate state planning, does it  
22 not?

23 A It --

24 MR. LANPHER: I object. It calls for a legal  
25 conclusion.

1 MR. GLEASON: Well, this is a very high-ranking  
2 state official who ought to be qualified and ought to have  
3 knowledge to answer that question. Objection denied.

4 Answer the question, please.

5 BY MR. SISK:

6 Q Does Article 2(b) to your understanding as  
7 Director of SEMO mandate that state planning?

8 MR. LANPHER: I object. That's state planning for  
9 what purpose, sir?

10 MR. SISK: The witness can qualify it anyway he  
11 wishes.

12 MR. LANPHER: Well, I object to the question --

13 MR. GLEASON: Do you understand the question? Do  
14 you understand the question?

15 THE WITNESS: I'm having some, admittedly, some  
16 difficulty with it because of the word "mandate".

17 BY MR. SISK:

18 Q Does Article 2(b) require the preparation of the  
19 disaster preparedness plan that we discussed earlier?

20 A Yes.

21 Q And does that disaster preparedness plan, under  
22 Article 2(b), have to have certain characteristics and  
23 components, doesn't it?

24 A It's been awhile since I reviewed Article 2(b),  
25 but I believe there are some general guidelines as to what

1 ought to be in the emergency plan.

2 Q And that would include the types of disasters that  
3 are supposed to be covered and so forth?

4 A I believe there is a statement in there of the  
5 general nature that alludes to the kinds of things that  
6 might confront government officials.

7 Q Now, if a local government elects to prepare a  
8 disaster preparedness plan, you said it was not mandated,  
9 but if a local government elects to do that under Article  
10 2(b), does the state emergency management office assist with  
11 that kind of plan development?

12 A Not unless it were done in concert with the  
13 existing population protection planning effort.

14 Q So, --

15 A We don't have the resources to do that.

16 Q Okay. So, plan preparation at the local level then  
17 could be an integrated planning to design to meet both  
18 Article 2(b) and civil defense and types of things that you  
19 talked about under the federally-funded programs, is that  
20 correct?

21 A I believe I already stated that.

22 Q Okay. And --

23 A That would be the intent. Whether it was achieved  
24 or not is another point.

25 Q Okay. Does the state emergency management office

1 review local plans that are prepared for compliance with  
2 Article 2(b)?

3 MR. LANPHER: I object to the question. This is  
4 not relevant, Judge Gleason, to the inquiry.

5 MR. GLEASON: It is relevant in my opinion. So,  
6 the objection is denied.

7 MR. LANPHER: Would you please --

8 MR. GLEASON: Respond to the question, please.

9 MR. LANPHER: Judge Gleason, very respectfully,  
10 I'd like to have the rationale of why your previous order  
11 doesn't control.

12 MR. GLEASON: I've already gone through that once  
13 and perhaps twice with you. The difficulty, Mr. Lanpher, is  
14 you're just not accepting my reasoning.

15 Now, --

16 MR. LANPHER: Judge Gleason, I'm accepting your  
17 words, that we relied upon.

18 MR. GLEASON: -- you're not accepting the  
19 reasoning that I cited to you at several different occasions  
20 today, and all you're doing is wasting all of our time right  
21 now.

22 The objection is denied. Please respond to the  
23 question.

24 THE WITNESS: Could you restate the question,  
25 please?

1 BY MR. SISK:

2 Q Does the state emergency management office review  
3 the local disaster preparedness plans that are prepared for  
4 compliance with Article 2(b) of the Executive Law?

5 A Formally?

6 Q In any sense.

7 A Formally, we don't. We rely on the compliance  
8 with the civil preparedness guide of the Federal Government.  
9 That is, after all, the funded effort. But, certainly, we  
10 are not unfamiliar, at least my staff is not unfamiliar with  
11 what would be outlined in Article 2(b) of the Executive Law,  
12 and I would assume that since good planning concepts are  
13 good planning concepts, regardless of the legislation or  
14 regulation covering them, that they would be part of their  
15 deliberations in analyzing any such document.

16 Q Does the state emergency management office then  
17 evaluate these plans against FEMA criteria in any informal  
18 sense?

19 A In a more formal sense with respect to the  
20 population protection planning effort than the Executive  
21 Law, Article 2(b) effort, because that is the basis for the  
22 funding.

23 We would review it as I have stated several times  
24 to determine what our view, collective view is as regards  
25 compliance with the operative federal guidance.

1 Q Mr. DeVito, I'm now going to hand you a document  
2 that is entitled "Resources Manual".

3 MR. SISK: I will vouch for the record that that  
4 is also a document recently produced to us by Suffolk  
5 County.

6 In Mr. Lanpher's cover letter producing it  
7 recently, I believe Mr. Lanpher stated that this is not  
8 technically a part of the Suffolk County Emergency  
9 Operations Plan, but is referred to in that plan and,  
10 therefore, was being produced in the production late last  
11 week.

12 If Mr. Lanpher needs to correct that, that's fine.

13 I would ask that this document be marked for  
14 identification as LOCA Discovery Exhibit 13.

15 MR. GLEASON: It's so marked.

16 (The document referred to was  
17 marked for identification as  
18 LOCA Discovery Exhibit 13.)

19 BY MR. SISK:

20 Q Mr. DeVito, the document that's now identified as  
21 LOCA Exhibit 13 begins with a county inter-office memorandum  
22 to Director William E. Regan from Major Bruce Jewel. It's  
23 dated June 11, 1980, and it is -- it says "Status Report".

24 There are a number of documents contained within  
25 this manual. If you'd like to look quickly at it, I think I

1 know the answer to this question.

2 Have you seen this document before?

3 A I think you've answered your own question. The  
4 answer is no.

5 Q Now, I'll ask you to turn. There are numbers in  
6 the upper right-hand corner, which I will represent are  
7 numbers that have been affixed by the Hunt and Williams law  
8 firm.

9 If you will turn to the page A02056. That's in  
10 roughly the middle of that manual. Do you recognize that  
11 document which begins "State of New York Division of  
12 Military and Naval Affairs, State Emergency Management  
13 Office, Emergency Operations Telephone Directory"?

14 A Yes, sir, I do.

15 Q What is that document?

16 A It's, as the name implies, it's the telephone  
17 directory. It provides the names, phone numbers, locations  
18 of emergency management personnel around the state.

19 Q If you will turn to the second page of that  
20 document, page number A02057, in the lower left-hand corner,  
21 that appears to bear a date, 2/1/87.

22 Do you see that date?

23 A Yes, sir, I do.

24 Q Do you recognize this document bearing that date?

25 A I can't attest to any specific version of this.

1 This is an on-going directory that is updated from time to  
2 time, and I'm sure there are later versions than this one.

3 Q Is this a document that is maintained by your  
4 agency in the ordinary course of its business?

5 A Yes, it is.

6 Q Will you turn to about the middle of that  
7 directory, in the upper right-hand corner, there's a page  
8 A02076? The page number on the document itself is document  
9 -- is page D-1.

10 It also bears the date 2/1/87 in the lower left-  
11 hand corner.

12 That purports to describe state headquarters  
13 staff, state emergency management office. Do you recognize  
14 that particular listing?

15 A Yes, sir. It's somewhat familiar. Again, I can't  
16 attest to the specific data on a specific date.

17 Q Does it identify you and Mr. Jamano under the  
18 heading "Executives"?

19 A Yes, sir, it does.

20 Q Are those your office numbers, telephone numbers?

21 A That is correct.

22 Q And over on the right-hand side, immediately  
23 opposite that, there's a title "Planning" and that lists,  
24 among others, Mr. Hirshkowitz and Mr. Horton.

25 Are those two gentlemen properly identified in

1 that document as members of your planning section?

2 A Yes, they are.

3 Q And is Jerry D. Horton the gentleman who obtained  
4 a copy of the Suffolk County Emergency Operations Plans from  
5 the county?

6 A That is my understanding, yes.

7 Q Do you know how this document came into the  
8 possession of Suffolk County?

9 A I have no idea. We do distribute these directories  
10 as a matter of course, and, so, I would assume that that's  
11 the way we received it.

12 MR. SISK: Judge Gleason, tomorrow, we intend to  
13 proffer this entire document as to be admitted into the  
14 record.

15 For ease, it may be better to do the entire  
16 document the same time, but I would like at this time to  
17 move at least for admission of the telephone directory and  
18 at least the specific pages that this witness has just  
19 identified.

20 I believe he has personally authenticated --

21 MR. GLEASON: Want to give me those pages again?

22 MR. LANPHER: I don't understand what you're  
23 moving.

24 MR. GLEASON: Is that what you're moving? Just  
25 the pages that he has identified?

1 MR. SISK: Judge Gleason, if -- I would like to  
2 move admission of the pages K02056 to establish what the  
3 document is, K02057 to establish the first page --

4 MR. GLEASON: Let's go a little slower. What's the  
5 first one?

6 MR. SISK: I'm sorry. It's the cover page.  
7 K02056. Page A-1 simply establishes the first page of the  
8 document. K02057. And the organizational list of K02076,  
9 which is page D-1, the witness just identified.

10 MR. GLEASON: All right. Is there objection? The  
11 first page is three pages, I believe.

12 MR. SISK: Four.

13 MR. GLEASON: And the cover.

14 MR. SISK: Three and the cover, Judge Gleason.

15 MR. GLEASON: All right.

16 MR. SISK: The cover page, A-1 and D-1.

17 MR. GLEASON: So, it's K02056, K02057, K02076.

18 MR. SISK: Correct.

19 MR. GLEASON: Is there objection?

20 MR. LANPHER: Suffolk County objects, Judge  
21 Gleason. There is no stated purpose for the proffer. This  
22 document was produced in discovery. The fact that it was  
23 produced, I don't understand why it needs to come into  
24 evidence.

25 This is a document that was produced in discovery.

1 MR. SISK: Judge Gleason, it was produced last  
2 Saturday.

3 MR. GLEASON: All right. I'll abstain the  
4 objection for having it admitted into evidence.

5 MR. LANPHER: Well, you understand, we do object.  
6 You're overruling our objection?

7 MR. GLEASON: Yes, I do understand your objection.

8 MR. ZAHNLEUTER: I also object on the basis that  
9 it proves nothing in relation to what the issue is in this  
10 proceeding.

11 MR. GLEASON: There are many things in the record  
12 that don't prove anything, Mr. Zahnleuter.

13 BY MR. SISK:

14 Q Mr. DeVito, how long has Jerry Horton been in the  
15 planning section of the state emergency management office?

16 MR. LANPHER: I object. That's not pertinent.

17 MR. GLEASON: One minute before we proceed.

18 Those referenced pages are to -- are just pages  
19 out of Local Discovery Exhibit Number 13.

20 MR. SISK: Perhaps we should designate the pages  
21 as Discovery Exhibit 14, and I'll move the --

22 MR. GLEASON: All right. I think that would be  
23 better.

24 MR. SISK: Fine. Move the admission on that  
25 basis.

1 MR. GLEASON: All right. Those pages will be  
2 referred to as Discovery Exhibit, LOCA Discovery Exhibit  
3 Number 14 and admitted on that basis.

4 (The document referred to was  
5 marked for identification as  
6 LOCA Discovery Exhibit 14, and  
7 was received in evidence.)

8 MR. GLEASON: All right. Now, proceed, please.

9 BY MR. SISK:

10 Q Mr. DeVito, how long has Mr. Horton been a member  
11 of the planning section of the state emergency management  
12 office or its predecessor, the Office of Disaster  
13 Preparedness?

14 MR. LANPHER: Objection. I stated an objection,  
15 too, and then you had an inquiry, Judge.

16 MR. GLEASON: What's the objection to that  
17 question?

18 MR. LANPHER: The objection to that question is  
19 that it's unrelated to the stated purpose of this  
20 proceeding.

21 MR. GLEASON: Well, it may or may not be. The  
22 objection is denied.

23 Please answer the question. Mr. Horton has  
24 already been identified as a fairly key person in the  
25 transmission of documents here.

1 THE WITNESS: Mr. Horton was on the ODP staff when  
2 I joined it.

3 MR. SISK: Okay. Mr. DeVito, I will now ask that  
4 the following document be marked for identification as LOCA  
5 Discovery Exhibit 16 -- 15. It's Number 15. It is a  
6 letter, dated 1 May 1981, on the letterhead of the State of  
7 New York, Division of Military and Naval Affairs. It is to  
8 Mr. William E. Regan, Director of Suffolk County Department  
9 of Emergency Preparedness. It is signed by Jerry Horton,  
10 Director of Programming and Planning or appears to be signed  
11 by Jerry Horton.

12 MR. GLEASON: The document will be designated as  
13 LOCA Discovery Exhibit Number 15.

14 (The document referred to was  
15 marked for identification as  
16 LOCA Discovery Exhibit 15.)

17 MR. SISK: I will vouch for the record that this  
18 is one of the documents that was produced by Suffolk County,  
19 I believe, in 1982, but in an earlier discovery in this  
20 proceeding.

21 BY MR. SISK:

22 Q Mr. DeVito, have you ever seen that letter before?

23 A No, sir, I have not.

24 Q Can you scan it momentarily?

25 A I'm reading it.

1 (Pause)

2 BY MR. SISK:

3 Q Having reviewed the document, Mr. DeVito, can you  
4 determine from having read it, I understand now for the  
5 first time, what its significance is?

6 A On the face of it, what it appears had occurred  
7 was that this document called "Disaster Preparedness Plan",  
8 date indicated, was reviewed by Mr. Horton and he found some  
9 areas of non-consistency with some programs and overall  
10 complimented the plan.

11 Q Mr. DeVito, the letter begins with the section  
12 "The Suffolk County Disaster Preparedness Plan, dated 1  
13 January 1981, has been reviewed by the ODP Programming and  
14 Planning Section.", is that correct?

15 A That's what it says.

16 Q And there are numerous references in this letter  
17 to Article 2(b) of the New York Executive Law, is that  
18 correct?

19 A That's correct.

20 Q Does the letter also at the end suggest that the  
21 county development submit diligent town disaster procedures  
22 in accordance with Article 2(b) to support the county plan?

23 A It states that.

24 Q And prior to that, you had no knowledge of this  
25 particular document?

1 A No. I've never seen it before.

2 Q Is it -- excuse me a moment.

3 (Pause)

4 BY MR. SISK:

5 Q Mr. DeVito, the first paragraph of that letter  
6 also states "The plan is compatible with the provisions of  
7 Article 2(b), Section 23, Local Disaster Preparedness  
8 Plans", is that correct?

9 A That's what it states.

10 Q And paragraph 5, it states "If this plan will  
11 include civil defense functions, there will be a great deal  
12 of additional information needed", and it refers to certain  
13 things, including crisis relocation, which you alluded to  
14 earlier, is that correct?

15 A That is correct.

16 Q Now, can you explain for me why the Office of  
17 Disaster Preparedness conducted this review of the Suffolk  
18 County Disaster Preparedness Plan, if you know, based on the  
19 functions you've assumed as the head of ODP and SEMO?

20 MR. LANPHER: I object.

21 MR. ZAHNLEUTER: I object.

22 Judge Gleason, I must make --

23 MR. GLEASON: Who went first?

24 MR. ZAHNLEUTER: I prefer to go first because Mr.  
25 DeVito is the state witness.

1 I must object to this because it comes down to a  
2 matter of due process, and had we known this issue in this  
3 proceeding would have involved things that occurred in the  
4 early 1980s, we might have been better able to prepare for  
5 substantive questions about substantive reviews and  
6 substantive plans.

7 But we weren't apprised of that as an issue in  
8 this proceeding. We were apprised of a different issue,  
9 which I stated and Mr. Lanpher stated many times, and that  
10 was the production or non-production of emergency plans.

11 This doesn't show anything about that issue, and,  
12 indeed, there's no showing going back to what I said in my  
13 opening statement that there's a discovery request that  
14 pertains to this document.

15 So, I object because this line of questioning is  
16 beyond the scope of this proceeding, and it's important to  
17 the state of New York because it's a matter of due process.

18 MR. LANPHER: Judge Gleason, I am going to join in  
19 that objection, but, further, with respect to this letter  
20 and the questions Mr. Sisk is pursuing, this witness has  
21 said he has no knowledge about this letter.

22 So, the question calls for speculation.

23 MR. GLEASON: I think that's a more germane  
24 objection, and on that basis, I have to grant it, unless you  
25 want to restate the question somehow.

1 MR. SISK: Judge Gleason, I will withdraw the  
2 proffer until we get Mr. Regan on the stand.

3 BY MR. SISK:

4 Q Mr. DeVito, let me ask you about one item relating  
5 to the content of this letter.

6 Under Item 4, -- excuse me.

7 (Pause)

8 BY MR. SISK:

9 Q I'm sorry. I misidentified it. Under Item 1, there  
10 is a reference to a statement that the plan is patterned on  
11 the local radiological emergency response plans and standard  
12 operating procedures for activation of the state emergency  
13 operations center.

14 Do you have any idea what that means?

15 MR. LANPHER: I object. Same objection, Judge.

16 MR. GLEASON: He may ask that question. He's an  
17 expert. See if he has any opinion as to what it means.

18 Go ahead.

19 THE WITNESS: I know what he says, but I don't  
20 know what Mr. Horton was addressing in his judgment.

BY MR. SISK:

21 Q Do you know what he's referring to by the state  
22 radiological emergency response plans?

23 A No, I do not.

24 Mr. DeVito, have you participated in the answers  
25

1 to recent discovery in this proceeding and, specifically,  
2 have you participated at all in the providing of documents  
3 in response to -- I'm sorry -- in providing substantive  
4 answers of any sort to LILCO's second set of  
5 interrogatories?

6 MR. SISK: I will vouch for the record. Those were  
7 filed on June 3, 1988. You may not have participated, but  
8 I'd like the record to reflect whether you did or not.

9 MS. YOUNG: Excuse me. Did you say answers?

10 MR. SISK: The answers to the second set of  
11 interrogatories filed on June 3, 1988.

12 MR. LANPHER: Is that what has been marked LOCA  
13 Exhibit 8 for identification?

14 MR. SISK: For identification and not yet  
15 admitted.

16 THE WITNESS: I don't know what you're referring  
17 to. Can you be more specific?

18 BY MR. SISK:

19 Q Were you involved in any respect in responding to  
20 discovery in this proceeding prior to June 6th, 1988?

21 A Again, I have no recollection, I think I said this  
22 before, of being asked to deliver any documents prior to the  
23 time I was asked the question about the Suffolk County plan  
24 and then, as my memory serves me, and I will admit that's  
25 dragging out somewhat since my day started about 4:30 this

1 morning, that the request for anything that we had came  
2 after I had made Mr. Zahnleuter aware that we did have in  
3 our possession and had had since May 6th the Suffolk County  
4 Emergency Operations Plan.

5 MR. LANPHER: Judge Gleason, I think that the  
6 witness clearly must be confused. As I recall the question,  
7 it was had he been involved in any discovery prior to June  
8 6th. I don't have the exact date, but he was deposed by you,  
9 Mr. Sisk, in April?

10 MR. SISK: In responding to the written discovery.

11 MR. LANPHER: Well, I don't want the record to be  
12 confused. He was deposed on a Friday morning. I remember it  
13 in Albany.

14 THE WITNESS: And I do, too, and I don't remember  
15 the date, but, Your Honor, I apologize. These legal terms  
16 have absolutely no relevance in my lexicon. So, I don't --  
17 when he's talking about these various interrogatories, I  
18 don't know what dates you're referring to.

19 MR. SISK: Let me try to clarify by placing a  
20 couple of documents before the witness.

21 For the record, the deposition was April 29, 1988,  
22 and we all recall it.

23 I'll ask Mr. DeVito if he can identify the  
24 documents that have been marked for identification as LOCA  
25 Exhibit 8, which is the answers to New York State and LOCA's

1 second set of interrogatories, dated June 3, 1988.

2 MR. GLEASON: Mr. Sisk, I presume at some time,  
3 you or one of your associates will present us with a copy of  
4 that exhibit.

5 MR. SISK: I thought that had been done. I  
6 apologize.

7 MR. GLEASON: We're talking about the  
8 interrogatories, the second set of interrogatories? I don't  
9 believe so.

10 MR. LANPHER: It was not passed out. We happen to  
11 have our own version.

12 (Pause)

13 MR. SISK: What I just handed out is actually two  
14 documents. One is dated June 3, 1988. Mr. Zahnleuter  
15 indicated that verification would follow. The verification  
16 followed on June 15, 1988, and it was a verification by Mr.  
17 Peele. That came in under the cover of a letter from Mr.  
18 Zahnleuter that was attached.

19 So, if we could consider this collectively as LOCA  
20 Exhibit 8 for identification, that would be fine.

21 MR. GLEASON: It is so designated.

22 BY MR. SISK:

23 Q Now, referring to the document that bears the date  
24 June 3, 1988, in the upper right-hand corner, have you ever  
25 seen that document before?

1 A I have no remembrance of having seen this before.

2 MR. GLEASON: I didn't hear your answer.

3 THE WITNESS: I don't recall having seen this  
4 before, Your Honor.

5 BY MR. SISK:

6 Q Do you recall being consulted at all prior to this  
7 time in responding to written discovery requests? Prior to  
8 this time, I mean prior to June 3, 1988.

9 MR. ZAHNLEUTER: Mr. Sisk, do you mean you as in  
10 Mr. DeVito personally?

11 MR. SISK: Mr. DeVito personally.

12 MR. ZAHNLEUTER: Or SEMO? You said Mr. DeVito  
13 personally?

14 MR. SISK: Yes.

15 BY MR. SISK:

16 Q Do you recall, Mr. DeVito, personal? having been  
17 consulted to respond to written discovery prior to June 3,  
18 1988?

19 A No, I don't recall that dialogue having taken  
20 place.

21 Q And what you do recall, though, is the contact  
22 being made with respect to the Suffolk County Emergency  
23 Operations Plan on June 6th, 1988?

24 A I remember that date because I made a special note  
25 of it because of the existence of that plan in my

1 headquarters, and I didn't know about it, and that's when I  
2 ascertain that it was May 6th that it was provided.

3 Q Now, do you know whether anyone on your staff at  
4 the state emergency management office was consulted in  
5 responding to written discovery, such as these  
6 interrogatories, prior to June 3, 1988?

7 A Not to my knowledge.

8 MR. SISK: Now, I'm now going to hand you a  
9 document and ask that it be marked for identification as  
10 LOCA Exhibit, I think we're up to 16.

11 This document is entitled "State of New York's  
12 Response to LOCA's Third Set of Interrogatories and Request  
13 for Production of Documents". It bears in the upper right-  
14 hand corner a date, July 5, 1988.

15 BY MR. SISK:

16 Q Mr. DeVito, for the record, it contains a  
17 verification which is signed by Mr. Davidoff and another  
18 verification which I believe is signed by you.

19 Can you identify that document for me?

20 MR. GLEASON: Excuse me a minute. This document  
21 will be designated as LOCA Discovery Exhibit Number 16.

22 (The document referred to was  
23 marked for identification as  
24 LOCA Discovery Exhibit 16.)

25 MR. ZAHNLEUTER: Judge Gleason, the document has

1 just been identified actually by Mr. Sisk, and, so, I would  
2 seek a clarification about what the nature of the question  
3 is seeking an identification from Mr. DeVito.

4 MR. SISK: I'm asking him to identify the  
5 document, the entire document initially, if he can.

6 BY MR. SISK:

7 Q Can you tell me what it is?

8 a I don't remember the formal designations here, but  
9 I recall some of the language that's contained herein. So,  
10 I've seen it before.

11 Q Have you read this document in its entirety prior  
12 to today?

13 A Yes.

14 Q And let me ask you to turn to your verification.  
15 As I understand it, your verification is limited to the last  
16 three sentences of the response to Interrogatory Number 125,  
17 is that correct?

18 A That is correct.

19 Q Let me ask you to turn back to -- let me ask you  
20 this. Could you turn back to the answer to Interrogatory  
21 Number 124, and I believe a portion of that answer was  
22 verified by Davidoff, not by you?

23 Let me ask you whether you reviewed the statements  
24 made by counsel that are referred to in the transcript of  
25 the NRC proceeding on page 3 in response to Interrogatory

1 Number 124.

2 Have you reviewed those portions of the  
3 transcript?

4 A Generally, when I went over this document.

5 MR. LANPHER: Could I ask for a clarification? Is  
6 the question whether Mr. DeVito looked at the trial  
7 transcript or looked at this answer?

8 MR. SISK: Looked at the trial transcript.

9 THE WITNESS: No, sir.

10 BY MR. SISK:

11 Q Now, let me direct your attention to the sentence  
12 after the reference to the trial transcript, and  
13 specifically the portion following the colon. It says, "The  
14 State of New York provided LOCA with a copy of a successor  
15 New York State Disaster Preparedness Plan of an outdated  
16 portion of the Suffolk County Emergency Operations Plan",  
17 etc.

18 Mr. DeVito, is that information true to your  
19 knowledge?

20 A Yes, it is, and I believe we covered that earlier  
21 in both constructs.

22 Q Okay. Now, but you have not reviewed the  
23 statements of counsel that were referred to, that is, the  
24 specific statements that are referred to as being in the  
25 transcript of the hearing?

1 A I have not reviewed the transcript of the hearing.

2 Q Okay. Now, Mr. DeVito, let me hand to you --  
3 well, let me do this.

4 MR. SISK: Let me move admission of the entire  
5 document, if possible, so that we don't have to wait for Mr.  
6 Davidoff to verify it, into the record at this point.

7 If the state insists on waiting for Mr. Davidoff  
8 to confirm his verification, that will be fine, I suppose.  
9 It may be easier to do it now because the verification is  
10 under oath and in writing.

11 MR. GLEASON: Does the state insist on waiting for  
12 Mr. Davidoff?

13 MR. ZAHNLEUTER: The State of New York is willing  
14 to stipulate that Mr. Davidoff's verification is true and  
15 correct and, indeed, that was the understanding that we  
16 provided.

17 There is no challenge to Mr. Davidoff's  
18 verification. I don't really understand what the nature of  
19 this offer into evidence of these responses is.

20 I mean, I stipulate that the state asserts this  
21 document, and I stipulate that it's verified as stated  
22 within.

23 MR. SISK: Judge Gleason, I believe the contents  
24 of those responses may become important.

25 MR. GLEASON: Pardon?

1 MR. SISK: I believe the contents of those  
2 responses may become important.

3 MR. LANPHER: I suggest, therefore, that we defer  
4 ruling on this proffer until we find out if this is material  
5 at all to this proceeding. I don't understand the relevance  
6 at this time, Judge.

7 MR. GLEASON: When are you going to make that kind  
8 of an effort, Mr. Sisk?

9 MR. SISK: Very quickly, I hope.

10 MR. GLEASON: Well, let's move on then.

11 MR. SISK: Now, Mr. DeVito, I'm next going to hand  
12 you a document and ask that it be marked as LOCA Discovery  
13 Exhibit 17, a document, dated June 28, 1988, and entitled  
14 "Government's Response to Board Order of June 24, 1988".

15 MR. GLEASON: This document will be designated as  
16 LOCA Discovery Exhibit Number 17.

17 (The document referred to was  
18 marked for identification as  
19 LOCA Discovery Exhibit 17.)

20 BY MR. SISK:

21 Q Mr. DeVito, if you'll turn to page 10 of this  
22 document, at the top of page 10, there is a paragraph that  
23 begins with "Donald DeVito". I'll ask that you read that  
24 paragraph from that point down to the next heading, "LOCA".

25 (Pause)

1 BY MR. SISK:

2 Q Mr. DeVito, is it true that SEMO has authority to  
3 review state and local government emergency plans for non-  
4 nuclear emergencies?

5 A Depending on how you interpret authority. Do we  
6 have a legal authority to pass judgment on those plans? No.  
7 We provide advice, counsel, coordination, that sort of  
8 thing.

9 Q But, that is, for local government emergency plans  
10 for non-nuclear emergencies, is that correct?

11 A Generally speaking, yes.

12 Q What do you mean by generally speaking, yes?

13 A That as a general process for an office, like the  
14 state emergency management office, that we would do that  
15 kind of thing under today's program management. That may  
16 not have always been the case. I can't attest to that.

17 Q As long as you have been with SEMO or ODP?

18 A For those counties that have been involved in the  
19 population protection planning effort, yes.

20 Q Now, let me ask you to read the next sentence. It  
21 states, "Mr. DeVito will testify that SEMO personnel have  
22 known for many years that Suffolk County, like other  
23 counties in New York, had a plan for dealing generally with  
24 emergencies."

25 Mr. DeVito, is that correct?

1 A I don't think I could so testify.

2 MR. GLEASON: I didn't hear your response.

3 THE WITNESS: I don't believe I could make that as  
4 an absolute statement, that SEMO personnel have known for  
5 many years that Suffolk County had a plan for dealing  
6 generally with emergencies nor did I say that for any county  
7 in the state.

8 As I've indicated earlier, the effort that we have  
9 undertaken in the last several years has been designed to  
10 make that a very true statement, but I can't attest  
11 absolutely that that's correct.

12 BY MR. SISK:

13 Q Mr. DeVito, there's -- the next sentence states  
14 that -- well, let me ask you this. Do you know whether  
15 SEMO personnel have known for many years that Suffolk County  
16 has a plan for dealing with generally with emergencies?

17 A Not to my knowledge, and I've never asked that  
18 question.

19 Q Would Mr. Hirshkowitz be in charge of that?

20 A Again, his program is narrowly focused on the  
21 population protection planning effort, and he may or may not  
22 be aware of such an issue. In any event, we did become  
23 aware of it on May 6th.

24 Q Mr. DeVito, the next sentence states that he,  
25 referring to Mr. DeVito, "would also testify that a copy of

1 the county operations plan was located in SEMO files in June  
2 6th, 1988, and that this copy was received from Suffolk  
3 County on May 6th, 1988."

4 I'll stipulate that's what you said earlier.

5 Now, in that statement, there's -- it refers to  
6 "this copy was received from Suffolk County on May 6th,  
7 1988."

8 To your knowledge, did anyone within SEMO have a  
9 copy of any Suffolk County plan for dealing with emergencies  
10 prior to May 6th, 1988?

11 A To my knowledge, no, because the specific question  
12 I asked when the document was made known to me was when did  
13 we get this.

14 Q Mr. DeVito, the next sentence says, "He would  
15 testify that the state obtained that copy in connection with  
16 a SEMO review of non-nuclear emergency plans in early May  
17 1988, and not in connection with any Shoreham-related  
18 matters."

19 Mr. DeVito, is that true?

20 A That is correct. That's in conjunction with the  
21 planning effort that I described earlier.

22 Q Okay. And what is meant by "a SEMO review of non-  
23 nuclear emergency plans"?

24 A That's the process that I was describing earlier,  
25 where staff would visit a community that was scheduled to

1 participate in population protection planning effort, and  
2 that's the opening part, to meet with local officials and  
3 determine what is/what isn't, and what the program is all  
4 about.

5           It's not -- I think to categorize it as a SEMO  
6 review of emergency plans is really not a correct statement.  
7 Rather, it is the initiation of the planning process. Then,  
8 of course, if any documents were delivered that purported to  
9 be a plan or the draft of a plan or particular portions of  
10 what one would hope to be a plan, we would start conducting  
11 that review at that time.

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1 MR. GLEASON: Excuse me. That's what you were  
2 testifying you were doing with respect to this accounting  
3 emergency plan?

4 THE WITNESS: That's correct.

5 BY MR. SISK.

6 Q This plan which you say was obtained by Mr. Borkman  
7 was obtained on May 6, 1988, and you did not personally learn  
8 of it until June 6, 1988, is that right?

9 A That's correct.

10 Q Do you recall being deposed on April 29, 1988 in  
11 this proceeding in Albany in a certain conference room?

12 A I remember the occasion but not the date. If you  
13 say it was the 29th, I'll accept that.

14 MR. SISK: I vouch for that for the record.

15 BY MR. SISK:

16 Q At that time do you recall my asking you whether  
17 there is a Suffolk County disaster plan that is either  
18 included within or referenced in the New York State disaster  
19 preparedness plan?

20 A I don't remember the specific question. As you will  
21 recall, there were a number of them.

22 Q Let me ask one of my associates to hand you a copy  
23 of the deposition transcript dated April 29, 1988.

24 (Pause)

25 Q I am not at all certain it will be necessary to

1 admit this, but perhaps we had better mark it for  
2 identification. It's a LOCA Discovery Exhibit #18.

3 Q Along with the deposition I would like to have  
4 marked with it as part of Exhibit #18, the notice of  
5 deposition which was bound in with that deposition as Exhibit  
6 #1.

7 (Pause)

8 MR. KLINE: Both the notice of deposition and the  
9 deposition itself will be marked as LOCA Discovery Exhibit  
10 #18.

11 (The document referred to was  
12 marked for identification as  
13 LOCA Exhibit #18.)

14 BY MR. SISK:

15 Q Referring specifically to item two on the notice of  
16 deposition, that item requests that you bring to the  
17 deposition a true copy of the current New York State disaster  
18 preparedness plan, specifically including any and all  
19 portions, appendices, attachments, or exhibits that involve  
20 what pertain to Suffolk County, and specifically include any  
21 Suffolk County disaster drawing.

22 On page seven of your deposition transcript, I asked  
23 you a question about that particular item on the deposition  
24 notice. The question at the top of page seven, line five,  
25 states "Mr. DeVito, is there a Suffolk County disaster plan

1 that is either included within or referenced to the New York  
2 State disaster preparedness plan?" Your answer was, "To my  
3 knowledge, no."

4 There is then a following question, "Do you know  
5 whether there is such a document?" Followed by an objection.  
6 Followed by the question, "Do you know whether such a document  
7 exists or is referenced in the New York State plan?" Your  
8 answer was, "I do not believe so, no."

9 Mr. DeVito, at the time you made that statement, I  
10 gather you were unaware of the existence of any Suffolk County  
11 disaster preparedness plans. Is that correct?

12 A Obviously, or my answer would not have been what it  
13 is.

14 Q If we turn to page 25 of the deposition, there's a  
15 question beginning on line six that says, "Mr. DeVito, do you  
16 know whether Suffolk County has, as you called it, a broad-  
17 based disaster preparedness plan?" Your answer was, "No, I  
18 don't. You'd have to check with Suffolk County on that.

19 The next question is, "Is there anyone within the  
20 State Emergency Management office who would know the answer to  
21 that question?" Your answer is, "I would doubt it. I would  
22 doubt it because remember that this process is of relatively  
23 recent vintage over the last several years.

24 There's another paragraph that follows that. There  
25 is then a question near the bottom of the page, "Who within

1 the State Emergency Management Office is responsible for  
2 providing assistance to local governments with respect to  
3 these broad-based disaster preparedness plans?" There is an  
4 objection at that point. You answered, "Be a little more  
5 specific. I'm trying to give you as concrete an answer as I  
6 can get, but..."

7           There is then a question, well let me ask you, is  
8 there anyone in the State Emergency Management Office who is  
9 responsible for providing state assistance to local  
10 governments in preparing the broad-based local disaster  
11 preparedness plan.

12           Your answer was, "In the final analysis I would be,  
13 after all, while one might be able to delegate authority, you  
14 cannot delegate responsibility. So in the final analysis, I'm  
15 responsible for that, but I do have a staff and a plan that is  
16 engaged in those types of activities.

17           There is then a question, "Who within the planning  
18 section is engaged in those types of activities?" The answer  
19 is, "There are a number of people, about seven or eight, at  
20 this point.

21           Question, "Could you give me the names of those  
22 people to the best of your recollection?" Answer, "My section  
23 chief is Richard Herskewitz. He's my Chief of Planning. I  
24 would depend upon him to advise me as to what activities had  
25 taken place in any given year and what the status of those

1 might be in any given year."

2           There is then, Mr. DeVito, reference further down  
3 about the federally funded programs that we've been talking  
4 about today.

5           Mr. DeVito, at the time you provided these answers  
6 on April 29, 1988, were you aware that anyone from your  
7 planning section was planning to go down to Suffolk County to  
8 assist with the preparation of a general disaster plan?

9           A     I had no specific date that that would occur, but I  
10 knew that was a normal part of the process, that that would  
11 occur at some point.

12           Q     Did you know that Suffolk County was on the agenda,  
13 so to speak, for 1988?

14           A     For the Population Protection Planning Board?

15           Q     Yes.

16           A     Yes.

17           Q     And you knew that based upon having been briefed by  
18 Mr. Herskewitz?

19           A     And based upon negotiation sessions with the Federal  
20 Emergency Management Agency.

21           Q     When did those negotiation sessions with the Federal  
22 Emergency Management Agency begin?

23           A     They take place prior to the start of the federal  
24 fiscal year.

25           Q     When would that have been? In 1987?

1 A Right.

2 Q So as of 1987 you and Mr. Herskewitz knew that  
3 Suffolk County would be up for a review of some sort as to, or  
4 some assistance in preparing a broad-based general disaster  
5 plan?

6 A Should they choose to do so, yes. They can not  
7 participate in the program.

8 Q And the consequence of not participating is that  
9 they get no money, is that correct?

10 A They don't get the Emergency Management Assistance  
11 funding.

12 Q But they had been receiving that funding, I believe  
13 you stated, up to that point.

14 A That's correct.

15 Q So failing to participate would have resulted in  
16 Suffolk County losing that money, is that correct?

17 A If the Federal Emergency Management Agency chose to  
18 withhold it on that basis.

19 Q SEMO would not make that decision?

20 A That's not our choice.

21 Q FEMA would?

22 A FEMA would.

23 MR. GLEASON: Let's take a five minute recess  
24 please.

25 (Whereupon, a brief recess was taken.)

1 MR. GLEASON: We're ready, Mr. Sisk.

2 BY MR. SISK:

3 Q Mr. DeVito, while you have your deposition before  
4 you could you turn to page 100?

5 (Pause)

6 Q There is a question on page 100 beginning at Line 7  
7 which states, "Mr. DeVito, does the statement radiological  
8 emergency preparedness plan identifying the state resources  
9 that could be employed to respond within the ingestion pathway  
10 of Shoreham in the event of an emergency at Shoreh: " And  
11 your answer was, "I believe I've indicated on more than one  
12 occasion, counselor, I am not an expert in the state's  
13 radiological emergency preparedness plan. That is precisely  
14 why we have established in this state a Radiological Emergency  
15 Preparedness Group to deal with those kinds of issues, because  
16 they are such specific issues, so I don't have that kind of  
17 expertise."

18 Mr. DeVito, does that remain an accurate answer to  
19 your question that was asked at that time?

20 A I haven't gained any greater expertise as a result  
21 of these hearings, counselor.

22 Q Does anyone within the State Emergency Management  
23 Office have the kind of expertise you're referring to with  
24 respect to resources that could be employed? That is state  
25 resources that could be employed to respond within the

1 ingestion pathway of Shoreham?

2 A With respect to ingestion pathways generally, we do  
3 have a radiological section and they obviously have expertise  
4 in radiological matters. They assist and work with the  
5 Radiological Emergency Preparedness Group who has the  
6 fundamental responsibility for any power generating facility.  
7 So in the construct of your question, should there be reason  
8 to do so they would be the person who would be responsible for  
9 that effort, the REP Group.

10 Q Do you have a radiological section within the State  
11 Emergency Management Office? Is that correct?

12 A Yes sir.

13 Q Who is the head of that section?

14 A One Lee Batis. Their focus is, again, on the civil  
15 defense issues.

16 Q Those are then the civil defense experts as it were  
17 within the State Emergency Management Office?

18 A That is correct.

19 Q Is Mr. Germano a part of that group?

20 A No, not at the present time.

21 Q Was he formerly a part of that group?

22 A That's where he was before he became the Chief of  
23 Staff.

24 Q So there are still personnel within SEMO who have  
25 civil defense responsibilities, is that correct?

1           A     That is correct.

2           Q     Do those people engage in any kind of review or  
3 coordination with local governments on civil defense planning?

4           A     As they would pertain to their particular area of  
5 expertise.

6           Q     What do you mean by as it would pertain to their  
7 particular area of expertise?

8           A     Since the focus of most civil defense planning as  
9 required by the Federal Emergency Management Agencies on the  
10 nuclear attack issue, then obviously there are nuclear issues  
11 associated with that and that would be the area where they  
12 would focus.

13          Q     Did you consult with any of the members of that  
14 radiological section to see if they had any prior knowledge of  
15 the Suffolk County emergency operations plan prior to May of  
16 1988?

17          A     The general requirement was to all sections to  
18 provide me anything they had that might pertain, however  
19 remotely, to the issue of discovery.

20          Q     When you say the request was to all sections, was  
21 that by written memorandum that you sent out requesting that  
22 documents be produced or found?

23          A     No, it was word of mouth.

24          Q     Mr. DeVito, do you know whether Mr. Germano has any  
25 expertise with respect to state resources that could be

1 employed to respond within the ingestion pathway?

2 MR. LANPHER: I object. I suggest that we cover  
3 that with Mr. Germano when he is here.

4 MR. GLEASON: He's his boss, so let him respond to  
5 it.

6 THE WITNESS: He has a general level of expertise in  
7 many areas associated with the Emergency Management Office,  
8 and that's part of the reason I made him Chief of Staff. And  
9 as he comes out of the radiologic section, radiological  
10 defense section, one would assume that he has some particular  
11 expertise in that regard.

12 BY MR. SISK:

13 Q Has Mr. Germano to your knowledge engaged in  
14 training of local government personnel with respect to  
15 radiological responses?

16 MR. LANPHER: I object to that question, Judge  
17 Gleason. Training --

18 MR. GLEASON: Where is this going, Mr. Sisk?

19 MR. SISK: Let me try to focus it.

20 BY MR. SISK:

21 Q Do you know whether Mr. Germano has engaged in any  
22 training of Suffolk County personnel with respect to  
23 radiological responses?

24 MR. LANPHER: The same, I didn't finish my objection  
25 before, Judge Gleason. Training is not an issue in this

1 proceeding. We've had disagreements about scope, but we're  
2 way outside the scope here. This doesn't relate to production  
3 of documents or discovery issues. I think it's time to stop  
4 this.

5 MR. GLEASON: Mr. Sisk?

6 MR. SISK: It relates to state planning, and  
7 particularly to state planning that might have informed our  
8 realism argument with respect to Suffolk County.

9 MR. LANPHER: Judge Gleason, with all respect, that  
10 wasn't an answer.

11 MR. GLEASON: That takes us beyond the scope.  
12 Proceed.

13 BY MR. SISK:

14 Q Mr. DeVito, does the State Emergency Management  
15 Agency of the New York State Disaster Preparedness Commission  
16 issue guidance documents to assist local governments in  
17 preparing disaster plans?

18 MR. LANPHER: Can I have that question read back?  
19 I'm sorry. I didn't hear it. Or could you repeat it?

20 BY MR. SISK:

21 Q Does the State Emergency Management Office or the  
22 State Disaster Preparedness Commission issue guidance  
23 documents to local governments to assist them in preparing  
24 local disaster plans?

25 A When we can.

1 Q Are you familiar with the document --

2 MR. GLEASON: Excuse me, I didn't hear the answer.

3 THE WITNESS: When we can. We can't do it all the  
4 time, we just don't have the resources to deal with providing  
5 guidance documents end upon end. That's the general gist of  
6 what we would provide, is an overall guidance document. Some  
7 sort of direction as to what people would consider development  
8 of a plan.

9 MR. GLEASON: Have you provided such guidance?

10 THE WITNESS: On a number of occasions --

11 MR. GLEASON: As a matter of fact have you provided  
12 such guidance?

13 THE WITNESS: On a number of occasions in the past.

14 MR. GLEASON: On a number of occasions. Statewide?

15 THE WITNESS: For example, we have provided, the  
16 county has met a Hazardous Materials Planning Guide. Again,  
17 these are not to in any way be interpreted as boilerplate  
18 plans. They are simply advice and counsel to jurisdictions as  
19 to what they ought to be considering should they choose to  
20 develop a hazardous materials plan. We've done that on a  
21 number of subjects.

22 BY MR. SISK:

23 Q Mr. DeVito, I will now hand you a document that I'd  
24 like to have marked as LOCA Discovery Exhibit #19. It's title  
25 is a "Guide to Local Government Disaster Planning." It bears

1 the logo of the New York State Disaster Preparedness  
2 Commission.

3 MR. SISK: I'd like to consider at this point, three  
4 documents as a group to expedite. The next document which I'd  
5 like to have marked, perhaps we'd better mark that one --

6 MR. GLEASON: Let's at least mark the documents one  
7 at a time.

8 MR. SISK: This document bears a number on the front  
9 page in the upper right hand corner, L00915. That, for the  
10 record, is an identifying number placed on the document by  
11 this law firm.

12 MR. GLEASON: That document will be marked as LOCA  
13 Discovery Exhibit #19.

14 (The document referred to was  
15 marked for identification as  
16 Exhibit #19.)

17 MR. SISK: The next document I will ask be marked as  
18 LOCA Discovery Exhibit #20 is --

19 MR. LANPHER: Just a second, Mr. Sisk. My document  
20 which we're supposed to mark as Exhibit #19, you'll be  
21 sympathetic, 1-3-5-7-9.

22 MR. SISK: Oh no. Mine goes 1-2-3. Have we  
23 miscopied those?

24 (Pause)

25 MR. SISK: Mr. DeVito, the next document which I'd

1 like to have marked as LOCA Discovery Exhibit #20 is entitled  
2 "Guide for Preparing a County Comprehensive Emergency  
3 Management Plan in New York State."

4 The second page of that document in the lower left  
5 hand corner states "SEMO -- February 1986."

6 MR. GLEASON: This document will be designated as  
7 LOCA Discovery Exhibit #20.

8 (The document referred to was  
9 marked for identification as  
10 Exhibit #20.)

11 MR. SISK: The next document which appears to be  
12 related to the other two is entitled the "Basic Plan Component  
13 of a County Comprehensive Emergency Management Plan." On the  
14 second page its title is "Prototype of Standard Format with a  
15 Basic Plan Component of a County Comprehensive Emergency  
16 Management Plan in New York State." in the lower right hand  
17 corner, that too has a designation of "SEMO -- February 1986."

18 MR. GLEASON: That wil' be designated as LOCA  
19 Discovery Exhibit #21.

20 (The document referred to was  
21 marked for identification as  
22 Exhibit #21.)

23 BY MR. SISK:

24 Q Mr. DeVito, can you identify those documents? And  
25 if you need to break them up go right ahead, but I'd like to

1 see if you can identify all three.

2 A They are general planning guidance to be made  
3 available to local governments to assist them should they  
4 choose to complete a comprehensive emergency plan.

5 Q Does SEMO prepare these documents?

6 A Yes sir.

7 Q If you refer to the document --

8 A Recognizing, of course, that some of the inserts may  
9 be extracted from other documents. For example, there is some  
10 federal guidance in one of these documents that was obviously  
11 taken out of a broader based federal planning guide and  
12 incorporated in the county planning guide.

13 Q Mr. DeVito, are these documents prepared by your  
14 agency in the ordinary course of the agency's business?

15 A Not every year. It just depends on what our work  
16 schedule is from one year to the next as to what we can devote  
17 resources to.

18 Q Were these documents initially created in February  
19 1986?

20 A I don't recall the actual dates when all of this was  
21 undertaken. You made reference to some dates. I would assume  
22 that it was around that time frame or immediately preceding  
23 that this process unfolded.

24 Q Was there any type of guidance document or manual  
25 relating to county disaster plans or local disaster plans

1 which was issued by SEMO which pre-dated these documents?

2 A The overriding guidance, as I have indicated  
3 earlier, would come from the federal and civil preparedness  
4 guides since it is in compliance with that program that these  
5 efforts are attempted.

6 Q Were there any earlier versions of state documents  
7 like these?

8 A I have no recollection of that.

9 Q Who within SEMO is responsible for preparing this  
10 kind of guidance document?

11 A The planning section.

12 Q That's Mr. Herskewitz's section?

13 A That is correct.

14 Q Does Mr. Horton assist with that?

15 A That is correct.

16 Q If you'll turn to the document that has been  
17 identified as Exhibit #20, it's the one that begins "Guide for  
18 Preparing County Comprehensive Emergency Management Plan in  
19 New York State."

20 If you'll turn to page one of the document, in the  
21 middle of the page it says, "A comprehensive plan consists of  
22 the following components:" and then it follows with a list of  
23 plan components. It refers on page two to a requirement for  
24 annexes. Page two refers specifically to specific plan  
25 requirements related to an emergency function such as

1 evacuation.

2 Are those components required parts of a  
3 comprehensive county plan?

4 MR. LANPHER: Judge Gleason, I object. He hasn't  
5 linked this at all to the issue in this proceeding regarding  
6 the production of plans or procedures.

7 MR. GLEASON: Maybe he's going to tie it up. Let  
8 him proceed, or we'll be here all night, Mr. Lanpher.

9 MR. LANPHER: Or the Board could sustain my  
10 objection. We don't have to be here all night.

11 MR. GLEASON: Well that's one way of looking at it.  
12 But I'm going to deny it, so let him proceed.

13 BY MR. SISK:

14 Q Mr. DeVito, are these required components of a  
15 county comprehensive disaster plan?

16 A There are no required components since the state  
17 does not mandate planning. There are elements that are  
18 suggested in a variety of documents as being good form to have  
19 an effective emergency plan. The overriding concern is the  
20 guidance direction that is provided in the civil preparedness  
21 guides from the Federal Emergency Management Agency for plans  
22 to satisfy specific criteria in order to be eligible for the  
23 funding associated with the overall program.

24 Q Let me ask you to turn to page five of that  
25 document. It lists annexes. Annex B is entitled

1 "Radiological Protection." Is that simply a suggested portion  
2 of a local plan?

3 MR. LANPHER: Excuse me, you said page five. Didn't  
4 you mean page seven?

5 MR. SISK: I meant page five.

6 MR. LANPHER: Okay.

7 THE WITNESS: Those are the types of things that the  
8 federal government would expect in compliance with the civil  
9 preparedness guides and the kinds of things that ought to be  
10 considered in order to provide broad-based public protection.

11 For example, the hazardous materials annex is a  
12 reasonable kind of thing to consider in this day and age. I  
13 remind you that the thrust here is to attempt to come up with  
14 an overall document and then have specific orientation  
15 contained in other documents.

16 BY MR. SISK:

17 Q What about the annex for, the suggested annex or the  
18 mass evaluation management, is that something FEMA encourages  
19 local governments to include?

20 A That is something that FEMA all too often emphasizes  
21 to the exclusion of other approaches.

22 Q Mr. DeVito, the next document, LOCA Exhibit #21  
23 which is labeled on the second page "Prototype of Standard  
24 Format for the Basic Plan Component," etcetera. Is this  
25 intended to be just a draft form of a plan for the local

1 government to simply fill in the blanks?

2 A No. We don't particularly encourage the boilerplate  
3 approach. What we're attempting to do is recognizing that  
4 many jurisdictions in New York State do not have fully  
5 established emergency management offices. In some counties,  
6 for example, there's only a part time director. We're trying  
7 to provide as much assistance administratively as we can so  
8 that those who don't have perhaps the wherewithal to go into  
9 an extensive planning effort would at least have a guide to  
10 follow in the development of their particular plan.

11 Q This document in the introduction refers to  
12 directions set out in Section 23 of the New York Executive  
13 Article IIB and FEMA Plan Criteria presented in CPG1-8A. Are  
14 those the types of requirements or the types of suggestions  
15 that SEMO is now recommending for inclusion in local plans in  
16 order to qualify for the emergency management assistance  
17 funding?

18 A Yes, but it goes beyond that. It's to encourage the  
19 development of such coordinated documents to protect the  
20 public.

21 Q Mr. DeVito, there is a component in this plan which  
22 is entitled Annex B. It appears very near the end of the  
23 document, I think approximately 10 or 11 pages from the end of  
24 the document. It's entitled "Local Radiological Protection  
25 Annex." It states, "Revised 12-86."

1                   Is this a recommended portion of a local disaster  
2 plan?

3           A        Again, it's the kinds of things that should be  
4 considered in the development of a radiological annex at the  
5 local level.

6           Q        But it's not a plan or a draft section of a plan per  
7 se?

8           A        No, it's not intended to be that at all.

9           Q        Mr. DeVito, if you refer to the end of this  
10 document, page 10, there is a reference to the New York State  
11 radiological response plan, the CPG1-8 Guide, and to CPG1-8A  
12 Guide. The first reference is, I suppose, to the radiological  
13 component of the state disaster plan, is that correct? The  
14 radiological emergency response plan, or radiological  
15 emergency preparedness plan.

16          A        That's correct.

17          Q        Are the CPG documents FEMA guidance documents?

18          A        Yes they are.

19          Q        Do you know the dates of those FEMA guidance  
20 documents?

21          A        No, I'm afraid I don't.

22                   MR. SISK: Judge Gleason, the only portion of these  
23 documents that I would like to move to admit at this time is  
24 the Annex B of Exhibit #21 since the witness, I think, has  
25 answered the questions with respect to what these documents

1 are and what they're supposed to do. It's not necessary to  
2 put them in full text.

3 The Annex B, we should perhaps designate as LOCA  
4 Exhibit #22 and I'll move its admission into the record  
5 separately.

6 MR. GLEASON: It will be so designated.

7 (The document referred to was  
8 marked for identification as  
9 Exhibit #22.)

10 MR. SISK: I will vouch for the record, well let me  
11 just simply move that it be admitted at this time.

12 MS. YOUNG: Excuse me, Judge Gleason. I notice that  
13 Annex B has occasional words that are blurried in our copy.  
14 Page two.

15 MR. SISK: My copy is legible. If anyone's is not,  
16 we'll replace it.

17 MR. LANPHER: Mine is illegible.

18 MS. YOUNG: There are portions throughout.

19 MR. SISK: Let me just proffer one copy for the  
20 record, and if people would like to pass it around, that's  
21 fine.

22 MR. GLEASON: Is there objection to its admission to  
23 the record?

24 MR. LANPHER: Judge Gleason, this is part of a large  
25 document which I haven't had an opportunity to review in full.

1 I'd like a chance to review it before I --

2 MR. SISK: Let me make my proffer. All three of  
these documents were produced to LOCA in discovery either on  
4 July 5 or July 6, we received them on either July 6 or July 7  
5 by Federal Express from the State of New York. We did not  
6 have them prior to that time.

7 MR. GLEASON: Do you still want to look it over?

8 MR. LANPHER: I do. I frankly don't understand why  
9 a portion is being moved into evidence. Am I correct that you  
10 want to move in L0087 through 80?

11 MR. SISK: 870.

12 MR. LANPHER: 870 through 80. I haven't reviewed  
13 the entire document and this is one 12 page portion of the  
14 whole document, so I'd like an opportunity to look at it  
15 overnight.

16 MR. GLEASON: All right, let him look at it  
17 overnight then and we'll take care of it tomorrow.

18 MR. LANPHER: Thank you.

19 MR. SISK: I would like a clean copy to go to the  
20 reporter. If someone else would provide it. We do have  
21 another clean copy, so that will be fine.

22 MR. LANPHER: Was this separately marked then as an  
23 exhibit?

24 MR. GLEASON: It's marked as Exhibit #22.

1 BY MR. SISK:

2 Q Mr. DeVito, I will now ask one of my associates to  
3 hand to you a document from the Federal Emergency Management  
4 Agency, actually two documents from the Federal Emergency  
5 Management Agency. One bears the logo in the upper right hand  
6 corner, "CPG1-8/October 1985." Its title is "Guide for  
7 Development of State and Local Emergency Operations and  
8 Plans."

9 There is then a document that bears the designation  
10 in the upper right hand corner "CPG1-8A/October 1985." It  
11 states "Interim Guidance, guide for the review of state and  
12 local emergency operations plans."

13 (Pause)

14 Q Do you recognize those documents?

15 MR. LANPHER: Is this going to be one exhibit or  
16 two?

17 MR. SISK I apologize. Let me ask that they be  
18 marked as Exhibit #23 and Exhibit #24. CPG1-8 as Exhibit #23,  
19 and CPG1-8A as Exhibit #24.

20 MR. GLEASON: They are so marked.

21 (The documents referred to were  
22 marked for identification as  
23 Exhibits #23 and #24.)

24 BY MR. SISK:

25 Q Do you recognize these documents?

1           A     I haven't looked at them in some time, but they  
2 appear to be what they purport to be.

3           Q     What is that?

4           A     The civil preparedness guides I have been referring  
5 to during this hearing.

6           Q     These documents are issued by FEMA?

7           A     That is correct.

8           Q     Does your agency receive these documents or  
9 documents like this in the ordinary course of its business?

10          A     That is correct.

11          Q     Do you know whether your agency has received copies  
12 of these particular guides in the ordinary course of its  
13 business?

14          A     In terms of the date, the October 1985 version?

15          Q     In terms of the designation CPG1-8 and 1-8A.

16          A     Yes.

17          Q     But you're not clear as to which version may be in  
18 your office's files?

19          A     I would assume that as a matter of routine, whatever  
20 the timing may be, that the Federal Emergency Management  
21 Agency when these documents are printed up will disburse them  
22 to the states. I have seen documents like this. Whether they  
23 were the '85 version or not I don't specifically recall. I  
24 don't review these on a daily basis. But the normal scheme of  
25 things would say they would be distributed to us.

1 Q Mr. DeVito, if you will refer to the document that  
2 has been designated as Exhibit #24, can you refer to page 2-1?

3 A Which one is #24?

4 Q The shorter document. 1-8A.

5 A The page again?

6 Q 2-1.

7 Under EOP Review it states, "State Emergency  
8 Management Agency personnel are required to review EOP's by  
9 completing the EOP crosswalk specified in this chapter for  
10 each EOP that is updated by an EMA participant jurisdiction  
11 and for each EOP that is developed by a non-EMA participant  
12 jurisdiction."

13 Mr. DeVito, does this refer to the review by your  
14 office of each county EOP that is either updated or developed  
15 initially?

16 MR. LANPHER: Judge Gleason, I object. This is  
17 Cross-Examination about a FEMA guidance document. It is not  
18 responsive to discovery. I don't know where LOCA got it, and  
19 it's not germane to the issues that this Board is supposed to  
20 be considering about whether the state and county complied  
21 with discovery.

22 MR. GLEASON: What is the purpose for using this  
23 document, Mr. Sisk?

24 MR. SISK: Judge Gleason, I'm trying to determine  
25 whether the State Emergency Management Office in fact is

1 required to review local plans periodically in order to ensure  
2 federal funding in accordance with these documents.

3 Specifically I will then ask the witness whether any  
4 predecessors to this document exist, and take it from there.

5 MR. LANPHER: But federal funding has nothing to do  
6 with the issues presented, and Mr. DeVito has made very clear  
7 in a lot of earlier testimony that the state of New York did  
8 not review the Suffolk County plan earlier in the context of  
9 these CPG documents.

10 MR. GLEASON: If there is a general effort to try to  
11 determine if there are other plans that have been reviewed --

12 MR. LANPHER: Why don't they ask Mr. DeVito?

13 MR. GLEASON: He may have his own way of getting  
14 about asking him, so we'll just have to be patient.

15 MR. LANPHER: Could I understand your ruling then?  
16 If this is a pursuit of attempting to find out if there are  
17 other plans the state should have produced then the inquiry is  
18 acceptable?

19 MR. GLEASON: I don't want to respond to that  
20 question right at the moment. I don't know where his inquiry  
21 is leading. All I suggested is one possible area it could  
22 lead to. Then it would be acceptable. I will concede that.

23 MR. LANPHER: I didn't hear him saying that. I  
24 heard him say it was going to be about funding, sir.

25 MR. GLEASON: I understand that. But generally

1 people pay attention to funding requirements in government.  
2 At least I've found it so. Let him proceed and see where it  
3 goes.

4 Proceed, please.

5 BY MR. SISK:

6 Q Does this refer to, the sentence I've just read you,  
7 does that refer to your agency's or does that relate to your  
8 agency's review of local emergency operations plans which are  
9 either updated or developed for EMA funding?

10 A That's a process I explained to you earlier. It's  
11 worked out on the basis of a work plan that's negotiated on an  
12 annual basis.

13 Q How many local government plans in the state of New  
14 York are reviewed annually?

15 MR. LANPHER: Object. Irrelevant.

16 MR. GLEASON: Objection denied. Please respond.

17 THE WITNESS: That would depend upon the amount of  
18 funding and the amount of staff associated with that funding  
19 that is available in any given year.

20 BY MR. SISK:

21 Q Since you have been there in 1982, do you recall how  
22 many local government plans or emergency operation plans have  
23 been reviewed by your agency?

24 A There are some 71, as I recall, EMA jurisdictions,  
25 57 EMA jurisdictions. At the conclusion of this year, all of

1 those will have been completed.

2 Q Does that mean that every plan in the state, every  
3 local emergency plan in the state has been reviewed by your  
4 office since you have been with SEMO?

5 A No, it means that all of those jurisdictions that  
6 are EMA participants will have completed their emergency  
7 operations plan requirement in accordance with the population  
8 protection planning program by the end of this fiscal year.  
9 Or if there is some associated work effort with any one of  
10 those plans that cannot be completed for whatever reason, that  
11 additional workload would be negotiated with FEMA into next  
12 fiscal year should they concur with and accept the basis for  
13 the delay.

14 Q And it was your testimony that this year is the  
15 first year that Suffolk County's plan has been reviewed as  
16 part of that process?

17 A Yes sir.

18 Q Is it the first time your office has ever reviewed  
19 the Suffolk County plan, to your knowledge?

20 A You're speaking of the --

21 Q Whether it is in conjunction with this federally  
22 funded process or otherwise.

23 A To my knowledge, yes, but that's said in the context  
24 of that letter you showed me earlier.

25 Q Okay.

1 MR. GLEASON: Excuse me, Mr. Sisk. Mr. DeVito, can  
2 you educate me as to why planning for Suffolk County with the  
3 large number of people it has would be so delayed in  
4 comparison with all these other 57 entities, their plans?

5 THE WITNESS: Part of it, of course, is a failure on  
6 the part of the federal government to provide sufficient funds  
7 to do enough of these plans in the short term part of the  
8 process.

9 MR. GLEASON: I thought you indicated you were going  
10 to have all 57 done this year.

11 THE WITNESS: No, 57 will be completed this year.  
12 The process has been ongoing for several years. The dilemma,  
13 of course, is the availability of funds, the availability of  
14 staff to do the effort, and then working out a work plan to do  
15 that. There are probably as many variations as to who should  
16 go in what order as there are communities to be considered.

17 MR. GLEASON: Wouldn't you say that it looks like it  
18 appears that Suffolk County is at the end of the line of the  
19 review process?

20 THE WITNESS: No. Suffolk County in conjunction  
21 with several other counties that are being done this year will  
22 complete the EMA jurisdictions, assuming that they are done on  
23 time. From that point on, where we go with non-EMA  
24 jurisdictions, and I remind you as I stated earlier, there are  
25 a number of those, and how many of the existing EMA

1 jurisdictions that have already completed their emergency  
2 operations plans, might be reviewed for update, I have  
3 absolutely no idea. That's a process that will have to be  
4 negotiated with the Federal Emergency Management Agency.

5 MR. GLEASON: How many EMA jurisdictions are there?

6 THE WITNESS: Fifty-seven.

7 MR. GLEASON: And Suffolk County is one of three  
8 that is going to wind up the review of the EMA jurisdictions?

9 THE WITNESS: It's one of several. Suffolk County  
10 and I believe there are about five or six others.

11 MR. GLEASON: Can you name them?

12 THE WITNESS: I was afraid you might ask me that.  
13 Yates County, Nassau County, Albany County. There are a  
14 number around the state.

15 MR. GLEASON: Proceed, Mr. Sisk.

16 BY MR. SISK:

17 Q Mr. DeVito I will now ask that my associates hand to  
18 you a fairly thick document that was produced recently in  
19 discovery by Suffolk County. It is entitled "Radiological  
20 Intelligence Annex K." It bears a date of August 1976.

21 (Pause)

22 MR. SISK: I'll ask that that be marked for  
23 identification as LOCA Exhibit #25. For the record, that was  
24 produced under cover of a letter dated June 1, 1988 from Mr.  
25 Lanpher.

1 MR. GLEASON: Is this to be marked, Mr. Sisk?

2 MR. SISK: I'm sorry. Exhibit #25.

3 MR. GLEASON: It will be marked as LOCA Discovery  
4 Exhibit #25.

5 (The document referred to was  
6 marked for identification as  
7 Exhibit #25.)

8 BY MR. SISK:

9 Q Mr. DeVito, have you ever seen that document before?

10 A No sir, I have not.

11 Q Its cover states that it is Annex K to the Emergency  
12 Operations Plan of New York State. It is under the logo of  
13 the State Civil Defense Commission, State of New York,  
14 Division of Military and Naval Affairs, Radiological  
15 Intelligence Section.

16 Your agency, the State Emergency Management Office  
17 and its predecessor, the Office of Disaster Preparedness, are,  
18 is the word operationally, part of the Division of Military  
19 and Naval Affairs?

20 A To simplify it let's say administratively. We're a  
21 part of that because our operation line goes through the  
22 chairman of DPC as I indicated earlier.

23 Q I believe you stated earlier you don't know whether  
24 the New York Civil Defense Plan as it existed prior to 1982  
25 was entitled Emergency Operations Plan of New York State, is

1 that correct?

2 A That doesn't seem to be consistent in my mind.

3 Q This doesn't refresh your recollection at all?

4 A No.

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1 In the radiologic annex to any effort that  
2 involved the Federal Civil Defense Program.

3 Q Mr. DeVito, is that still true today?

4 A (DeVito) I believe it is, but I couldn't swear  
5 absolutely that Annex K is still the radiologic annex. That  
6 seemed to be an administrative item of convenience for the  
7 federal programs.

8 Q And who would know? Would that be the people in  
9 your radiological division?

10 A (DeVito) Yes. That would be their area of  
11 responsibility.

12 Q Mr. DeVito, have you personally participated in  
13 any exercises for nuclear plants in the State of New York?

14 MR. ZAFNLEUTER: Objection.

15 MR. LANPHER: Objection. How is that relevant --

16 JUDGE GLEASON: Would you repeat the question,  
17 please?

18 BY MR. SISK:

19 Q Have you personally participated in any exercises  
20 for nuclear plants in the State of New York?

21 JUDGE GLEASON: Object to that?

22 MR. LANPHER: And the objection is that  
23 Mr. DeVito's participation or non-participation is  
24 absolutely irrelevant to the issues in this proceeding.

25 JUDGE GLEASON: It is certainly relevant to the

1 issue of how knowledgeable he is in doing -- carrying out  
2 his assignments.

3 MR. LANPHER: But that wasn't the issue.

4 JUDGE GLEASON: That is possible utilization for  
5 the answer to that question. The objection is denied.

6 BY MR. SISK:

7 Q Have you?

8 A (DeVito) Ever?

9 Q Yes.

10 A (DeVito) Yes.

11 Q Have you ever seen a gentleman named Robert  
12 Shepherd in any of those exercises?

13 A (DeVito) The name does not ring a bell with me.

14 MR. SISK: Judge Gleason, I'll leave that simply  
15 marked for identification. We'll come back to that tomorrow  
16 with this other county witness.

17 JUDGE GLEASON: All right. How much more do you  
18 have, Mr. Sisk.

19 MR. SISK: Very little I am pleased to say.

20 BY MR. SISK:

21 Q Mr. DeVito, I will now hand to you a document  
22 entitled, "Emergency Communications Development Plan, State  
23 of New York, County of Suffolk." This also I will vouch for  
24 the record is a document recently produced in discovery by  
25 the State of New York.

1 JUDGE GLEASON: Mr. Sisk, have you given that an  
2 exhibit number?

3 MR. SISK: That should be marked for  
4 identification as LILCO Exhibit 26, LILCO Discovery Exhibit  
5 Number 26.

6 JUDGE GLEASON: It is so designated.

7 (The document referred to  
8 was marked for identification  
9 as LILCO Discovery Exhibit  
10 Number 26.)

11 MR. SISK: I will vouch for the record that this  
12 document, too, was produced either Wednesday or we received  
13 it either Wednesday or Thursday of last week from the State  
14 of New York.

15 BY MR. SISK:

16 Q Mr. DeVito, do you recognize that document?

17 A (DeVito) No, I do not. Not this particular one.

18 Q What do you mean by not this particular one?

19 A (DeVito) Well, I recognize some of the forms  
20 contained herein as part of a generalized communications  
21 process for identifying frequencies and call signs and the  
22 like, but I don't recall having seen the Suffolk County  
23 version of it.

24 Q Do personnel within your office, the State  
25 Emergency Management Office, maintain documents of this type

1 for particular counties?

2 A (DeVito) I have a communications and warning  
3 section that contains a series of documents of this type.

4 Q And who heads up your communications and warning  
5 section?

6 A (DeVito) A gentleman by the name of Bruce Houston.

7 Q And do you know whether Mr. Houston was consulted  
8 prior to the past couple of weeks to respond to document  
9 requests in this proceeding?

10 A (DeVito) You mean prior to the June 6th  
11 conversation with counsel?

12 Q Yes.

13 A (DeVito) Not to my knowledge.

14 JUDGE GLEASON: What was the answer?

15 THE WITNESS: (DeVito) Not to my knowledge, Your  
16 Honor.

17 JUDGE GLEASON: Was he one of those persons that  
18 you -- by spreading the word of mouth context?

19 THE WITNESS: (DeVito) Yes, sir. That was post  
20 the conversation with counsel in which he indicated that  
21 this discovery proceeding was ongoing and that we needed to  
22 produce certain documents and all the rest of that. So, he  
23 would have been one of those individuals to whom I had said  
24 anything, whatever it is, let the lawyers sort it out.

25 BY MR. SISK:

1 Q Do you know, Mr. DeVito, whether this document was  
2 produced from your agency's files?

3 A (DeVito) I don't know specifically whether this  
4 one was. You say it was provided by the State, so,  
5 therefore, my assumption would be that it was.

6 Q And does Mr. Germano have any responsibility for  
7 this type of document?

8 A (DeVito) Only in the broadest possible sense that  
9 an administrative chief would get involved in that process.

10 Q But this is a type of document that is maintained  
11 by personnel within SEMO's files. Is that correct?

12 A (DeVito) Yes, as I recall it is.

13 Q Now, if you will turn to -- the easiest way to  
14 look up in the right-hand corner for the page number L00473.  
15 On that page, there is something called Form G, "Emergency  
16 Public Information System." And it refers to Emergency  
17 Broadcast System Stations. It is under the heading in the  
18 upper right-hand corner, "State of New York, Suffolk  
19 County." It identifies under item (1) call sign, WCBS, New  
20 York City, New York.

21 It has a column labeled "Area" which says, Nassau  
22 EOC. Can you tell me what that -- can you interpret what  
23 that page means for me, Mr. DeVito?

24 A (DeVito) Well, apparently, it's an identification  
25 of the location and call signs of stations that are

1 participating in that area in the Emergency Broadcast  
2 System, at least those that were back in October of 1978.

3 Q If you will turn to page L00477, Mr. DeVito, just  
4 a few pages later, that's entitled, "Form H. Radiological  
5 Monitoring." And that lists a reporting system, service  
6 organization or KFMS. Do you know, can you interpret what  
7 that page means for me?

8 A (DeVito) No, I can't.

9 Q Could that be a list of radiological monitoring  
10 locations within Suffolk County?

11 MR. LANPHER: I object. It calls for speculation.

12 MR. ZAHNLEUTER: I object.

13 MR. LANPHER: He said he couldn't interpret it.

14 JUDGE GLEASON: Well, you know, I not as afraid of  
15 the answers in speculation as you attorneys are. So, the  
16 objection is denied

17 MR. ZAHNLEUTER: The question isn't being afraid,  
18 Judge Gleason, it is not probative evidence.

19 JUDGE GLEASON: Well, concern about the probative  
20 value of it. Let's put it that way.

21 Please respond to the question.

22 THE WITNESS: (DeVito) I thought I had with all  
23 due respect, Your Honor, I don't know.

24 MR. SISK: Judge Gleason, I would like to offer  
25 this in evidence, but I think in light of this witness's

1 inability to identify the specific document, it might be  
2 easier if counsel for the State could make some proffer as  
3 to whether this was actually produced from SEMO's files.

4 JUDGE GLEASON: Mr. Zahnleuter?

5 MR. ZAHNLEUTER: I can stipulate that the State of  
6 New York produced this document. And I obtained it from the  
7 SEMO group.

8 MR. SISK: Because of the issues implicated by  
9 this document, its very late production, I would move its  
10 admission as being squarely within the scope of this  
11 proceeding.

12 MR. ZAHNLEUTER: Well, I object. There are no  
13 issues implicated by this document. This document was  
14 produced and it doesn't show any evidence of any kind  
15 regarding production or non-production of plans. As a  
16 matter of fact, Mr. Sisk's questioning went to the  
17 substantive nature: What does this page mean? That as we  
18 have been instructed to weight is a sign that this inquiry  
19 does not relate to the scope of this proceeding. He did not  
20 go anywhere with his question. So, this document is  
21 irrelevant.

22 JUDGE GLEASON: Do you intend to query Mr. Germano  
23 concerning this document?

24 MR. SISK: Yes, I do.

25 JUDGE GLEASON: I suggest that you wait and raise

1 this point.

2 MR. SISK: Very well.

3 BY MR. SISK:

4 Q Mr. DeVito, are you aware of any radiological  
5 emergency response planning within Suffolk County for  
6 radiological incidents at any nuclear power plant?

7 MR. LANPHER: I object to the question as vague.  
8 What does he mean by any radiological emergency response  
9 planning? I don't know what he means.

10 JUDGE GLEASON: Do you know what he means,  
11 Mr. DeVito?

12 THE WITNESS: (DeVito) I would assume that any  
13 means of any type and my answer is I'm not aware.

14 BY MR. SISK:

15 Q Are you aware of any radiological emergency  
16 response planning for Fisher's Island in New York?

17 A (DeVito) No.

18 Q Mr. DeVito, do you know whether any documents that  
19 you have produced to counsel for the State of New York based  
20 on the review by your agency were withheld from production  
21 to LILCO?

22 MR. ZAHNLEUTER: I can represent as counsel who  
23 was responsible for document production --

24 JUDGE GLEASON: Just a minute. You are not a  
25 witness here. And do you want a response from the lawyer or

1 do you want it from the witness?

2 MR. SISK: I would just like the witness to say if  
3 he knows. He may not know.

4 BY MR. SISK:

5 Q But, to your knowledge, Mr. DeVito, do you know  
6 whether all of the documents that you produced to  
7 Mr. Zahnleuter were produced to LILCO? Do you know?

8 A (DeVito) No. I would assume you would have to ask  
9 Mr. Zahnleuter.

10 Q Did you have any discussions with anyone within  
11 your office about whether a particular document should or  
12 shouldn't be turned over to Mr. Zahnleuter?

13 A (DeVito) I'll go back to what I said half a dozen  
14 times, it seems. My instructions were that anything that we  
15 had that might be considered as germane to the issue of  
16 emergency planning in Suffolk be provided to counsel. And I  
17 would prefer to err on the side of providing too much and  
18 let you lawyers sort out what's appropriate and what's not.

19 Q Sensible. Did you make any inquiry of your  
20 Poughkeepsie Southern District Office at that time?

21 MR. LANPHER: I object to the question as vague.  
22 What kind of inquiry is he talking about?

23 MR. SISK: About production of documents.

24 THE WITNESS: (DeVito) No, not specifically. I  
25 conveyed that to my headquarters staff.

1 MR. SISK: Judge Gleason, I'm sorry it's taken  
2 half the evening, but that's all I have.

3 JUDGE GLEASON: Any questions on the part of the  
4 staff?

5 MS. YOUNG: Just a handful.

6 JUDGE GLEASON: Just a handful?

7 MS. YOUNG: Yes.

8 JUDGE GLEASON: Please proceed.

9 MR. SISK: Is that the number of questions that  
10 ascribes to or the difficulty of them?

11 CROSS-EXAMINATION

12 BY MS. YOUNG:

13 Q Just a quick follow up on Mr. Sisk's last question  
14 or last series of questions. Did you or your staff prepare  
15 a list of the documents that you turned over to counsel for  
16 the State of New York production?

17 A (DeVito) I believe there was a transmittal  
18 memorandum that had a listing on it, but that's kind of hazy  
19 in my mind at this juncture.

20 Q You don't recall whether you or your staff  
21 prepared a listing of the documents that you found  
22 responsive to that --

23 A (DeVito) I seem to recall a listing. And if it  
24 was in the transmittal document, that's where I'm getting a  
25 little hazy. But that sounds like a reasonable thing to do.

1 And, hopefully, we had done that.

2 Q Do you know whether you or your staff have  
3 retained a list of the documents that you turned over --

4 A (DeVito) In any transmittal that we would have  
5 sent out, I am sure we would have an office copy of that.

6 Q Was Mr. Horton involved in the search for  
7 documents that you directed in June?

8 A (DeVito) I couldn't say that he was specifically  
9 because the direction went to his chief. One would assume  
10 that everybody within the planning section would have been  
11 requested to provide the same information.

12 Q I believe counsel for LILCO showed you LILCO  
13 Discovery Exhibit 17, which was the government's response to  
14 the court order of June 24, 1988. Do you still have that in  
15 front of you?

16 A (DeVito) Would that be the one identified as  
17 Docket  
18 No. 50-322-0L-3?

19 Q Yes. Can you turn to page 10 of the document?

20 Mr. Sisk asked you a series of questions about the  
21 summary of what your testimony would be regarding the  
22 board's inquiring concerning production of planning  
23 documents. Did you review this document before it was  
24 served to the parties in this proceeding?

25 A (DeVito) No. This is the first time I've seen in.

1 Q Thank you. Could you turn to LILCO Exhibit 15  
2 which was a letter to William Reagan from Jerry Gordon dated  
3 May 1st, 1981?

4 A (DeVito) You're right. These chairs are  
5 uncomfortable.

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T21rct

1 Q I believe that Mr. Sisk asked you a series of  
2 questions which disclosed that at least Mr. Thornton who  
3 signed the letter had reviewed a version of the Suffolk  
4 County advanced preparedness plan dated in January of 1981,  
5 is that correct?

6 A (DeVito) That is what the letter says.

7 Q And in response to a series of questions asked by  
8 Mr. Sisk, you indicated that you were not aware of whether  
9 SEMA or the predecessor agency had reviewed any Suffolk  
10 County disaster plan?

11 A (DeVito) SEMA has not. What I indicated was that  
12 prior to my tenure that I was not aware of any program to do  
13 that. And it would not surprise me one way or the other.  
14 But I did not see that in looking back and attempting to  
15 analyze what the emergency management programs in New York  
16 State were like in the past, and that there was any pattern  
17 for doing that on a consistent basis.

18 Q But does the information in this letter lead you  
19 to conclude that such review was being done prior to  
20 SEMA?

21 A (DeVito) No. What it leads me to conclude is  
22 that in this instance that it was done. It could have been  
23 strictly at the request of the county, and perhaps that is  
24 the way that the system worked in those days. I really  
25 could not tell you.

1 Q So the language in here that points to compliance  
2 with Article 2(b), Section 3, the local disaster  
3 preparedness plan, does not lead you to conclude that review  
4 of such plans were routine at that time?

5 A (DeVito) Which section are you referring to, the  
6 last paragraph?

7 Q If you look at paragraph one and also the  
8 concluding paragraph that starts "in general" on page two.

9 A (DeVito) I would not and did conclude from this  
10 that it was a pro forma kind of a thing. It was a  
11 continuing effort for each and every county and state.

12 Q If you could find Discovery Exhibit 19.

13 A (DeVito) Yes, ma'am.

14 Q Do you know when this document was prepared?

15 A (DeVito) No, I do not.

16 Q Do you have any idea what the designation at the  
17 top PP-1 is?

18 A (DeVito) I was wondering the same thing when I  
19 saw it. I do not know.

20 Q I hesitate to get into this area, as there will be  
21 an objection from counsel for the state and county, but one  
22 quick question.

23 Can you tell me in what period Suffolk County  
24 received emergency management assistance funds?

25 A (DeVito) No.

1 Q To your knowledge, did they receive su funds  
2 prior to May of 1988?

3 A (DeVito) Well, yes. As I indicated to counsel's  
4 questions earlier, I have been on board since April of 1982.  
5 And as my memory serves me, they received emergency  
6 management assistance funding that whole period.

7 MS. YOUNG: That concludes the staff's questions.

8 JUDGE GLEASON: Mr. Cummings.

9 MR. CUMMINGS: I have a few questions,  
10 Judge Gleason.

11 CROSS-EXAMINATION

12 BY MR. CUMMINGS:

13 Q Mr. DeVito, are you familiar in your position with  
14 Title 44 of the Code of Federal Regulations?

15 A (DeVito) That is the one that contains some of  
16 the outlines with Public Law 93-288?

17 Q Yes. I am not asking you to be specifically  
18 familiar. Even I as a lawyer for the agency do not know it  
19 all. I want to read several definitions. It is in the  
20 nature of determining exactly what you do in your position.  
21 The first definition is from 44 CFR 205.212. It is the  
22 definition of the term governor's authorized representative.

23 "The governor's authorized representative means  
24 the person named by the governor in the federal/state  
25 agreement to execute on behalf of the state all necessary

1 documents for disaster assistance, and to evaluate and to  
2 transmit local government eligible private and non-private  
3 facility and state agency requests for assistance to the  
4 regional director following a major disaster or emergency  
5 declaration."

6 Have you ever been a governor's authorized  
7 representative?

8 A (DeVito) Yes, I have.

9 Q And are you typically the person who would in fact  
10 sign as the governor's authorized representative, or would  
11 it be some that you would designate?

12 MR. LANPHER: I object to the question. I do not  
13 understand the relevance of this to this proceeding.

14 MR. CUMMINGS: You are going to find out.

15 JUDGE GLEASON: Well, let us proceed. The  
16 objection is denied. Let us proceed and see where he is  
17 going with it.

18 THE WITNESS: (DeVito) The question was?

19 BY MR. CUMMINGS:

20 Q Are you typically the person that the governor  
21 designates to act as the authorized representative?

22 A (DeVito) In the last several disasters, that has  
23 been the case.

24 Q How many presidential disasters have you  
25 participated in as the governor's authorized representative?

1 A (DeVito) Seven.

2 Q And what disaster plan or what state plan were you  
3 using when you responded to those disasters if any?

4 A (DeVito) I guess that the best way to say that is  
5 that the state disaster preparedness plan is a guide, and  
6 each event that occurs carries with it its own set of  
7 circumstances. And based on those circumstances and the  
8 availability of personnel, and resource availability, and  
9 the location of the disaster, and there are entire litany of  
10 things that could probably be counted, that would determine  
11 the specific course of action. The plans themselves do not  
12 contain that level of specificity.

13 Q You are saying that you did not respond under a  
14 specific plan, but basically made an ad hoc determination  
15 that it was appropriate?

16 A (DeVito) What I am saying is that the plan that  
17 you referred to as the state disaster preparedness plan is a  
18 guidance document. It is not a document that contains  
19 within it an entire litany of specific actions to be taken  
20 by specific organizations. Rather what it does is it  
21 outlines general areas of responsibilities for the member  
22 agencies of the Disaster Preparedness Commission.

23 And within that context then, we would respond  
24 based upon the particular needs at the time, and the  
25 particular direction that we might receive from the governor

1 or his agent.

2 Q So within the broad outlines of the plan, given  
3 that it does not have the level of specificity that would go  
4 down to the ultimate nth degree, you did respond in  
5 accordance with your plan, is that your statement?

6 A (DeVito) We clearly responded, yes.

7 JUDGE GLEASON: Did he answer your question? We  
8 know that you responded. Did you respond according to your  
9 plan?

10 THE WITNESS: (DeVito) In accordance with the  
11 general guidance that is contained within the plan; yes,  
12 sir.

13 BY MR. CUMMINGS:

14 Q And you have authority or your designee has  
15 authority to deviate from that plan, is that correct?

16 A (DeVito) Well, one of the fundamental axioms of  
17 emergency management is that Murphy was an optimist. And  
18 operating within that context then, there is always an ad  
19 hoc response to many situations.

20 Q With respect to another definition, this is for  
21 Part 300, Section 302(c) of Title 44, "State disaster  
22 preparedness coordinator means the person designated by the  
23 governor or by state law as responsible for overall disaster  
24 preparedness program coordination or management."

25 Are you that person designed by the governor,

1 either by the governor, or in some sort of written order, or  
2 by law?

3 A (DeVito) No, not specifically designated by  
4 written order or by law. But within the context of the  
5 definition that you have just provided, as I understand it,  
6 and again I am trying to interpret what you are saying, I  
7 would be that person as the director of the office. But in  
8 any given disaster by state procedure, a state coordinating  
9 officer could be designated as someone else, who would then  
10 become the responsible agent for the governor and the  
11 Disaster Preparedness Commission in that particular  
12 disaster.

13 Q Well, as background, Part 300 deals with disaster  
14 preparedness assistance for basically plans. The passage of  
15 the Disaster Relief Act of 1974 provided an initial grant,  
16 as you stated in your testimony, an annual \$25,000 update  
17 each year for the disaster preparedness plan. In that plan,  
18 it calls for a state disaster preparedness coordinator.

19 Does your current plan call for the director of  
20 SEMA to be that coordinator?

21 MR. ZAHNLEUTER: I object. Counsel is testifying,  
22 and that is not even a question.

23 MR. CUMMINGS: I believe it is, Judge Gleason. I  
24 am asking about the state plan, and he is the state  
25 coordinator.

1 JUDGE GLEASON: The objection is denied. Answer  
2 the question, please.

3 THE WITNESS: (DeVito) Again by way of background  
4 to illustrate the system. When the governor declares a  
5 state of disaster emergency in the state, which is as you  
6 know counsel is generally required before the federal  
7 government will entertain a request for presidential  
8 assistance under Public Law 92-288, at that juncture on  
9 declaration of a state of disaster emergency, a state  
10 coordinating officer is appointed or designated. That may  
11 be me, and that may be somebody else, depending upon the  
12 nature of the disaster.

13 Now on some seven occasions, gubernatorial  
14 declared disasters that subsequently became presidential  
15 disaster declarations, I was so designated. On the other  
16 hand, in a couple of other disasters that were very issue  
17 specific, such as drought and such as coastal erosion, other  
18 individuals were designated at the state coordinating  
19 officer.

20 BY MR. CUMMINGS:

21 Q That answer goes to the first term that I was  
22 dealing with.

23 What I am really asking now is under the disaster  
24 preparedness plan who is charged by the governor in some  
25 sort of written order with keeping it updated and current,

1 is that you?

2 A (DeVito) That is my office, yes. And as its  
3 director, I would be responsible for that.

4 Q The next section of the regulation that I am going  
5 to read to you is from Part 302, Title 44, Section  
6 302.3(b)(2). "Each sub-grantee jurisdiction shall have a  
7 local EOP," that stands for emergency operations plan,  
8 "which conforms with the requirements for plan content as  
9 set forth in CPG 1-3, and CPG 1-8, and CPG-1-8(a), which has  
10 been improved by the local chief executive or authorized  
11 official and accepted by the governor or other authorized  
12 state official as being consistent with the state's EOP."

13 Are you the authorized state official who would  
14 accept those local emergency operation plans?

15 A (DeVito) I think that ties to what we have  
16 talking about in this whole process. That the EMA  
17 jurisdiction, the recipient jurisdictions, would develop  
18 plans as part of the basis for them receiving the funding.  
19 That process is coordinated through my population protection  
20 planning section, which is commonly referred here as the  
21 planning section. And one of the responsibilities that we  
22 have is to that cross-walk in CPG 1-8(a).

23 And I believe that ties to what you are  
24 referencing there. Although without the specific language  
25 in front of me, maybe I am getting a little bit afield. But

1 I believe that is the focus of what you are driving at. And  
2 that would be that particular office.

3 Q And in your position, you would be expected to be  
4 familiar with the federal regulations?

5 A (DeVito) Insofar as any executive can be familiar  
6 with the host of federal regulations that seem to govern  
7 everything that we do.

8 Q Is your position funded in part by the federal  
9 government?

10 A (DeVito) Yes, it is.

11 Q And is Mr. Germano's'?

12 A No, it is not.

13 MR. CUMMINGS: Thank you. I have no further  
14 questions.

15 JUDGE GLEASON: Mr. Zahnleuter.

16 MR. LANPHER: Can I go first?

17 JUDGE GLEASON: Yes. Choose among yourselves. I  
18 sometimes identify you as being together, but I am  
19 constantly reminded that you are not. So since it is the  
20 state's witness, I have to defer to him.

21 MR. LANPHER: Just a couple of questions.

22 MR. ZAHNLEUTER: Excuse me. Before we do this, I  
23 am not sure. That by allowing Mr. Lanpher to ask questions,  
24 I am not allowing myself to ask questions? I want to make a  
25 note that I do have a few questions for Mr. DeVito.

1 JUDGE GLEASON: We need to have this night wind  
2 up. We were not inclined to exclude you because he is going  
3 first.

4 MR. ZAHNLEUTER: Okay, thank you.

5 CROSS-EXAMINATION

6 BY MR. LANPHER:

7 Q Mr. DeVito, following up just on the last question  
8 from Mr. Cummings. And I do not have the language of the  
9 regulation, but my recollection is that there was some talk  
10 of some state official accepting, I believe that it was the  
11 word accept was used in the regulation, accepting a county  
12 plan.

13 Do you recall that language in the regulation?

14 A (DeVito) Not from the regulation, but from Mr.  
15 Cummings' recitation of it.

16 MR. LANPHER: Was that a fair summary,  
17 Mr. Cummings?

18 MR. CUMMINGS: I believe that the word is accept.

19 MR. LANPHER: Okay.

20 BY MR. LANPHER:

21 Q Have you accepted, has SEMA accepted the Suffolk  
22 County emergency operation plan?

23 A (DeVito) Not at this time.

24 Q You mentioned that you have been in charge of  
25 seven disasters where the president has declared them to be

1 disasters, is that correct?

2 A (DeVito) That is correct.

3 Q Were any of those nuclear power plant accidents?

4 A (DeVito) None of them.

5 Q Earlier you were shown Exhibit 15. That is the  
6 letter from Mr. Thornton to Mr. Regan. And you were asked  
7 questions concerning testimony that you gave on  
8 April 29 in your deposition where you stated at page 7 of  
9 that deposition that you did not know whether any such  
10 document, and going back, included a Suffolk County disaster  
11 plan exists.

12 Do you recall that deposition testimony?

13 A (DeVito) I saw it a moment ago; yes, sir.

14 Q And at the time that you gave that deposition  
15 testimony, that was truthful, correct?

16 A (DeVito) That is still truthful.

17 Q Did they show you during that deposition Discovery  
18 Exhibit 15 for identification dated May 1, 1981?

19 A The Thornton to Mr. Regan?

20 Q Yes.

21 A No, sir.

22 Q I believe that the record will show that Mr. Sisk  
23 stated before he asked questions that that letter was  
24 provided by Suffolk County discovery in 1982 or 1983.

25 A (DeVito) That is correct.

1 Q So it was in their possession.

2 A final question. Early in Judge Gleason's  
3 questioning of you, there was a question about your  
4 relationship with the DPC.

5 Is it not true that on a day to day basis that the  
6 Disaster Preparedness Commission really has no function,  
7 that they just meet once or twice a year?

8 A (DeVito) They meet twice a year. And the  
9 membership of the Disaster Preparedness Commission consists  
10 of the heads of some seventeen state agencies. Clearly,  
11 those men and women have other things to occupy their daily  
12 responsibilities both statutorily and fiscally. And the  
13 Commission's concerns only come to their attention  
14 periodically.

15 Q Is it fair to state then that the DPC deals almost  
16 exclusively with policy issues that are brought to its  
17 attention either by you or by the field?

18 A (DeVito) I am not a lawyer, so interpreting the  
19 law is kind of difficult. But in my reading of it, that is  
20 what I see, that they are a policy body, and not a working  
21 group on a daily basis.

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1 JUDGE GLEASON: Doesn't the executive law and the  
2 executive emergency laws spell out the responsibilities of  
3 the Disaster Commission?

4 MR. LANPHER: It spells out a number of policy-  
5 orientations, as I read it.

6 JUDGE GLEASON: Well, now, wait -- it doesn't talk  
7 policy; it talks about responsibilities, doesn't it? And  
8 doesn't it lay those responsibilities on the shoulders of  
9 the Disaster Preparedness suppression?

10 I'm trying to visualize in my mind's eye the  
11 specific charges contained therein, and if I can, I'd rather  
12 refer to it a little, when that.

13 JUDGE GLEASON: Then have it referred to.

14 MR. SISK: I have a copy of it right here.

15 MR. LANPHER: I think it's in some of these  
16 documents here.

17 MR. SISK: I only have one and it is marked up.  
18 There are a number of charges here that are part and parcel  
19 of the kinds of services that my office provides on behalf  
20 of the Commission, so that the Commission membership, per  
21 se, is not involved in these activities, except as a follow  
22 on to efforts that I or other working groups operating on  
23 behalf of the Commission may undertake.

24 JUDGE GLEASON: All that does is tell me the way  
25 you're operating. It doesn't tell me what that loss is.

1 And my question was, was it the law itself that places  
2 responsibility on the Commission.

3 MR. LANPHER: Then I object to the question  
4 because you're asking for a legal interpretation and I don't  
5 think that's an appropriate question.

6 JUDGE GLEASON: You're the one who pursued this  
7 area.

8 MR. LANPHER: No, I asked a specific question  
9 regarding the DPC acts on a day-to-day basis; whether it  
10 acts at all.

11 JUDGE GLEASON: As opposed to the Commission.

12 MR. LANPHER: That's the same thing. DPC and the  
13 Commission are the same thing, Judge.

14 JUDGE GLEASON: All right, they're the same thing  
15 and you don't have to remind me that they're the same thing;  
16 and I was just following up as to what the actual  
17 responsibilities were. Because as we started out this  
18 discussion, as I indicated, it appeared from the kind of  
19 questions that Mr. Zahnleuter was asking and the responses  
20 that Dr. Xera was a kind of a supernumerary. He was just  
21 there; and after all, you presented him as one of your  
22 witnesses in the realism issues. So I presume he's a man of  
23 some substances; and I assume he's a man of some  
24 responsibilities..

25 MR. LANPHER: I just have a responsibility to

1 speak on the Governor's behalf, that's right.

2 JUDGE GLEASON: All right, the law says what it  
3 says.

4 Anyway, let's go on because I think we all know  
5 what the rule is. Ask your questions, Mr. Zahnleuter; it's  
6 getting late.

7 MR. ZAHNLEUTER: Mr. DeVito, interrogatory 120  
8 from Local's second set of interrogatories of March 24,  
9 says, "please provide a copy of any and all existing plans  
10 and procedures for responding to emergencies whether  
11 radiological or non-radiological affecting Suffolk County,  
12 including but not limited to chemical spills; fires;  
13 hurricanes, explosions, and earthquakes. Please include any  
14 and all plans for dealing with accidents involving shipments  
15 of radiological materials of Brookhaven National Lab, the  
16 Shoreham Nuclear Power Stations, hospitals and other medical  
17 and industrial facilities."

18 Do you recall in the course of your document  
19 production and search ever having this interrogatory read to  
20 you or provided to you by way of a copy?

21 THE WITNESS: You conveyed it initially to me  
22 through a phone call that I don't remember the precise  
23 timing of that phone call, whether it was at the same time  
24 that it was -- it may have been at the same time, June 6,  
25 that you asked me about the Suffolk County plan issue.

1           But in any event, I remember a phone conversation  
2 initially; and then subsequently at some later date, having  
3 seen correspondence that recounted all of those things. And  
4 that was the basis of my telling the staff to come up with  
5 anything and everything; I didn't care what it was, to  
6 provide for discovery purposes.

7           MR. ZAHNLEUTER: I proffer that responsive  
8 documents that SEMA produced were produced to LOCO. I have  
9 no questions.

10           JUDGE GLEASON: All right. We're going to start a  
11 little bit later tomorrow, about 9:30; and we want hopefully  
12 to have a response back on Mr. Shepherd by tomorrow, and we  
13 thank you for your testimony.

14           THE WITNESS: (Devito) I thank you for your  
15 courtesy, Your Honor.

16           (Whereupon, at 9:09 p.m., the hearing was  
17 recessed, to reconvene Tuesday, July 12, 1988, at 9:30 a.m.)

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CERTIFICATE

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This is to certify that the attached proceedings before the United States Nuclear Regulatory Commission in the matter of:

Name: Long Island Lighting Company  
(Shoreham Nuclear Power Station, Unit 1)

Docket Number: 50-322-OL-3

Place: Bethesda, Maryland

Date: July 11, 1988

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission taken stenographically by me and, thereafter reduced to typewriting by me or under the direction of the court reporting company, and that the transcript is a true and accurate record of the foregoing proceedings.

1st Daniel W. Skidmore

(Signature typed): Daniel W. Skidmore

Official Reporter

Heritage Reporting Corporation