

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:)
)
 LONG ISLAND LIGHTING COMPANY) No. 50-322-OL-3
 (SHOREHAM NUCLEAR POWER PLANT,)
 UNIT 1))

(PARTIAL TRANSCRIPT)

Pages: 21537 through 21720
 Place: Bethesda, Maryland
 Date: July 14, 1983

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

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

10 Thursday,
11 July 14, 1988

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

15 The above-entitled matter came on for hearing at
16 9:30 a.m.

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

18 For the Board:

19 JUDGE JERRY KLINE
20 JUDGE FRED SHON

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

22 On behalf of Applicants:

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(Continued on next page.)

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APPEARANCES: (Continued)

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C O N T E N T S

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>DIRE</u>
<u>WITNESSES:</u>					
Norman Kelly (By Spivey)	21544				
(By Letsche)		21559			
(By Young)		21588			
(By Cumming)		21596			
David Axelrod (By Zahnleuter)	21603				
(Sisk)		21624			

E X H I B I T S

EXHIBITS: __	IDENTIFIED	RECEIVED	DESCRIPTION
No. 8	Prev.	21696	LILCO's Interrogatories
No. 34	21626	21635	Attachments to Axelrod Deposition
No. 35	21636		Article 2-B
No. 36	21652		Axelrod Deposition
No. 37	21702		NYS DPC Minutes
No. 38	21704		Affidavit of Axelrod
No. 39	21713		Government's answers to LILCO Interrogatories
No. 40	21716		Letter to LILCO dated 12?21?84
No. 41	21717	21718	Memo from Axelrod

P R O C E E D I N G S

1
2 JUDGE GLEASON: If we could proceed,
3 please. Mr. Zahnleuter is not here?

4 MR. SISK: Perhaps, Judge Gleason, I had
5 better place on the record a notation of my conversation
6 with Mr. Zahnleuter late yesterday afternoon. I talked
7 with Mr. Zahnleuter by telephone at approximately 4:15
8 yesterday afternoon. He informed me that he had also
9 talked to Mr. Lanpher, so Mr. Lanpher may be able to
10 confirm these details.

11 Mr. Zahnleuter stated that Doctor Axelrod
12 and Mr. Zahnleuter would be coming to the hearings this
13 morning on this morning's flight, that they will not be
14 arriving, therefore, until approximately 11:00 or 11:30
15 this morning. He stated that he would, therefore, miss
16 the examination of Mr. Kelly, and he had made the choice
17 to do so. He also said that Doctor Axelrod would have
18 to leave promptly at 2:00 p.m. today.

19 I informed Mr. Zahnleuter that LILCO could
20 not agree in advance to any time limitation on the
21 questioning of Doctor Axelrod. That, of course, is a
22 matter that is up to the Board. I did assure him that I
23 would do my best with the time given to LILCO for cross-
24 examination to get Doctor Axelrod out by 2:00 p.m., but
25 I couldn't assure that we would be able to do that.

1 I can state to the Board that I am certain
2 that if there are numerous objections or statements or
3 preliminary statements while Doctor Axelrod is here, I
4 don't believe that I will be able to finish by 2:00. I
5 do believe I have a number of important matters to cover
6 with Doctor Axelrod.

7 I have assured Mr. Zahnleuter, and I
8 assure the Board, that I will cover only those matters
9 that LILCO deems to be important to the issue before the
10 Board, as to whether the discovery processes in this
11 proceeding have been complied with. I would suggest
12 that if Doctor Axelrod arrives at 11:00 or 11:30 we
13 should not break for lunch until he leaves at 2:00, if,
14 indeed, that is what occurs.

15 Mr. Spivey will be putting on the
16 testimony and representing Mr. Kelly at this point.

17 JUDGE GLEASON: How about the other
18 witness, Mr. Germano?

19 MR. SISK: Mr. Germano, as I understand
20 it, will be coming down today, also with Mr. Zahnleuter,
21 and will be available after Doctor Axelrod leaves this
22 afternoon. So the proposed order of witnesses, which is
23 acceptable to LILCO, is to start with Mr. Kelly, go to
24 Doctor Axelrod, and then go to Mr. Germano.

25 Mr. Zahnleuter indicated to me that if the

1 county had not completed questioning of Mr. Kelly by
2 11:00 or 11:30, he would be willing to go straight on
3 with Doctor Axelrod and come back to Mr. Kelly later in
4 the afternoon, if that is necessary.

5 JUDGE GLEASON: Mr. Kelly, do you have any
6 preliminary remarks?

7 MR. LANPHER: No preliminary remarks. I
8 think it is more appropriate for Mr. Zahnleuter, when he
9 arrives, to respond to any inquiries you may have about
10 Doctor Axelrod's schedule.

11 JUDGE GLEASON: Mr. Kelly, would you
12 please raise your right hand.

13 Whereupon,

14

NORMAN KELLY

15 having been first duly sworn, was called as a witness
16 herein and was examined and testified as follows:

17 MR. SPIVEY: Judge Gleason, if I may
18 inquire, do you want me to examine Mr. Kelly first?

19 JUDGE GLEASON: If you prefer to do it
20 that way. That is the option that has been given to lay
21 a groundwork if you prefer to do it, yes.

22 MR. SPIVEY: Well, sir, my concern is that
23 -- The Court, of course, knows my objection to delving
24 into Mr. Kelly's knowledge on the grounds that it is
25 irrelevant for the inquiry here. By examining him I

1 wouldn't want it to be taken that I am waiving that
2 objection. But I think I know the areas that the Board
3 wants me to go into and I will be happy to do that.

4 JUDGE GLEASON: All right, fine. We don't
5 assume that you will be waiving any objections, or any
6 other counsel is ever going to waive an objection.

7 **DIRECT EXAMINATION**

8 BY MR. SPIVEY:

9 Q Mr. Kelly, would you state your full name,
10 address, and occupation?

11 A (Kelly) My name is Norman Kelly. I live
12 at 49 Shore Road, West, Mount Sinai, Long Island, New
13 York. My occupation is an Associate Emergency Planner
14 with LILCO.

15 Q How long have you been with LILCO?

16 A (Kelly) It will be three years this next
17 -- well, three years now.

18 Q Can you tell the members of the Board when
19 you were first employed by LILCO in this current
20 employment?

21 A (Kelly) I went on board February -- I
22 believe it was February 11th, of '85.

23 Q Would you briefly sketch for the members
24 of the Board your educational background and your
25 employment experience?

1 A (Kelly) Well, I am a retired Air Force
2 military officer. I have a Master's degree in History
3 and Political Science. I was a former Director of the
4 Department of Emergency Preparedness in Suffolk County
5 from 1968 to 1980. I, subsequently, went and spent a
6 three year period, after leaving the county, with the
7 Federal Emergency Management Agency, FEMA, Region II, in
8 New York. After leaving FEMA, I was employed by JILCO,
9 as I mentioned, on February 11th, '85.

10 Q Would you describe for the members of the
11 Board, briefly, your duties and responsibilities when
12 you were the Director of the Department of Emergency
13 Preparedness with Suffolk County?

14 A (Kelly) Basically, that position is a
15 position in which you oversee or manage the local
16 Department of Emergency Preparedness and Civil Defense.
17 That included making sure that we had proper emergency
18 plans for any possible emergency or disaster that may
19 occur within Suffolk County. We in the department were
20 more of a coordinating agency coordinating other
21 agencies within the county that would normally
22 participate in recovery of a disaster or an emergency.

23 Q Would you please describe for the Board,
24 briefly, your duties and responsibilities when you were
25 with FEMA?

1 A (Kelly) My job primarily with FEMA was to
2 participate in the Federal Disaster Emergency Assistant
3 programs. Additional duties assigned to me were as a
4 liaison between the New York State Office of Emergency
5 Management and the local, county Civil Defense and
6 Emergency Preparedness offices within Region II, which
7 included New York, New Jersey, Puerto Rico, and the
8 Virgin Islands.

9 Q In your position with FEMA, Mr. Kelly, did
10 you know of the existence of a Suffolk County Emergency
11 Plan?

12 A (Kelly) Yes, sir, I did.

13 Q What was the significance of that to you?

14 A (Kelly) Well, in order for local Civil
15 Defense and Emergency Preparedness offices to receive
16 Federal matching funds they must conform by having met
17 the State and FEMA requirements, which require updated
18 emergency plans for all types of possible disasters or
19 emergencies.

20 Q Was Suffolk a participant in that Federal
21 funding?

22 A (Kelly) Yes, they were.

23 Q Would you describe briefly for the Board
24 your current duties and responsibilities with LILCO?

25 A (Kelly) My primary responsibility is in

1 the training area, teaching people within LILCO and the
2 LERO organization, sections of the -- certain sections
3 of the LILCO emergency plan. Additional duties include
4 overseeing and monitoring the siren system that we have
5 around the Shoreham Nuclear Power Plant and the updating
6 of the -- I'm trying to think of what -- well,
7 basically, updating the ingestion pathway section of the
8 plan, which is done annually, which includes making sure
9 of the telephones and locations of various farm stands,
10 farms, dairy farms, et cetera.

11 Q Mr. Kelly, did there come a time in 1985
12 or 1986 when you were asked to obtain some emergency
13 plan from Suffolk County?

14 A (Kelly) Yes, there was.

15 Q Do you recall approximately when that was?

16 A (Kelly) It was roughly -- I can't recall
17 exactly, but I would say late '85 or early '86.

18 Q Do you recall who asked you to get that
19 plan?

20 A (Kelly) I can't really name a name. I
21 know at that particular time I was asked by one of my
22 supervisors if it was possible for me to obtain the
23 county emergency plan, but I don't recall exactly who it
24 was.

25 Q What was your understanding of what you

1 were being asked to get?

2 A (Kelly) Well, my understanding was to
3 obtain the Suffolk County emergency or operational plan.

4 Q What was your response to that request?

5 A (Kelly) Well, having been in the
6 department and having been a Director, I was acquainted
7 with people who still are employed with the department.
8 I made a call to the Office of Emergency Preparedness in
9 Yaphank and I talked to my old Operations Officer, Mr.
10 Berkley Bennett. I told him that I needed the county
11 emergency operations plan. He referred me to Mr. Dick
12 Jones, who he said at that time was handling the
13 emergency plans.

14 I then talked to Mr. Jones. I told him
15 what I wanted. He said "Do you want the whole plan," he
16 said, "because I'm going to have to copy this thing and
17 it's -- he says, "It's as thick as a telephone book." I
18 said, "No, Jonesy, I don't think I need all of the
19 annexes, what I need, basically, is the basic plan."

20 He said, "Well, that will save me a lot of
21 work, because we have to copy it." I said, "How long
22 will it take?" He said, "When do you need it?" I said,
23 "Well, I needed it yesterday." He said, "Well, I think
24 I can get it for you tomorrow, if you just want the
25 basic plan." That was our conversation. I picked it up

1 the following day.

2 Q Do you have a recollection of looking at
3 the document you picked up the next day?

4 A (Kelly) I briefly looked at it. It was
5 in a brown envelope. When Mr. Jones gave it to me, I
6 just basically opened it up, and it said, to my best
7 recollection, "Basic Emergency Operations Plan." I
8 didn't go any further than that.

9 Q What did you do with it after you picked
10 it up?

11 A (Kelly) I brought it back to the office.
12 Our office at that time was in Melville.

13 Q Do you know what you did with it after you
14 brought it back to your office?

15 A (Kelly) I gave it to one of my
16 supervisors. I don't recall exactly who it was. It
17 could have been Mr. Renz, Bill Renz, it could have been
18 Mr. DeVerio, but I really don't recall who I actually
19 handed it to.

20 MR. SISK: May the witness be shown
21 Exhibit Number 11, marked for identification.

22 JUDGE GLEASON: All right.

23 BY MR. SPIVEY:

24 Q Mr. Kelly, subsequent to the events you
25 have just told us about, did you ever receive any other

1 request to obtain documents from Suffolk County?

2 A (Kelly) Yes, I was asked to obtain the
3 Suffolk County Emergency Preparedness Emergency
4 Directory.

5 Q Would you tell the members of the Board
6 how that request came about, who made it, and what you
7 did?

8 A (Kelly) I was asked by Mr. Aidikoff --

9 Q Excuse me, about when was this?

10 A (Kelly) The time frame. I really don't
11 recall the exact time, but it would seem to me it was at
12 least a year ago.

13 Q Who is Mr. Aidikoff, please, sir?

14 A (Kelly) He is one of our consultants that
15 works with LILCO in the Emergency Planning Department.

16 Q Continue on, if you would.

17 A (Kelly) He asked me if I could get a copy
18 of this document, which is the Emergency Directory, and
19 I had said to him at the time, "What do you mean
20 emergency, do you mean the telephone directory?" He
21 said, "Well, I don't really know what it is," he said,
22 "but it probably is that."

23 So I called again to the Office of
24 Emergency Preparedness, Suffolk County, and I talked to
25 Mr. Berkley Bennett and asked him if I could get this

1 document. He said, "Yes, no problems." So I went out
2 and I picked it up and brought it back to the office and
3 turned it over to Mr. Aidikoff.

4 Q To the best of your recollection, Mr.
5 Kelly, were any of the names or phone numbers
6 obliterated in the copy you got from Mr. Bennett?

7 A (Kelly) No. they were not obliterated.

8 Q You could read the directory and see the
9 names, addresses, and telephone numbers on the copy you
10 got from Mr. Bennett?

11 A (Kelly) Yes, to my best recollection,
12 yes.

13 Q Mr. Kelly, I would like to draw your
14 attention to a lunch that it has been testified to was
15 had recently among you, Mr. Regan, and Mr. Bilello. Do
16 you recall going to a lunch recently with those
17 gentlemen?

18 A (Kelly) Yes, I do.

19 Q When was that?

20 A (Kelly) To the best of my recollection,
21 it was in June, and I believe it was on the 22nd,
22 according to my diary.

23 Q Where did you have that lunch?

24 JUDGE GLEASON: Excuse me, did you say
25 June 22nd?

1 THE WITNESS (Kelly): Yes, sir, June 22nd,
2 according to my diary.

3 BY MR. SPIVEY:

4 Q Where was that lunch held?

5 A (Kelly) It was held at the Coram Pond
6 Diner, in Coram, Long Island.

7 Q Would you tell the members of the Board
8 how you happened to be invited to that lunch?

9 A (Kelly) I was in the office and Mr.
10 Regan, who was in a habit of calling me since I've
11 gotten out of the hospital, and asked me how I was
12 feeling. I said, "Fine, I'm coming along fine." He
13 said, "How about having lunch today?" I said, "Sure,
14 that's fine with me, I'm open." "Where do you want to
15 have lunch?" I said, "Well, it really makes no
16 difference to me." He said, "Well, how about the Coram
17 Diner?" I said, "Fine, what time?" He said, "12:30."
18 I said, "Okay, I'll meet you there," which I did --
19 well, I went there at 12:30.

20 Q Tell us what happened after you got there,
21 or when you got there?

22 A (Kelly) When I got there, I was -- it was
23 a little before 12:30, and he had said 12:30, so I
24 walked in. The diner wasn't too full, I sat down, and
25 the waitress came over. She asked me if I wanted to

1 order. I said, "No, I'm waiting for another gentleman."
2 So I had a cup of tea or coffee, I forget which, and
3 then I started to think, "Well, gee, it's getting later
4 than 12:30, maybe he is in the other section." They
5 have two sections in the diner. I was in the main
6 section. He was apparently in the wing.

7 I said to the waitress, "Let me go look in
8 the other wing of the diner, he may be in there." Sure
9 enough, when I walked in there, he was there with Mr.
10 Bilello. I walked over and told them I had been waiting
11 outside in the other section for them, sit down, and
12 that's how I met them.

13 Q Had you expected to see Mr. Bilello on
14 this occasion?

15 A (Kelly) No.

16 Q You didn't understand that he was coming
17 to the lunch?

18 A (Kelly) No.

19 Q Could you tell the members of the Board
20 what sort of conversation took place during that lunch?

21 A (Kelly) Well, I sat down. Of course, the
22 first comments were made, I guess it was by Bill, "How
23 are you feeling?"

24 Q Bill is Mr. Regan?

25 A (Kelly) Mr. Regan. John Bilello

1 mentioned something about, "I hear you had a rough
2 time," et cetera, and so forth, and I said, "Yes." He
3 says -- he started off with a comment of, "I've been
4 having a rough time, too." I says --

5 Q Who said that, Mr. Bilello?

6 A (Kelly) Yeah. I said, "In what way?" He
7 said, "Well, the damned State is down on our tails
8 because of our emergency plans, that unless we get them
9 updated we are going to lose our matching funds from the
10 Federal government." He said, "We got hold of Mr.
11 Horton from the State Emergency Management Office." He,
12 apparently, went down and helped them update their plan.
13 He said, "Well, you've heard enough about that crap," he
14 said, "you've been all through that. Let's talk about
15 something else." That was about the gist of the
16 conversation.

17 Q Did you have any other conversation about
18 that plan with either Mr. Bilello or Mr. Regan?

19 A (Kelly) No.

20 Q I take it the rest of the conversation was
21 just general about the weather, your health, and things
22 of that nature?

23 A (Kelly) Yeah, just general stuff.

24 Q How long did the luncheon last?

25 A (Kelly) We were there about an hour and

1 15, somewhere in that area, an hour and 20.

2 Q When you left, did you leave separately?

3 A (Kelly) No, we all got up and started to
4 leave. I think I made the comment to Mr. Bilello that I
5 had dropped off Rev 9 of the local planning, and I --

6 Q By Rev 9, what do you mean?

7 A (Kelly) Revision 9 of the local plan. He
8 said, "Yeah, I got it." He said, "When am I going to
9 get Rev 10?" I said, "Well, we're in the process of
10 getting it published. As soon as we get it, I'll see
11 that you get a copy." That was about the end of the
12 conversation.

13 Q Who paid for that lunch, Mr. Kelly?

14 A (Kelly) I did.

15 Q Do you recall how you paid for it?

16 A (Kelly) Yes, I paid by credit card; I
17 think, either American Express or Diner's.

18 Q Mr. Kelly, have you been shown in this
19 case what has been represented in these proceedings as
20 the County Emergency Operating Plan?

21 A (Kelly) Just recently, back maybe three
22 weeks ago.

23 Q Is that the first time you had seen the
24 complete plan?

25 A (Kelly) Yes, sir.

1 Q When is the first time that you had spoken
2 with LILCO's attorneys about this matter, and
3 particularly, the Emergency Operating Plan?

4 A (Kelly) It was about three or four weeks
5 ago.

6 MR. SPIVEY: No further questions.

7 JUDGE GLEASON: Mr. Kelly, are you back to
8 work now?

9 THE WITNESS (Kelly): Yes, sir, I am.

10 JUDGE GLEASON: I didn't concentrate when
11 you were asked initially about what your duties were
12 with LILCO. Could you run through that again with me?

13 THE WITNESS (Kelly): Yes, sir. My
14 primary duties now are involved in the training program
15 where we are training people in certain sections of the
16 LILCO plan, emergency plan. These are new people who
17 are coming into the program. We have classes for those
18 people and I teach those classes.

19 A collateral duty, as I mentioned, was to
20 monitor the prompt notification siren system around the
21 Shoreham Nuclear Power Plant, its monthly testing, the
22 printouts, the follow-up on making sure that if any of
23 the sirens don't operate, that maintenance is properly
24 done on them, and the ingestion pathway updating, which
25 I do on a yearly basis. Again, when I say "update",

1 making sure that the farm stands that we have listed are
2 still there, proper telephone numbers, et cetera.

3 JUDGE GLEASON: Have you been involved in
4 any way with this pending litigation during your
5 employment with LILCO?

6 THE WITNESS (Kelly): No, sir.

7 JUDGE GLEASON: What is your current title
8 again?

9 THE WITNESS (Kelly): I am an Associate
10 Emergency Planner.

11 JUDGE GLEASON: Whom do you report to?

12 THE WITNESS (Kelly): I report to Mr.
13 Douglas Crocker, who is our Manager.

14 JUDGE GLEASON: Crocker?

15 THE WITNESS (Kelly): Yes, sir.

16 JUDGE GLEASON: Mr. Crocker has been a
17 fairly key witness in a number of issues in this
18 proceeding. It would just appear to be as kind of a
19 likely occurrence that there would have been discussion
20 of some of the events or some of the issues involved in
21 this litigation. Since you did at one time, even though
22 it goes back to 1980, have previous employment with
23 Suffolk County in a very significant area, the Emergency
24 Planning, and also subsequent to that had employment
25 with FEMA, involved in dealing with local governments

1 and State governments in New Jersey and the State of New
2 York, that there would have been conversation involving
3 these issues in which you would have participated. Is
4 that an erroneous assumption?

5 THE WITNESS (Kelly): Do you mean directly
6 with Mr. Crocker?

7 JUDGE GLEASON: Mr. Crocker, right.

8 THE WITNESS (Kelly): In reference to the
9 litigation?

10 JUDGE GLEASON: Yes.

11 THE WITNESS (Kelly): No, sir, we have
12 never discussed any of that, any of the issues that are
13 involved with the litigation. At least, I haven't with
14 Mr. Crocker.

15 JUDGE GLEASON: During the session the
16 other day -- we might as well, you know, get -- join in
17 this issue as rapidly as we can, because I think that at
18 least the surroundings have been laid, there was
19 testimony from Mr. Bilello that during this luncheon
20 that he kidded you about getting a copy of this Suffolk
21 Emergency Plan.

22 He indicated that he did not think that
23 you should have the plan, but he did not indicate in the
24 testimony, as I recall it, that he indicated that to
25 you, but merely his comments were more in kind of

1 jocular fashion. Do I gather from your comments here
2 today that that conversation never occurred?

3 THE WITNESS (Kelly): That didn't occur,
4 Your Honor. As I mentioned, the plan we talked about
5 was the current Suffolk County plan, which he was
6 getting a lot of flack from by the State people because
7 it needed updated.

8 JUDGE GLEASON: There was no reference to
9 the fact by him, or in fact -- although there wasn't
10 testimony to that effect by his supervisor, no reference
11 during that conversation to the fact that you had
12 obtained the plan, a copy of the plan?

13 THE WITNESS (Kelly): No, sir, that is
14 correct.

15 JUDGE GLEASON: I think that really
16 resolves the questions I have. Do you wish to proceed,
17 Ms. Letsche?

18 MS. LETSCHE: Yes.

19 **CROSS-EXAMINATION**

20 BY MS. LETSCHE:

21 Q Mr. Kelly, what documents or papers did
22 you review in preparation for your testimony today?

23 A (Kelly) Oh, let's see. I took a look at
24 the plan that I was handed two or three weeks ago, that
25 Mr. DeVerio gave me, and that was about the substance of

1 it.

2 Q Did you review any other documents or
3 correspondence or other information to prepare for this?

4 A (Kelly) I did look at a document, I don't
5 know what you would call it, that had to do with the
6 proceedings.

7 Q A transcript?

8 A (Kelly) No, it wasn't a transcript.

9 Q Did Mr. DeVerio give it to you?

10 A (Kelly) Yes, I believe so.

11 Q Was it a piece of testimony?

12 A (Kelly) No. Just let me -- what it
13 really was about was that if the county of Suffolk
14 people were to testify, they would testify according to,
15 and if I was to testify -- my name was listed on that
16 document -- if I was to testify, I would testify to. I
17 don't know what you call that.

18 Q Was this a pleading, a document that --
19 did you understand it had been filed by Suffolk County?

20 A (Kelly) I really don't know.

21 JUDGE GLEASON: Maybe the attorneys could
22 help us out.

23 MR. IRWIN: Judge Gleason, we can clarify
24 this. I provided Mr. Kelly with a copy of a document
25 dated June 28, 1988, and styled "Government's Response

1 to Board Order of June 24, 1988." The day I received
2 that document, which was either the 28th or the 29th, I
3 immediately called LILCO and asked them to undertake an
4 inquiry as to the matters asserted in it. Mr. Kelly
5 was, naturally, one of the first people contacted. This
6 is the document.

7 BY MS. LETSCHE:

8 Q Mr. Kelly, when you looked at the plan
9 that Mr. DeVerio gave you, you said that was two or
10 three weeks ago?

11 A (Kelly) Yes, ma'am.

12 Q I take it that was before you looked at
13 the other document you just mentioned; is that right?

14 A (Kelly) I think it was before, but I'm
15 not really sure. I couldn't really be sure on that,
16 because they were very close together. I don't know
17 whether I received one prior to, or which one came
18 first. I believe I got the plan first.

19 Q The plan that Mr. DeVerio gave you, I take
20 it, was -- was that what was in the -- do you know
21 whether that was what was in the brown envelope that you
22 had given to your supervisor when you came back from the
23 county, back in '85 or '86?

24 A (Kelly) No, what Mr. DeVerio gave me was
25 considerably more, as I recall, than what I had

1 originally obtained from Mr. Jones.

2 Q You said before that you got from Mr.
3 Jones a brown envelope; is that right?

4 A (Kelly) As I recall, the paper work that
5 he had given me was in a brown envelope.

6 Q You said before that you didn't really go
7 through what was in that, you just glanced at it and
8 gave it to your supervisor; is that right?

9 A (Kelly) That is correct.

10 Q The supervisor to whom you gave it, was
11 that Mr. Crocker?

12 A (Kelly) No, I don't think -- Mr. Crocker,
13 at that particular time, was not -- well, if he was with
14 us, he wasn't my supervisor at the time. My supervisor
15 was Mr. Bill Renz, who I feel very strongly I gave it
16 to, but he was my supervisor at the time. He left
17 shortly thereafter.

18 Q Mr. Renz left shortly thereafter?

19 A (Kelly) Yes.

20 Q Mr. DeVerio, I take it, worked with you
21 also; is that correct?

22 A (Kelly) Yes, ma'am.

23 Q Back in that time frame when you received
24 this document from the county?

25 A (Kelly) Yes.

1 Q What is the name of the department or
2 division in LILCO with which you were affiliated back at
3 that time period?

4 A (Kelly) Well, actually, our department is
5 the Nuclear Operation Support Department and I work in
6 the Emergency Planning Division.

7 Q Are you a part of the organization called
8 LERIO? Are you familiar with that term, L-E-R-I-O?

9 A (Kelly) Yes.

10 Q Are you part of that organization?

11 A (Kelly) I guess I would be, yes.

12 Q Are you part of the LERIO organization?

13 A (Kelly) Yes.

14 Q Do you have a LERIO job assignment?

15 A (Kelly) Yes.

16 Q What is that, sir?

17 A (Kelly) Well, during the drills and
18 exercises, I was usually an observer in the drills that
19 we have.

20 Q You mentioned that you worked -- and I'm
21 talking about this 1985 time frame -- you worked with
22 Mr. DeVerio and Mr. Renz. Did you work with Mr.
23 Weismantle?

24 A (Kelly) No, I didn't really have too much
25 to do with Mr. Weismantle.

1 Q Mr. Weismantle was in overall charge of
2 that LERIO organization though; wasn't he?

3 A (Kelly) Yes, ma'am.

4 Q So ultimately, he would have been up above
5 you in the chain of command?

6 A (Kelly) He was the top banana, so to
7 speak.

8

9

1 BY MS. LETSCHE:

2 Q I believe you were describing what your
3 current duties are, and you were talking about
4 overseeing and monitoring things related to the siren
5 system, but you mentioned that you also were responsible
6 for certain updating of portions of the LILCO plant. Do
7 you recall that?

8 A (Kelly) Yes.

9 Q What were your duties back when you first
10 began working with LILCO, back in the 1985, February,
11 1985, when you first came on board.

12 A (Kelly) Primarily, again, my job
13 description outline becoming acquainted the various
14 training programs, that we were going to be instructing
15 various new LERIO people. At that time I was also
16 assigned the siren program and the ingestion pathway,
17 updating the programs.

18 Q So initially you were getting acquainted
19 with training programs, and you were dealing with sirens
20 and ingestion pathway issues.

21 A (Kelly) Yes, ma'am.

22 Q I take it that in connection with those
23 duties you were working with, or were familiar with the
24 LILCO plan, the LERIO plan; is that right?

25 A (Kelly) Yes, that's true.

1 Q Basically your job was all in connection
2 with that LERIO off-site response plan; is that right?

3 A (Kelly) That's right.

4 Q Those have been your duties the whole time
5 that you have been employed with LILCO; is that right?

6 A (Kelly) That's basically correct.

7 Q You mentioned before that you, back in
8 1985 or '86, that you were asked to obtain a copy of
9 Suffolk County Emergency Plan. Obviously, whoever asked
10 you knew that there was one; is that right?

11 You said that was one of your supervisors?

12 MR. REIS: Ms. Letsche, I don't think he
13 orally answered that question.

14 MS. LETSCHE: I'm sorry. The answer was
15 yes to my last question; is that right?

16 THE WITNESS (Kelly): Yes.

17 BY MS. LETSCHE:

18 Q Do you recall who it was -- this was
19 somebody at LILCO who asked you to obtain the County's
20 plan; is that right?

21 A (Kelly) That's correct.

22 Q Do you recall who it was that asked you
23 that?

24 A (Kelly) I really don't. At that time we
25 were doing a lot of things, and this just came out of

1 the blue to me, and I don't really recall exactly who
2 asked if I could the copy, or get a copy of the plan.

3 Q I'm going to see if maybe I can help your
4 memory a little bit.

5 Do you remember the exercise that took
6 place -- big exercise that took place in early 1986 at
7 the Shoreham plant? Do you remember that?

8 A (Kelly) The FEMA exercise?

9 Q Right. You participated in that exercise?

10 A (Kelly) Yes, I did.

11 Q Was the request by somebody at LILCO that
12 you obtain a County Emergency Operations Plan before
13 that exercise took place?

14 A (Kelly) I can't really recall whether it
15 was before or after.

16 Q Do you recall a lot of preparations for
17 that exercise going on in your office?

18 A (Kelly) Yes, I do.

19 Q You were involved in those preparations;
20 is that right?

21 A (Kelly) Yes, I was going to be a
22 participant in it.

23 Q When you came to work for LILCO, I assume
24 it was no secret that you had previously worked for the
25 County; is that right?

1 A (Kelly) Mr. DeVerio knew it. How many
2 other people at LILCO knew it, I don't know.

3 Q Was it Mr. DeVerio who asked you to get a
4 copy of the Suffolk County Plan for him?

5 A (Kelly) I really don't recall whether it
6 was he or whether it was Bill Renz at that particular
7 time, but --

8 Q One of those two?

9 A (Kelly) It seemed to me it was somebody
10 that at that time was in the office, and I was asked if
11 I could a copy, and I said, I don't know, I'll see if I
12 can, and that's when I made the call.

13 Q What was your understanding of why they
14 asked you to get a copy of that plan?

15 A (Kelly) I didn't have any understanding
16 at all. They just asked if I could get a copy of it,
17 and I said, well, I'll do what I can.

18 Q Then after you got it, you gave it to Mr.
19 DeVerio?

20 A (Kelly) Again, I really can't recall who
21 I actually handed it to. It seemed to me it might have
22 been one of those people, but I really don't recall.

23 Q It was your understanding that either Mr.
24 DeVerio or Mr. Renz got the plan that your obtained from
25 Mr. Jones and then went on and did whatever they did

1 with it?

2 MR. SPIVEY: Objection. I don't believe
3 it's been established that he it to either one of those
4 gentlemen. He's really saying it seems like he might
5 of, but he doesn't really recall who he gave it to.

6 JUDGE GLEASON: Can you rephrase your
7 question, Ms. Letsche?

8 MS. LETSCHE: Let me rephrase the
9 question.

10 BY MS. LETSCHE:

11 Q It's likely, isn't it, Mr. Kelly, that you
12 gave the plans to either Mr. DeVerio or Mr. Renz?

13 A (Kelly) That's possible, yes.

14 Q Can you think of anyone else you might
15 have given it to?

16 A (Kelly) Not really.

17 Q Do you know what they did with it?

18 A (Kelly) No, ma'am; I have no idea.

19 Q Mr. Kelly, two or three weeks ago when Mr.
20 DeVerio showed you a plan, do you know -- why don't you
21 describe for me what he showed you? Can you do that?

22 A (Kelly) The plan was approximately about
23 this size or this size --

24 Q Wait a second, that's not going to come
25 out on the --

1 Is that LILCO Exhibit 10 in front of him,
2 Mr. Irwin?

3 MR. IRWIN: This is a LILCO Exhibit 10
4 which was provided last Saturday. This is LILCO Exhibit
5 9 which was provided in late May. This is what was in
6 LILCO's possession at the time Mr. DeVerio showed him --

7
8 MS. LETSCHE: Okay, you did what I want.

9 BY MS. LETSCHE:

10 Q Mr. Kelly, why don't you answer the
11 question now.

12 The document that Mr. DeVerio showed you
13 two or three weeks ago was -- describe that for me,
14 please.

15 A (Kelly) It was the Emergency Operation
16 Plan, basic plan, plus annexes.

17 Q You were familiar with that plan when he
18 showed it to you; right?

19 A (Kelly) I wouldn't say I was really -- I
20 wouldn't say I was really familiar with that particular
21 plan, because it had been a long time. I had left the
22 County in 1980, and I recall when I was Director, our
23 plans were far from being voluminous as it presently is.

24 Q Mr. Kelly, did you ask, or have you made
25 any attempt to locate the copy of the plan that you

1 obtained from Dick Jones back in 1985?

2 A (Kelly) No, ma'am, I would have no reason
3 to have use of it.

4 Q I was thinking when Mr. DeVerio showed you
5 this plan two or three weeks ago, did you ask, "Is this
6 the same one I gave you guys a couple of years ago?"

7 A (Kelly) No.

8 Q Mr. DeVerio didn't mention anything about
9 whether or not it was the same one that you had given
10 him two or three years ago, or did you --

11 MR. SPIVEY: I don't believe it was
12 established -- excuse me, it's an objection. I don't
13 believe it's established that he gave it to Mr. DeVerio.

14 MS. LETSCHE: I'll rephrase the question.

15 BY MS. LETSCHE:

16 Q Did Mr. DeVerio mention to you whether the
17 plan he showed you two or three weeks ago was the one
18 that you had obtained back in 1985 or '86?

19 A (Kelly) I don't believe he made any
20 comment along those lines. I don't recall that.

21 Q Why did Mr. DeVerio show you that plan two
22 or three weeks ago; do you know?

23 A (Kelly) I suspect that I was going to be
24 asked to testify.

25 Q Did Mr. DeVerio say that to you?

1 A (Kelly) No, I don't think so.

2 Q What did Mr. DeVerio say to you when he
3 showed you the plan?

4 A (Kelly) He just gave me the plan and
5 said, this is what we got from Suffolk County. That was
6 about it.

7 Q Did he say when we had gotten it from
8 Suffolk County?

9 A (Kelly) I believe he said recently.

10 Q Do you know whether the plan that Mr.
11 DeVerio showed you two or three weeks ago, do you
12 remember whether that document was copied on one side,
13 or on both sides of the pages?

14 A (Kelly) The one that he gave me?

15 Q The one that he showed you two or three
16 weeks ago.

17 A (Kelly) I think it was on both sides.

18 Q Mr. Kelly, in your duties with LILCO, have
19 u ever been involved in working on affidavits, for
20 instance, affidavits to be signed by Mr. DeVerio, by Mr.
21 Renz, or by Mr. Crocker?

22 A (Kelly) You mean legal affidavits?

23 Q Yes, legal affidavits.

24 A (Kelly) No.

25 Q Have you ever been asked to work on

1 discussions or reports about how that Suffolk County is
2 organized?

3 A (Kelly) No, if I understand your question
4 right. Would you ask that again?

5 Q Sure. Let me ask a slightly different
6 question and then we'll come back to that.

7 A (Kelly) Okay.

8 Q Have you ever been asked for information
9 about how the County is organized, the structure of the
10 County, while you worked with LILCO?

11 MR. SPIVEY: Objection. Asked by whom?

12 MS. LETSCHE: Asked by one of your
13 supervisors, or somebody at LILCO?

14 THE WITNESS (Kelly): I believe the
15 discussion occasionally would come up, and I would be
16 asked, well, you know, who's in charge of this
17 department, or something along those lines, yeah.

18 BY MS. LETSCHE:

19 Q You answered those questions to the best
20 of your knowledge, I assume?

21 A (Kelly) Yes.

22 Q Have you ever been asked to put any of
23 that kind of information in writing for any of your
24 supervisors?

25 A (Kelly) No.

1 Q Have you ever been asked to review any
2 documents that may have had discussions on that subject,
3 who was in charge and --

4 A (Kelly) No, ma'am.

5 Q Have you ever heard, Mr. Kelly, of
6 something called the realism doctrine, realism argument?

7 A (Kelly) Yes, ma'am.

8 Q You're familiar with that? It's talked
9 about in the halls of LILCO?

10 A (Kelly) All over.

11 Q I assume you participate in all those
12 discussions; is that right? You're in some discussions
13 on that subject?

14 A (Kelly) There's a lot of it in the papers
15 out on Long Island, a lot of discussion, yes. I've not
16 been directly involved, but I've heard discussions on
17 the issue.

18 Q I assume you are aware of the fact that
19 your supervisors and people in your department have been
20 working on that issue for a long time; is that right?

21 A (Kelly) Yes.

22 Q Mr. Kelly, I want to go back a little bit
23 to when you were working with the County; okay?

24 A (Kelly) Uh-huh.

25 Q Back then there was a, I believe you

1 mentioned it, there was an Emergency Operations Plan in
2 existence when you were the Director of the Division of
3 Emergency Preparedness; is that right?

4 A (Kelly) That's correct.

5 Q I believe you mentioned that it was a
6 civil defense type plan; is that right?

7 A (Kelly) Civil defense in -- we were in
8 the process of being urged by the State at that time to
9 include all types of possible contingency plans for all
10 kinds of emergencies and disasters.

11 Q Were you involved in that process of
12 including those things in the plan?

13 A (Kelly) This all came about just about
14 the time that I left the County to other employment.

15 Q To work with FEMA?

16 A (Kelly) Yes.

17 Q What did the County's Emergency Operations
18 Plan look like, to the best of your recollection, back
19 when you left the County in 1980?

20 A (Kelly) It wasn't very big, and it was
21 kind of very general in nature. As I recall, we
22 followed a guideline that the State had provided, and of
23 course you were to add your own annexes, and that's what
24 we were in the process of doing.

25 Q So there were some annexes in the plan at

1 the time that you were there?

2 A (Kelly) To the best of my knowledge, yes,
3 there were a few.

4 Q But they were being added as time went on;
5 is that right?

6 A (Kelly) Yes.

7 Q When you said you had a guideline, I
8 think, from the State, was it kind of fill-in-the-blank
9 sort of form, plan, that the State gave you?

10 A (Kelly) I don't recall it was that kind
11 of a particular document, but it gave you some
12 parameters on what to do and how to -- what you should
13 cover in the plan, what you should include in the plan I
14 mean.

15 Q Mr. Kelly, when you were with the Suffolk
16 County, did there exist an Emergency
17 Preparedness/Emergency Directory?

18 A (Kelly) We called it at that time a
19 telephone directory, if I recall.

20 Q Did that telephone directory list the
21 telephone numbers of people in all the County
22 departments who would -- who may need to be contacted in
23 the event of an emergency?

24 A (Kelly) To the best of my knowledge, yes.

25 Q When you were in the County, did that

1 emergency directory include listings for utility
2 companies?

3 A (Kelly) I believe it did.

4 Q To the best of your knowledge, LILCO was -
5 - was LILCO listed in the directory back then?

6 A (Kelly) I can't say for sure, but I would
7 assume that it was, yes.

8 Q Let me show you, or perhaps you can give
9 the witness a copy of LILCO's Discovery Exhibit Number
10 12. I'll just show him our copy.

11 Do you have before you, Mr. Kelly, a
12 document that's marked on the front page, LILCO
13 Discovery Exhibit Number 12?

14 A (Kelly) Yes, ma'am.

15 Q Would you read the title of that document,
16 please?

17 A (Kelly) " Suffolk County Department of
18 Emergency Preparedness Emergency Directory."

19 Q Would you open to the next page; is there
20 a date on that page?

21 A (Kelly) It says, "Revised March, 1980"

22 Q Right. Would this have been the -- do you
23 recognize this document?

24 A (Kelly) Yeah, it looks familiar; uh-huh.

25 Q Would you turn to page 31 of that exhibit,

1 please?

2 A (Kelly) Right, 31.

3 Q That has a listing of -- title at the top
4 is, "Utilities"; is that correct?

5 A (Kelly) Yes, ma'am.

6 Q That includes a listing for Long Island
7 Lighting Company?

8 A (Kelly) Yes, it does.

9 Q It has a Mr. Fitzpatrick listed there with
10 home and -- residence and office phone numbers; is that
11 right?

12 A (Kelly) Yes, ma'am.

13 Q Mr. Kelly, it's true, is it not, that it
14 is the po' of the Emergency Preparedness Division to
15 send copies of the Emergency Directory to anyone who's
16 listed in that Directory?

17 A (Kelly) Do you mean the County plan?

18 Q No. Listen to my question.

19 The policy of the County Emergency
20 Preparedness Division is to send a copy of the Emergency
21 Directory, itself, to the persons who are listed in that
22 Directory?

23 MR. SPIVEY: I object to the question
24 unless we can have a time frame on it when he would have
25 known what the policy of the County was.

1 MS. LETSCHE: I can ask him that.

2 BY MS. LETSCHE:

3 Q When you were with the County, was that
4 true?

5 A (Kelly) I believe it was.

6 Q To the best of your -- do you know whether
7 that policy has been changed?

8 A (Kelly) I do not.

9 Q Mr. Kelly, when you were with the County,
10 did you ever hold hurricane conferences?

11 A (Kelly) Yes, ma'am, we did, yearly.

12 Q Were utility companies invited to those
13 conferences, sir, when you were with the Division?

14 A (Kelly) Yes.

15 Q Did LILCO regularly attend those
16 conferences, to the best of your recollection?

17 A (Kelly) I believe they did, yes.

18 Q Would it have been Mr. Fitzpatrick who
19 attended?

20 A (Kelly) I believe so.

21 Q Do you know Mr. Fitzpatrick?

22 A (Kelly) I vaguely recall him now, yes.

23 Q What occurred at those hurricane
24 conferences when you were with the County, sir?

25 A (Kelly) We had briefings on procedures,

1 what to do during a hurricane, possible areas of
2 evacuation, in fact we went through one, evacuating Fire
3 Island during August, those kind of things, general
4 knowledge, meteorological programs, and things of that
5 nature.

6 Q Were whatever plans or preparedness were
7 in existence at that time discussed during those
8 conference?

9 A (Kelly) Not directly, no. We would hand
10 out literature, also that was furnished by the Federal
11 Government in reference to severe weather, storm
12 warnings, and hurricanes, that kind of thing. But we
13 didn't really discuss the emergency plan, per se.

14 Q At that time, though, the County did have
15 an emergency plan to deal with hurricanes; is that
16 right?

17 A (Kelly) Yes.

18 Q That was part of the Suffolk County
19 Emergency Operations Plan at that time; is that right?

20 A (Kelly) Yes.

21 Q There wasn't any secret about that, was
22 there?

23 A (Kelly) No, not to my knowledge.

24 Q Were those conferences held in the County
25 EOC?

1 A (Kelly) Yes, ma'am.

2 Q You mentioned that when you were with the
3 County, there was a lot of planning going on, I think
4 you said, at the time. Were you involved, sir, in any
5 planning related to the Shoreham plant, responding to an
6 emergency at the Shoreham plant, when you were with the
7 County?

8 A (Kelly) When I was with the County? To
9 the best of my recollection, we were working with other
10 County departments in developing evacuation plans, if I
11 recall, for the Shoreham area. We had Mr. LaGrande, who
12 at that time was in the Suffolk County Planning
13 Department that worked with my department, plus some
14 representatives from other county departments that would
15 normally be involved in emergency recovery. That's
16 about it.

17 Q You mentioned that you had been asked
18 about a year ago, I think you said, to get a copy of the
19 Emergency Directory; is that right?

20 A (Kelly) Yes, ma'am.

21 Q I can't recall, did you say who had asked
22 you to get you that?

23 A (Kelly) Yes. I believe it was Mr.
24 Aidikoff.

25 Q Had you been asked at any other time to

1 obtain any other information from Suffolk County or from
2 the Planning Division for LILCO?

3 A (Kelly) No, ma'am, just this particular
4 document and a copy of the Emergency Operation Plan.

5 Q Both of those things you had been told to
6 get those documents in particular; is that right?

7 A (Kelly) Yes, ma'am.

8 Q I want to go back for one minute, Mr.
9 Kelly, to the -- when Mr. DeVerio two or three weeks ago
10 showed you a plan. About how long did you spend looking
11 at that plan Mr. DeVerio showed you?

12 A (Kelly) I just kind of casually leafed
13 through it. I didn't spend hours on it, or anything
14 like that. I would say maybe an hour.

15 Q Did you have any conversations with Mr.
16 DeVerio about it after you had looked at it?

17 A (Kelly) No, ma'am.

18 Q Did Mr. DeVerio ask you anything about it
19 after you looked at it?

20 A (Kelly) It seemed to me he might have --
21 or he did say something along the lines, I'm not sure
22 exactly how he phrased it, but, I'm trying to recall, so
23 bear with me.

24 It seemed to me that Chuck might have said
25 to me, or did say to me, "This plan is what we've

1 gotten, and what do you think of it?", or something
2 along those lines.

3 If I recall, I said something to the
4 effect, "It's a heck of a lot bigger, more voluminous,
5 than when I was there", or something along those lines.

6 But that was about the gist of the
7 conversation.

8 Q Did you talk about anything else with Mr.
9 DeVerio during this meeting or conversation?

10 A (Kelly) No, I can't recall any additional
11 information.

12 Q You said you thought at that point that
13 you might be asked to testify. Did Mr. DeVerio talked
14 to you about that possibility?

15 A (Kelly) I can't recall if he did or
16 didn't at that particular time.

17 Q How did you come to be thinking that you
18 might be called to testify?

19 A (Kelly) I believe it was Mr. Crocker who
20 mentioned that to me, who was my immediate supervisor.

21 Q When did Mr. Crocker mention that
22 possibility to you?

23 A (Kelly) I don't know. I would say it was
24 about the time that I was handed these documents.

25 Q Two or three weeks ago, roughly?

1 A (Kelly) I would say so, yes.

2 Q When Mr. Crocker mentioned that
3 possibility to you, did he say anything else to you?
4 Did you have any other discussions with him about the
5 possibility of your testifying?

6 A (Kelly) No, ma'am.

7 Q Did you ask why you would have to testify?

8 A (Kelly) I don't recall any particular
9 conversation as to the reason. I assumed at the time it
10 was because of my previous employment with Suffolk
11 County.

12 Q Nobody told you what it was that you would
13 be asked to testify about; is that right?

14 A (Kelly) At that particular time, no.

15 Q When did you first learn what it was that
16 you might have to testify about?

17 A (Kelly) I guess it was about two weeks
18 ago, to the best of my recollection.

19 Q How did you learn that two weeks ago?

20 A (Kelly) I was finally told by Mr. Crocker
21 that I would be -- to my recollection -- would be
22 testifying. He would let me know the particular dates.

23 MS. LETSCHE: Excuse me. Can I just ask
24 what Mr. Irwin just handed to the witness?

25 MR. IRWIN: I handed a copy of the

1 Intervenor June 28, 1988, filing which has been
2 referred to.

3 MS. LETSCHE: I object to that. I think
4 that is completely inappropriate during the witnesses'
5 testimony for his Counsel to be handing him documents
6 that are not being interrogated about.

7 JUDGE GLEASON: Please take the document
8 back.

9 Ms. Letsche, I would like to take a five
10 minute break now.

11 MS. LETSCHE: That's fine.

12 JUDGE GLEASON: Let's take a five minute
13 break, please.

14 MS. LETSCHE: Could I request, Judge
15 Gleason, though, that during the break that the witness
16 not be -- that there not be discussions with the witness
17 about this particular line of questioning on the issues
18 --

19 JUDGE GLEASON: I will so request the
20 attorneys not to discuss the particular line of
21 questioning.

22 MR. IRWIN: Sure.

23 MS. LETSCHE: Thank you.

24 (Whereupon, a short recess was taken.)

1 JUDGE GLEASON: Let's proceed, Ms. Letsche.

2 BY MS. LETSCHE:

3 Q I just have a couple more questions, Mr.
4 Kelly.

5 When you got the copy of the Emergency
6 Operations Plan from Dick Jones, you go it in a brown
7 envelope, right?

8 A (Kelly) To the best of my recollections yes.

9 Q You didn't really examine it in the envelope?
10 You glanced at it and then you gave it to your
11 supervisor; is that right?

12 A (Kelly) Yes, ma'am.

13 Q You said a little while ago, I think, that you
14 spent roughly an hour looking at whatever -- the plan
15 that Mr. DeVerio gave you two or three weeks ago; is
16 that right?

17 A (Kelly) That's correct.

18 Q Sitting here today, you don't know, do you,
19 whether was in that brown envelope, was or was not the
20 same as what Mr. DeVerio showed you?

21 A (Kelly) All I can say is, that what Mr.
22 DeVerio gave me to look at, which he said was the plan,
23 was considerably more than I had gotten from Mr. Jones,
24 in volume.

25 Q Just based on the volume?

1 A (Kelly) And what I had just looked at,
2 briefly, when I got it from Mr. Jones.

3 Q That's based on your recollection of how thick
4 the brown envelope was you got from Mr. Jones?

5 A (Kelly) Yeah.

6 Q When did you first talk to Counsel about your
7 testimony here?

8 A (Kelly) I would say about two, three weeks
9 ago.

10 Q Had you ever talked to Counsel for LILCO at
11 any time earlier about the Suffolk County Emergency
12 Operations Plan?

13 A (Kelly) No, not to my recollection, no.

14 Q Any time back in '85 or '86, when you had been
15 asked to get it, did you have any conversations in that
16 time frame with any LILCO's Counsel?

17 A (Kelly) No, ma'am.

18 Q Am I correct, that Mr. Renz is no longer an
19 employee of LILCO?

20 A (Kelly) That's correct.

21 Q Mr. DeVerio still is; is that right?

22 A (Kelly) Yes, ma'am.

23 Q He has been continually, for as long as you've
24 been with LILCO; is that right?

25 A (Kelly) That's correct.

1 MS. LETSCHE: I have no further questions of
2 this witness.

3 JUDGE GLEASON: Staff?

4 CROSS-EXAMINATION

5 BY MS. YOUNG:

6 Q Mr. Kelly, at the time you were with Suffolk
7 County Division of Emergency Preparedness, did you send
8 copies, or did you, or anyone on your staff, send copies
9 of the Suffolk County Operations Plan to the State?

10 A (Kelly) Yes, they had to approve our plan.
11 That was part of the requirement for receiving matching
12 funds from FEMA. They had to review them and approve
13 them.

14 Q Do you recall how often that was done?

15 A (Kelly) We were required to update those
16 plans on a yearly basis. Usually when we had people
17 from State come down, they had kind of a check list that
18 they would check off to see that we were conforming with
19 the state requirements, so that we could continue
20 getting our matching funds.

21 So, it was kind of a yearly update on the
22 plan, and the review of the plan and its annexes.

23 Q Was it your understanding that the State
24 retained copies of the plan that you sent to them?

25 A (Kelly) Yes, yes, ma'am.

1 Q Also during the time that you were Director of
2 the Division, could you explain again the scope of the
3 Operations Plan. Did it cover, for example,
4 transportation accidents?

5 A (Kelly) At that particular time, as I
6 mentioned earlier, we were in the process of updating
7 and reviewing our plans and adding other possible
8 annexes to accidents that could possibly happen in
9 Suffolk County.

10 To the best of my knowledge, that's what we
11 were doing when I left.

12 Q Did that process begin in 1980, or was it
13 prior to that?

14 A (Kelly) It was prior to 1980. As I say,
15 about the time that I left is when the State was coming
16 out with what they call a generic plan which all
17 counties and municipalities could use as a basis and add
18 annexes and appendices to that plan as it pertained to
19 the local jurisdiction.

20 But they were pressing for us to include all
21 possible emergencies or disasters that could happen
22 within your jurisdiction. You should have contingency
23 plans for those events.

24 That's what the process was going through when
25 I left.

1 Q But it was developing at the time -- were any
2 annexes completed before you left Suffolk County?

3 A (Kelly) I really don't recall. As you can
4 appreciate it, it was very sudden departure on my part
5 by the County Executive's part, and so I didn't really
6 pay much attention to it.

7 We had a gentlemen in the Division -- or in
8 the Office of Emergency Preparedness who was in charge
9 in preparing and reviewing and updating plans.

10 The Director usually reviews it, puts his John
11 Henry on it, and then it goes to State for approval.

12 Q Who was responsible for reviewing and updating
13 plans at that time?

14 A (Kelly) I believe it was a Thomas McCarrick
15 who is no longer with the agency. He was our Plans
16 Officer at the time.

17 Q At the time you were Director of the Division,
18 did the plans cover accidents at Brookhaven Lab?

19 A (Kelly) At Brookhaven Lab?

20 Q Yes.

21 A (Kelly) I don't think that we had an annex
22 that covered accidents at Shoreham -- I mean, at
23 Brookhaven.

24 Q Would the answer also be the same for the
25 Shoreham facility?

1 A (Kelly) As I mentioned, we were developing an
2 evacuation plan for the Shoreham plant about that time,
3 yes.

4 Q But was it part of the Operations Plan?

5 A (Kelly) Was it part of it?

6 Q Yes.

7 A (Kelly) Yes, to the best of my knowledge, it
8 was.

9 Q I believe I recall your testimony that
10 hurricanes were covered by the Operations Plan at that
11 time?

12 A (Kelly) I believe they were, yes.

13 Q What about industrial accidents?

14 A (Kelly) I'm not quite positive on that.

15 Q In 1980 you left employment with Suffolk
16 County and went to work with FEMA; is that correct?

17 A (Kelly) Not directly. I had some other
18 employment prior to my going with Federal Emergency
19 Management Agency. I didn't go with them until six or
20 seven months after I left the County.

21 Q Okay, and later you started working with
22 LILCO, around '85?

23 A (Kelly) Yes, ma'am.

24 Q At the time you started working with LILCO,
25 was it your understanding that LILCO had a copy of the

1 Operations Plan, the Suffolk County Operations Plan?

2 A (Kelly) No, ma'am.

3 Q Before you left your position as Director of
4 the Division of Emergency Preparedness in Suffolk
5 County, do you ever recall a copy being transmitted --
6 of the Suffolk County Operations Plan being transmitted
7 to LILCO?

8 A (Kelly) No, we wouldn't have had any reason
9 to send it any other place other than maybe certain
10 Suffolk County departments that would be participating
11 in recovery operations.

12 Q But you mentioned also the State of New York
13 had received a copy.

14 A (Kelly) Yes, of course. The State of New
15 York had to approve the plan.

16 Q I believe you stated in testimony today, that
17 during the '85, '86 time frame, when you received a copy
18 of the plan
19 from Richard Jones, that you were working for Mr. Renz
20 or Mr. DeVerio. What was Mr. DeVerio's position at that
21 time?

22 MR. SPIVEY: Objection, to the extent that the
23 question implies that he received the entire plan. I
24 don't believe that's been established.

25 MS. YOUNG: I don't to mean to imply that at

1 all.

2 BY MS. YOUNG:

3 Q From the time that you picked up a copy of a
4 version of the Suffolk County Plan, in 1985 or 1986,
5 what was your work relationship with Mr. DeVerio?

6 MR. SPIVEY: I object, just a moment. My
7 objection is that he did not receive the entire plan or
8 any particular version of it.

9 MS. LETSCHE: I object to that
10 characterization. Perhaps the way to deal with this is
11 to talk about what he picked up in the brown envelope
12 from Mr. Jones.

13 I don't think Counsel for LILCO, or Counsel
14 for the staff, or myself, for that matter, should
15 attempt to characterize what it was, in objections or
16 otherwise.

17 JUDGE GLEASON: Restate your question.

18 BY MS. YOUNG:

19 Q At the time you picked up a brown envelope
20 from Mr. Jones, in the 1985 or 1986 time frame, what was
21 your work relationship with Mr. DeVerio?

22 A (Kelly) Chuck, as I recall at the time, was
23 the -- he was the Division Manager, I believe. Mr. Renz
24 was my immediate supervisor.

25 Q What was the name of the Division at that

1 time?

2 A (Kelly) No, that would be the Emergency
3 Planning Division.

4 Q What is Mr. DeVerio's position now with LILCO?

5 A (Kelly) I know he recently got promoted. I
6 don't know exactly what his official title is, unless
7 it's the head of the Nuclear Operations Support
8 Division, or Department. I'm not quite sure what his
9 official title is.

10 Q But then you said that your immediate
11 supervisor was Mr. Crocker; right?

12 A (Kelly) That's correct.

13 Q Is Mr. DeVerio Mr. Crocker's supervisor?

14 A (Kelly) Yes, I believe so.

15 Q Returning to the document in the brown
16 envelope, for the moment, that you received in the '85,
17 '86 time frame.

18 Do you recall how long you looked at the
19 document?

20 A (Kelly) I just briefly opened the envelope
21 and just looked at it. To the best of my recollection
22 it said, "Suffolk County Basic Operations Plan", and
23 that's about the amount of my inspection of it.

24 Q Do you recall if there were annexes attached
25 to it?

1 A (Kelly) I don't really recall. There may
2 have been Annex A, but other than that, there wasn't
3 anything else.

4 Q Do you recall whether the copies were on one
5 side versus two sides?

6 A (Kelly) Again, I really don't recall.

7 Q Let's talk for a short momen' about the lunch
8 you had this year with Mr. Regan and Mr. Bilello.

9 I believe in testimonv from Mr. Bilello, the
10 Board was told that you had just been recently released
11 from the hospital before that lunch took place.

12 A (Kelly) That's correct.

13 Q At the time of the lunch, were you under any
14 medication related to your hospitalization?

15 A (Kelly) Not as far as medication from my
16 hospital stay, no.

17 Q There wasn't, in your opinion, any reason that
18 your recollection about those events taking place -- or
19 conversations taking place during that lunch, would be
20 faulty?

21 A (Kelly) No, they would be accurate, to the
22 best of my knowledge, yes.

23 MS. YOUNG: The staff has no further
24 questions.

25 JUDGE GLEASON: Mr. Cumming.

1 MR. CUMMING: I have several questions, Judge,
2 please.

3 CROSS-EXAMINATION

4 BY MR. CUMMING:

5 Q Mr. Kelly, I know you stated this previously,
6 but what were the exact dates of your employment with
7 Suffolk County?

8 A (Kelly) 1968 to 1980. I would have left
9 probably the first -- the end of January of 1980, as I
10 recall, my "Dear Norm" letter, terminating my employment
11 with Suffolk County, is dated the first of, I believe,
12 the first of February, 1980.

13 Q We have been discussing this morning your
14 knowledge of the Suffolk County Operations Plan during
15 that time frame.

16 But were there any other documents that
17 related to emergency planning in that time frame that
18 were extensive. For example, written procedures or
19 agreements between the County and, for example,
20 officials at Brookhaven, or officials of LILCO,
21 concerning response to emergencies?

22 A (Kelly) During the time I was Director?

23 Q Yes.

24 A (Kelly) I believe there might have been
25 something with Brookhaven, but I can't answer yes or no

1 as far as LILCO is concerned.

2 Q What were the dates of your employment with
3 the Federal Emergency Management Agency?

4 A (Kelly) Let me see, I left the County in '80.
5 I started, I believe, February, it would be three years,
6 '83, I guess.

7 Q I'm really looking for the years, not the
8 months, precisely.

9 A (Kelly) I went with FEMA, probably early
10 1980, about the middle of 1980. I worked three years,
11 '83, approximately.

12 Q What office within FEMA Region II, were you
13 employed during that time frame, or offices, if more
14 than one?

15 A (Kelly) As I mentioned earlier, my primary
16 job was in the area of liaison between the State of New
17 York and the various counties within Region II on a
18 follow-up basis of following through on their project
19 applications, and any other problems they may have had
20 at that particular time, that FEMA felt they could
21 assist them then.

22 Q Do you recall the specific name of the
23 organization within Region II that you conducted that
24 activity?

25 A (Kelly) You mean within the office?

1 Q That's correct.

2 A (Kelly) No, I can't recall.

3 Q Would it have been the Plans and Preparedness
4 Division, or something similar to that, or National
5 Preparedness Division?

6 A (Kelly) Could have been, yeah.

7 Q Could it have been the Disaster Assistance
8 Division, or something equivalent to that?

9 A (Kelly) I was, for a short time, in that
10 division, Disaster Assistance Division, and then when I
11 first went into the office, and then later went over to
12 this other department, or division, which I don't even
13 recall. It might have been Plans or --

14 Q Were you ever in what is called the Natural
15 and Technological Hazards Division?

16 A (Kelly) No.

17 Q During that time in which you were employed by
18 FEMA, did you ever have occasion to learn of any
19 requests by the State of New York, or Suffolk County, or
20 the State of New York on behalf of Suffolk County, for
21 any waiver or exemption from FEMA requirements for
22 emergency planning?

23 A (Kelly) No, not to my knowledge, no.

24 Q Did you ever have occasion in your position
25 during your employment at FEMA to have, as part of your

1 job, the requirement to review state compliance with
2 FEMA regulations, or Suffolk County compliance or state
3 requirements on emergency plan?

4 A (Kelly) No, sir.

5 Q You have no specific knowledge of either the
6 State or Suffolk County emergency plans during the
7 course of your employment at FEMA?

8 A (Kelly) That's correct.

9 Q Just one further question, Mr. Kelly, do you
10 recall in your time as -- with Suffolk County, any
11 agreements or protocols concerning nuclear power plants
12 that were in your emergency operation plans, or outside
13 of the emergency operation plans?

14 A (Kelly) Are you asking me who I recall, if
15 there were any agreements?

16 Q Yes, that Suffolk County was a party to.

17 A (Kelly) I can't recall any off hand, no.
18 There may have been.

19 Q An example would be, perhaps, any planning for
20 a release from Indian Point.

21 A (Kelly) The only recall I have in that
22 connection would be that, I believe, we were -- we would
23 have received a phone call, in which it seems to me, was
24 an agreement, or something in writing, or it could have
25 been very well that we would have received a telephone

1 call had anything happened there that would have
2 affected our area in Suffolk County.

3 I don't recall, though, whether it was
4 written, or it was just a verbal from the Office of
5 Emergency Preparedness in Connecticut.

6 Q Did you have any agreements or protocols with
7 the State of Connecticut?

8 A (Kelly) As I say, I don't recall that we had
9 any.

10 Q Given your testimony this morning about the
11 luncheon, did you find it surprising that the Suffolk
12 County, Mr. Bilello, would be complaining -- I believe
13 you mentioned it was Mr. Bilello, complaining that the
14 State was requiring an update of Suffolk County's
15 Emergency Operations Plans, or that they might lose
16 state money -- Federal money -- given that you've
17 testified that there was an annual update requirement?

18 A (Kelly) Are you asking, was I surprised?

19 Q Yes, were you surprised?

20 A (Kelly) Yeah, a little bit. I didn't really
21 expect to see John there, I mean, when I walked in. As
22 I said, just about the time I sat down is when that
23 subject came up by him.

24 Q Given your testimony this morning, wouldn't it
have been reasonable for someone in Mr. Bilello's

1 position to expect that he always had the requirement on
2 an annual basis to update?

3 MS. LETSCHE: I object to that question
4 calling for all sorts of speculation about what other
5 people may have reasonably thought. It's just an
6 improper question.

7 JUDGE GLEASON: You should restate the
8 question, if you want to.

9 BY MR. CUMMING:

10 Q Based on your knowledge of State review of
11 Suffolk County's Emergency Operations Plans, in your
12 experience, did you find it unusual, given the annual
13 update requirement, for Mr. Bilello to suddenly be
14 discussing that the State was threatening to cut off the
15 monies if they did not update their plan?

16 MS. LETSCHE: I object to that
17 characterization of what Mr. Kelly thought he remembered
18 Mr. Bilello saying.

19 JUDGE GLEASON: Objection denied. Answer the
20 question please.

21 THE WITNESS (Kelly): Yeah, because --

22 JUDGE GLEASON: I think he's already answered
23 the question.

24 THE WITNESS (Kelly): -- my feeling is that
25 John being the Deputy Director, he certainly was aware

1 that these requirements existed in order to be eligible
2 for matching funds.

3 MR. CUMMING: I have no further questions.

4 JUDGE GLEASON: Any follow-up?

5 MR. SPIVEY: No, Your Honor.

6 JUDGE GLEASON: All right, thank you very much
7 for coming, Mr. Kelly. Your testimony has been very
8 helpful.

9 THE WITNESS (Kelly): Thank you, Your Honor.

10 MR. SPIVEY: May Mr. Kelly be excused?

11 JUDGE GLEASON: Yes, you are excused.

12 (Whereupon, the witness was excused.)

13 JUDGE GLEASON: Mr. Zahnleuter, do you want to
14 bring in Doctor Axelrod?

15 Whereupon,

16 **DOCTOR DAVID AXELROD**

17 having been first duly sworn, was called as a witness
18 herein and was examined and testified as follows.

19 JUDGE GLEASON: You are appearing here, Doctor
20 Axelrod, under a subpoena issued by the Board on the
21 13th, I believe.

22 Mr. Zahnleuter, do you want to proceed first,
23 or how do you want to proceed?

24 MR. ZAHNLEUTER: I do have some direct
25 questioning that I would like to ask.

1 JUDGE GLEASON: All right.

2 MR. ZAHNLEUTER: I would also like to state
3 that Doctor Axelrod is appearing here today on his own
4 volition, rather than under the subpoena which was
5 signed by you, Judge Gleason, on Tuesday, because the
6 State's position is that the subpoena was not properly
7 served, and that there are other defects with the
8 subpoena.

9 In any event Doctor Axelrod is here under his
10 own volition to respond to the Board's questioning and
11 other parties'.

12 JUDGE GLEASON: We won't argue the
13 technicalities.

14 Mr. Zahnleuter, proceed with your witness --
15 the Board's witness.

16 **DIRECT EXAMINATION**

17 BY MR. ZAHNLEUTER:

18 Q Would you please state your name and current
19 position with the State of New York?

20 A (Axelrod) I am David Axelrod. I am currently
21 Commissioner of Health of the State of New York, and
22 Chairman of the Disaster Preparedness Commission.

23 Q Doctor Axelrod, how do REPG and SEMO relate
24 organizationally to the DPC?

25 A (Axelrod) They are the functioning arms of

1 the Disaster Preparedness Commission. They provide the
2 analysis, they provide the response capability for the
3 Disaster Preparedness Commission.

4 Q Would you describe how the Disaster
5 Preparedness Commission is comprised?

6 A (Axelrod) The Disaster Preparedness
7 Commission is comprised of executive officers of state
8 government. It consists of the Commissioners of Health,
9 Environmental Conservation, Agriculture and Markets,
10 Commerce, the Commissioner of Labor, the Director of
11 Criminal Justice, the Fire Coordinator for the State of
12 New York, a representative of the Secretary of State.

13 I think I've named most of the functioning
14 executive departments that are represented on the
15 Disaster Preparedness Commission, as well as three
16 additional members who are the executives within the
17 State of New York from local government.

18 Q Could you, briefly, describe what the
19 functions and responsibilities are of REPG and SEMO?

20 A (Axelrod) The functions and responsibilities
21 relate to the review of the local county plans for
22 disaster preparedness. They accept the responsibility
23 for the response to the requirements that are outlined
24 in Article 2-B of the Executive Law, with respect to the
25 preparation of a disaster plan.

1 There is required, under Article 2-B, the
2 development of a state disaster plan, which is the
3 responsibility of the State Emergency Management Office.

4 The Radiological Emergency Preparedness Group,
5 or REPG, is responsible for those elements which
6 specifically relate to radiologic emergencies, and for
7 the implementation of site-specific plans for
8 radiological emergencies associated with operating power
9 plants.

10 Q Do you know whether REPG and SEMO have been
11 involved in responding to discovery requests by LILCO
12 relating to Shoreham?

13 A (Axelrod) To the extent that I have been
14 informed by my Counsel of the nature of those requests,
15 and the nature of the response, I am aware of it.

16 Q Do you have any other knowledge, besides
17 what's been communicated to you by Counsel?

18 A (Axelrod) No, I do not.

19 Q Do you have any familiarity with LILCO's
20 second set of interrogatories and document requests?

21 A (Axelrod) Again, only to the extent to which
22 I have been informed of those requests by Counsel.

23 Q Do you have any familiarity with the State of
24 New York's response to LILCO's second set of
25 interrogatories and document requests?

1 A (Axelrod) My familiarity rests with copies of
2 correspondence which have been forward by Counsel, and
3 the listing of certain documents which have been
4 forwarded.

5 Q Were you involved in any way with the
6 production of documents concerning this matter?

7 A (Axelrod) No, those activities were carried
8 out by Counsel, along with the Director of the State
9 Emergency Management Office and Radiological Emergency
10 Preparedness Group.

11 Q Do you have any familiarity with the Suffolk
12 County Emergency Operations Plan?

13 A (Axelrod) I have no specific familiarity. My
14 familiarity resides only with respect to its utilization
15 by Suffolk County at the time of Hurricane Gloria.

16 Q Do you have any familiarity with emergency
17 plans concerning Brookhaven National Laboratory?

18 A (Axelrod) I'm aware only of a procedure which
19 involved an escort for waste that was being transported
20 from Brookhaven National Laboratory.

21 Q That procedure was produced to LILCO under
22 cover of July 5th, a letter from Counsel.

23 Have you discussed the subject matter of the
24 testimony just provided to anyone other than Counsel?

25 A (Axelrod) No, I have not.

1 MR. ZAHNLEUTER: Judge Gleason, that
2 completes my questioning. Doctor Axelrod is now
3 available for the Board's questioning, and, on his
4 behalf, I request that we continue as expeditiously as
5 possible and, hopefully, conclude in time for him to
6 catch his return flight to Albany at around two o'clock.

7 JUDGE GLEASON: Doctor Axelrod, we appreciate
8 your appearance today with or without being in response
9 to a subpoena. We are not unfamiliar with the heavy
10 responsibilities assumed by someone in your position,
11 but we are involved in a fairly important phase in this
12 case. Your talents was deemed to be necessary by the
13 Board.

14 I wonder if you would go back, please, and
15 enumerate a little bit more for us what the
16 responsibilities of the State Disaster Preparedness
17 Commission are under Section 2-B of the State Law.

18 THE WITNESS (Axelrod): The specific
19 responsibilities are enumerated to a very detailed
20 degree in Article 2-B. They relate to the response of
21 the State, the coordinated responsibility of the
22 Disaster Preparedness Commission for any emergency that
23 would occur within the State in which the Governor would
24 have determined that there would have been a requirement
25 for state intervention, or in which there would have

1 been a request for intervention on the part of the
2 locality for intervention in the event of a disaster.

3 In addition, the responsibilities extend to
4 the prevention of such disasters, the development of
5 procedures for the prevention of such disasters, as well
6 as for the response capabilities and the development of
7 procedures that would mitigate such a response
8 subsequent to its occurrence, and to provide for
9 appropriate mechanisms to achieve the most effective
10 recovery in the event of a disaster.

11 JUDGE GLEASON: Is either SEMO or REPG
12 referred to in that law?

13 THE WITNESS (Axelrod): No, sir. The specific
14 implementation, I do not believe, is identified, except
15 for the Disaster Preparedness Commission.

16 JUDGE GLEASON: Would you kindly outline for
17 us, please, just how you operate the Commission?

18 THE WITNESS (Axelrod): The Commission, I
19 serve as Chairman of the cabinet officers whom I've
20 enumerated, as well as the three public members in terms
21 of providing direction to the State Emergency Management
22 Office.

23 The decisions that are made by the Commission,
24 are conveyed to the State Emergency Management Office
25 for its operative response, as well as to REPG for its

1 response as well.

2 In the event of an emergency, I assume the
3 direct role for supervising the activities of SEMO at
4 the time of an emergency.

5 In general terms, I am the overall supervisor
6 with delegated responsibility to both SEMO and REPG.

7 JUDGE GLEASON: In carrying out this
8 responsibility as Chairman, how often -- if I understand
9 your -- some testimony to the effect that the Disaster
10 Preparedness Commission only meets on several occasions
11 during the year?

12 THE WITNESS (Axelrod): The statute requires
13 that the Disaster Preparedness Commission, as a full
14 commission, meet no less than two times per year, and it
15 has generally met twice per year.

16 I don't recall any specific instances where it
17 has met on more than two occasions per year.

18 JUDGE GLEASON: What does it do in such
19 meetings?

20 THE WITNESS (Axelrod): It discusses the
21 status of disaster preparedness plans, discusses the
22 State's response to disasters which may have occurred.
23 It discusses the extent to which on-going activities
24 relate to prevention and mitigation of disasters,
25 accepts recommendations from members of the Disaster

1 Preparedness Commission for other activities which
2 require the attention of the large number of agencies
3 which I represented within the Commission, and
4 determines what courses of action should be recommended
5 to the State Emergency Management Office for the most
6 effective coordination of its activities.

7 JUDGE GLEASON: During this review that the
8 Commission, itself, has on several occasions a year, do
9 you review state emergency plans?

10 THE WITNESS (Axelrod): The --

11 JUDGE GLEASON: Excuse me, county emergency
12 plans.

13 THE WITNESS (Axelrod): The county emergency
14 plans are not reviewed at the official meetings of the
15 Disaster Preparedness Commission. The members of SEMO
16 or REPG may report on the status of specific county
17 plans.

18 There is no requirement that a county submit a
19 plan to the Disaster Preparedness Commission. The only
20 mandate is upon the State, and the submission of such
21 plans by counties is a voluntary activity.

22 JUDGE GLEASON: Somehow, it seems to me,
23 there's some kind of gap in this. Maybe you could fill
24 in how that gap is filled up.

25 You said that you are the responsible person

1 in the event of an emergency.

2 THE WITNESS (Axelrod): Yes.

3 JUDGE GLEASON: You realize that emergencies
4 happen in counties, and we realize that county emergency
5 plans have to be operative during such emergencies, and
6 they agree with state plans. How do you know what a
7 county is going to do is these plans have not been
8 reviewed before your Commission?

9 THE WITNESS (Axelrod): We can only review
10 those plans which have been provided to us. As I have
11 indicated, there is no mandate that each county must
12 provide to the State a disaster preparedness plan.

13 So, what we do is work together with the
14 counties to the extent that we can to insure that there
15 is such a plan. Where they have been submitted to us,
16 they are incorporated into the State's disaster
17 response.

18 But there is an overall state-wide disaster
19 planning document, which is the basis for our responding
20 to each of the counties in the event that a disaster
21 occurs within that county that requires interventions of
22 the State.

23

24

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25

1 JUDGE GLEASON: Do you feel that this is just
2 a deficiency in your emergency organizational frame work
3 in the State there isn't a requirement for --

4 THE WITNESS (Axelrod): The legislature of the
5 State of New York in its wisdom decided not to make the
6 requirement for a disaster plan a mandate. Therefore,
7 we are not in a position to mandate upon the counties
8 the production of such a plan.

9 JUDGE GLEASON: You are drawing a distinction,
10 I presume, between a disaster plan and an emergency
11 operating plan?

12 THE WITNESS (Axelrod): There is no
13 requirement that there be a county-wide emergency
14 operating plan under Article 2-B.

15 JUDGE SHON: Doctor Axelrod, although there is
16 no requirements that a county have an emergency plan, is
17 it nevertheless true that if a county opts to have one,
18 there are certain EMA funds available through the State
19 from FEMA, provided that that plan conforms to certain
20 standards; is that correct?

21 THE WITNESS (Axelrod): I have a general
22 understanding that it is correct.

23 JUDGE SHON: That doesn't in any way require
24 an approval from or a review by your Preparedness
25 Committee?

1 THE WITNESS (Axelrod): It does not require
2 it. A review is generally provided to assist the
3 counties in the preparation of its document. We have
4 attempted over the course of the existence of the
5 Disaster Preparedness Commission and the State Emergency
6 Management Office to encourage counties to complete such
7 a plan, but only some counties have indicated their
8 desire to have such a plan available for emergency
9 response.

10 JUDGE SHON: The people most concerned with
11 reviewing these county plans or keeping track of them in
12 any way are SEMO; is that right?

13 THE WITNESS (Axelrod): Yes, sir, that is the
14 State Emergency Management Office.

15 JUDGE SHON: They, of course, function
16 continuously, even when your committee isn't in session?

17 THE WITNESS (Axelrod): Yes, sir.

18 JUDGE SHON: Thank you.

19 JUDGE GLEASON: How often do you meet with the
20 heads of SEMO and REPG?

21 THE WITNESS (Axelrod): There is no regular
22 meeting with SEMO and REPG, except as the situation may
23 require it, except as specific issues may arise in which
24 the Director of SEMO or the Director of REPG may wish to
25 discuss with me a problem, whether it relates to

1 administrative structure or whether it relates to field
2 operations or, indeed, whether it relates to any of the
3 mandates that have been laid down upon the State
4 Emergency Management Office or, in fact, in relationship
5 to items that have been discussed in previous agenda
6 meetings -- previous agendas, with the full Disaster
7 Preparedness Commission.

8 JUDGE GLEASON: How often does that activity
9 occur?

10 THE WITNESS (Axelrod): It occurs on an ad hoc
11 basis. I would say that I probably speak with Mr.
12 DeVito perhaps once every other week. On an average, I
13 would think that that would be an adequate
14 characterization of the number of times which I speak
15 directly to him concerning matters effecting the State
16 Emergency Management Office.

17 JUDGE GLEASON: Speaking for a moment on
18 emergency plans involving nuclear reactors, do those
19 come before your Disaster Preparedness Commission?

20 THE WITNESS (Axelrod): Recommendations from
21 the Disaster Preparedness Commission are prepared by the
22 Radiological Emergency Preparedness group.
23 Recommendations for approval are discussed by the
24 Disaster Preparedness Commission and a recommendation is
25 made by them to the governor.

1 JUDGE GLEASON: Back when the Indian Point
2 operating situation was occurring, when Rockland County
3 was not willing to participate in emergency planning,
4 did that issue come before the Preparedness Commission?

5 MR. ZAHNLEUTER: Judge Gleason, I object.

6 MR. LANPHER: I would like to register an
7 objection.

8 JUDGE GLEASON: Your objection is denied.

9 MR. LANPHER: I would like to state my
10 objection, sir, on behalf of Suffolk County. This is
11 entirely irrelevant to the issues identified in this
12 proceeding. Plus, as I understand it, Doctor Axelrod's
13 time is very short. I think we should be dealing with
14 the relevant issues as defined in the conference orders.

15 JUDGE GLEASON: Mr. Lanpher, what you consider
16 relevant is not necessarily what this Board considers
17 relevant. Just make your objection and don't be talking
18 about time. We are proceeding with the questions as I
19 want to proceed with them. Just make your objections.
20 Your objection has been denied. Do you want to add to
21 that objection?

22 MR. LANPHER: No, I want to make sure though
23 that my objection is noted on the record, because we
24 overlapped when we made the objections.

25 JUDGE GLEASON: Please respond to the

1 question.

2 THE WITNESS (Axelrod): Could I have the
3 question repeated?

4 JUDGE GLEASON: Read the question back,
5 please.

6 I would like to say that during the course of this
7 proceeding those objections, which have been raised many
8 times and denied many times, and the witness has to have
9 the question read back to him many times, those are the
10 things that are occurring that are taking time in this
11 proceeding.

12 MR. LANPHER: My recollection is that this is
13 the second time a question has had to be read back,
14 Judge.

15 JUDGE GLEASON: It's just because in the other
16 times the attorneys have repeated the question. Read
17 the question back, please.

18 (The reporter read back the pending question.)

19 THE WITNESS (Axelrod): I believe the issue
20 did come before the Disaster Preparedness Commission. I
21 recall some discussions with members of the Disaster
22 Preparedness Commission. What I don't recall is whether
23 it was discussed at a full meeting of the Disaster
24 Preparedness Commission or whether it was discussed with
25 the members of SEMO and REPG independently and that a

1 statement was made at the Disaster Preparedness
2 Commission as to what the recommendation would be, but
3 yes, there was discussion.

4 JUDGE GLEASON: At that time, do you recall
5 whether there was a discussion of the resources
6 available or the planning activities available in
7 Rockland County to respond to an emergency in the event
8 of an accident occurring at Indian Point?

9 MR. LANPHER: I would like to note a standing
10 objection.

11 JUDGE GLEASON: I assume that your objections
12 relate to all of these questions, so you don't have to
13 raise them again.

14 MR. LANPHER: As long as it is clear that I
15 have a standing objection to this entire line.

16 JUDGE GLEASON: You have a stading objection.

17 MR. ZAHNLEUTER: And the State's objection,
18 too.

19 JUDGE GLEASON: Of course, the state as well.

20 THE WITNESS (Axelrod): The elements that were
21 discussed at the time were whether or not there did,
22 indeed, exist a plan for the Indian Point reactors and
23 whether or not that plan required the participation of
24 the several counties which would be affected by the
25 required emergency planning.

1 There was a discussion of the extent to which
2 Rockland County had participated up until that point and
3 its willingness to continue to observe the presence and
4 the execution of the emergency plan and the assurance
5 that those resources would become available within a set
6 limited period of time that had been established. I
7 believe it was some period of months. The precise
8 number of months I do not recall. At which time, the
9 expectation was that those resources would become
10 available from Rockland County.

11 JUDGE GLEASON: Turning to the Shoreham
12 facility, has that emergency plan considerations
13 affecting the Shoreham facility if it were licensed and
14 operating and the lack of plans of Rockland County of
15 them -- I don't mean Rockland County, excuse me, Suffolk
16 County. Has that issue come before the Preparedness
17 Commission?

18 THE WITNESS (Axelrod): No, sir, it has not
19 come before the Preparedness Commission because there
20 has never been a plan, as far as the Commission was
21 concerned.

22 JUDGE GLEASON: Well, there wasn't any plan in
23 Rockland County either; was there?

24 THE WITNESS (Axelrod): Yes, there was.
25 Rockland County had participated in the development of a

1 plan during various periods of times. There were many
2 confusing events in Rockland County and the history is
3 one which we can provide you with. But there had been
4 various levels of participation, including the
5 observation of the drills, et cetera, by members of
6 Rockland County's government at various periods of time,
7 so that the history is a very disjointed one with
8 respect to Rockland County. There was participation,
9 non-participation, except as evidenced by observation
10 participation, development of a plan. So there were
11 many elements in the Rockland County situation that were
12 quite distinct.

13 JUDGE GLEASON: Weren't there some similar
14 elements, though? Wasn't there a time when you had
15 plans prepared by -- in conjunction with Suffolk County
16 concerning the Shoreham facility?

17 THE WITNESS (Axelrod): There was never an
18 approved plan for the Shoreham facility, whereas there
19 had been an approved plan for Rockland and for the
20 Indian Point facility. So that whatever similarities
21 there were, there was one glaring dissimilarity, which
22 certainly distinguished it in all ways from the Rockland
23 County, Indian Point situation, sir.

24 JUDGE GLEASON: When Rockland County was not
25 participating in the plan, how can you say there was an

1 approved plan involving Indian Point?

2 THE WITNESS (Axelrod): There was an approved
3 plan, that is, a plan approved by the Disaster
4 Preparedness Commission, that was predicated upon the
5 previous indications of participation by Rockland
6 County. It was with the understanding that Rockland
7 County would, within a period of time, which was
8 identified, become an active participant in the
9 implementation of that plan.

10 There was no plan approved by the Disaster
11 Preparedness Commission for Shoreham. There was no
12 indication of any participation whatsoever of the county
13 and local governments that would be absolutely essential
14 to the implementation of a site specific plan.

15 JUDGE GLEASON: Did the Preparedness
16 Commission ever look into what the planning resources
17 were of Suffolk County to bring to an emergency in the
18 event the plant were licensed?

19 THE WITNESS (Axelrod): I have no recollection
20 of a specific determination of what resources could be
21 brought to bear, other than those which were contained
22 in submissions to the REPG at that point in time, and
23 I'm not aware of any discussions of the specific
24 resources that were identified in those preliminary
25 plans.

1 JUDGE GLEASON: In other words, there was no
2 discussion before the Preparedness Commission of those
3 plans?

4 THE WITNESS (Axelrod): No, sir, not of the
5 resources, Judge. There was no discussion of the
6 resources.

7 JUDGE GLEASON: Well, resources and plans --
8 There was, in fact, I gather, all during this time
9 something called the Suffolk County Emergency Plan?

10 MR. LANPHER: Could I ask for clarification?
11 When you said there were two vague things and you said a
12 Suffolk County Emergency Plan, are you talking about the
13 Emergency Operations Plan that has been discussed in
14 this hearing?

15 JUDGE GLEASON: That is right, yes. That is
16 the only thing that I am aware of.

17 MR. LANPHER: Your question, I believe, was
18 vague in terms of the time frame that you wanted to
19 direct the witness to, Judge.

20 JUDGE GLEASON: Was the question vague to you,
21 Doctor Axelrod?

22 THE WITNESS (Axelrod): My understanding of
23 the question is that it related to the period of time at
24 which there were submissions for the Shoreham operation
25 facility and that would have been 1983, or thereabouts.

1 Am I correct in assuming that is --

2 JUDGE GLEASON: No, I think Mr. Lanpher is
3 right then. During all of this time that this
4 controversy has been going on between the State, Suffolk
5 County, and LILCO, involving the licensing of Shoreham,
6 there was in existence in some form or other a document
7 called the Suffolk County Emergency Plan. My question
8 to you is: Was that plan ever brought before the
9 Disaster Preparedness Commission as --

10 THE WITNESS (Axelrod): I have no
11 recollection, no, sir.

12 JUDGE GLEASON: Wait until I finish. -- as
13 might be available for assistance in the event Shoreham
14 were licensed?

15 THE WITNESS (Axelrod): I'm not aware of it,
16 sir. I have no recollection.

17 JUDGE GLEASON: In fact, I think you testified
18 that your only recollection of that plan was as it
19 became operative during Hurricane Gloria?

20 THE WITNESS (Axelrod): Yes, sir.

21 JUDGE GLEASON: You assumed from that basis
22 that there was a plan, or how did you -- what is your
23 understanding based on?

24 THE WITNESS (Axelrod): The understanding is
25 based upon the interactions between those representing

1 the State and those representing Suffolk County, in
2 which it became apparent through our local person who
3 was working with Suffolk County, that there was a plan
4 that was being implemented by Suffolk County at that
5 point in time.

6 JUDGE GLEASON: Did this come as a surprise to
7 you?

8 THE WITNESS (Axelrod): It did not come as a
9 surprise that a county of the size of Suffolk would have
10 some operative procedures for dealing with emergencies.

11 JUDGE GLEASON: Did it cross your mind that if
12 such a plan had existed, why wasn't it available for
13 being utilized in the event that Shoreham were licensed
14 and an accident happened there? After all, you are the
15 chairman of the Commission, you are the one that has to
16 be the interface, if you will, with the governor?

17 THE WITNESS (Axelrod): The situation at that
18 time was that the Suffolk County Plan, if, indeed, it
19 existed as an operational plan for emergencies, had no
20 relationship to any radiological emergencies. Since
21 there was the assumption that the Shoreham plan would
22 not operate, that it was a moot question with respect to
23 a consideration of the Suffolk County Plan.

24 JUDGE GLEASON: I want to get clear again, and
25 I think you have already stated. Your only knowledge of

1 the plan was in connection with the development of
2 Hurricane Gloria, and that occurred in -- when was that,
3 1986 or 1985?

4 THE WITNESS (Axelrod): '86, I believe. It
5 was two years ago.

6 MR. LANPHER: October of '85.

7 THE WITNESS (Axelrod): October of '85. Thank
8 you.

9 JUDGE GLEASON: Thank you, Doctor. I will
10 turn the witness over to Mr. Sisk.

11 **CROSS-EXAMINATION**

12 BY MR. SISK:

13 Q Doctor Axelrod, did you review any documents
14 in preparing for the testimony you are giving today?

15 A (Axelrod) The documents which I reviewed were
16 provided by counsel. They consisted of responses to the
17 interrogatories, as well as a transcript of my
18 deposition, which I had previously provided to you, as
19 well as a statement which I read before the Disaster
20 Preparedness Commission from Governor Cuomo, and from
21 the then County Executive in 1983.

22 Q Had you ever seen the responses to
23 interrogatories prior to their being provided to you by
24 counsel?

25 A (Axelrod) The interrogatories, or the

1 responses, only the letters indicating what documents.
2 The documents themselves were not provided to him. I'm
3 sorry if I misled you.

4 Q Did you review the letters from counsel for
5 the State of New York listing documents that had been
6 produced?

7 A (Axelrod) Yes, sir.

8 Q Did you also review specific answers to
9 interrogatories in which certain questions were laid
10 out?

11 A (Axelrod) No.

12 Q So you haven't reviewed any specific answers
13 to questions; is that correct?

14 A (Axelrod) The specific questions were those
15 which were asked by Mr. Zahnleuter at the initiation of
16 my testimony.

17 Q Did you review any other documents in
18 preparing for this testimony?

19 A (Axelrod) No, sir, I did not.

20 Q Have you talked to anyone, other than counsel,
21 to prepare for this testimony?

22 A (Axelrod) No, sir, I have not.

23 Q Have you discussed with anyone the testimony
24 given previously in this proceeding, and by that, I mean
25 earlier this we've, by General Papile?

1 A (Axelrod) I have not, no.

2 Q Or by Mr. DeVito?

3 A (Axelrod) No, I have not.

4 Q Doctor Axelrod, I believe you testified
5 earlier that you, as Chairman of the DPC, were basically
6 in charge of REPG and SEMO operationally; is that
7 correct?

8 A (Axelrod) Yes, sir.

9 Q Doctor Axelrod, did you sponsor some proposed
10 testimony previously in this proceeding?

11 A (Axelrod) I did.

12 Q Doctor Axelrod, I will ask one of my
13 associates to hand you a copy of a document entitled
14 "Direct Testimony of David Axelrod on behalf of the
15 State of New York." It bears a date of April 13, 1988.
16 In the upper right-hand corner it is labeled "Attachment
17 2." I will ask you if you can identify that document,
18 and I will ask that it be marked as LILCO Exhibit 34.

19 JUDGE GLEASON: It may be so marked.

20 (The document referred to was
21 marked for identification as
22 LILCO Exhibit Number 34.)

23 THE WITNESS (Axelrod): The document contains
24 material --

25 MR. LANPHER: I object. I don't think there

1 is a question pending; was there?

2 MR. SISK: I had asked if he can identify the
3 document.

4 MR. LANPHER: Excuse me.

5 THE WITNESS (Axelrod): The document, as
6 Attachment 2, contains material that extends beyond my
7 direct testimony. It includes an affidavit of the
8 Governor of the State of New York that is attached. It
9 also includes two copies, one dated July 31 '88, and a
10 second affidavit by the Governor of the State of New
11 York dated May 6, 1987. It includes a statement by the
12 Governor, which does not have a date on it. So there
13 are exhibits attached to my testimony which do not
14 represent my direct testimony.

15 BY MR. SISK:

16 Q Doctor Axelrod, let me ask you to turn to page
17 three of your direct testimony. There is a paragraph in
18 the middle of the page which refers to Governor Cuomo's
19 affidavit and it quotes from it. Then that is followed
20 by the following statement: "Governor Cuomo's affidavit
21 is attached here and made a part of this testimony." Is
22 that correct?

23 A (Axelrod) Yes, sir.

24 Q Doctor Axelrod, Governor Cuomo's affidavit,
25 while it is attached as an exhibit, is, in fact, made a

1 part of your direct testimony; is that correct?

2 A (Axelrod) Yes, sir, I wanted to distinguish
3 between my personal testimony and that of the exhibits
4 that were attached.

5 Q What is the distinction?

6 A (Axelrod) Well, I have -- what I said in
7 terms of response to the specific questions I have
8 responded to as my statements, and I have included
9 Governor Cuomo's testimony as a result of references
10 within my testimony, but they do not represent my
11 statements, although they are part of the affidavit and
12 part of the testimony.

13 Q Doctor Axelrod, was it your intent in filing
14 this testimony to vouch for the statements made by
15 Governor Cuomo?

16 MR. LANPHER: I object to that question. I
17 don't understand what he means by vouch for.

18 JUDGE GLEASON: I don't understand the
19 question either. Does he agree with it? What is --

20 BY MR. SISK:

21 Q Doctor Axelrod, let me try to rephrase it.
22 Was it your intent in making this statement in the
23 testimony that you were adopting the statements of
24 Governor Cuomo as the testimony of the State of New York
25 in your capacity as the Chairman of the Disaster

1 Preparedness Commission?

2 A (Axelrod) Well, I don't think that the
3 Commissioner of Health or the Chairman of the Disaster
4 Preparedness Commission adopts the position of the
5 Governor. The Governor clearly states his position and
6 my testimony is in support of the Governor's position.
7 I would not adopt the position of the Governor. The
8 Governor states a position and by virtue of my role I
9 carry out the directive and support the positions taken
10 by the Governor.

11 Q Doctor Axelrod, do you recall a deposition
12 earlier in this proceeding, on Friday, April 22, 1988,
13 at Albany?

14 A (Axelrod) I recall a deposition, yes, sir.

15 Q Doctor Axelrod, do you recall stating that
16 deposition that the statements made in that deposition
17 were made on behalf of the Governor and the State of New
18 York?

19 MR. LANPHER: Mr. Sisk, excuse me --

20 MR. SISK: Let me ask for the witnesses
21 recollection, if I may.

22 MR. LANPHER: I would rather have you show him
23 the document that you are referring to, if you ask him a
24 question about what he recalls about what he said at the
25 deposition.

1 MR. SISK: I think I am entitled to act for
2 his recollection first.

3 JUDGE GLEASON: He is entitled to ask for his
4 recollection.

5 THE WITNESS (Axelrod): I recall something of
6 the nature of the statement that you read, yes.

7 BY MR. SISK:

8 Q Doctor Axelrod, do you also recall stating
9 that in terms of emergency response you would be in
10 charge of the State's response to emergencies at the
11 direction of the governor?

12 A (Axelrod) Without characterizing it as a
13 quote, I believe I did say something to that effect,
14 yes.

15 Q Doctor Axelrod, on page four of your own
16 testimony there is a statement, and I will quote: "I
17 cannot speculate what specific actions the State would
18 take, when they would be taken, or what resources might
19 be available in the hypothetical situation that the NRC
20 were to license Shoreham to operate at levels above 5
21 percent power, if the courts were to uphold that
22 licensing decision and there were a serious accident at
23 the plant that required an off-site emergency response."
24 Have I quoted that correctly, Doctor Axelrod?

25 A (Axelrod) Yes, sir.

1 Q Was that statement true at the time it was
2 made?

3 MR. LANPHER: I object to this line of
4 questioning, Judge Gleason. This does not relate to the
5 issue that you defined in this proceeding.
6 Specifically, you stated that the use of plans -- this
7 proceeding is not to deal with the best efforts issue.
8 This line of questioning is going directly to the
9 realism issue. I think it is absolutely improper under
10 the scope of the proceeding which you defined in the
11 conference calls on June 24 and June 29, 1988.

12 JUDGE GLEASON: Mr. Lanpher, you and your
13 associate have raised the same objection on at least 10
14 different occasions in these three days of proceedings.

15 MR. LANPHER: Can you please explain to me how
16 you can violate your own order?

17 JUDGE GLEASON: Let me finish, please. I have
18 patiently attempted to show you that we don't know where
19 these questions go to, that we are allowing them to go
20 to see if they are connected up. We have not changed
21 what the issue of this proceeding is. The objection is
22 going to be denied. Please proceed.

23 BY MR. SISK:

24 Q Let me rephrase the question to speed it up.
25 Doctor Axelrod, is the statement I just stated a true

1 statement?

2 A (Axelrod) Yes, sir.

3 MR. SISK: Judge Gleason, I would like at this
4 time to move admission of the document that has been
5 marked as Exhibit 34. It was propounded by the county
6 as testimony in this proceeding. It is relevant to show
7 the State's position and it is relevant to show whether
8 the discovery processes had been complied with.

9 JUDGE GLEASON: Is there objection?

10 MR. ZAHNLEUTER: Yes, I object, and a simple
11 statement to say that this is a document that is
12 relevant to show that discovery processes has be'n
13 complied with is meaningless. There is nothing in this
14 document that pertains to that. That is a
15 generalization, that is a statement, that is not backed
16 up with any rationality. It should not be accepted as
17 support for an argument to move this document into
18 evidence.

19 This document is beyond the scope of the
20 proceeding, as I understand it, from a prior order at
21 20935. It has nothing to do with document production at
22 all. It is the most typical example of realism best
23 efforts testimony that the Board has said would not be
24 at issue in this proceeding. This is actually realism
25 best effort proposed testimony and it is highly improper

1 to allow it into this proceeding under a one sentence,
2 over-generalization, meaningless statement that it
3 somehow relates to document production.

4 MR. LANPHER: Judge Gleason, Suffolk County
5 joins in that. I would point out in denying the
6 objection I made perhaps two minutes ago you said you
7 were going to find out where this was going, that you
8 were not changing the scope of the proceeding. Well,
9 Mr. Sisk is finished with this. He now has sought to
10 move it in and he has not connected it with the scope,
11 so I support Mr. Zahnleuter.

12 MR. SISK: Judge Gleason --

13 MR. REIS: Judge Gleason, can the staff be
14 heard for a moment?

15 JUDGE GLEASON: Yes, sir, go ahead.

16 MR. REIS: The important part of this
17 document, I think, is the statement, "I cannot
18 speculate," and then it goes on, "what resources might
19 be available in a hypothetical situation." I think it
20 is important because it sheds light on whether there was
21 a good faith opportunity effort to show what resources
22 would be available, considering that there was an
23 emergency plan for Suffolk County, albeit not for the
24 Shoreham plant, that had resources that were available
25 in the event of an emergency at Shoreham. So in that

1 sense, I think it is relevant.

2 MR. SISK: Judge Gleason, my point is simply
3 to show that discovery processes, including the
4 deposition of Doctor Axelrod, and some other matters,
5 were not complied with, and one of the central issues in
6 discovery was identification of State and county
7 resources that would be available for a response to an
8 emergency at Shoreham. I have no intention to get into
9 the merits, but the purpose of this proceeding is to
10 determine whether discovery processes have been complied
11 with. If the Board prefers to withhold ruling until I
12 have tied this up, I will be happy to do that.

13 MR. ZAHNLEUTER: May I respond, please? Both
14 counsel for LILCO and counsel for the NRC staff have
15 described this document as something that the county has
16 proposed and that is totally erroneous. But we will
17 overlook that and regard their statements as pertaining
18 to the State. But, nevertheless --

19 MR. REIS: I stand correct.

20 MR. ZAHNLEUTER: Nevertheless, this document
21 shows nothing about how discovery processes have not
22 been complied with. I challenge anyone to show me where
23 it does say that. This is a realism best efforts
24 document. It is proposed testimony. There has been no
25 showing whatsoever that discovery processes have not

1 for identification as LILCO
2 Exhibit Number 34, was
3 received in evidence.)

4 BY MR. SISK:

5 Q Doctor Axelrod, as Chairman of the Disaster
6 Preparedness Commission, are you familiar with the
7 provisions of Article 2-B of the State Executive Law?

8 A (Axelrod) Yes, I am generally familiar with
9 it.

10 Q I will now ask one of my associates to hand
11 you a document that is entitled Article 2-B. It is the
12 State and local natural and man made disaster
13 preparedness. I will vouch for the record that it is a
14 copy of Article 2-B of the New York State Executive Law.
15 I will ask that this be marked as LILCO Exhibit 35.

16 JUDGE GLEASON: It will be so designated.

17 (The document referred to was
18 marked for identification as
19 LILCO Exhibit Number 35.)

20 MR. SISK: I do not intend to move admission
21 of this because the law will speak for itself. It is
22 solely for the purposes of use in the hearing.

23 BY MR. SISK:

24 Q Doctor Axelrod, are you familiar with that
25 statute?

1 A (Axelrod) Yes, I am.

2 Q Does that statute establish the Disaster
3 Preparedness Commission?

4 A (Axelrod) It does.

5 Q Does that statute include within its scope
6 plans for and responses to radiological accidents?

7 A (Axelrod) Yes, it does. If I may, I note
8 that the statute, as you have provided it to me,
9 includes the Industrial Commissioner as being a member
10 of the Disaster Preparedness Commission. That, I
11 believe, has been amended, and I don't see the amendment
12 to the statute here. It is the Commissioner of Labor.
13 Just so that we accurately identify the statute in its
14 current form.

15 Q Let me have just a moment. Doctor Axelrod, I
16 apologize. My copy is current, yours is not. I don't
17 think it will have any material bearing.

18 A (Axelrod) Well, I just was concerned that --

19 Q I understand. Let me ask you to turn -- well,
20 let me ask you this: Does this statute require the
21 preparation of the State Disaster Preparedness Plan? I
22 believe you so testified earlier.

23 A (Axelrod) I did.

24 Q Will you turn to Section 22 of the statute?
25 Is this the section which requires the preparation of

1 the State Disaster Preparedness Plan?

2 MR. LANPHER: Judge Gleason, I want to note my
3 standing objection to this line of inquiry. I don't
4 think it relates in any manner to the discovery issues
5 which have been raised.

6 JUDGE GLEASON: I note your objection.

7 MR. LANPHER: I request that Mr. Sisk make a
8 proffer on where he is going with this.

9 JUDGE GLEASON: I am not going to require him
10 to do that currently. Proceed, Mr. Sisk.

11 MR. ZAHNLEUTER: I will note my objection.

12 JUDGE GLEASON: I believe you were referring
13 to a page of some of this document. What page were you
14 referring to?

15 MR. LANPHER: 25. Mr. Sisk is working from a
16 different document than we are, that is the problem.

17 MR. SISK: I believe I am working from a later
18 version. Okay, now we have the same one.

19 JUDGE GLEASON: Section 22.

20 BY MR. SISK:

21 Q Section 22. That section provides that, "The
22 Commission shall prepare a State Disaster Preparedness
23 Plan," and it continues beyond that. The Commission is
24 the Disaster Preparedness Commission; correct?

25 A (Axelrod) Yes, sir.

1 Q Doctor Axelrod, if you will turn to the next
2 page, page 26, which is under sub-section three, that
3 section states, "Such plans shall be prepared with such
4 assistance from other agencies as the Commission deems
5 necessary and shall include, but not be limited to."
6 Have I read that correctly?

7 A (Axelrod) Yes, sir.

8 Q If you follow on down the page, under sub-
9 section B, one of those requirements that shall be
10 included, and correct me if I am misinterpreting, under
11 sub-section B, disaster response, it states: "Plans to
12 coordinate the use of resources and manpower for service
13 during and after disaster emergencies and to deliver
14 services to aid citizens and reduce human suffering
15 resulting from a disaster emergency shall include but
16 not be limited to: 1) Centralized coordination of
17 resources, manpower, and services, utilizing existing
18 organizations and lines of authority and centralized
19 direction of request for assistance." Have I read that
20 correctly?

21 A (Axelrod) Yes, sir.

22 Q It also requires, under sub-section B3, a
23 system for warning populations, and under sub-section
24 B4, arrangements for activating State, municipal, and
25 volunteer forces; is that correct?

1 A (Axelrod) Yes, sir.

2 Q It also requires, under sub-section 5, a
3 specific plan for rapid and efficient communications and
4 for the integration of State communication facilities
5 during a State disaster and emergency; is that also
6 correct?

7 A (Axelrod) Yes, sir.

8 Q Under sub-section 6, it requires a plan for
9 coordinating evacuation procedures; is that correct?

10 A (Axelrod) Yes, sir.

11 Q Under sub-section 9, it requires provisions
12 for training State and local government personnel and
13 volunteers in disaster response operations; is that
14 correct?

15 A (Axelrod) Yes, sir.

16 MR. ZAHNLEUTER: Excuse me. Doctor Axelrod's
17 time is precious. We will stipulate that the provision
18 says what it says.

19 BY MR. SISK:

20 Q Doctor Axelrod, when the statute refers to
21 disaster, on page 22, I believe this confirms what you
22 stated earlier, disaster means what, occurrence or
23 threat of a widespread or severe damage injury or loss
24 of live or property resulting from any natural or man
25 made causes including, but not limited to -- I am

1 skipping some words -- and it includes radiological
2 accidents; is that correct?

3 A (Axelrod) I'm sorry --

4 Q I am on page 22, sub-section 2A.

5 A (Axelrod) I'm assuming you are reading it, so
6 I will acknowledge that you are reading it off of the
7 statute, unless you want to read it again.

8 Q No, that's fine. Doctor Axelrod, let me ask
9 one of my associates to hand you what has been marked
10 LILCO Exhibit 1.

11

12

(CONTINUED ON NEXT PAGE)

1 MR. SISK: That was admitted on Monday and is
2 the New York State Disaster Preparedness Plan.

3 BY MR. SISK:

4 Q Doctor Axelrod, to the best of your knowledge
5 is that a copy of the New York State Disaster
6 Preparedness Plan? I believe it has been so verified by
7 Mr. DeVito.

8 A (Axelrod) Yes.

9 Q Is that the most current version?

10 A (Axelrod) I believe it is.

11 Q Is that the State's general disaster plan as
12 required by Article 2-B?

13 A (Axelrod) Yes, sir.

14 Q Does it meet the requirements of Article 2-B?

15 A (Axelrod) I believe it does.

16 Q Has it been approved by the Disaster
17 Preparedness Commission?

18 A (Axelrod) The -- I would have been a member
19 of the Disaster Preparedness Commission. Since I did
20 not become Chairman of the Disaster Preparedness
21 Commission until about the time this revision occurred,
22 so I am not sure that I can accurately provide you with
23 a response. I don't recall serving as Chairman during
24 the course of all the meetings at which an approval
25 would have taken place, but it is certainly possible

1 that it would have been approved.

2 Q Doctor Axelrod, doesn't section 22 of the
3 statute require that it be reviewed by the DPC annually?

4 A (Axelrod) Yes.

5 Q Would you be reviewing in your capacity as
6 Chairman of the DPC anything other than a plan that had
7 been previously approved?

8 A (Axelrod) I would assume not. You asked me
9 if I recalled having approved it, and what I said was
10 that I was not Chairman and I don't recall specifically
11 having been approved. But the answer is yes about
12 subsequent approvals.

13 Q I understand. Now, Doctor Axelrod, the
14 statement that I read you previously from your pre-filed
15 testimony, do you recall confirming in your deposition
16 in discovery in this matter on April 22, 1988, that you
17 were unable to identify any resources that could be used
18 to reply to a Shoreham emergency?

19 A (Axelrod) I would like to read the statement
20 from my testimony because I am not sure that you
21 characterized it correctly.

22 Q Proceed.

23 A (Axelrod) The statement in my testimony says
24 I cannot speculate what specific actions the State would
25 take, when they would be taken, or what resources might

1 be available in the hypothetical situation that the NRC
2 were to license Shoreham to operate at levels above five
3 percent power, et cetera. I think that that is a
4 somewhat different statement from that which you have
5 made.

6 The statement in my testimony relates to a
7 very specific hypothetical situation.

8 Q Doctor Axelrod, does the State also have
9 Radiological Emergency Preparedness Plan?

10 A (Axelrod) Yes, it does.

11 Q May I ask one of my associates to hand you a
12 copy of a document that has been marked -- excuse me a
13 moment. It has been marked for identification as LILCO
14 Exhibit 6. It is the New York State Radiological
15 Emergency Preparedness Plan. The copy previously
16 submitted was verified by General Papile.

17 Doctor Axelrod, can you identify that
18 document?

19 A (Axelrod) This is the generic portion of the
20 State Emergency -- Radiological Emergency Response Plan
21 based upon the verification of General Papile.

22 Q Doctor Axelrod, let me ask you to turn to the
23 executive summary on page 1 of that document. Under the
24 section titled "Introduction", there is a statement,
25 "The New York State Disaster Preparedness Plan addresses

1 radiological emergencies in general terms, whereas this
2 NYS Radiological Preparedness Plan fills in the specific
3 details. The plan also includes seven county plans,
4 county and state implementation material, and procedures
5 necessary to carry out adequate protective action
6 responses should a radiological emergency at a nuclear
7 power plant occur. All components of this plan are
8 designed to provide pre-planned, coordinated efforts by
9 emergency managers."

10 Have I quoted that correctly?

11 A (Axelrod) Yes, sir.

12 Q Doctor Axelrod, is this generic part of the
13 New York State Radiological Plan a part of the New York
14 State Disaster Preparedness Plan?

15 A (Axelrod) Yes, it is. I need to have some
16 clarification. The plan that is being referred to and
17 which I have been provided does not included the seven
18 county plans. The statement in the introduction clearly
19 identifies the plan as containing seven county plans,
20 county and state implementation material and procedures;
21 and, therefore, I would consider the materials which
22 have been provided as being the generic portion of the
23 plan, not in fact the complete State plan since the
24 introduction itself makes it clear that the plan
25 includes the seven county plans and , therefore, cites

1 specific mechanisms for State response.

2 Q Doctor Axelrod, with that qualification, which
3 I am certain you also made in your deposition, this
4 document and the seven county plans are part of the
5 State Disaster Preparedness Plan; is that correct?

6 A (Axelrod) That is correct.

7 Q Do they comply with the requirements of
8 Article 2-B as set forth in the -- as set forth in that
9 statute?

10 A (Axelrod) I am aware -- I am not sure where
11 you are referring to now.

12 Q Doctor Axelrod, I am not referring to anything
13 specifically. Does the radiological plan and the
14 various county plans that have been approved by the DPC
15 and made a part of this plan, do they satisfy the
16 requirements of Article 2-B concerning resources and so
17 forth, which we discussed earlier?

18 MR. LANPHER: I object to the question.
19 Article 2-B is a long statute. If Mr. Sisk has a
20 specific provision or provisions of Article 2-B as to
21 which he wants an opinion from this witness, I think he
22 ought to point it out to the witness. Otherwise, the
23 question is vague.

24 JUDGE GLEASON: I don't think the question is
25 vague. The objection is denied. This man is the

1 Chairman of the Commission. The question is relevant
2 and it can be answered by this witness. It should be
3 able to be answered by this witness.

4 THE WITNESS (Axelrod): The Radiological
5 Preparedness Plan is part of the State Disaster
6 Preparedness Plan as it is identified in Section 22 of
7 page 25 of the statute that you have us -- provided me
8 with.

9 BY MR. SISK:

10 Q Does it meet the requirements of Section 22 of
11 the statute?

12 A (Axelrod) Yes, I believe it does. Not as it
13 stands alone, but in terms of the entire plan which
14 includes the seven site specific plans, that I would
15 view as being integral to the plan.

16 Q Doctor Axelrod, if you will turn to page 3 in
17 the Executive Summary of that document, near the top of
18 the page it says, "This plan places the State lead role
19 during an emergency at any commercial nuclear power
20 plant with the New York State Department of Health. The
21 Department of Health is charged with the assessment and
22 evaluation of radiological incidents, and with the task
23 of recommending appropriate protective actions."

24 Then it proceeds from there.

25 Doctor Axelrod, you are also the Chairman of

1 the State Department of Health; are you not?

2 A (Axelrod) Commissioner.

3 Q Commissioner, I apologize. You are the
4 Commissioner of the New York State Department of Health?

5 A (Axelrod) Yes, sir.

6 Q Doctor Axelrod, taking collectively the New
7 York State Disaster Preparedness Plan Exhibit 1, and the
8 New York State Radiological Plan Exhibit 6, could any of
9 the resources identified in that document be used in
10 responding to an emergency at Shoreham?

11 MR. ZAHNLEUTER: I object.

12 MR. SISK: I intend to tie it up to discovery,
13 Your Honor.

14 JUDGE GLEASON: Objection denied.

15 MR. LANPHER: Note our objection, too.

16 THE WITNESS (Axelrod): The difficulty I have
17 is, in the absence of a site-specific identification,
18 the resources, the plume modeling, all of the elements
19 that are identified within each of the seven
20 site-specific plans that are attached to the
21 Radiological Emergency Preparedness Plan, it would be
22 difficult to determine how such resources might be made
23 available without clear indications of time, place, all
24 of the elements that would relate to the site-specific
25 issues that would address the Shoreham facility.

1 BY MR. SISK:

2 Q Doctor Axelrod, please listen to my question.
3 Could any of the resources identified in those documents
4 be used in responding to an emergency at the Shoreham
5 plant, if it were to operate?

6 MR. LANPHER: I object to the questioning.
7 He's already asked and answered that. He says he cannot
8 do it with a site-specific plan. I think it's an
9 improper question.

10 JUDGE GLEASON: Let him answer the question,
11 please. Respond to the question.

12 THE WITNESS (Axelrod): I have indicated that
13 without having a site-specific plan, I would not be in a
14 position to identify what, if any, specific resources
15 could be made available.

16 The traffic conditions, the time of day, the
17 time of the week, the month, all of those things would
18 require specific site-specific actions and planning that
19 would determine whether or not any one, or more than
20 one, of the resources could be made available in such a
21 circumstance.

22 BY MR. SISK:

23 Q Let me try one more time. Could any of the
24 resources identified in Exhibit 1, the State Disaster
25 Plan, or Exhibit 6, the New York State Radiological

1 Plan, be used in responding to an emergency at Shoreham,
2 if it were to operate.

3 MR. ZAHNLEUTER: I object one more time.

4 MR. LANPHER: That's exactly the same question
5 he asked before, Judge.

6 MR. SISK: I do haven't had an answer.

7 JUDGE GLEASON: Pardon?

8 MR. SISK: I don't believe I got an answer.

9 MR. LANPHER: I disagree --

10 JUDGE GLEASON: You got an answer. It may not
11 be the answer to your question, but you did get an
12 answer. I think it was the same question. Let's
13 proceed.

14 BY MR. SISK:

15 Q Doctor Axelrod, you recall providing similar
16 testimony to that you've just given at your discovery
17 deposition on April 22?

18 A (Axelrod) Yes.

19 Q I'm not asking for identical words, but
20 testimony to the effect?

21 MR. ZAHNLEUTER: I object.

22 MR. LANPHER: This is the third time, I
23 believe, that he's made reference to the deposition to
24 ask a witness to recall three months what he might have
25 said in a deposition, especially as busy as Doctor

1 Axelrod -- I don't think it's proper cross-examination.

2 MR. SISK: With all that noting, I think the
3 witness answered.

4 THE WITNESS (Axelrod): I started to answer.

5 JUDGE GLEASON: Do you recollect the
6 testimony?

7 THE WITNESS (Axelrod): I recollect the
8 general sense of my testimony, Judge, but I would be
9 hardpressed without clearly identifying the specific
10 areas of the deposition to which Counsel is referring to
11 provide him with a specific response.

12 I must say, I'm a little dismayed at having to
13 provide for general responses to specific testimony
14 which I could identify, or might be identified, by
15 Counsel by giving me a copy of my deposition.

16 JUDGE GLEASON: I think it might be more
17 helpful, Mr. Sisk, if you did --

18 MR. SISK: That will be fine.

19 BY MR. SISK:

20 Q Doctor Axelrod, I will now ask one of my
21 associates to hand you a copy of the transcript of the
22 deposition dated April 22, 1988. (Document tendered.)

23 I will ask that that be marked for
24 identification as LILCO Exhibit 36.

25 JUDGE GLEASON: It will be so marked.

1 (The document referred to was
2 marked for identification as
3 LILCO's Exhibit 36.)

4 BY MR. SISK:

5 Q Doctor Axelrod, if you turn to page 65 of the
6 transcript of the deposition, and specifically the
7 bottom of page 65.

8 I will vouch for the record that the question
9 which I'm to read pertains specifically to the State --
10 the general portion of the State Radiological Plan, the
11 same document we've been referring to as Exhibit 6.

12 The question is, "Doctor Axelrod, is it your
13 testimony that the State resources identified in this
14 document would not be available for a response to an
15 emergency at the Shoreham nuclear plant?"

16 Your answer was, "It would be impossible for
17 me to speculate as to what resources might or might not
18 be available since there is the assumption that those
19 resources will be in response to a plan. Since there is
20 no plan with respect to Shoreham, it is impossible for
21 me to identify which resources would or would not be
22 available in addressing an incident at the Shoreham
23 plant."

24 Do you now recall that testimony, Doctor
25 Axelrod?

1 A (Axelrod) Yes, yes, I do.

2 Q Does that remain your testimony today?

3 A (Axelrod) Yes, it does.

4 Q Doctor Axelrod, does Article 2-B of the
5 Executive Law also provide for local plans, and I'll ask
6 you to refer back now to Exhibit 35, Section 23, which
7 is on -- begins on page 28.

8 MR. LANPHER: I object to the question. I
9 believe it's dated. I don't know what counsel --

10 JUDGE GLEASON: Restate the question, please.

11 BY MR. SISK:

12 Q Does Article 2-B of the Executive Law also
13 provide for the preparation of local disaster
14 preparedness plans, and specifically county plans?

15 MR. LANPHER: I object, that question is
16 vague. I don't understand what Mr. Sisk means by
17 "provide for".

18 JUDGE GLEASON: Would you like to try a third
19 time, Mr. Sisk?

20 Does the witness understand the question?

21 THE WITNESS (Axelrod): No, I don't, because
22 the statute speaks for itself, and it says --

23 JUDGE GLEASON: I didn't ask that question,
24 whether it stands --

25 THE WITNESS (Axelrod): No, I don't understand

1 what you mean by "provide for." I don't understand.

2 BY MR. SISK:

3 Q I think I will be able to state it in a way no
4 one will quibble with.

5 Does Section 23, Article 2-B of the Executive
6 Law authorize the preparation of local disaster
7 preparedness plans and specifically, county disaster
8 preparedness plans.

9 A (Axelrod) Yes.

10 Q Doctor Axelrod, under Subsection 1 of Section
11 23, the statute provides, "The Disaster Preparedness
12 Commission shall provide assistance and advice for the
13 development of such plans."

14 Does that portion refer to local plans and
15 county plans?

16 A (Axelrod) It refers to the identified issues
17 within the preceding sentence. It says, "County and
18 city is authorized to prepare, and the Disaster
19 Preparedness Commission is directed to provide, such
20 assistance to counties and cities with the exception of
21 the City of New York."

22 Q Doctor Axelrod, under Subsection 6, Section
23 23, let me quote that provision: "All plans for
24 disaster preparedness developed by local governments, or
25 any revisions thereto, shall be submitted to the

1 Commission by December 31st of each year to facilitate
2 state coordination of disaster operations."

3 Does that provision, when it refers to the
4 Commission, does that refer to the Disaster Preparedness
5 Commission?

6 A (Axelrod) Yes, sir, it does. I believe it
7 does.

8 Q Under Subsection 7, Doctor Axelrod, the
9 statute provides: "Such plans -- let me ask before I
10 proceed further, what does "such plans" mean in
11 Subsection 7, and I'm asking for your understanding as
12 Chairman of the DPC?

13 A (Axelrod) My understanding is that it would
14 refer to Section 6.

15 Q Okay, very well.

16 MR. LANPHER: Judge Gleason, I want to
17 interpose an objection to this going through the
18 statute. This witness -- doesn't relate to discovery
19 issues. I think it's a waste of the valuable of time of
20 Doctor Axelrod. He's here for only a brief amount of
21 time.

22 JUDGE GLEASON: Please proceed.

23 MR. SISK: I'll try to proceed quickly.

24 BY MR. SISK:

25 Q Doctor Axelrod, If you'll turn the page to

1 page 29, and look under Subsection B of Section 7, and
2 this refers to disaster response --

3 JUDGE GLEASON: Subsection 7 of -- Section 7
4 of Subsection B?

5 MR. SISK: Yes.

6 MR. LANPHER: I don't understand where we are.

7 MR. SISK: We should be on page 29 of the
8 document, under a subheading, letter B, Disaster
9 Response. It was subsection of Subsection 7 of Section
10 23

11 BY MR. SISK:

12 Q Doctor Axelrod, I won't carry through every
13 detail of this, but there are a number of subcomponents
14 listed there under Subsection B for disaster response.

15 Are all of these requirements, and there 17 of
16 them, must all of these types of provisions be in any
17 local disaster preparedness plan that is submitted to
18 the DPC for approval?

19 A (Axelrod) For any plan that would be app
20 by the DPC, these are the components that must be
21 contained. On the other hand, the localities are
22 authorized, and they are not required to plans to
23 provide in the first instance.

24 Q Doctor Axelrod, in local -- any local disaster
25 preparedness plan that are prepared, are they

1 coordinated with the state plan?

2 A (Axelrod) Those which are submitted to the
3 Disaster Preparedness Commission are coordinated through
4 SEMO.

5 Q Doctor Axelrod, I will now ask one of my
6 associates to hand you a copy of a document that has
7 been marked as LILCO's Discovery 15. It is a letter
8 dated May 1, 1981. It is a letter which appears to be
9 from Jerry Horton, Director of Programming and Planning
10 within the State of New York, Division of Military and
11 Naval Affairs, to Mr. William E. Regan, Director of
12 Suffolk County Department of Emergency Preparedness.

13 Docto. Axelrod, have you ever seen that
14 document before?

15 A (Axelrod) I don't recall ever having seen it.

16 Q Doctor Axelrod, how long have you been
17 Chairman of the Disaster Preparedness Commission.

18 A (Axelrod) I became Chairman in the late Fall
19 of 1982.

20 Q Were you previously a member of the Disaster
21 Preparedness Commission?

22 A (Axelrod) The Commissioner of Health, by
23 statute, is a member of the Disaster Preparedness
24 Commission. I was appointed Commissioner of Health in
25 1979, so I was a member at that time.

1 Q Doctor Axelrod, did the DPC, at any time,
2 review a Suffolk County Disaster Preparedness Plan?

3 A (Axelrod) I have no recollection.

4 Q Doctor Axelrod, how are local plans submitted
5 for review by the Disaster Preparedness Commission?

6 A (Axelrod) They would be submitted by the --
7 they would be reviewed by the State Emergency Management
8 Office, and brought to the Disaster Preparedness
9 Commission for approval, if indeed approval were being
10 sought by the State Emergency Management Office.

11 Q Is Mr. Horton in the planning section of the
12 State Emergency Management Office?

13 A (Axelrod) I am not sure where Mr. Horton is
14 at the present time.

15 Q Do you know whether he was at that time?

16 A (Axelrod) I did not know Mr. Horton at the
17 time. I have no recollection of meeting Mr. Horton at
18 the time. I would not be in a position to say where he
19 was at that time.

20 Q Are any records kept of local plans that are
21 submitted to DPC for approval?

22 A (Axelrod) They would be kept by the State
23 Emergency Management Office.

24 Q Who within the State Emergency Management
25 Office keeps those records?

1 A (Axelrod) It would be under the jurisdiction
2 of the Director of the State Emergency Management
3 Office.

4 Q That would be Mr. DeVito?

5 A (Axelrod) And his predecessor.

6 Q Doctor Axelrod, is there any distinction
7 between a local disaster preparedness plan as set forth
8 in Article 2-B, and a local emergency operations plan?

9 A (Axelrod) There may be. It would be up to
10 the locality to decide whether or not it wished to
11 develop a disaster preparedness plan under the statutory
12 provisions, and to assume the responsibilities for
13 including all of those elements that would be required
14 under the DPC's -- under Article 2-B, or simply to
15 prepare a plan which the county would then determine
16 what it should contain, based on its own interests,
17 rather than those which would be identified in the
18 statute.

19 Q So, they may or may not be the same plan,
20 depending on a particular locality; is that correct?

21 A (Axelrod) That's correct.

22 Q Does the Disaster Preparedness Commission
23 review local emergency operations plans?

24 A (Axelrod) Only if they would have that
25 submitted, or they would have been the result of direct

1 discussion between the locality and the State Emergency
2 Management Office.

3 Q To your knowledge, has there ever been any DPC
4 review of the Suffolk County Emergency Operations Plan?

5 A (Axelrod) Not -- I have no recollection of
6 such a review by the Disaster Preparedness Commission.

7 Q Prior to preparing for your testimony in this
8 proceeding, Doctor Axelrod, did you have any knowledge of
9 the existence of the Suffolk County Emergency Operations
10 Plan?

11 A (Axelrod) As I've indicated previously, my
12 only familiarity was with its implementation at the
13 time of the Suffolk County's response in which the DPC
14 representatives were coordinating with Suffolk County at
15 that point in time.

16 Q That was Hurricane Gloria in 1985?

17 A (Axelrod) Yes, sir.

18 Q Were you aware of the existence of that plan
19 prior to that time?

20 A (Axelrod) As I've indicated, I'm not aware of
21 the specific existence of the plan. I know that there
22 was a document which was being used by Suffolk County to
23 coordinate its activities and to work with the State at
24 that point in time.

25 I did not see the plan, but I was informed

1 that such a plan existed from which Suffolk was working.
2 I did not see it. I cannot identify the specific nature
3 of it. But I was made aware of the fact that such a
4 document existed for response.

5 Q When did you first learn that such a document
6 existed.

7 MR. LANPHER: I object. This has been asked
8 and answered. He's already testified at least twice to
9 that, Judge.

10 JUDGE GLEASON: I think it has been answered,
11 Mr. Sisk.

12 MR. SISK: I'm sorry. I was perhaps confused
13 by the previous answer.

14 BY MR. SISK:

15 Q Were you aware of the existence of that at any
16 time prior to 1985?

17 A (Axelrod) No.

18 Q Okay, my apologies.

19 Had you reviewed any of the provisions of
20 Suffolk County Emergency Operations Plan?

21 A (Axelrod) No.

22 Q Doctor Axelrod, I will now ask one of my
23 associates to hand you a copy of a document which has
24 been marked as LILCO's Exhibit 17. It is entitled,
25 "Government's Response to Court Order of June 24, 1988."

1 I'll ask that you turn specifically to page 10
2 of that document.

3 Doctor Axelrod, I will vouch for the record
4 that this is a response to what we lawyers call a
5 pleading filed by the lawyers in this proceeding on
6 behalf of the government's --the State of New York and
7 the County of Suffolk, on or about June 28, 1988.

8 I will ask you to -- direct your attention to
9 paragraph entitled "Donald DeVito". That paragraph
10 states: "SEMO has authority to review state and local
11 government emergency plans for non-nuclear emergencies."

12 Is that a correct statement, Doctor Axelrod?

13 A (Axelrod) Yes.

14 Q Ignoring the portion Mr. DeVito testified, let
15 me ask you about this portion: "SEMO personnel have
16 known for many years that Suffolk County, like other
17 counties in New York, have a plan for dealing generally
18 with emergencies."

19 To your knowledge, is that true?

20 A (Axelrod) Not all counties have plans for
21 emergencies. The assumption is that all counties have
22 plans for emergencies. It's been a source of
23 considerable consternation within the Disaster
24 Preparedness Commission that some counties don't have
25 such plans. I'm not sure that all counties, like other

1 counties, certainly cannot be all inclusive.

2 My expectation, as I indicated earlier, when
3 we were required to respond to the Gloria situation was
4 that a plan of some kind existed in a county of the size
5 of Suffolk. So that I would think there was an
6 assumption that there was a mechanism for emergency
7 response.

8 The nature of the plan, the completeness of
9 the plan, was not something that I certainly had any
10 knowledge of.

11 In addition to which, the nature of those
12 plans, which would not have been submitted for approval
13 by the Disaster Preparedness Commission, or in this case
14 by the State Emergency Management Office, would have had
15 certain components. Those that would not have been
16 submitted would not have had other components.

17 As you have already identified, there is a
18 series of requirements for approval by the State
19 Emergency Management Office of the Disaster Preparedness
20 Commission, and plans that would not have been submitted
21 for approval would have had components that are
22 identified, and some would not have had components. So,
23 there would have been great discrepancy in the nature of
24 those plans.

25 I think the assumption is far reaching.

1 Q Doctor Axelrod, I believe you stated earlier
2 that as the Chairman of the DPC, the Chairman of the
3 State Emergency Management Office reports to you,
4 operationally; is that correct?

5 A (Axelrod) Yes, sir.

6 Q Doctor Axelrod, in that supervisory capacity,
7 do you know whether SEMO personnel have known for many
8 years that Suffolk County had a plan for dealing
9 generally with emergencies?

10 A (Axelrod) I cannot testify to the fact that
11 they had specific knowledge.

12 Q Who, within SEMO, would know the answer to
13 that question?

14 A (Axelrod) The persons within SEMO who would
15 know would be Mr. DeVito, his predecessor, Mr. Germano,
16 who are the persons presently at the command level
17 within the State Emergency Management Office.

18 Q Who was Mr. DeVito's predecessor?

19 A (Axelrod) I believe his direct predecessor
20 was a man named Arnold Grushky.

21 Q Doctor Axelrod, are you aware of any process
22 by which the Federal Emergency Management Agency
23 provides funds through the State for the preparation of
24 local emergency operations plans?

25 A (Axelrod) I only know that such funds are

1 provided. I know none of the details by which those
2 funds are made available. Those determinations are
3 carried out through the State Emergency Management
4 Office.

5 Q In your capacity as Chairman of the DPC,
6 you're really not involved in that?

7 A (Axelrod) No, sir.

8

9

(CONTINUED ON NEXT PAGE)

1 MR. SISK: Judge Gleason, I am approximately
2 halfway through and this might be a good point for a
3 short break.

4 JUDGE GLEASON: All right, let's take a five
5 minute break.

6 (Whereupon, a short recess was taken.)

7 JUDGE GLEASON: Proceed, Mr. Sisk.

8 BY MR. SISK:

9 Q Doctor Axelrod, I will now ask that you be
10 handed a document that was previously identified as
11 LILCO Exhibit 3. It is an affidavit which was filed
12 previously by the state and it was sponsored by James D.
13 Papile, James C. Baranski, and Lawrence B. Czech of the
14 Radiological Emergency Preparedness Group. It was filed
15 in response to a motion for summary disposition by
16 LILCO. The record will, of course, speak for itself.
17 It was relied on by the Board in denying the summary
18 disposition.

19 Doctor Axelrod, Mr. Papile is the Director of
20 Radiological Emergency Preparedness Group; is that
21 correct?

22 A (Axelrod) Yes, sir.

23 Q He reports to you with respect to radiological
24 emergency planning and response matters. I think you
25 did state that earlier; right?

1 A (Axelrod) Yes.

2 Q Doctor Axelrod, let me ask you to turn to page
3 10 of that affidavit, paragraph 14. There is a
4 statement in the middle of the paragraph at page 14 --
5 I'm sorry, page 10, paragraph 14, that: "This ignores
6 the reality that the state plan" -- and I will vouch
7 that is referring to the State Radiological Plan --
8 "depends on the development of detailed procedures going
9 beyond the generic plan and county specific addenda,
10 which implement the tasks identified in the plan." Then
11 there is an example of the ingestion pathway
12 implementation. There is a reference further down to
13 major examples -- "Major examples of a site specific
14 implementation procedures." Doctor Axelrod, do you know
15 what that statement means; can you tell me what it
16 means?

17 MR. ZAHNLEUTER: I object to the form of that
18 question.

19 BY MR. SISK:

20 Q The statement, "This ignores the reality," et
21 cetera, that I quoted. the full sentence in the middle
22 of -- the second sentence in paragraph 14?

23 MR. LANPHER: Judge Gleason, I --

24 MR. ZAHNLEUTER: I do object to the form. I
25 think it would be proper, given the Board's relevancy

1 rulings, to ask if he agrees with it, but not does he
2 know what it means. It is not his statement.

3 MR. LANPHER: Judge Gleason, I interpose a
4 different objection. This is one statement taken out of
5 a large affidavit. Unless Doctor Axelrod has reviewed
6 this affidavit, and also what the affidavit purportedly
7 responds to, I think you are asking for speculation and
8 it is not a proper question. I think he has to lay a
9 foundation first of whether he has ever even seen this
10 document before, talked with General Papile about it, or
11 anything like that.

12 MR. SISK: Doctor Axelrod -- I'm sorry, I
13 apologize. Let me respond to the objection. Judge
14 Gleason, I can lay that foundation. I am prepared to do
15 it if it is necessary for the witness to understand it,
16 but we will certainly be here past two o'clock.

17 MR. LANPHER: Judge, if the witness has never
18 seen this document and doesn't know what it was
19 referring to --

20 JUDGE GLEASON: Why don't you let the witness
21 say whether he has ever seen this document before.

22 MR. LANPHER: He wasn't asked that.

23 JUDGE GLEASON: Do you understand, Doctor
24 Axelrod, the question you are being asked?

25 THE WITNESS (Axelrod): No, I'm afraid I

1 don't.

2 BY MR. SISK:

3 Q Doctor Axelrod, let's approach it this way.
4 Will you turn to the end of that document, on the very
5 last page? Is that the signature of James D. Papile?

6 A (Axelrod) I believe it is. To the best of my
7 knowledge, that appears to be his signature, yes.

8 Q There are two other signatures. Mr. Czech's
9 signature appears to have been inserted by Mr. Papile.
10 Do you recognize Mr. Baranski's signature?

11 A (Axelrod) I do not recognize -- I would not
12 be able to identify Mr. Baranski's signature.

13 Q Doctor Axelrod, have you ever seen this
14 affidavit before?

15 A (Axelrod) I don't recall it.

16 Q Doctor Axelrod, as Chairman of the Disaster
17 Preparedness Commission, do you expect the Director of
18 the Radiological Emergency Preparedness Group, when he
19 signs an affidavit and files it in a legal proceeding,
20 to be telling the truth on behalf of that agency?

21 A (Axelrod) I have no doubt that General Papile
22 signed the affidavit with the expectation that that
23 contained the truth as he was aware of it at the time.

24 Q Doctor Axelrod, now if you will turn back to
25 page 10, paragraph 14 of this affidavit. I will quote -

1 - I would just like for you to read the entirety of
2 paragraph 14. It is already in the record.

3 Doctor Axelrod, let me refer you to the
4 passage that talks about the development of detailed
5 procedures going beyond the generic plan and county
6 specific addendum. The following sentence, which says:
7 "Returning to the example of ingestion pathway
8 implementation, the New York State Plan leaves to
9 various state agencies the responsibility of developing
10 implementation procedures." There is then a sentence
11 referring to two examples.

12 To focus the question, can you tell me, if you
13 know, the meaning of the reference to state agencies
14 developing implementation procedures?

15 A (Axelrod) I think I am as confused by the
16 ambiguity of the statement and I would not be able to do
17 anything else but speculate on the nature of what
18 General Papile was referring to.

19 Q Are you the Chairman -- I'm sorry, the
20 Commissioner of the Department of Health?

21 A (Axelrod) Yes, I am.

22 Q Does the Department of Health develop
23 implementation procedures for responding to radiological
24 emergencies which go beyond the generic radiological
25 plan and county specific addendum?

1 A (Axelrod) There are specific sampling
2 protocols that are utilized by the Department of Health
3 for any radiologic sampling. I would only be
4 hypothezing as to whether or not that was the reference.
5 I just am at a loss, in the absence of more specificity,
6 to be more certain what General Papile was referring to.

7 Q Let's divorce ourselves from what General
8 Papile may have had in his mind at the time and let me
9 ask you the question. Can you describe for me any and
10 all implementation procedures of the Department of
11 Health which go beyond the generic state radiological
12 plan and county specific addendum?

13 A (Axelrod) Those procedures for sampling that
14 go beyond the specific elements of the county addendum
15 would be the responsibility of the Bureau of Radiation
16 Safety, whatever the current title of the name of the
17 bureau is, under Doctor Rimawi, who would have been
18 responsible for any specific elements that related to
19 collection of samples.

20 Q Is that Doctor Kareem Rimawi?

21 A (Axelrod) Yes, it is.

22 Q Are you aware of any other such implementation
23 procedures?

24 A (Axelrod) The only other elements would be
25 the coordination between the personnel and the

1 recommendations of Doctor Rimawi and those within the
2 laboratory, which would be under the direction of Doctor
3 Dickerman, who is the director of the laboratory.

4 Q Are you aware of any such implementation
5 procedures which would be developed or administered by
6 the State Emergency Management Office?

7 A (Axelrod) Those implementation procedures
8 would not be under the direction of the State Emergency
9 Management Office. As the statement by General Papile
10 indicates, it would be left to the various state
11 agencies. In this case, it would be the Department of
12 Health that would have the responsibility for
13 determining the protocol for the identification and
14 measurement of such samples as might be required. That
15 would be, as I have indicated, Doctor Rimawi and Doctor
16 Dickerman who would be responsible for the laboratory
17 components.

18 Q Other than the sampling provisions that you
19 described under the wing of the Department of Health,
20 are you aware of any implementation procedures developed
21 separately by the State Emergency Management Office?

22 A (Axelrod) No, I am not.

23 Q Doctor Axelrod, let me ask that you be handed
24 a copy of a document that was marked for identification
25 as LILCO Exhibit 8. It is the State of New York's

1 response to LILCO's second set of interrogatories
2 regarding Contentions 1-2, 4-8, and 10. It is dated
3 June 3, 1988. It is also a document which I will vouch
4 for the record has been verified subsequently by General
5 Papile.

6 JUDGE GLEASON: Mr. Sisk, if you could try to
7 wind up with this witness by 1:30, please?

8 MR. SISK: I will endeavor to, Judge Gleason.

9 BY MR. SISK:

10 Q Doctor Axelrod, will you turn to paragraph
11 number 97 on page 13 of that document? There is an
12 answer which says: "The 'site specific implementing
13 procedures' are the responsibilities of the counties.
14 Counties work with state agencies but the 'site specific
15 implementing procedures' are actually developed by the
16 counties." The next sub-paragraph says: "Counties are
17 responsible for implementing these procedures."

18 Doctor Axelrod, I will also vouch for the
19 record that the reference there to "See general
20 objections 1, 2, and 3" is to general objection that the
21 state doesn't have responsive information, but it might
22 be in the possession of counties, in essence.

23 MR. ZAHNLEUTER: I would object to that
24 characterization of the general objections.

25 JUDGE GLEASON: They speak for themselves.

1 MR. SISK: I had moved the admission of this
2 document yesterday, Judge Gleason. It was denied
3 because the witness was not allowed to explain potential
4 inconsistencies. If Mr. Zahnleuter would like his
5 objections to go in verbatim, this might be a good time
6 to put the document in.

7 MR. ZAHNLEUTER: I don't understand that at
8 all.

9 MR. LANPHER: All Mr. Zahnleuter did was
10 object to the characterization of some materials on page
11 two of this document. We are not at the stage of moving
12 for admission of this.

13 JUDGE GLEASON: Mr. Sisk, I hadn't realized
14 this document wasn't in the record. Are you moving it?

15 MR. SISK: Yes, I was simply trying to
16 expedite it. That was the document to which there was
17 objection because I had neglected to move its admission
18 while General Papile was here, on the ground that he was
19 not here to explain any inconsistencies between that and
20 his previous affidavit. That is the sole purpose for
21 which I move the admission of this document at this time
22 when the witness that I wish to ask these questions to
23 is here.

24 JUDGE GLEASON: Are you moving it for
25 admission?

1 MR. SISK: Yes.

2 JUDGE GLEASON: Is there objection?

3 MR. ZAHNLEUTER: Yes.

4 MR. LANPHER: I object.

5 JUDGE GLEASON: State your objections.

6 MR. ZAHNLEUTER: This document was denied
7 admission on a previous occasion and I don't see any
8 difference between that situation and now, except that
9 Doctor Axelrod is even further removed from these two
10 documents because he has not prepared either one of them
11 or verified either one of them. In short, it doesn't
12 make one bit of difference that Doctor Axelrod is here
13 today in terms of admission of this document.

14 JUDGE GLEASON: Your objection?

15 MR. LANPHER: Judge Gleason, it hasn't been --
16 as Mr. Zahnleuter stated, these answers are not
17 verified by Mr. Axelrod. I think before you could even
18 consider moving admission, or we object on the basis of
19 relevance, among other things, you would have to
20 establish that Doctor Axelrod has some familiarity with
21 this document, had some role in its preparation, and Mr.
22 Sisk hasn't done that. So I agree with Mr. Zahnleuter,
23 we are no farther along than yesterday.

24 JUDGE GLEASON: Let's proceed a little bit
25 with it, Mr. Sisk.

1 MR. SISK: Judge Gleason, perhaps to tie these
2 two together I should also ask that the witness be
3 handed a document entitled LILCO Discovery Exhibit 29,
4 or previously marked as Exhibit 29. That document is
5 LILCO's second set of interrogatories and request for
6 production of documents.

7 BY MR. SISK:

8 Q Doctor Axelrod, to facilitate going through
9 this, perhaps you could put the affidavit filed by
10 General Papile on the left side, the interrogatories
11 that were just handed to you, Exhibit 29, in the middle,
12 and the document that represents the State's responses
13 to those interrogatories, which is Exhibit 8, to the
14 right of that.

15 A (Axelrod) Which is Exhibit 8?

16 Q That is the document entitled "State of New
17 York responses to LILCO's second set of
18 interrogatories," dated June 3, 1988.

19 MR. LANPHER: Judge Gleason, I must object
20 before we get into this. This is an improper inquiry if
21 this witness has never seen these documents.

22 JUDGE GLEASON: I don't know where this
23 inquiry is going. I am stating once again that all this
24 is doing is using up time needlessly. Let's go on and
25 see where it is going.

1 MR. LANPHER: I don't mean to argue with you,
2 Judge, but he has already testified that one of the
3 documents which Mr. Sisk wants him to line up on the
4 table he is unfamiliar with. That is the affidavit,
5 which has been marked as LILCO Discovery Exhibit 3. How
6 can you ask him to testify about something that he has
7 never seen?

8 JUDGE GLEASON: Well, I don't know what the
9 purpose is that he wants to use that document.

10 MR. SISK: Judge Gleason, I believe the
11 witness, as Chairman of the DPC, must have some
12 knowledge of the facts contained in these documents,
13 whether or not he signed them. That is why I'm asking
14 the question.

15 JUDGE GLEASON: Let us proceed, please.

16 THE WITNESS (Axelrod): The third document
17 that you requested that I identify was Discovery Exhibit
18 Number what?

19 BY MR. SISK:

20 Q The last document given to you was Discovery
21 Exhibit 29.

22 A (Axelrod) You asked me to put that in the
23 middle, the one on the left, what is the one on the
24 right?

25 Q The one on the right is entitled "State of New

1 York's Response to LILCO's Second Set of
2 Interrogatories." It is dated June 3, up in the right-
3 hand corner.

4 A (Axelrod) Okay, I have got it.

5 Q That is Exhibit 8.

6 A (Axelrod) No, that is Exhibit -- I don't --
7 Does somebody have a copy of Exhibit 8? I don't have
8 the exhibit.

9 MR. ZAHNLEUTER: Exhibit 8 is the Papile,
10 Baranski, and Czech affidavit, which I believe is --

11 THE WITNESS (Axelrod): No, that is Exhibit 3.
12 Exhibit 3, 29, and 8.

13 BY MR. SISK:

14 Q Let me try to carry you through this way.
15 Look at the document on your extreme left, which is
16 Exhibit 3. We referred to paragraph 14 on the
17 affidavit. Now, let me ask you to turn to the document
18 in the middle, the discovery request, and turn to page
19 33.

20 JUDGE GLEASON: Which document is that?

21 THE WITNESS (Axelrod): That is the middle
22 document.

23 JUDGE GLEASON: I understand, but I would like
24 the number to it.

25 MR. SISK: That is Exhibit 29, at the bottom

1 of page 33.

2 BY MR. SISK:

3 Q That states: "Page 10 of the REPG affidavit
4 cites two 'examples' of site specific implementing
5 procedures that concern an adequate local communication
6 network for use by the ingestion sampling team and an
7 adequate operation space for the ingestion pathway
8 sampling teams." I believe that that statement is
9 contained in paragraph 14, near the bottom.

10 Doctor Axelrod, if you will turn to the
11 document on your right and the answer to that question,
12 number 97.

13 JUDGE GLEASON: Which exhibit?

14 MR. SISK: That is Exhibit 8, item 97, page
15 13, and I have previously read that into the record.

16 MR. LANPHER: Excuse me. You have read a
17 portion of it into the record, you haven't read all of
18 the answer.

19 MR. SISK: I have read portions 9A and 9B, 97A
20 and B into the record.

21 BY MR. SISK:

22 Q Doctor Axelrod, the REPG affidavit referred to
23 state agency implementation procedures and I asked you a
24 few questions about those. The interrogatory asks for
25 information as to those items contained in paragraph 14

1 of the REPG affidavit. The state response says that
2 site specific implementing procedures are the
3 responsibilities of the counties.

4 Doctor Axelrod, can you tell me which of those
5 statements is true; that is, are there site specific
6 implementation procedures which are developed by various
7 state agencies for responding to radiological accidents,
8 other than those allegedly developed by counties?

9 MR. ZAHNLEUTER: I object to the form of the
10 question because it assumes an inconsistency and there
11 has been no basis established for that assumption.

12 MR. LANPHER: Judge Gleason, I object also to
13 the question because it was very confusing. The REPG
14 affidavit, as I understand it, was talking about state
15 matters. The interrogatory number 97, which is our
16 middle document, at the top of page 34, after quoting
17 from the REPG affidavit, which it talked about state
18 matters, then asked for each county, asked a response
19 regarding counties. Then the response, which is the
20 document on the third side, goes ahead and responds
21 about counties. I don't think there is any
22 inconsistency. I am very confused by the question.

23 JUDGE GLEASON: Are you confused, Doctor
24 Axelrod?

25 THE WITNESS (Axelrod): I am very confused.

1 JUDGE GLEASON: All right, you are going to
2 have to start over again, Mr. Sisk.

3 BY MR. SISK:

4 Q Let me ask it this way, Doctor Axelrod: Are
5 you aware of the existence of site specific implementing
6 procedures for radiological responses that are developed
7 by state agencies, other than those you have previously
8 described for me?

9 A (Axelrod) No.

10 Q Doctor Axelrod, are you aware of the existence
11 of any county specific implementing procedures for
12 responding to radiological emergencies, and I want to
13 limit this to counties in ingestion pathways?

14 A (Axelrod) I am only aware that they exist
15 with respect to the site specific portions of the
16 Radiological Emergency Preparedness Plan that identified
17 the specific activities and the responsibilities of each
18 of the counties providing for implementing procedures.
19 So that whatever would be contained would be required in
20 terms of the procedures would be within the site
21 specific plan that would have been part of the site
22 specific plan that are the appendices to the
23 Radiological Emergency Plan.

24 Q Are those the only county specific
25 implementing procedures for ingestion pathway responses

1 of which you are aware?

2 A (Axelrod) Those are the only ones of which I
3 am aware.

4 Q Doctor Axelrod, I will now ask that you be
5 handed a document, and don't lose those yet, we are not
6 finished. You might want to put this one on top.

7 A (Axelrod) In the middle or on the right or
8 left?

9 Q Doctor Axelrod, the document is a memorandum
10 from Anthony Germano that was previously marked as LILCO
11 Exhibit 5. It was admitted to the proceeding on Monday.
12 Doctor Axelrod, have you seen that document I'm
13 referring to, not only the cover memorandum, but the
14 attached guidance memorandum; have you ever seen that
15 document before?

16 A (Axelrod) No, I have not.

17 Q Doctor Axelrod, if you will turn to page two
18 of that document, there is a statement --

19 A (Axelrod) Page two or the first page?

20 Q Page two of the attached document, which is
21 entitled "Local Government Planning Guidelines for
22 Radiological Ingestion Exposure Pathway." There is a
23 statement there: "The material and operational data
24 contained within this document reflect the current
25 policies and criteria associated with the radiological

1 ingestion exposure pathway from the operating nuclear
2 plants located within, as well as bordering, the state.
3 Attachment 1 depicts operating nuclear power plants for
4 which this procedure has been developed." Have I read
5 that correctly?

6 A (Axelrod) Yes, sir.

7 Q Doctor Axelrod, you stated that you were not
8 aware of this document until it was just placed in front
9 of you; is that correct?

10 A (Axelrod) I have never seen the document. I
11 didn't say that I was not aware of it.

12 Q Were you aware of its existence?

13 A (Axelrod) I have been aware of a variety of
14 documents relating to exposure pathways but I have not
15 seen the documents.

16 Q This is one of a variety of documents?

17 A (Axelrod) A variety of procedures that have
18 been discussed at various times in terms of the state's
19 response and local response to radiological emergency
20 preparedness.

21 Q What are those procedures?

22 A (Axelrod) I'm sorry?

23 Q What are the procedures that you are referring
24 to?

25 A (Axelrod) They are those that are generally

1 identified within a radiological emergency preparedness
2 plan in the development of subsequent documents to
3 elaborate upon the plan itself.

4 Q What subsequent documents are there outside of
5 the plan itself?

6 A (Axelrod) I have no specific knowledge, but I
7 am aware of the fact that certain procedural information
8 has been provided at various points in time.

9 Q What form does this procedural information
10 take?

11 A (Axelrod) It obviously takes the form of this
12 material which you have provided me with, guidance
13 material that was prepared for local governments.

14 Q Doctor Axelrod, who prepares those materials?

15 A (Axelrod) They are prepared by SEMO in
16 collaboration with REPG.

17 Q Are there any other state agencies that
18 prepare such material?

19 A (Axelrod) I'm not aware of any.

20 Q Doctor Axelrod, please turn to page six of
21 this document and look at the bottom of the page. It
22 says: "For each of these potential ingestion exposure
23 pathways, appropriate state agencies have operational
24 response and recovery procedures which would be
25 implemented under the direction of the Chairman of the

1 DPC." Have I read that correctly?

2 A (Axelrod) Yes, sir.

3 Q Have you testified that you are not aware of
4 operational response and recovery procedures which would
5 be referred to there, other than the ones you described
6 earlier from the Department of Health?

7 A (Axelrod) I would be aware from the site
8 specific plans that there are a series of
9 responsibilities that are assigned to each of the
10 agencies in the course of response.

11 Q When you refer again to site specific plans,
12 you are talking about the county plans that are annexed
13 and made a part of the State Radiological Plan?

14 A (Axelrod) Those are the site specific plans,
15 they are not necessarily county plans in some instances.
16 They are site specific.

17 Q They are site specific and all of them are
18 included in the State Radiological Plan?

19 A (Axelrod) Yes.

20 Q Doctor Axelrod, for a moment put to one side
21 the document you have just been looking to. Let's go
22 back to the other three. Doctor Axelrod, please turn to
23 page four of the affidavit of General Papile, et al,
24 which is Exhibit 3. That is the document on your far
25 left. Turn to paragraph six. That document is also in

1 the record. Please take a moment to review it. It is
2 in paragraph number six, which carries forward from page
3 four and page five.

4 Doctor Axelrod, there is a statement in that
5 REPG affidavit to the effect that the state could not
6 adequately respond to a Shoreham emergency without a
7 detailed Shoreham specific off-site plan appended to the
8 state generic plan without the training of state and
9 local personnel concerning the specifics without the
10 development of internal agency procedures and without
11 the evaluation of state and local personnel during
12 exercises and drills.

13 Doctor Axelrod, the statements to which I am
14 referring also under that affidavit refer to both the
15 10-mile and 50-mile emergency planning zones.

16 MR. LANPHER: Excuse me, Mr. Sisk. Could you
17 point out where you are referring to? I was at the
18 bottom of page four and the top of page five in your
19 earlier reference.

20 MR. SISK: The 10-mile and 50-mile planning
21 zones is in the middle of page four.

22 BY MR. SISK:

23 Q Doctor Axelrod, I believe I have already asked
24 you to some degree whether you are familiar with state
25 agency procedures and your familiarity with county

1 implementing procedures, so I won't retrench that. Let
2 me ask you to turn to the document in the middle, which
3 is Exhibit 29, and turn to page 22, paragraph number 50,
4 that is LILCO's discovery request. That states:

5 "Identify all plans and procedures that New York State
6 has and would use, follow, or otherwise rely upon to
7 make an ingestion pathway and recovery and re-entry
8 response to radiological emergency at A) the Yankee-Rowe
9 Nuclear Power Plant, Massachusetts; B) the Millstone
10 Nuclear Power Plant, Connecticut; C) the Haddam Neck
11 Nuclear Power Plant, Connecticut; D) the Vermont Yankee
12 Nuclear Power Plant, Vermont; and E) the Oyster Creek
13 Nuclear Power Plant, New Jersey. Indicate which of the
14 plans and procedures are site specific, rather than
15 generic, please provide copies of all of the documents."

16 Doctor Axelrod, now please turn to the
17 document, which I hope is still on your right, which is
18 Exhibit 8, and turn to the response to item number 50,
19 which appears --

20 A (Axelrod) Do you have another copy? The
21 third sentence is not legible under 50, do you have
22 another copy?

23 Q I will try to quote it for you. It is on page
24 three.

25 A (Axelrod) Just the third sentence is not --

1 MR. LANPHER: Do you mean the third line?

2 THE WITNESS (Axelrod): The third line, right.

3 BY MR. SISK:

4 Q I will read it for you, if I can. It says:
5 "For sub-parts A through E, whatever plans and
6 procedures exist are contained within the New York State
7 Radiological Emergency Preparedness Plan for commercial
8 power plants 'New York State Plan', which speaks for
9 itself and needs no summarization. Although the New
10 York State Plan contains detailed county plans for each
11 plant located in New York State, except Shoreham, the
12 New York State Plan does not contain such detailed
13 county plans for out-of-state plants and, therefore, is
14 not site specific for the plants identified in sub-parts
15 A through E. The New York State Plan has already been
16 provided to LILCO."

17 Doctor Axelrod, I believe you stated that --
18 well, let me just ask you to be sure. Are you aware of
19 any state procedures which are designed for response to
20 those plants that were listed in the interrogatory and
21 as to which that response applied?

22 A (Axelrod) I am not aware of any other
23 information that would provide for site specific
24 response to the plants that are identified in the
25 interrogatory of March 24th.

1 Q That is a map, is it not?

2 A (Axelrod) Yes, it is.

3 Q Doctor Axelrod, I will vouch for the record
4 that that map is also contained in New York Radiological
5 Preparedness Response Plan.

6 Doctor Axelrod, if you will look at the map,
7 does this procedure apply to the Vermont Yankee plant?

8 A (Axelrod) I'm sorry, which procedure?

9 Q The procedure -- the guidance memorandum which
10 was described in that passage as this procedure, a
11 document that you are now referring to, to which
12 Attachment 1 is appended.

13 A (Axelrod) Yes.

14 Q Does that procedure apply to Yankee-Rowe?

15 A (Axelrod) Yes.

16 Q Does it apply to Millstone?

17 A (Axelrod) Yes.

18 Q Does it apply to Oyster Creek? Look down at
19 the bottom of the map, that may help you.

20 A (Axelrod) I don't see where Oyster Creek
21 intersects with New York State. It's on the map, but I
22 don't see where it intersects with New York State. I'm
23 not exactly sure, oh, I see, I see it. Okay, I see it,
24 yes.

25 Q I think it might be a little tip of Brooklyn.

1 A (Axelrod) I was just trying to identify where
2 it intersected it.

3 Q Doctor Axelrod, does the 50-mile emergency
4 planning zone on that map indicated by the dots for
5 Millstone, encompass all or part of Suffolk County?

6 A (Axelrod) It would appear to.

7 C I will vouch for the record that the
8 memorandum that we're referring to from Mr. Germano was
9 not produced to LILCO in discovery and was represented
10 by Mr. Zahnleuter, as being not responsive.

11 I will also at this point move admission of
12 the State's answers to the third -- I'm sorry, to
13 LILCO's second set of interrogatories, that's a document
14 identified as Exhibit 8, and in that fashion I'll be
15 able to move on from this line of questioning.

16 I apologize this is taking time, Judge
17 Gleason, but I do have a couple of, I believe --

18 JUDGE GLEASON: Are there any objections?
19 Hearing none, the document will be admitted.

20 MR. ZAHNLEUTER: Excuse me, I object. Judge
21 Gleason, I'm sorry. I object to the introduction of, I
22 think it's Discovery Exhibit 8; is that correct, Mr.
23 Sisk?

24 MR. SISK: That's correct.

25 MR. ZAHNLEUTER: I object to that, because,

1 again, the document has been used in no different way
2 than it has been used before, when it was denied
3 admission. There's nothing in Discovery Exhibit 8 that
4 is relevant to the non-production of plans, and there's
5 been no point made about that.

6 Also, I feel compelled to state that this
7 document, which is LILCO Exhibit 5, which Mr. Sisk has
8 just made a representation about, is not responsive to
9 any discovery request.

10 JUDGE GLEASON: Mr. Sisk, would you like to
11 respond to this relevancy argument?

12 MR. SISK: I'm sorry; relevancy argument?

13 JUDGE GLEASON: Yes.

14 MR. SISK: Judge Gleason, the reason that we
15 are moving its submission is that we believe we told
16 things in the course of the proceeding and in discovery
17 responses that were incorrect, and that were
18 demonstrably incorrect, based on documents in the
19 State's possession, we believe that goes squarely to the
20 point of this proceeding which relates to whether the
21 discovery processes have been complied with, whether
22 documents have been provided, whether responses have
23 been evasive.

24 MR. LANPHER: Judge Gleason --

25 MR. ZAHNLEUTER: I respond by asking what is

1 the incorrect statement? I think that ought to be shown
2 before there's any offer of admission and relevancy.

3 JUDGE GLEASON: Mr. Sisk?

4 MR. SISK: Judge Gleason, the interrogatory
5 requested all procedures, whether generic or
6 site-specific, relating to ingestion pathway response
7 for five listed plants. The witness has just testified
8 that document that was given to him and identified as
9 the memorandum from Mr. Germano, Exhibit 5, was a
10 procedure that the State had for responding in the
11 ingestion pathway to those five plants.

12 That document was not produced to us in
13 discovery. I believe that that demonstrates the
14 discovery was not complied with as to that document.

15 I also believe there are other inconsistencies
16 between the affidavit of Mr. Papile, and the State's
17 responses to interrogatories, which would take probably
18 another couple of hours to explore, if the Board would
19 like for us to do that.

20 The documents will, however, speak for
21 themselves. They were both signed by General Papile.
22 Doctor Axelrod stated he would expect an official
23 working for him to testify and verify things truthfully
24 when speaking on emergency planning matters, and to that
25 degree I believe that the document should be admitted in

1 its entirety.

2 MR. ZAHNLEUTER: Judge Gleason, I've become
3 confused, because I thought the offer related to
4 Discovery Exhibit 8, and that is, written responses by
5 the State of New York to interrogatories.

6 MR. SISK: That is correct.

7 MR. ZAHNLEUTER: That has nothing to do with
8 document production, and if the basis for the offer is
9 that Mr. Sisk believes that document should have been
10 produced and wasn't, then that is a separate question
11 from whether or not Discovery Exhibit 8 should be
12 admitted, because Discovery Exhibit 8 is written
13 response to an interrogatory. It's not a document
14 production.

15 MR. SISK: Judge, now I think we are the heart
16 of the matter.

17 The scope of this proceeding, as LILCO has
18 understood it relates to whether the discovery processes
19 of the Commission and the Board have been complied with.
20 If there is evasive or erroneous information in an
21 interrogatory response in a deposition transcript, in a
22 piece of testimony or pleading, but particularly if it
23 is in a discovery response, whether it is written in the
24 form of an interrogatory, or testimonial in the form of
25 an exhibit -- a deposition, or in the form of a

1 document, we believe that's material to the course of
2 this proceeding. We believe that's squarely within
3 discovery.

4 MR. LANPHER: Judge Gleason, can I be heard
5 here just briefly?

6 JUDGE GLEASON: Yes.

7 MR. LANPHER: I think there's another reason
8 why the admission of this document is improper. It's
9 for the reason that you articulated yesterday, Judge
10 Gleason.

11 What LILCO's trying to portray here is that
12 General Papile, between his affidavit of February 10, or
13 whatever that date was, earlier this year, and his
14 verification of interrogatory answers in June, 1988, has
15 made inconsistent statements.

16 The reason that the documents were not
17 admitted before, I believe, and I know we argued it, was
18 because General Papile had not had a chance to explain
19 the consistency or alleged inconsistency of the
20 documents. LILCO had him here to testify, and they
21 didn't ask him the right questions, for whatever reason.
22 For that reason, you denied admission before.

23 LILCO is now saying, General Papile has made
24 inconsistent statements. Well, it's improper to try to
25 get that evidence in through Doctor Axelrod, who has

1 never seen these documents before.

2 JUDGE GLEASON: I don't think that's improper
3 at all, as long as there is some identification of the
4 information contained within those statements.

5 Look, I really don't want to take any more
6 time on this. We're going to admit the document. You
7 can either prove or disprove your point when we get
8 around to the --

9 MR. LANPHER: Judge Gleason, am I correct,
10 you're only going to admit Discovery Exhibit 8, insofar
11 as Interrogatory 50 is concerned? I think it would be
12 highly improper to introduce the entire document.

13 JUDGE GLEASON: Your request was for the
14 entire document, if I understood.

15 MR. SISK: Judge Gleason, it was, and I am
16 prepared to go on with that document, but I've been told
17 I have run out of time.

18 JUDGE GLEASON: We cannot have that. We are
19 going to admit the entire document at this time. The
20 statements of consistency or inconsistency, as they bear
21 on the issue before this Board, will be borne out by our
22 review of the process. Let's proceed.

23 (The document marked
24 previously for identification
25 as Discovery Exhibit 8 was

1 received into evidence.)

2 BY MR. SISK:

3 Q Doctor Axelrod, has the --

4 JUDGE GLEASON: How much more time do you
5 have, Mr. Sisk?

6 MR. SISK: I think approximately 10 minutes,
7 Judge Gleason.

8 JUDGE GLEASON: All right.

9 BY MR. SISK:

10 Q Doctor Axelrod, in your testimony which was
11 previously marked, and I believe that is Exhibit 34, you
12 stated in essence that in the absence of a site-specific
13 plan for Shoreham, you were unable to speculate as to
14 what resources might be available to respond to such
15 accidents. Is that a fair characterization?

16 A (Axelrod) To what point are you referring?
17 Can you identify it?

18 Q I will refer specifically to page 4 of your
19 pre-file -- Let me first ask you to refer first to page
20 2 in your pre-file testimony.

21 JUDGE GLEASON: Would you bear with us a
22 minute until we get some documents?

23 MR. SISK: It's Exhibit 34, dated April 13,
24 1988, in the upper left hand corner, direct testimony of
25 David Axelrod on behalf of the State of New York.

1 BY MR. SISK:

2 Q Doctor Axelrod, there you state that the State
3 does not have a site-specific plan for responding to a
4 Shoreham accident.

5 A (Axelrod) That's correct.

6 Q On page 4 of the testimony, there's a
7 statement that you cannot speculate what specific
8 actions the State would take, when they would be taking
9 them, or what resources might be available; is that
10 correct?

11 A (Axelrod) That's correct.

12 Q Doctor Axelrod, is the reason that you could
13 not speculate as to what resources might be available,
14 the fact, as you have testified, that there is no
15 Shoreham-specific plan in the State of New York?

16 MR. LANPHER: I object; this has been asked
17 and answered, Judge.

18 JUDGE GLEASON: Let him answer it again,
19 please. Objection denied.

20 BY MR. SISK:

21 Q Is that correct?

22 A (Axelrod) I have made it clear that we would
23 not know without a site-specific identification of the
24 nature of the response, the time, location, et cetera,
25 that we would be in a position to make any resource

1 available to deal with any emergency response.

2 Q That is because there is no site-specific plan
3 at this stage; is that correct? Is that your position?

4 A (Axelrod) There is no site-specific
5 identification of the procedures to be followed in any
6 specific set of circumstances.

7 Q Doctor Axelrod, why is that there is no
8 site-specific plan for Shoreham?

9 MR. LANPHER: I object to the question. This
10 is far outside the scope of this proceeding.

11 MR. SISK: I will tie it up.

12 JUDGE GLEASON: Let him tie it up later.
13 Objection denied. Answer the question, please.

14 THE WITNESS (Axelrod): The determination has
15 been made that no plan can be made for the Shoreham
16 operating facility.

17 BY MR. SISK:

18 Q Doctor Axelrod, when was that determination
19 made?

20 A (Axelrod) By whom?

21 Q That's what I'd like to know. Was any such
22 determination ever made by the Disaster Preparedness
23 Commission?

24 A (Axelrod) I read into the record in testimony
25 which was provided to me by Counsel, a letter in early

1 of 1983, which identifies the determination that a plan
2 could not provided based upon expert information
3 provided to the Governor and by Suffolk County.

4 Q Was that the statement that you made to the
5 Disaster Preparedness Commission in March of 1983?

6 A (Axelrod) yes.

7 Q Doctor Axelrod, let me ask you to turn to your
8 deposition transcript, which I believe is Exhibit 36.
9 It's one of the thicker things, yes. That is Exhibit
10 36, and it's dated April 22, I believe, 1988.

11 Can you turn to page 30? There's a question
12 beginning at line 5, "Who determined that no plan is
13 possible?" You repeat the question back to me. Then
14 your answer is, "The Disaster Preparedness Commission
15 made that determination after an evaluation of the
16 information it that it had obtained through the --
17 offered through the member agencies of the Disaster
18 Preparedness Commission, as well as from materials
19 submitted by the counties which would be responsible for
20 the implementation of any plan."

21 Question: "When was that determination made?"

22 Answer: "That has been a continuous
23 evaluation for those determinations."

24 There has been a process of making the
25 determinations -- You state, quote: "It has been made

1 over a period of some five years."

2 Question: "Is there any specific DPC order or
3 decision reflecting that result?"

4 The answer is: "I don't recall any specific
5 order reflecting that, but I believe there's a statement
6 to the Governor at some point in time, that the plan is
7 a non-plan and, therefore, would not be submitted for
8 either his approval or submission to the Federal
9 Government."

10 There are then some following questions in
11 turn at the bottom of page 31: "Will you tell me --
12 well, will you tell me, was there any proceeding?"

13 Answer: "There was a proceeding in which the
14 Disaster Preparedness Commission did evaluate a plan in
15 which the DPC made a determination based on
16 recommendations from staff as to whether or not a plan
17 existed for the Shoreham plant."

18 Question: "Can you describe that proceeding
19 for me?"

20 Answer: "My best recollection is that it was
21 meeting of the Disaster Preparedness Commission."

22 Question: "Do you recall when that occurred?"

23 Answer: "No, I do not."

24 Question: "Is there any record of that
25 meeting?"

1 Answer: "There are records of all the
2 Disaster Preparedness Commission meetings. There are
3 minutes that are kept."

4 At the time, you were unable to recall the
5 date.

6 Doctor Axelrod, I will now ask that you be
7 handed a document that will be marked for identification
8 as LILCO Exhibit 37.

9 JUDGE GLEASON: The material will be
10 designated LILCO Discovery Exhibit Number 37.

11 (The document referred to was
12 marked for identification as
13 LILCO Exhibit 37.)

14 BY MR. SISK:

15 Q Doctor Axelrod, it is entitled, "The
16 Stenographic Record, New York State Disaster
17 Preparedness Commission, in the Matter of a Meeting of
18 the New York State Disaster Preparedness Commission
19 Proceedings, March 2, 1983."

20 Specifically, attached to that, and I'll vouch
21 this is precisely in the form in which it was produced
22 to us by Counsel for the State of New York, are pages 58
23 through 67 of that transcript.

24 Doctor Axelrod, is that the meeting and the
25 determination to which you were referring in the

1 deposition?

2 A (Axelrod) Yes.

3 Q Doctor Axelrod, does this constitute the
4 entirety of the DPC's deliberations and decisions, the
5 determination as you described it on this matter?

6 A (Axelrod) That is the transcript -- this is
7 all there is in the transcript -- this would be the
8 entire record of what the -- discussion at that point in
9 time.

10 Q Doctor Axelrod, this consists entirely of
11 statements either made or read by you, and specifically
12 you read a statement from Governor Cuomo, and a
13 statement from then County Executive -- Suffolk County
14 Executive; is that correct?

15 A (Axelrod) That's correct.

16 Q Doctor Axelrod, the conclusion on page 67, is
17 there was no response followed by your statement that, I
18 think summarizes the status: "We will meet and provide
19 opportunity for the Commission to meet with Suffolk
20 County if that appears to be appropriate, and we will
21 proceed from there." Then you turn to other items. Is
22 that correct?

23 I'm just asking you to vouch for what the
24 document says.

25 A (Axelrod) Yes.

1 Doctor Axelrod, turn to page 2 of that
2 affidavit, paragraph 5. Well, let me ask you to turn to
3 the last page, page 3. Is that your signature?

4 A (Axelrod) Yes, it is.

5 Q That is dated February 27, 1984; is that
6 correct?

7 A (Axelrod) Yes.

8 Q Doctor Axelrod, turn to paragraph 5 on page 2.
9 I'll ask you to review the entirety of that
10 paragraph and it specifically states, first sentence:
11 "I, personally, have reviewed all the documents which
12 have been withheld from LILCO."

13 There's been a description of where they are
14 listed, and then, "These documents are being withheld
15 from discovery at my direction, because they consist of
16 communications between members of the REPG, and other
17 members of the DFC staff. Although communications
18 contains some facts vastly interwoven with opinions,
19 recommendations, and deliberations pertaining to
20 decisions made during the process, of internally
21 assessing Shoreham, and the DPC's proposed rules and
22 regulations."

23 And I'm continuing to quote, Doctor Axelrod, I
24 call your particular attention to the last sentence,
25 "Indeed, the DPC itself has never even convened a

1 meeting for the purpose of discussing the work of the
2 DPC staff pertaining to Shoreham."

3 Have I read that correctly?

4 A (Axelrod) Yes.

5 Q Is that statement correct, Doctor Axelrod?

6 A (Axelrod) Yes.

7 Q I have just one final line of questioning.

8 Doctor Axelrod, in your position as Chairman
9 of the DPC, can you speak authoritatively on behalf of
10 the State on the matters in issue in this proceeding?

11 MR. LANPHER: Excuse me, Judge, could I have
12 the question repeated?

13 BY MR. SISK:

14 Q Doctor Axelrod, as chairman of the Disaster
15 Preparedness Commission, can you speak authoritatively
16 on the behalf of the State in matters and issues in this
17 proceeding?

18 MR. LANPHER: I object to the question. I
19 don't -- it's vague. What do you mean, the matters and
20 issues in this proceeding?

21 MR. ZAHNLEUTER: We've been discussing the
22 matters at issue in this proceeding for a long time. I
23 object to.

24 JUDGE GLEASON: Do you understand the
25 question, Doctor Axelrod?

1 THE WITNESS (Axelrod): No, I do not.

2 JUDGE GLEASON: Restate it.

3 MR. SISK: Let me make a proffer, and that is,
4 in a letter dated April 15, 1988, directed to the Board,
5 it was written by Kirkpatrick & Lockhart, and it was
6 signed by Mr. Lanpher. It is directed to the Judges on
7 the Board, and was telecopied to the Board on or about
8 April 15, 1988, in opposition to discovery in this
9 proceeding.

10 It was shortly after Doctor Axelrod's
11 testimony had been proffered to the Board.

12 It states at the bottom of page 2, and I will
13 vouch for this, "First, the individuals who the
14 governments have designated as witness, have been so
15 designated because they are high-ranking county and
16 state officials who are able to speak knowledgeably,
17 authoritatively, and on behalf of the governments on the
18 matters at issue.

19 "Further, since the matter at issue here is
20 the intended actions of the governments, the governments
21 are entitled to designate the persons to appear and
22 speak on their behalf in a legal proceeding such as
23 this, and this Board must respect that right."

24 There's then a footnote that cites to the
25 Federal Rules of Civil Procedure and the NRC rules.

1 That is my proffer.

2 BY MR. SISK

3 Q Based on that proffer or independently, Doctor
4 Axelrod, are you able to speak authoritatively on behalf
5 of the State of New York, on the matters and issue in
6 this proceeding?

7 MR. LANPHER: I object, Judge Gleason, because
8 the matters at issue in this hearing, you've explicitly
9 said, are not the realism issues, and that letter which
10 I signed was going specifically to the best efforts
11 realism issues, as they were pending on April 15, 1988.

12 So, that statement has absolutely no relevance
13 to the issues that you've now convened this hearing for.

14 JUDGE GLEASON: I don't know whether it does
15 or not. Again, let's --

16 MR. LANPHER: Well, he made a proffer and it's
17 clear that the letter, Judge Gleason, that I wrote back
18 then, was dealing with different issues than you are
19 dealing with here.

20 JUDGE GLEASON: I understand that. But I
21 don't know what his question is dealing with, so let's
22 go on with the question and the answer --

23 MR. LANPHER: Then I object to the question
24 unless he defines the issues in the terms of this
25 proceeding.

1 JUDGE GLEASON: The objection is denied.
2 Please respond to the question.

3 THE WITNESS (Axelrod): I am authorized to
4 speak only on those issues in which I have been given
5 the authority by the Governor to address those specific
6 issues as they relate to my role as Chairman of the
7 Disaster Preparedness Commission in carrying out the
8 responsibilities of Article 2-E, and as they relate to
9 my testimony of April 13th, I was authorized and
10 directed by the Governor to present testimony to address
11 a hypothetical situation.

12 BY MR. SISK:

13 Q That hypothetical situation was the operation
14 of Shoreham; right?

15 A (Axelrod) The specific question, I believe
16 that is contained in my testimony, is what action would
17 New York State take if the NRC were to license Shoreham
18 to operate at levels above five percent power, and there
19 were a serious accident at the plant that required
20 off-site emergency response.

21 Q Okay, Doctor Axelrod, yes, that part has been
22 admitted.

23 Doctor Axelrod, have you stated in your
24 testimony, and in the portions of the deposition which
25 have been read, that there is no state plan for Shoreham

1 because the State has determined that emergency planning
2 is impossible for Shoreham?

3 A (Axelrod) Yes.

4 Q Doctor Axelrod, isn't it true that it is the
5 State's policy to prevent the possibility of effective
6 emergency planning for Shoreham.

7 MR. LANPHER: I object to the question as
8 totally irrelevant.

9 JUDGE [REDACTED]: The objection is denied. Let
10 him respond to the question. I'm not --

11 THE WITNESS (Axelrod): Could you repeat the
12 question? I'm not sure I --

13 BY MR. SISK:

14 Q Isn't it true that it is the State's policy to
15 prevent the possibility of effective emergency planning
16 for Shoreham?

17 A (Axelrod) No, the State's policy has been
18 that the circumstances surrounding the plant at Shoreham
19 make it impossible to develop a plan which would provide
20 for the assurances that the State of New York feels are
21 necessary for the people of the State of New York to
22 protect their welfare.

23 Q Doctor Axelrod, is it true that the State has
24 disconnected radiological emergency communications
25 system-wise between Shoreham and the State?

1 MR. LANPHER: Judge Gleason, I object.

2 JUDGE GLEASON: I don't know where it's going,
3 so please --

4 MR. LANPHER: Judge Gleason, it's time that we
5 get some proffers before we go on these wild goose
6 chases. I don't think your rulings are proper, with all
7 respect.

8 JUDGE GLEASON: Then, you can carry that
9 burden on an appeal some place, but right now, the
10 objection is denied. Please respond to the question,
11 and you're using up a lot of time with your objections.

12 MR. LANPHER: I have to protect my client's
13 rights.

14 JUDGE GLEASON: You're making the objections,
15 and consuming a lot of time, and you're getting the same
16 answers, which I think are consistent. So, let's
17 proceed.

18 BY MR. SISK:

19 Q Doctor Axelrod, isn't it true that the State
20 disconnected radiological emergency communication
21 system-wise for so-called RECS lines between Shoreham
22 and state offices in Albany?

23 A (Axelrod) Yes.

24 Q Do you know when those lines were
25 disconnected?

1 A (Axelrod) No, I do not.

2 Q Do you know why?

3 A (Axelrod) The determination was made that the
4 -- certain ill-effective purposes, there was no
5 possibility of utilizing that information to implement
6 any plans since no plan existed.

7 Q Doctor Axelrod, weren't those lines
8 disconnected on the advice of Counsel, in this
9 litigation?

10 MR. LANPHER: I object. He already testified.

11 JUDGE GLEASON: Let him answer the question.
12 Objection denied.

13 MR. LANPHER: I objected -- if the answer is
14 yes, then we're very close to attorney work product and
15 attorney-client privilege questions. That's a serious
16 question, and I would ask for a few seconds to
17 contemplate my response.

18 I object to any question which asks about
19 advice of Counsel.

20 JUDGE GLEASON: Objection is denied. Respond
21 to the question, please.

22 THE WITNESS (Axelrod): I have no specific
23 recollection as to the conditions under which the lines
24 were disconnected.

25 BY MR. SISK:

1 Q Doctor Axelrod, are you familiar with an
2 affidavit filed by James D. Papile in this proceeding,
3 which discusses disconnection of the RECS lines?

4 A (Axelrod) No, I'm not.

5 MR. SISK: To save time, I will not go on with
6 that.

7 JUDGE GLEASON: Mr. Sisk, how much more do you
8 have to do?

9 MR. SISK: About five minutes, at most.

10 BY MR. SISK:

11 Q Doctor Axelrod, I'm now going to ask that you
12 be handed a document entitled, "Government's Answers and
13 Additional Objections to LILCO's second set of
14 interrogatories." This is dated April 22, 1988.

15 I'll ask that that be marked LILCO Discovery
16 Exhibit 39.

17 JUDGE GLEASON: So designated.

18 (The document referred to was
19 marked for identification as
20 LILCO Exhibit Number 39.)

21 BY MR. SISK:

22 Q Doctor Axelrod, I'll ask you to direct your
23 attention to the bottom of page 3, LILCO Interrogatory
24 Number 11.

25 It states, "To the extent not already provided

1 in your response to Interrogatory Number 10, please
2 answer the following questions with respect to the RECS
3 lines in state offices.

4 A. What is required to make the existing
5 Shoreham RECS lines to the State operational and capable
6 of functioning?"

7 There's been a reference to the affidavit of
8 James Papile, of May 11, 1987, at 3, paragraph 4, that
9 is a matter of record already in this proceeding, Doctor
10 Axelrod.

11 It continues:

12 "B. If Shoreham were to operate at 100
13 percent power, would the State permit the RECS lines to
14 be operational?"

15 "C. Precisely how far is the nearest RECS
16 line drop in each of the following offices: REPG in
17 Albany, the State Police Communications Center in
18 Albany, the State EOC in Albany, the SEMO District
19 Office in Poughkeepsie?"

20 "D. Will the State permit LILCO, at LILCO's
21 expense, to relocate the RECS lines to each of the above
22 four locations?"

23 "E. Will the State permit LILCO, at LILCO's
24 expense, to relocate the RECS lines to each of the above
25 four locations, if Shoreham were licensed to operate at

1 100 percent power?"

2 There's been an answer, Doctor Axelrod, and
3 part A discusses where the lines were located, and what
4 would be needed to make them operational.

5 The next part, B, D, and E, states, "The State
6 objects to these interrogatories on the ground that they
7 call for speculation. Notwithstanding this objection,
8 the State answers that, for the reasons set forth in the
9 April 13 objection and offer of proof, the State has not
10 adopted any plan for Shoreham, and will not cooperate
11 with LILCO in developing or implementing any emergency
12 plan or response. Beyond these facts, the State is
13 unable to provide any further information. The County
14 is unable to respond to these interrogatories, which are
15 directed to the State."

16 Now, Doctor Axelrod, did there come a time in
17 1984 when a Mr. John Leonard of LILCO wrote a letter to
18 you requesting that the RECS line between the Shoreham
19 plant and the State be reconnected?

20 MR. LANPHER: I object, Judge Gleason. This
21 is supposedly a proceeding concerning whether the
22 discovery processes have been complied with. Whether
23 Mr. Leonard wrote a letter in 1984 to Doctor Axelrod has
24 nothing to do with this proceeding.

25 JUDGE GLEASON: Once again, we're not sure --

1 I'm not sure whether it does or not. Objection is
2 denied. Please proceed. Answer the question.

3 THE WITNESS (Axelrod): I have no recollection
4 of receiving such a letter.

5 BY MR. SISK:

6 Q I'll ask that you be handed a document that is
7 entitled, "A Letter to Long Island Lighting Company,
8 dated December 21, 1984, addressed to Doctor David
9 Axelrod, Chairman of the Disaster Preparedness
10 Commission." It is signed and sent by John D. Leonard,
11 Vice President, Nuclear Operations, Long Island Lighting
12 Company."

13 I asked that that be marked LILCO Exhibit 39 -
14 - I'm sorry -- 40.

15 JUDGE GLEASON: It will be so designated.

16 (The document referred to was
17 marked for identification as
18 LILCO Exhibit 40.)

19 BY MR. SISK:

20 Q Doctor Axelrod, does that refresh your
21 recollection at all?

22 A (Axelrod) Yes, it does.

23 Q Doctor Axelrod, isn't it a fact that in
24 response to this letter, you recommended that the RECS
25 lines be reconnected to the Shoreham facility?

1 A (Axelrod) I have no recollection of such a
2 recommendation.

3 Q Do you know whether you made such a
4 recommendation?

5 A (Axelrod) I don't have any recollection of
6 that kind of a recommendation.

7 Q Doctor Axelrod, I will now ask that you be
8 handed a document, which I will ask to be marked as
9 LILCO Exhibit 41.

10 I will vouch for the record this was obtained
11 by LILCO outside the discovery process.

12 JUDGE GLEASON: It will be so designated as LILCO
13 Exhibit Number 41.

14 (The document referred to was
15 marked for identification as
16 LILCO Exhibit Number 41.)

17 BY MR. SISK:

18 Q Doctor Axelrod, do you recognize that
19 memorandum?

20 A (Axelrod) I do.

21 Q Is that your signature?

22 A (Axelrod) Yes, it is.

23 Q Did you author it?

24 A (Axelrod) In all probability.

25 MR. SISK: I will move the admission of that

1 document.

2 JUDGE GLEASON: Is there an objection? If
3 not, the document --

4 MR. LANPHER: Yes, I object.

5 MR. ZAHNLEUTER: I haven't had a chance to
6 even read this letter. May I have a second to read it,
7 please?

8 MR. LANPHER: I will object for the reasons
9 previously stated, that these are matters that do not
10 pertain whatsoever to the issues in this proceeding, and
11 we consider it a deprivation of due process for the
12 Board to continually allow interrogation on issues which
13 outside the scope and the noticed issues.

14 MR. ZAHNLEUTER: I will cite the same
15 objection.

16 JUDGE GLEASON: Objection denied. The letter
17 will be admitted into the record.

18 (The document referred to,
19 having been previously marked
20 for identification as LILCO
21 Exhibit 41, was admitted in
22 evidence.)

23 MR. SISK: I have only one further line of
24 questioning, Doctor Axelrod.

25 MR. LANPHER: Judge, I object. This is about

1 the third time he's had one further line.

2 MR. SISK: I'll limit it to one question.

3 BY MR. SISK:

4 Q Doctor Axelrod, are you aware that Doctor
5 Kareem Rimawi works in the Department of Health, and who
6 you described earlier, is a recipient of the 1987
7 Brookhaven National Laboratory Emergency Response Plan
8 and that he received a copy of that plan from the
9 Department of Energy?

10 A (Axelrod) I'm not aware that he received that
11 plan, no.

12 MR. SISK: I will vouch that that plan was
13 also not produced to LILCO's discovery.

14 That's all I have.

15 JUDGE GLEASON: All right. Does the staff
16 have any questions?

17 MS. YOUNG: Could we have a few moments.

18 I misunderstood. Did this last exhibit get
19 admitted?

20 MR. SISK: Yes, it did.

21 MR. ZAHNLEUTER: Judge Gleason, during this
22 lull, I would like to make a motion to strike two lines
23 of questions that Mr. Sisk developed.

24 One line started with a question involving why
25 there is no State plan for Shoreham. Mr. Sisk promised

1 that he would tie it up.

2 Another line involved whether or not the
3 State's policy to prevent effective planning for
4 Shoreham, and he promised that he would tie it up.

5 I've seen the testimony that's been developed
6 as a result of each one of those lines of questioning.
7 None of that testimony relates to any discovery request,
8 discovery response, document production, or anything.

9 I believe on those grounds that he has failed
10 to tie it up, and I move to strike that testimony.

11 JUDGE GLEASON: I'm not going to grant that
12 motion this time. This record is to disperse, so we
13 just can't make a judgment based on that. So, I'll just
14 have to deny it until we check the complete record.

15

16

REPORTER'S CERTIFICATE

DOCKET NUMBER: 50-322-OL-3

CASE TITLE: Long Island Lighting Company

HEARING DATE: July 14, 1988

LOCATION: Bethesda, Maryland

I hereby certify that the proceedings and evidence herein are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Nuclear Regulatory Commission, Atomic Safety and Licensing Board, Judge James Gleason, and that this is a true and correct transcript of the same.

Date: July 14, 1988



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