

ORIGINAL

UNITED STATES NUCLEAR REGULATORY COMMISSION

In the Matter of:

LONG ISLAND LIGHTING COMPANY)	
(SHOREHAM NUCLEAR POWER STATION,)	No. 50-322-OL-3
UNIT 1))	
)	

(PARTIAL TRANSCRIPT)

Pages: 21721 through 21829

Place: Bethesda, Maryland

Date: July 14, 1988

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

4 In the Matter of:)

5 LONG ISLAND LIGHTING COMPANY)

6 (Shoreham Nuclear Power)
7 Station, Unit 1))

) Docket No.
) 50-322-OL-3
) (Emergency Planning)

8 Thursday,
9 July 14, 1988

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

13 The above-entitled matter came on for hearing at
14 9:30 a.m.

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

16 For the Board:

17 JUDGE JERRY KLINE
18 JUDGE FRED SHON

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

20 On behalf of Applicants:

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(Continued on next page.)

1
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C O N T E N T S

VOIR

RE CROSS DIREWITNESSES:DIRECTCROSSREDIRECT

Norman Kelly (By Spivey)	21544			
(By Letsche)		21559		
(By Young)		21588		
(By Cumming)		21596		
David Axelrod (By Zahnleuter)	21603			
(Sisk)		21624		
Anthony J. Geramo (By Mr. Zahnleuter)	21729			
(By Mr. Sisk)		21735		

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
FEMA Discovery exhibit #1	21726		" A guide to Local government Planning"
No. 6	Prev.	21793	
LILCO Discovery exhibit # 42	21801		A Letter dated June 1, 1987 to the chairman of the Yates County legislature from Donald Devito. With pathway public awareness meeting agenda attached.
LILCO Discovery exhibit # 43	21807		Document entitled " Brookhaven National Laboratory Emergency Response Plan, revised July 1987.

1 JUDGE GLEASON: I'd like to get Dr. Axelrod out of
2 here in a reasonable period of time.

3 MS. YOUNG: As has been the practice of the
4 proceeding thus far, our questions are very short.

5 JUDGE GLEASON: We hope you continue that practice.

6 MS. YOUNG: Dr. Axelrod, could you just briefly
7 describe for us what the purpose is in the responsibilities
8 of --

9 MR. LANPHER: I object, irrelevant.

10 MR. ZAHNLEUTER: I object. I think this material
11 has been gone over so many times in this proceeding.

12 JUDGE GLEASON: I think it's pretty much in the
13 record.

14 MS. YOUNG: Okay, I'll withdraw that question.

15 BY MS. YOUNG:

16 Q Dr. Axelrod, have you ever been personally asked to
17 produce any documents in response to discovery requests made
18 by LILCO?

19 A Yes.

20 Q What documents were you asked to produce?

21 A Counsel has been responsible for all such requests
22 relating to various interrogatories and various requests.

23 Q Have you ever personally been asked to produce
24 documents?

25 A Personally, no.

1 Q Has your counsel ever asked you produce any
2 documents in response to LILCO discovery requests?

3 A Yes.

4 Q What did you produce?

5 A I have no idea. My records would have been gone
6 through, all the files would have been gone through, and all
7 the documents would have been produced for counsel.

8 Q Did you do that personally or did you delegate that
9 to someone on your staff?

10 A I did not do it personally.

11 Q Who on your staff made the search for document/
12 after receipt of request from your counsel?

13 A My executive assistant.

14 Q Who would that be?

15 A Ms. Martha Harvey.

16 Q Was a list of the documents that she found ever
17 compiled?

18 A No.

19 Q When they were turned over to Counsel for the State
20 of New York?

21 A I know of no such list.

22 Q Did you review the documents she found before
23 turning them over to Counsel for the State of New York?

24 A I did not.

25 Q Have you ever been asked to read or provide answers

1 to written interrogatories by LILCO?

2 A I have no recollection of written interrogatories by
3 LILCO.

4 Q Are you familiar with the term interrogatories?

5 A Yes.

6 Q Have you ever been asked to review answers to
7 written interrogatories? In other words, written answers
8 prepared

9 A I have no recollection of having been asked to
10 review specific interrogatories.

11 Q I'm having a little difficulty hearing you. Could
12 you speak up?

13 In reviewing Article 2B with Mr. Sisk, you mentioned
14 that states voluntarily or at their own initiative prepare --

15 A Counties.

16 Q Counties. I'm sorry. Counties disaster preparedness
17 plans. Is that correct?

18 A The statute makes it clear. I can identify the
19 specific portion of the statute. It's number 23, page 28,
20 which reads, "Each county except those contained within the
21 city of New York and each city is authorized to prepare
22 disaster preparedness plans."

23 Q If you can just answer yes or no this will go just a
24 little bit quicker. Then explain your answer after that if
25 you think it's necessary.

1 Would your answer to that question be yes, the
2 states are authorized at their own initiative --

3 MR. LANPHER: I object. He's answered the question.

4 JUDGE GLEASON: Let's proceed. He's answered the
5 question.

6 BY MS. YOUNG:

7 Q In those instances where a county does not prepare
8 such a plan, what does the state do?

9 A The state may urge that county to prepare such a
10 plan, but the state has no authority to compel.

11 Q Does the state ever do that planning on behalf of
12 the county itself?

13 A No.

14 Q I believe on page 28 of the exhibit that's been
15 marked for identification only, Exhibit #35, which is Article
16 2(b), and Section 23.6, there is a provision there requiring
17 that any disaster preparedness plans developed by local
18 governments or any revisions to those plans shall be submitted
19 to the Commission by December 31st of each year, is that
20 correct?

21 A That's correct.

22 Q To your knowledge has Suffolk County been submitting
23 revisions of their plans to the Disaster Preparedness
24 Commission?

25 A Not to my knowledge.

1 Q Are you aware of any agreement between the state of
2 New York and Suffolk County not to submit such revisions?

3 A No.

4 Q I'm going to show you a document that has been
5 marked Exhibit #19, and just see if you can identify it.

6 MS. YOUNG: For the record, the exhibit is entitled
7 "A Guide to Local Government Planning."

8 BY MS. YOUNG:

9 Q Have you seen that document before?

10 A I don't have a specific recollection of having seen
11 the document.

12 Q Do you have any idea of the timing of when it was
13 prepared?

14 A No I don't.

15 Q Do you know who in the Disaster Preparedness
16 Commission would know?

17 A This would have been prepared by the State Emergency
18 Management Office, and information concerning the date of its
19 preparation would be obtained from the State Emergency
20 Management Office.

21 Q Do you mean the State Emergency Management Office or
22 its predecessor?

23 A There is no predecessor. The State Emergency
24 Management Office had a previous director, but there is no
25 predecessor agency.

1 Q Thank you.

2 MS. YOUNG: No further questions.

3 MR. CUMMING: I have several brief questions, Judge
4 Gleason.

5 JUDGE GLEASON: Proceed, please.

6 MR. CUMMING: I want to mark this for
7 identification only.

8 JUDGE GLEASON: We'll mark this as FEMA Discovery
9 Exhibit #1.

10 (The document referred to was
11 marked for identification as
12 FEMA Discovery Exhibit #1.)

13 BY MR. CUMMING:

14 Q Dr. Axelrod, my name is William R. Cumming, and I am
15 counsel for the Federal Emergency Management Agency.

16 I just passed out a document which is annotated in
17 the upper right hand corner FEMA 9 May '88. It's a directory
18 of information of state officials involved with disaster
19 operations and emergency planning.

20 If you could turn to page 15 with respect to the
21 entry for New York State.

22 A Yes.

23 Q You have briefly described the relationships of the
24 DPC to SEMO and to REPIC. Could you explain the relationship
25 of the DPC, briefly explain the relationship of the DPC, SEMO,

1 and REPIC, if any, to the New York State Division of Military
2 and Naval Affairs?

3 A The State Emergency Management Office has been
4 housed in the facilities of the Division of Military and Naval
5 Affairs, and the Chief of Staff of the New York State Division
6 of Military and Naval Affairs is the person who is the
7 Deputy Director, I believe, of the State Emergency Management
8 Office. Because of the relationship to original civil defense
9 planning there has remained a strong coordination between
10 state emergency management activities and the Division of
11 Military and Naval Affairs.

12 Q Is there any independent development, review, or
13 technical assistance by the New York State Division of
14 Military and Naval Affairs to other state agencies or to local
15 governments on emergency operations plans, disaster
16 preparedness plans?

17 A No.

18 Q With respect to your personal knowledge, Dr.
19 Axelrod, are you aware of any studies or documentations that
20 have been prepared by the DPC, SEMO, or REPIC which have
21 their purpose demonstrating that emergency planning is not
22 possible at Shoreham?

23 A The question was, you lost me in your question.

24 Q To the extent that you have personal knowledge, are
25 you aware of any studies or analyses of the DPC, SEMO, or

1 REPIC which demonstrate that emergency planning is not
2 possible at Shoreham?

3 MR. LANPHER: Object, irrelevant.

4 JUDGE GLEASON: Objection is denied.

5 THE WITNESS: I'm not aware of any specific studies
6 other than those which have been referred to in previous
7 testimony.

8 MR. CUMMING: I have no further questions.

9 MR. LANPHER: No questions.

10 MR. ZAHNLEUTER: No questions.

11 JUDGE GLEASON: Thank you, Dr. Axelrod

12 We will take a recess. We'll be back at 3:00
13 o'clock.

14 (Whereupon, a brief recess was taken.)

15 JUDGE GLEASON: On the record at 3:09 p.m.

16 Is Mr. Geramo here?

17 MR. GERAMO: Yes.

18 Whereupon,

19 ANTHONY J. GERAMO

20 having been previously duly sworn, was called as a witness
21 herein, and was examined and testified as follows:

22 JUDGE GLEASON: Do you wish to make some opening
23 remarks, counselor?

24 MR. ZAHNLEUTER: Yes, Judge Gleason.

1 DIRECT EXAMINATION

2 BY MR. ZAHNLEUTER:

3 Q Would you please state your name and current
4 position with the state of New York?5 A My name is Anthony J. Geramo, and I am the Chief of
6 Staff of the State Emergency Management Office.

7 Q How long have you held that position?

8 A Since the fall of 1985.

9 Q What position did you hold prior to that?

10 A I held a number of positions with the State
11 Emergency Management Office. Before that time I was the
12 Radiological Emergency Preparedness Coordinator for the State
13 Emergency Management Office, and prior to that time I held a
14 number of positions in the Technical Resources Section.15 Q Did there come a time when you attempted to search
16 for documents in connection with the Shoreham litigation?

17 A Yes I did.

18 Q What prompted you to conduct that search?

19 A Essentially it was a number of different vehicles
20 from you as counsel for the state, both verbal, I can recall
21 at least one memorandum, as well as numerous personal visits.
22 At that time based on your request we did provide an extensive
23 search of our files for documents.

24 Q What kind of documents were you asked to search for?

25 A Essentially we were asked to look for documents that

1 from the emergency management perspective may affect Suffolk
2 County. In our search we did produce a number of documents
3 that were more or less guidance documents that were prepared
4 by our office under the auspices of the Disaster Preparedness
5 Commission, and they were turned over to you.

6 Q Did you personally conduct a search for the Suffolk
7 County Emergency Operations Plan?

8 A No I did not.

9 Q Do you know who did?

10 A Yes, Don DeVito did. But I might add that I did
11 coordinate on behalf of Mr. DeVito the search for the other
12 documents that you did request.

13 Q Did you produce those documents to me?

14 A Yes we did.

15 Q I'd like to show you a document now which has been
16 marked as LILCO's Discovery Exhibit #5, and ask you to
17 identify it.

18 A Yes, I can identify this document as one that was
19 prepared under the auspices of the DPC by our office in
20 coordination with other state agencies.

21 Q Would you characterize that document as a state
22 plan or procedure?

23 A Absolutely not. The intent of the document, and I
24 think it's stated throughout the document, is it was intended
25 as a guidance document. At the time of its preparation we

1 were very much involved with an exercise for the Ginna Nuclear
2 Power Plant site as a radiological ingestion exposure pathway
3 exercise based on federal criteria and requirements. The
4 intent of preparing this document was to provide those 13
5 counties that approximate to the Ginna site, and only those 13
6 counties, with necessary generic information that hopefully
7 they could take the information that was provided and then
8 enhance their existing emergency operations plan. So it's not
9 a plan, it's a guidance document.

10 Q Would you characterize LILCO's Discovery Exhibit #5
11 as a county plan or procedure?

12 A Again, absolutely not. As I said, the material
13 contained within and the references indicate in many locations
14 that the guidance material contained in this document should
15 be incorporated and expanded upon to meet the objectives of
16 the County Emergency Operation Plan.

17 Q I represent to you that on page 17 of a LILCO
18 pleading entitled "LILCO's Response to Intervenor's Motion to
19 Vacate" which is dated June 23, 1988, that LILCO states that
20 this Exhibit #5, "presumptively was intended for distribution
21 to all counties in a 50 mile EPZ."

22 What is your opinion with regard to that LILCO
23 statement?

24 A It was never intended for distribution state-wide.
25 It was intended to again provide those 13 counties that were

1 involved directly in the exercise with guidance information.
2 So it was never intended for state-wide distribution, nor was
3 it. This document was handed out at a meeting in early August
4 of last year with the 13 counties being represented at that
5 meeting and that was all of the distribution that was ever
6 done. It has never been reprinted, and as far as I'm
7 concerned it's still in draft form.

8 Q I represent to you that the same page of the same
9 LILCO pleading states that the exhibit, LILCO Discovery
10 Exhibit #5, "is generic." What is your opinion with regard to
11 that statement?

12 A I'd have to see what the connotation of generic is.
13 I think you can characterize this document as being generic in
14 that it provides generic guidance information. That's
15 information that currently exists in the state Radiological
16 Emergency Preparedness Plan and has so since the early '80s.
17 But in terms of being generic for any county to use, no.
18 That's certainly not the case. So generic information, yes.
19 But in terms of a county's requirement for planning, that's
20 really the Chief Executive of that jurisdiction's call and
21 responsibility. This information was intended to provide each
22 county with guidance material so they in turn could prepare
23 plans as appropriate and as deemed necessary to sustain an
24 operation in support of an incident at the Ginna nuclear power
25 plant.

1 Q Would you describe LILCO's Discovery Exhibit #5 as a
2 plan or procedure that New York state has and would use,
3 follow, or otherwise rely upon to make an ingestion pathway
4 and recovery and reentry response to a radiological emergency
5 at Yankee Rowe, Millstone, Hanamneck, Vermont Yankee, or the
6 Oyster Creek nuclear power plants?

7 A No, this document was never intended for that
8 purpose. The information necessary for state agencies in New
9 York State to provide a response is already contained in the
10 State Radiological Emergency Preparedness Plan. This does not
11 duplicate that information, nor is it a procedural document
12 for those agencies to operate in such an event.

13 If I could, I would like to say that in terms of
14 this being a plan, I think it's ludicrous to assume that. A
15 plan is obviously a coordinated and, in terms of a method of
16 solving a problem by applying resources. This document does
17 not do that. There are no resources identified. There are no
18 people, no phone numbers, there are no procedures per se for
19 county agencies or state agencies to carry out their
20 responsibilities. It has to be done in a coordinated fashion.
21 For a member of the State Emergency Management Office or a
22 representative of the DPC in concert with other state agencies
23 to develop that type of a document or this document isolated
24 in Albany certainly does not constitute a plan. That has to
25 be done at the local level. This document was intended solely

1 to provide guidance, to facilitate plan development at the
2 county level, and specifically those 13 counties.

3 MR. ZAHNLEUTER: Judge Gleason I vouch, as Mr. Sisk
4 has used the word currently today, that this document is not
5 responsive to LILCO's Discovery request, especially
6 interrogatory 50 which Mr. Sisk identified. With that, Mr.
7 Geramo is available for the Board's questions.

8 JUDGE GLEASON: Mr. Geramo, would you kindly cite
9 what was your prior work experience prior to going to work
10 with SEMO?

11 THE WITNESS: I worked in the private sector, Your
12 Honor.

13 JUDGE GLEASON: Could you elaborate a bit on that?

14 THE WITNESS: It had nothing to do with emergency
15 management. It was a sales position.

16 JUDGE GLEASON: I don't really have a lot of
17 questions. Any that I have I may pose at a later time. I'm
18 going to let counsel for the Applicant proceed. Let me ask
19 the general question, have you consulted with anybody
20 regarding the testimony that's been given in this proceeding
21 so far?

22 THE WITNESS: I'm sorry sir, I couldn't hear you.

23 JUDGE GLEASON: I say have you consulted with anyone
24 including attorneys regarding testimony that's been given at
25 this proceeding by any other witness so far?

1 THE WITNESS: No other witness, sir, but I did
2 consult with the state's attorney. That was just for
3 consultation. Mr. Zahnleuter.

4 JUDGE GLEASON: Regarding testimony in this
5 proceeding?

6 THE WITNESS: No sir.

7 JUDGE GLEASON: Who is going to proceed?

8 CROSS-EXAMINATION

9 BY MR. SISK:

10 Q Are you familiar with a document entitled the New
11 York State Disaster Preparedness Plan?

12 A Yes I am.

13 Q Is that document prepared and maintained by your
14 agency, the State Emergency Management Office?

15 A Yes it is.

16 Q Are you familiar with a document entitled the
17 "Suffolk County Emergency Operations Plan?"

18 A No I'm not.

19 Q Have you ever seen a document entitled the, I
20 believe I had it correct from Exhibits #9 and #10, "State of
21 New York, County of Suffolk, Emergency Operations Plan?"

22 A Not that I recall, no.

23 Q Can you describe for me your duties at the State
24 Emergency Management Office?

25 A Yes. As the Chief of Staff of the State Emergency

1 Management Office I'm responsible for the coordination of
2 section activities on behalf of the Director. I suppose that
3 means that in issuing his direction, his guidance, I ensure
4 that the policies and staff work are not only assigned but
5 also carried out. And in the event that information needs to
6 be provided to the Director, I ensure there is an
7 informational flow. There are a host of other activities I'm
8 also responsible for in that direct role.

9 Q What responsibilities do you have with respect to
10 planning for radiological emergencies at nuclear plants?

11 A I really have no responsibilities for planning
12 specifically for nuclear power plant. I maintain liaison with
13 the radiological emergency preparedness group in that regard,
14 and if there are needs to coordinate activities I will do so
15 with the radiological emergency preparedness group, but I have
16 no specific function as a planner in that regard.

17 Q You used the word liaison with the radiological
18 emergency preparedness group. Is that one of the functions
19 that you have as Chief of Staff?

20 A Essentially it's a function I carried with me when I
21 was in that capacity as the so-called REP coordinator for the
22 State Emergency Management Office. Those have diminished over
23 the last couple of years in terms of my liaison with the REP
24 group.

25 Q Will you tell me what you mean by your

1 responsibilities with the REP program?

2 A Sure. In terms of exercises that are scheduled,
3 conducted, and there is a need to coordinate SEMO staff
4 activities, in terms of briefing of staff and readying of the
5 state headquarters and other facilities, the management, day
6 to day management between REPIC and SEMO, and coordination
7 with other agencies as may be appropriate.

8 Q Are you the designated representative of the State
9 Emergency Management Office to receive on behalf of that
10 office a copy of the New York State Radiological Emergency
11 Preparedness Plan?

12 A I don't know how to answer that. I don't know if I
13 am or not. I do receive an update, but whether or not other
14 individuals on staff receive the updates, I couldn't tell you.

15 Q You do routinely in the course of your duties
16 receive updates of the New York State Radiological Emergency
17 Preparedness plan?

18 A Yes.

19 Q You don't know whether other members of your agency
20 do, is that correct?

21 A Whether they receive them direct or not, I couldn't
22 say. We do receive a supply and that supply is not only
23 provided to representatives on our staff but also other state
24 agencies as indicated in the plan itself.

25 Q Does that supply come, for your agency, does that

1 supply come to you and do you then distribute it to other
2 members of the staff?

3 A Yes.

4 Q Mr. Geramo, I'm going to ask that you be handed a
5 document that has been previously marked as LILCO Discovery
6 Exhibit #14. It is a three page document. It was
7 established, Mr. Geramo, on Monday, that this is a portion of
8 a document that lists certain personnel relating to the state
9 warning point. Mr. DeVito told us that this is a State
10 Emergency Management Office document.

11 I will also tell you, Mr. Geramo, it's been
12 established that these few pages which do not constitute the
13 whole document were found in a document entitled "Resources
14 Manual" in the files of Suffolk County.

15 Mr. Geramo, can you identify for me the document to
16 which this cover page refers, or are you familiar with the
17 document by that title?

18 A Is the question am I familiar with the document I've
19 got in front of you?

20 Q Are you familiar with the document that goes by the
21 title, the cover page that you have in front of you?

22 A Yes I am.

23 Q Will you turn to the third page of that document.
24 It bears a date in the lower left hand corner, 2/1/87. Is
25 that particular page of that document familiar to you?

1 A Yes it is.

2 Q What is that?

3 A This is nothing more than the state headquarters
4 telephone listing for personnel that work in Building 22 in
5 Albany.

6 Q Is that divided into sections or groups within the
7 State Emergency Management Office?

8 A Yes.

9 Q Can you tell me over on the right hand side what the
10 planning sections responsibilities are?

11 A Yes, they're responsible for the coordination and
12 the provision of assistance pursuant to the Federal Emergency
13 Management Agency's comprehensive cooperative agreement with
14 New York for the development of emergency operations plans.
15 They don't develop plans, they provide assistance.

16 Q They provide assistance then for the preparation of
17 emergency operations plans by local governments?

18 A In accordance with federal criteria, yes.

19 Q That includes counties?

20 A Yes.

21 Q Are you familiar with a gentleman named Jerry
22 Horton who is listed on that document?

23 A Yes I am.

24 Q What is his role within the planning group?

25 A He is a program administrator within the group and

1 he, I think a good way to characterize it, acts as liaison
2 between the program itself, the Emergency Operations Plan,
3 federal program, and the counties for which are on the
4 schedule to have plans developed.

5 Q Does he develop the list of the counties who are on
6 the schedule from year to year to have programs developed?

7 A I don't know the details of who develops. I don't
8 know.

9 Q Do you know who decides from year to year which
10 counties will receive assistance from the planning section for
11 emergency operations plans?

12 A I don't think it's as cut and dried to say that one
13 individuals says yes, we will do this county or no we will not
14 do this county. I think it's --

15 Q That's why I asked. If you can identify an
16 organization please do so, or a process.

17 A It's really the input from the agency itself and
18 from other sections in terms of where counties are with
19 respect to the emergency management program and the counties
20 themselves, what does their schedule allow for and where are
21 they in the planning process and do on. So it's not as cut
22 and dried as one individual saying yes, we will do this county
23 or no we won't.

24 Q When you say input from the agency do you mean from
25 your agency, SEMO?

1 A Yes. Again we rely on the planning shop to come up
2 with a list. Who in particular I don't know who has that
3 responsibility.

4 Q Do you know what their criteria are for determining
5 which counties will be reviewed from year to year or will
6 receive assistance from year to year?

7 A I think it's the same answer I just gave. It's
8 really a lot of factors. Is the county available in terms of
9 being at a point where they can identify the planning effort
10 that needs to be undertaken and the resources, etcetera.

11 Q Do those funds for the local emergency operations
12 plans flow in whole or in part from the Federal Emergency
13 Management Agency?

14 A Yes, they flow from FEMA.

15 Q Does your agency administer the distribution of
16 those funds to local governments for planning?

17 MR. LANPHER: I object, Judge Gleason. This line of
18 questioning is not relevant. The funding by FEMA of monies
19 just is not pertinent to this proceeding.

20 JUDGE GLEASON: Objection denied. Answer the
21 question.

22 THE WITNESS: There is no direct flow of money to a
23 county for planning purposes. There is a cooperative
24 agreement, and in that agreement is an emergency management
25 assistance program. That's the program designed by the

1 federal government, administered by the state to provide
2 dollars to counties that participate in the program for an
3 overall emergency management program. There is no specific
4 money allocated to do planning.

5 BY MR. SISK:

6 Q Who determines the amount of money allocated to each
7 county within the state?

8 A That's really done by way of a formula and the
9 formula's been around for a number of years. It pre-dates,
10 certainly my existence at the State Emergency Management
11 Office, and it was one that from my limited experience did
12 involve a lot of parameters. What those parameters are, I just
13 couldn't say at this point.

14 JUDGE GLEASON: You do not know how the money is
15 allocated?

16 THE WITNESS: I know that there is a population
17 involved. I don't know what the specific parameters were.
18 The program has certainly been around for a number of years.

19 JUDGE GLEASON: Nobody asked how long ago the
20 program started. I just asked you whether you knew how the
21 money was allocated.

22 THE WITNESS: I don't specifically know what the
23 distribution formula is.

24 JUDGE GLEASON: Thank you.

1 BY MR. SISK:

2 Q Do you know who makes the decision as to how much
3 money given counties get within the state of New York?

4 A Again, that's a formula that's been around for a
5 number of years. It goes up. If the federal pot goes up then
6 the state pot will go up proportionally among the states. If
7 it goes down the state pot goes down proportionally. The
8 formula that's in place will decrease proportionally.

9 Q Let's try to break this down into parts. It's
10 correct isn't it that federal funds under the Emergency
11 Management Assistance Program, flow directly from the
12 Federal Emergency Management Agency to the state, is that
13 correct?

14 A That's correct.

15 Q First step. Your agency then is responsible for
16 receiving those funds in the first instance from the federal
17 government, is that correct?

18 A That's correct.

19 Q Your agency is then responsible for passing those
20 funds or a portion of those funds through to various local
21 governments within the state, is that correct?

22 A Those that choose to participate, yes.

23 Q And for those counties that choose to participate,
24 who makes the determination which county gets how much of that
25 money?

1 MR. LANPHER: I object to the question. It's
2 already been asked and answered. The question assumes there's
3 a person. He's already said.

4 JUDGE GLEASON: He's trying to lead him step by step
5 through this process to see whether there isn't more
6 information. The objection is denied. Answer the question.

7 BY MR. SISK:

8 Q Who determines, once the state has the money, who
9 determines which local jurisdictions will receive how much of
10 that money?

11 A I guess the best way I can answer it is how I
12 already have. There's a formula in place. How that formula
13 was derived, I couldn't give you the specifics. It pre-dates
14 me.

15 Q So that's part of the formula. That's not varied by
16 the state from year to year?

17 A No.

18 Q What happens if a new local government is added that
19 didn't exist the previous year?

20 A Then I believe based on federal criteria and formula
21 you would look at factors like population, you would look at
22 other such factors which I'm not familiar with, and the total
23 pot that comes into New York state would be decreased
24 proportionally to cover that jurisdiction.

25 Q Mr. Geramo, is the size and population of the county

1 one of the criteria used to determine the amount of funding
2 that county gets?

3 MR. LANPHER: I object. The amount of funding is
4 just irrelevant, Judge Gleason.

5 JUDGE GLEASON: Objection denied.

6 THE WITNESS: This is really outside of my area of
7 expertise. I would assume it is, yes.

8 BY MR. SISK:

9 Q Do you know whether Suffolk County has been a
10 recipient of the emergency management assistance funds during
11 the past year?

12 A Yes I do.

13 Q Have they?

14 A Yes they have.

15 Q Do you know whether Suffolk County has received
16 those funds in previous years?

17 A Yes I do.

18 Q How long have you been at the State Emergency
19 Management Office?

20 A Since the fall of 1977.

21 Q So that would have been at the predecessor agency,
22 the Office of Disaster Preparedness at that time?

23 A That's correct.

24 Q Do you know whether Suffolk County has been a
25 recipient of those emergency management assistance funds ever

1 since you've been with the agency?

2 A No I don't.

3 Q Can you recall when you first learned that Suffolk
4 County was a recipient of emergency management assistance
5 funds?

6 A I really can't recall. The past several years, but
7 a specific date I couldn't recall.

8 Q Can you recall a time --

9 A Again, you're outside of my area of expertise.

10 Q I understand. I'm just asking for your knowledge.

11 JUDGE GLEASON: Mr. Geramo, may we we're under a
12 misapprehension. I certainly have a misapprehension of what
13 your responsibilities are. Did you indicate you were the
14 Chief of Staff for SEMO?

15 THE WITNESS: Yes I am.

16 JUDGE GLEASON: Ordinarily a Chief of Staff has the
17 responsibility for the whole area of an agency or division.
18 So why do you keep saying you're outside your area of
19 responsibility?

20 THE WITNESS: I don't get involved, sir, in day to
21 day administrative activities. That's something that's really
22 beyond me. I'm not familiar with the details. I think some of
23 the questions you're asking are of a detailed nature. I'm
24 familiar that Suffolk County gets emergency management
25 assistance funding. When I became aware of it, I couldn't

1 give you a date. In terms of formula and distribution, yes
2 there is a distribution system. Formulas, that pre-dates me
3 in terms of how the formulas were evolved or when they
4 evolved.

5 JUDGE GLEASON: All right, proceed.

6 BY MR. SISK:

7 Q Can you recall at any time since you have been with
8 the State Emergency Management Office, can you recall a time
9 when Suffolk County did not receive emergency management
10 assistance funds?

11 A No. Since I've known about it, no I could not.

12 Q When did you first become Chief of Staff at SEMO?

13 A Fall of 1985.

14 Q What was your position prior to that?

15 A I was the Radiological Emergency Preparedness
16 Coordinator for the State Emergency Management Office.

17 Q How long were you in that position?

18 A From approximately 1982 to the fall of '85.

19 Q Looking at the document that has been placed in
20 front of you and the state headquarters staff, recognizing
21 that that must have changed somewhat over the years, can you
22 identify for me the department or division to which you were
23 assigned prior to becoming Chief of Staff?

24 A I was assigned to the Executive Section.

25 Q Was there a time when you were assigned to a

1 different section of the State Emergency Management Office?

2 A Yes.

3 Q When was that?

4 A Prior to 1982.

5 Q What section were you assigned to at that time?

6 A Technical Resources Section.

7 Q That's the section identified with Mr. Batis at the
8 head on this document?

9 A That's correct.

10 Q Did Mr. Batis take over the position as the head of
11 that section when you joined the Executive Section?

12 A No.

13 Q Was there someone else in that position then?

14 A No, he was in that position to my knowledge.

15 Q Were you ever with a different section of SEMO?

16 A No.

17 Q That's where you began in 1977?

18 A That's correct.

19 Q Does SEMO maintain listings of county personnel in
20 various counties within the state?

21 A What type of listings?

22 Q Telephone listings. Directories of their emergency
23 service personnel.

24 A Yes we do.

25 Q Do you keep those for all counties in the state?]

1 A Yes we do.

2 Q Regardless of whether they're participating in the
3 emergency management assistance funding?

4 A Yes we do.

5 Q How do you obtain that information?

6 A It's information that's provided from the counties.
7 This document has been in existence and it's updated
8 periodically.

9 Q Do you maintain emergency service directories that
10 are prepared by the various counties?

11 A To my knowledge, no. In our Communications Section
12 they may have material relative to that, but at least from our
13 perspective, no we don't.

14 Q Would that be your Communication and Warning segment
15 as listed on this document?

16 A Yes.

17 Q That would be Mr. Bruce Houston who heads that
18 particular section?

19 A Yes.

20 Q Was Mr. Houston involved in gathering documents in
21 response to Mr. Zahnleuter's request this year?

22 A Yes he was.

23 Q Did you say you acted as the person who was
24 responsible for gathering the various documents that Mr.
25 Zahnleuter requested?

1 A I coordinated that effort, yes I did.

2 Q Does that mean that everyone within SEMO who was
3 requested to get documents brought them to you first, is that
4 correct?

5 A That's correct.

6 Q Do you recall whether Mr. Houston brought you a
7 document that was entitled Suffolk County Emergency Services
8 Directory?

9 A I can't specifically recall, no.

10 MR. SISK: Let me ask that the witness be shown a
11 document that has been identified as LILCO Exhibit #12.

12 MR. LANPHER: Judge Gleason, I'd like to ask a
13 question. Is there a specific discovery request to which this
14 would have been responsive this year? There were a lot of
15 discovery requests this year, but I think the question is
16 improper unless we establish --

17 JUDGE GLEASON: The emergency directory question?

18 MR. LANPHER: Yes sir.

19 JUDGE GLEASON: I certainly have no idea.

20 MR. LANPHER: Presumably Mr. Sisk, if he's pursuing
21 this line of questioning, can direct our attention to a
22 discovery request to which this would have been responsive.
23 If not, I object to the question. The question assumes there
24 was a discovery request to which this was responsive.

25 MR. SISK: Judge Gleason, I will vouch that this was

1 produced by the state pursuant to LILCO's discovery request
2 approximately last Thursday.

3 MR. LANPHER: Then what is the point if it was
4 produced?

5 JUDGE GLEASON: Why don't you wait for the question
6 and find out.

7 MR. LANPHER: Then I object to the question. We're
8 supposed to be here on non-production of documents. This was
9 produced. He just admitted it.

10 JUDGE GLEASON: You can prove non-production by
11 looking at something that was produced. Isn't that answer
12 relatively simple?

13 MR. LANPHER: No, I don't understand that, sir.

14 JUDGE GLEASON: Just wait and let's see where it
15 goes. I don't know where these things are heading. I don't
16 believe you do.

17 MR. LANPHER: That's true. I don't know where it's
18 heading, but my client deserves the right to know where it's
19 heading.

20 JUDGE GLEASON: Let him ask the question, then
21 you'll know, and then you can make your objections.

22 BY MR. SISK:

23 Q Mr. Geramo, do you recognize that document at all?

24 A Not in any detail.

25 Q Do you remember seeing that at the time you brought

1 documents to Mr. Zahnleuter in response to a discovery request
2 recently?

3 A I think we received somewhere around 14 or 15
4 documents. I can't specifically recall that this was one of
5 them. I've got that material back in my office.

6 Q Would this be the type of document that Mr. Houston
7 would have brought to you?

8 MR. LANPHER: Object. That calls for speculation.

9 BY MR. SISK:

10 Q Do you know whether that is a document that Mr.
11 Houston brought you?

12 A I would have to answer yes.

13 Q that document bears a date on the inside cover,
14 revised March 1980, do you see that?

15 A Yes I do.

16 Q Do you know how long that document had been in the
17 possession of SEMO?

18 A I couldn't tell you that.

19 Q I'll ask that you be shown a document entitled
20 Suffolk County Emergency Operations Plan. It has been
21 admitted to the record as Exhibit #9.

22 (Pause)

23 MR. SISK: May I have a moment Judge Gleason?

24 (Pause)

25 MR. SISK: Sorry for the time, Mr. Geramo.

1 BY MR. SISK:

2 Q If you can turn to Annex A, Appendix 7 of that
3 document which is approximately one-fourth of the way through.

4 JUDGE GLEASON: Do you want to give us a number?

5 MR. SISK: I'm trying to ascertain that. I don't
6 have a number on my copy. I'm sorry, Judge Gleason. Let me
7 see if I can help with that.

8 (Pause)

9 BY MR. SISK:

10 Q Mr. Geramo, I apologize for the confusion, but that
11 document is copied on two sides of the page. Have you now
12 found Annex A, Appendix 7? It begins with the page Suffolk
13 County Department of Emergency Preparedness Emergency
14 Directory.

15 Have you found that document?

16 A I've got it.

17 JUDGE GLEASON: The number is marked on our copies.
18 Can't you just give us the number of the page you're on?

19 MR. SISK: Judge Gleason, I believe Exhibit #9 does
20 not have a number on it. We can go to Exhibit #10. It will
21 serve the same purpose if that's easier. On Exhibit #10 the
22 page number is K02380.

23 (Pause)

24 THE WITNESS: I'm sorry, I have no document starting
25 out with 02.

1 MR. SISK: I think you're being handed Exhibit #10.

2 THE WITNESS: Okay.

3 MR. SISK: I apologize Judge Gleason. This is
4 taking longer than I thought. This is Exhibit #10 that we're
5 not turning to.

6 THE WITNESS: I can put aside the other exhibit?

7 MR. SISK: Yes.

8 BY MR. SISK:

9 Q Does that document appear to be the same document,
10 albeit a revised version, as the exhibit previously shown to
11 you, and that would be Exhibit #12, the document that came
12 from SEMO's files?

13 (Pause)

14 A Yes.

15 Q When Mr. Horton brought you the document identified
16 as Exhibit #12, was it a separate, free standing document, or
17 did it have any attachments?

18 A Mr. Horton or Mr. Houston?

19 Q I'm sorry, Mr. Houston. I apologize.

20 A Would you repeat the question?

21 Q Was the document that was identified as Exhibit #12
22 and brought to you by Mr. Houston a separate, free-standing
23 document, or did it have other attachments or appendices to
24 it?

25 MR. LANPHER: I object to that question because it

1 states that the document was brought to him by Mr. Houston. I
2 think his testimony was that he assumes that's where it might
3 have come from. I don't think he stated that he has a
4 specific recollection that it came from Mr. Houston.

5 MR. SISK: That's not my recollection of the
6 witness' testimony.

7 JUDGE GLEASON: Would you give us the facts, Mr.
8 Geramo. Did Mr. Houston bring the document to you?

9 THE WITNESS: Judge, I believe I said I would
10 believe that he would have brought the document. I don't know
11 for sure, sir.

12 JUDGE GLEASON: Restate your question, Mr. Sisk.

13 BY MR. SISK:

14 Q Do you know whether any document brought to you by
15 Mr. Houston was a free-standing document or whether it had
16 other attachments or appendices? Can you answer the question?

17 A I don't believe I can, no.

18 Q Very well.

19 A If I could make one statement, I do recall receiving
20 something similar from other counties. I think it's just a
21 matter of them providing the State Emergency Management Office
22 with their telephone directories. We don't use them in the
23 course of business day to day, and my guess is that they're
24 probably just maintained in a file.

25 Q I now ask that you be shown a document that has been

1 marked for identification as LILCO Exhibit #15. It is a
2 letter dated May 1, 1981 from Jerry D. Horton, Director of
3 Programming and Planning to Mr. William E. Regan, Director of
4 Suffolk County Department of Emergency Preparedness. It bears
5 a heading, "State of New York, Division of Military and Naval
6 Affairs."

7 First, Mr. Geramo, can you identify the letterhead
8 on this particular correspondence?

9 A Yes I can.

10 Q Can you tell me what it is?

11 A It's letterhead from the Division of Military and
12 Naval Affairs.

13 Q Is this the same letterhead that the Office of
14 Disaster Preparedness was using as of May 1, 1981?

15 A I believe so.

16 Q Was Mr. Horton in the Planning Section of the Office
17 of Disaster Preparedness at that time?

18 A If memory serves me right, yes he was.

19 Q Was he Director of Programming and Planning at that
20 time?

21 A I believe so, yes.

22 Q If you look at the contents of that letter it refers
23 to a Suffolk County Disaster Preparedness Plan dated 1 January
24 1981. There are some statements in the letter that the plan
25 is compatible with the provisions of Article 2(b), Section 23,

1 local disaster preparedness plans.

2 Do you have any knowledge of this letter?

3 A No I do not.

4 Q Do you have any knowledge of any review by the
5 Office of Disaster Preparedness of a Suffolk County Disaster
6 Preparedness Plan in 1981?

7 A Not that I recall, no.

8 Q Were you asked to review any portions of it?

9 A Not that I recall, no.

10 Q Referring to Item 5, it says "Purpose. If this plan
11 will include civil defense functions there will be a great
12 deal of additional information needed, i.e., RIDEF, crisis
13 relocation, etcetera."

14 Mr. Geramo, would those types of functions have
15 fallen within your area of responsibility in 1981?

16 MR. LANPHER: I object to this question. He's
17 asking this witness questions derived from this letter which
18 he says he has no recollection of ever seeing before.

19 JUDGE GLEASON: All he's asking him essentially is
20 whether those functions were in his areas of responsibility.
21 Objection denied.

22 Answer the question.

23 THE WITNESS: Can you repeat the question?

24 MR. SISK: Yes.

1 BY MR. SISK:

2 Q Were those functions identified in paragraph five of
3 that letter within your area of responsibility in 1981?

4 A Civil defense functions?

5 Q Is that what those are?

6 A Are you referring specifically to civil defense?

7 Q I'm referring to the items listed in paragraph five.
8 It says, "Civil defense functions." Then it says, "i.e.,
9 RIDEF, crisis relocation, etcetera."

10 A Crisis relocation, no. But radiological defense,
11 yes.

12 Q So there was a separate crisis relocation section,
13 or a separate section that dealt with crisis relocation in
14 1981?

15 A No, that was the Planning Section.

16 Q And you dealt strictly with radiological defense?

17 A Technical resources, radiological defense, yes.

18 Q At any time since you have been at SEMO has SEMO
19 ever reviewed a Suffolk County Civil Defense Plan?

20 A To my knowledge, no.

21 Q Mr. Geramo, ignoring the question of reviews and
22 legal consistencies and so forth, how long have you personally
23 been aware of the existence of the Suffolk County Emergency
24 Operations Plan?

25 A Certainly I became very familiar with its existence

1 in the last couple of months. In terms of when I physically
2 became aware of it, I really could not recall.

3 Q I'll ask that you be shown a document that has been
4 marked for identification as LILCO Exhibit #17. It is a
5 document entitled "Government's Response to Board Order of
6 June 24, 1988."

7 (Pause)

8 Q This is what the lawyers call a pleading in this
9 particular litigation. It was filed on behalf of the
10 Government, the state of New York, and Suffolk County in this
11 proceeding by their counsel.

12 I'll ask you to turn to page 10, and refer
13 specifically to the paragraph entitled "Donald DeVito."

14 Let me ask you to review that briefly, and I'll ask
15 you if you have any knowledge of the facts stated there.

16 (Pause)

17 Q First, Mr. Geramo, does SEMO have authority to
18 review state and local emergency plans for non-nuclear
19 emergencies?

20 A Yes, under the auspices of Article 2(b), yes.

21 Q Does SEMO also have the authority to review such
22 plans in connection with the emergency management assistance
23 program that I referred to earlier?

24 A Under the --

25 Q For the FEMA money that we discussed earlier.

1 A Define what you mean by the emergency management
2 assistance program. Be a little clearer if you could.

3 Q Perhaps you can tell me. Does SEMO have authority
4 to review state and local government emergency plans for non-
5 nuclear emergencies outside the context of Article 2(b)?

6 A Under the comprehensive cooperative agreement, yes.
7 We do review plans. The development of emergency operations
8 plans by counties are submitted for review.

9 Q Referring to the next sentence, and ignore the words
10 "Mr. DeVito testified." Is it true that SEMO personnel have
11 known for many years that Suffolk County, like other counties
12 in New York, had a plan for dealing generally with
13 emergencies?

14 A I really couldn't answer that. I don't know. It
15 would be an assumption on my part.

16 Q Do you know if SEMO personnel have known for many
17 years that Suffolk County had a plan for dealing generally
18 with emergencies?

19 A Again, it would be an assumption to respond for
20 other individuals.

21 Q Had you known for many years that Suffolk County had
22 a plan for dealing generally with emergencies?

23 A I think my answer is one that the program has been
24 around for a number of years, starting back in the '50s, '60s.
25 I think one would have to assume that counties did have

1 emergency, I don't want to use the word operations plans, but
2 plans that pre-date the 1980's. Based on that yes, again I
3 assume that they did have a plan.

4 Q The county has to have a plan to get into the
5 program to begin with, isn't that right?

6 A To get into what program?

7 Q Into the federally assisted emergency management
8 assistance program, to start receiving funds?

9 A The county has to make a commitment to develop a
10 plan. Whether or not a county specifically needs an approved
11 emergency operations plan, no.

12 Q So they can start receiving funds as soon as they
13 make a commitment to develop a plan.

14 A In a sense, yes.

15 Q What do you mean, in a sense?

16 A If you look at a schedule in the planning shop
17 itself there is a three month schedule that was negotiated with
18 the Federal Emergency Management Agency. Because a county did
19 not start year one, that doesn't mean they could not receive
20 funding.

21 Q So they have to commit to begin the planning process
22 in order to get the funding, is that a fair statement?

23 A The cooperative agreement is designed as such to
24 provide work objectives by the Federal Emergency Management
25 Agency, required objectives to meet some of the goals of the

1 emergency management program. It also includes some state
2 objectives. And to receive emergency management assistance
3 funding those jurisdictions that participate have to complete
4 those work objectives.

5 Q How much time is prescribed for them to complete the
6 work objectives and complete a plan?

7 A I believe under the federal criteria there was a
8 three year plan to ensure that each county within the state
9 would have an emergency operations plan. I believe that comes
10 to a close this year.

11 Q That process began in 1985?

12 A I believe so.

13 Q What about counties who had been receiving emergency
14 management assistance funds prior to 1985?

15 A This was FEMA policy that was issued in 1985.

16 Q I understand.

17 Prior to 1985, in order to receive the federal funds
18 through the emergency management assistance program, was there
19 any other federal funding mechanism? Did a local government
20 have to have a plan or commit to produce a plan in order to
21 get that money?

22 A I don't believe so, no.

23 Q They could get planning money from the federal
24 government without either having a local plan or committing to
25 produce a local plan?

1 A There is no planning money for the Federal Emergency
2 Management Agency. It's emergency management assistance
3 funding. Again, it's not dollars specific to do planning.
4 It's dollars that are made available to perform the particular
5 work objectives in accordance with the emergency management
6 program.

7 Q What are those work objectives?

8 MR. LANPHER: Judge Gleason, I object. There is no
9 dispute that Suffolk County had an emergency operations plan.
10 this questioning is --

11 JUDGE GLEASON: Where is this heading, Mr. Sisk?

12 MR. SISK: Judge Gleason, I'm simply trying to
13 establish how long SEMO has known that there was a Suffolk
14 County Emergency Operations Plan by virtue of the funding
15 mechanism.

16 JUDGE GLEASON: All right.

17 MR. LANPHER: Why doesn't he just ask that question.
18 How long has SEMO known?

19 JUDGE GLEASON: I don't want to tell him what
20 question to ask.

21 MR. SISK: I thought I tried to ask that directly a
22 moment ago. Let me just ask it and then if we can't get it
23 directly we may have to go by circumstance.

24 BY MR. SISK:

25 Q How long as SEMO known that Suffolk County had an

1 emergency operations plan?

2 A I thought I answered that. I said obviously in the
3 last couple of months I became aware of it personally, but
4 before that time I could not tell you. I could not give you a
5 specific date.

6 Q That's the reason I asked you the other questions.
7 That is, --

8 JUDGE GLEASON: Excuse me just a minute so I can get
9 this clear in my own mind. What you're saying, Mr. Geramo,
10 and what I really had understood you to say before, was that
11 up until two months ago you really had not known yourself,
12 personally, that there was a Suffolk County emergency plan.

13 THE WITNESS: Vaguely I did, Judge. I think it's
14 like asking what I know particularly that Yates County has an
15 emergency operations plan. Again, that's not my area of
16 expertise. But I would assume, sir.

17 JUDGE GLEASON: But you are responsible for
18 reviewing county plans, your agency is.

19 THE WITNESS: The agency is, sir.

20 JUDGE GLEASON: So we would assume a Chief of Staff
21 would know that. If you don't have a recollection that's your
22 testimony. So what is your testimony again, please.

23 THE WITNESS: Specifically when I became aware that
24 Suffolk County has an emergency operations plan, I don't
25 recall.

1 JUDGE GLEASON: Thank you.

2 BY MR. SISK:

3 Q Mr. Geramo, you stated that you think you know that
4 Yates County has a plan, but you are not specifically aware
5 that they do, is that correct?

6 A The point I'm trying to make is that if you go back
7 in time, the Civil Defense Program gets its genesis from the
8 '50s. In terms of what was done, plans, procedures, certainly
9 things were accomplished at the county level and the state
10 level. Not being one to assume, you would have to realize
11 that counties have been participating for a number of years.
12 Back in the '70s emergency operation planning was something
13 that was done under the auspices of civil defense. Based on
14 that assumption, you would draw a conclusion that counties do
15 have emergency operations plans. That's all I'm saying.

16 JUDGE GLEASON: So your knowledge is that you assume
17 they had a plan because everybody had plans, but you had no
18 distinct knowledge of the plan.

19 THE WITNESS: No sir, I didn't review them. I
20 didn't provide assistance in preparing. I wasn't involved at
21 that level sir.

22 JUDGE GLEASON: I think we ought to go on to
23 something else, Mr. Sisk.

24 BY MR. SISK:

25 Q Mr. Geramo, are you aware that Mr. Horton recently

1 obtained a copy of the Suffolk County Emergency Operations
2 Plan?

3 A Yes I am.

4 Q Do you know when he first obtained that copy?

5 A I believe it was back in early May of this year.

6 Q Were you aware that Suffolk County was on the list
7 of counties to be reviewed or assisted with emergency planning
8 during this fiscal year under the emergency management
9 assistance program?

10 A Under the comprehensive cooperative agreement?

11 Q Under the comprehensive cooperative agreement.

12 A Yes I was.

13 Q Were you aware that Suffolk County was on that list
14 as of 1987? Isn't that when the agreement was negotiated?

15 A Yes. It became effective October of last year,
16 1987.

17 Q Was Suffolk County on a list of counties to receive
18 assistance or a review of its emergency planning in the
19 agreement negotiated in 1985? In other words, is there a
20 three year projection that Suffolk County was known, it was
21 known that they'd be coming up in 1988?

22 A All counties were listed at that time.

23 Q All counties in the state of New York?

24 A I don't know whether they were physically identified
25 in a document, but that was one of the criteria in the

1 comprehensive cooperative agreement.

2 Q In 1985?

3 A I believe so, yes.

4 Q So as of 1985 the state of New York through your
5 office basically had made the commitment in the agreement to
6 review and as necessary update plans for all counties in the
7 state of New York?

8 MR. LANPHER: I object. I think we're going back
9 and rereading over this stuff that I thought your questions
10 clarified and you said to move on.

11 JUDGE GLEASON: Let's let him answer this. You can
12 answer that if you can, Mr. Geramo.

13 THE WITNESS: Essentially the CCA, comprehensive
14 cooperative agreement, was one that is really between the
15 federal government and the locality that's receiving the
16 dollars. So in terms of the policy and the guidance, yes,
17 they were aware as the rest of the state counties were aware,
18 that planning would have to be done. Emergency operation
19 planning would have to be done or they would not participate
20 in the program.

21 BY MR. SISK:

22 Q That was within three years?

23 A If memory serves me right three years, yes.

24 Q And SEMO was aware of that in 1985?

25 A Yes.

1 Q You said you were involved in coordinating the
2 document production on behalf of SEMO in 1988, and that is in
3 response to Mr. Zahnleuter's request, is that correct?

4 A That's correct.

5 Q Did you say that Mr. DeVito looked separately for
6 the Suffolk County Emergency Operations Plan?

7 A Yes.

8 Q You did not coordinate looking for the Suffolk
9 County Emergency Operations Plan?

10 A No.

11 Q Why was that distinction made in terms of who was
12 coordinating the search for documents?

13 A I really don't recall. It may have been that the
14 call came directly to Mr. DeVito to search for that document
15 as opposed to the call that counsel provided to me. That may
16 have been the rationale behind it. I may have not been in
17 that day. I don't recall.

18 Q So there may have been two separate requests?

19 A I don't recall.

20 Q Was the Suffolk County Emergency Operations Plan
21 the kind of document that you were asked to look for when you
22 were coordinating the document search?

23 A No. To my knowledge, no.

24 Q Were you asked to look for all documents pertaining
25 to emergency planning for Suffolk County?

1 A We were asked specifically to look for documents
2 that would affect Suffolk County. That was the instructions
3 given to our staff. As I indicated, the documents, it also
4 went beyond that and asked that we provide documents of an
5 emergency management nature that could be generic and similar
6 to the local guide that was discussed early on in my
7 testimony.

8 Q When you were coordinating, looking for documents,
9 did anyone bring you a copy of the Suffolk County Emergency
10 Operations Plan?

11 A Not to my knowledge, no.

12 Q Did you ask Mr. Horton in the Planning Section to
13 gather documents when you were coordinating the search for
14 documents?

15 A I asked all section chiefs to gather information.

16 Q Mr. Horton is chief of the Planning Section?

17 A He's responsible --

18 Q I'm sorry, I misspoke. Mr. Herskewitz is the head
19 of the Planning Section, is he not?

20 A Yes he is.

21 Q Did you ask Mr. Herskewitz specifically to gather
22 documents relating to emergency planning for Suffolk County?

23 A Yes.

24 Q Did Mr. Herskewitz bring you a copy of the Suffolk
25 County Emergency Operations Plan?

1 A No, I did not receive a copy of the Suffolk County
2 Emergency Operations Plan.

3 Q Did it go to Mr. DeVito at a later point in time?

4 A I don't recall.

5 Q Were you present when the document was given to Mr.
6 DeVito?

7 A No. I don't believe so.

8 Q Do you have any knowledge at all of how Mr. DeVito
9 received the copy of the Suffolk County Emergency Operations
10 Plan that was discovered in SEMC's files in 1988?

11 A Again sir, from general discussions, generalities,
12 but physically where it came from, when it was produced to
13 him, how it was produced to him, by whom, I don't know. I
14 wasn't involved in that.

15 Q What are the generalities you're referring to?

16 A I'm sorry?

17 Q You said something about generalities in
18 conversation. What were you referring to?

19 A Just hearing about a search for documents, and a
20 follow up search for documents as directed by counsel.

21 Q So there was a follow up search for documents?

22 A Yes. Those were the documents that were provided to
23 Mr. Zahnleuter. The 13 or 14 documents that were provided
24 from our files.

25 Q Is that the one you coordinated?

1 A Yes.

2 Q Was there a follow up after that?

3 A Not to my knowledge, no.

4 JUDGE GLEASON: May I ask a question, Mr. Sisk?

5 MR. SISK: Yes.

6 JUDGE GLEASON: When you turn over documents like
7 this, Mr. Geramo, do you make a list of those documents for
8 your files?

9 THE WITNESS: Yes, I believe we did in this
10 instance, sir.

11 JUDGE GLEASON: how about in prior instances?

12 THE WITNESS: I really can't recall. We've been
13 involved in providing documents in other areas, not anything
14 relating to this hearing but I just can't recall.

15 JUDGE GLEASON: Earlier phases of the litigation?

16 THE WITNESS: No sir, a matter totally not related
17 at all.

18 JUDGE GLEASON: Thank you.

19 BY MR. SISK:

20 Q Mr. Geramo, did you make the list you just referred
21 to of documents that you initially gave to Mr. Zahnleuter?

22 A I didn't make it personally, no.

23 Q Do you have a copy of it?

24 A I believe we do.

25 Q Does that list include the Suffolk County Emergency

1 Operations Plan?

2 A I would have to check the list. I don't recall.

3 MR. SISK: Judge, we may request the production of
4 that list, unless there is some privilege or something that
5 attaches to it. I think it might assist the record.

6 MS. YOUNG: The staff joins in that request.

7 JUDGE GLEASON: He said he may make that request.

8 MR. SISK: I would like to request its production by
9 the state at this time.

10 JUDGE GLEASON: Any response, Mr. Zahnleuter?

11 MR. ZAHNLEUTER: I don't see any basis for having
12 the list. I made a list when I transferred the documents to
13 Mr. Sisk, and that letter is probably July 5th. This is a
14 useless fishing expedition in my view.

15 MR. SISK: If Mr. Zahnleuter will represent that Mr.
16 Geramo's list is identical to the list that Mr. Zahnleuter
17 transmitted to me than I don't think we need to see the one
18 from Mr. Geramo. That may require some checking.

19 MR. ZAHNLEUTER: I have to state that I've never
20 seen the list. It was never provided to me. I just got
21 documents.

22 JUDGE GLEASON: He may not have the list. The list
23 was prepared by Mr. Geramo.

24 MR. SISK: Then let me make this request, that Mr.
25 Zahnleuter obtain the list and review it. If the list that

1 Mr. Geramo made is identical to the list contained in Mr.
2 Zahnleuter's letter to me, that's good enough, we don't need
3 to see it. But if the list is in any respect different, we
4 would like to request production of that list.

5 THE WITNESS: Let me just clarify. I don't believe
6 I said I made the list. I asked that a list be made before
7 the documents were --

8 MR. SISK: I apologize. You said you simply have a
9 copy.

10 JUDGE GLEASON: I believe that's a reasonable
11 request, Mr. Zahnleuter.

12 MR. ZAHNLEUTER: I'll pursue it when I get back to
13 the office.

14 MR. SISK: Judge Gleason, this may be a good time
15 for a short break. The next topic of inquiry will be the
16 memorandum from Mr. Geramo to the local government personnel.

17 JUDGE GLEASON: Let's take a break. Ten minutes.
18 (Whereupon, a brief recess was taken.)

19 JUDGE GLEASON: Let's proceed please.

20 BY MR. SISK:

21 Q Mr. Geramo, I will ask that a document be handed to
22 you which has been marked as LILCO Exhibit #5 and has been
23 admitted to the record. It is a memorandum dated August 27,
24 1987 from you to County Emergency Managers with an attachment,
25 New York State, Local Government Planning Guidance. Prepared

1 by the State Emergency Management Office, August 1987.

2 This is the document that you discussed with Mr.
3 Zahnleuter on your Direct Examination, is that correct?

4 A Yes it is.

5 Q Did you prepare this document?

6 A This document was prepared by the State Emergency
7 Management Office, yes.

8 Q Was it prepared under your direction and control?

9 A That's correct.

10 MR. LANPHER: Objection. I'd like a clarification
11 there. It appears to me that there are really two documents.
12 It's been marked as one exhibit.

13 MR. SISK: I'm referring to the entire document,
14 including the guidance manual.

15 BY MR. SISK:

16 Q Was it prepared at your direction and control?

17 A That's correct.

18 Q Let me ask you to turn to page one of the
19 introduction of the guidance manual. It comes immediately
20 after the list of attachments.

21 I'll direct your attention to the bottom of the
22 page, the first sentence in the last paragraph. It states,
23 "This document can become an appendix to the county all hazard
24 comprehensive emergency operations plan." Have I quoted that
25 correctly?

1 A Yes you have.

2 Q Mr. Geramo, can you explain to me the meaning of
3 that sentence?

4 A Yes, it refers to the fact that this specific
5 document is a guidance document only. It was intended to
6 facilitate for those 13 counties the production of their
7 documents, whether or not they had something existing or
8 needed to enhance that existing document or prepare something
9 new. The direct quote is really indicating that whatever the
10 county prepares, it's their responsibility that their document
11 in turn should become an annex to the overall county emergency
12 operations plan. That will give us continuity.

13 Q Why did you make reference to an all hazard
14 comprehensive emergency operations plan in this memorandum?

15 A We spent a great deal a couple of hours ago talking
16 about the emergency management assistance program, the Federal
17 Emergency Management Agency, and the comprehensive cooperative
18 agreement. That is with respect to what is done under those
19 programs, the emergency operations plan is prepared in that
20 fashion.

21 Q Correct me if I'm wrong, as of the end of this year
22 all counties in the state of New York will have received
23 assistance in connection with preparing all hazard
24 comprehensive emergency operations plans?

25 A No, that's not correct.

1 Q That's not correct?

2 A No.

3 Q There will still be some counties that have elected
4 not to participate?

5 A There will still be counties that are not within the
6 emergency management assistance program that will not have
7 assistance from the state in developing comprehensive
8 emergency operations plans.

9 JUDGE GLEASON: Mr. Geramo, this cooperative
10 agreement you referred to before which you said was an
11 agreement between FEMA and the counties, the government and
12 the counties --

13 THE WITNESS: FEMA, the state and the counties.

14 JUDGE GLEASON: The state was a signatory to the
15 agreement?

16 THE WITNESS: Yes sir.

17 JUDGE GLEASON: Thank you.

18 BY MR. SISK:

19 Q Let me take you to the top of page two of that
20 guidance document. It states that "The material and
21 operational data contained within this document reflect the
22 current policies and criteria associated with the radiological
23 ingestion exposure pathway from the operating nuclear plants
24 located within as well as bordering the state. Attachment 1
25 depicts operating nuclear power plants for which this

1 procedure has been developed."

2 If you turn to Attachment 1, Mr. Geramo, at the end
3 of the document, Attachment 1 is a map, is it not, out of the
4 state Radiological Emergency Preparedness Plan?

5 A That's correct.

6 Q Isn't that map contained in, I believe it's either
7 Annex K or Procedure K to the state radiological plan?

8 A I believe so, yes.

9 Q That part of the state radiological plan relates to
10 ingestion pathway responses, is that correct?

11 A That's correct.

12 Q On page six of this guidance document near the
13 bottom of the page there's a statement that "For each of these
14 potential ingestion exposure pathways, appropriate state
15 agencies have operational response and recovery procedures
16 which would be implemented under the direction of the Chairman
17 of the DPC.

18 DPC refers to Disaster Preparedness Commission, is
19 that correct?

20 A That's correct.

21 Q The potential ingestion exposure pathways refers to
22 the items listed further up on the page, that is milk, water,
23 foodstuffs, and animal feeds, is that correct?

24 A That's correct.

25 Q Can you tell me what you're referring to in this

1 passage, that is can you identify for me the appropriate, the
2 operational response and recovery procedures of the various
3 state agencies that you're referring to in this passage?

4 A You referred to it earlier, and that would be the
5 annex to the state radiological emergency preparedness plan.

6 Q Maybe it would be easier for clarity of the record
7 if we go back to the state radiological plan. That I believe
8 has been marked for identification as LILCO Exhibit #6.

9 (Pause)

10 MR. SISK: I think the appropriate section is
11 Procedure K. Can you turn to that portion? It's about four-
12 fifths of the way through the document. It's listed in the
13 table of contents.

14 MR. LANPHER: Do you have a Bates number?

15 (Pause)

16 BY MR. SISK:

17 Q Mr. Geramo, that begins on page L01418. Have you
18 found that?

19 A Yes I have.

20 Q Procedure K has a number of attachments, does it
21 not?

22 A Yes it does.

23 Q Can you identify for me by flipping through there,
24 since I believe you're a recipient of this plan, where
25 Procedure K ends? Is it at the end of those pages that had

1 "K-" at the bottom of them?

2 A It ends at K-23.

3 Q That is page L01442, Attachment A is that correct?

4 A That's correct.

5 Q Can you flip one page forward to L01444, and can you
6 tell me what that specifically lists?

7 A L01444 is part two, Section two of the plan. That
8 consists with a list of maps, resources. It's a table of
9 contents actually of the list.

10 Q Confining our attention then to the pages in
11 Procedure K that were identified as proceeding L01418 through
12 L01442, is that the state agency procedure which is referred
13 to at the bottom of page six of your guidance memorandum?

14 A Can you repeat the question for me?

15 Q We were speaking when we went to this document, to a
16 sentence at the bottom of page six and the guidance memorandum
17 that has been admitted as Exhibit #5. That referred to
18 operational response and recovery procedures that apparently
19 are possessed by appropriate state agencies. Is this the
20 operational response and recovery procedures to which you
21 referred in that sentence?

22 A No, the operational response and recovery procedures
23 are contained within the state radiological emergency
24 preparedness plan itself. The plan contains those specific
25 responsibilities and activities of state agencies in the event

1 of an emergency associated with an operating commercial
2 nuclear power plant. The Procedure K merely defines in more
3 detail more or less specific procedures. But it is as an
4 appendix to the overall plan, and as such the material
5 contained in the plan would be utilized by state agencies.
6 So our reference was to the entire plan.

7 Q I see. Are you aware of any, and I'll use your
8 terminology, operational response and recovery procedures that
9 are developed or maintained by various state agencies for an
10 ingestion pathway response other than those contained in the
11 state radiological plan, and I will include within that the
12 various county plans?

13 A I am generally aware that each agency that has a
14 responsibility in the radiological emergency preparedness plan
15 does have, to varying degrees, their own specific operational
16 procedures to implement what's in the plan.

17 Q Are those called standard operating procedures?

18 A They could be, sure.

19 Q Are they separate documents from the state plan
20 then?

21 A They're agency-specific procedures.

22 Q And they would be developed and promulgated by each
23 of the specific agencies?

24 A Yes.

25 Q Do you know whether the Department of Health has any

1 such procedures?

2 A I'm aware that they do, yes.

3 Q Do you know what form those documents take? Or did
4 they take the form of documents? Are the procedures set forth
5 in documents?

6 A I have been briefed, and in putting together this
7 document, am aware that they have specific procedures.
8 Whether they're on paper, whether they're on a blackboard, I
9 don't know the content. I have not reviewed them, if that's
10 what you're getting at.

11 Q Tell me everything you know about such operating
12 procedures by the Department of Health.

13 A The State Health Department has the responsibility
14 for public safety in the event of an ingestion pathway
15 concern, and as such would be responsible for radiological
16 monitoring and coordination activities and the issuance of
17 protective measures as such, to protect the population. With
18 respect to the monitoring, they would also have
19 responsibilities in the sampling end. The coordination of the
20 taking of samples in the area believed to be concerned from an
21 ingestion pathway.

22 If they have detailed procedures I, to my knowledge,
23 have not seen them. But in discussion with representatives
24 from the Health Department and the coordination of putting
25 together this document, certain information was included in

1 this document based on their operational procedures that were
2 developed.

3 Q Who are you referring to in the Health Department?

4 A I'm referring to the Bureau of Radiological Health.

5 Q Is that Dr. Kareem Rimawi?

6 A Yes it is.

7 Q Has he assisted you in the preparation of this
8 guidance document?

9 A The Bureau of Radiological Health, yes, they did
10 provide assistance.

11 Q So that is the Bureau within the Department of
12 Health of which Dr. Rimawi is the director, I believe, is that
13 correct?

14 A That's correct.

15 Q Has he personally assisted you in preparing this
16 guidance document?

17 A To my knowledge, no. And of course in the plan
18 itself there are specific responsibility-oriented and
19 procedural-oriented references to what the Health Department
20 would do in the event of an ingestion pathway emergency.

21 Q In fact this document itself discusses a number of
22 the responsibilities of the Department of Health, specifically
23 on page 13 and 14 you've got a summary of that.

24 A Which document is that?

25 Q Your guidance memorandum.

1 A Yes it does.

2 MR. SISK: Judge Gleason, I have a few questions on
3 the state radiological plan as far as SEMO's role in it. I
4 think in the interest of time it may not be necessary because
5 that document speaks for itself. I believe the radiological
6 plan has been identified and verified by General Papio and by
7 Dr. Axelrod. I believe this witness has stated that he
8 receives a copy of it. I believe it would be appropriate at
9 this time to move the introduction of this document into the
10 record insofar as it may go to the question that was discussed
11 earlier, and that is a number of answers that we received in
12 discovery and in testimony and in deposition to the effect
13 that specific resources in fact in these hearings, to the
14 effect that the state cannot identify resources that could be
15 used in responding to an emergency at Shoreham.

16 JUDGE GLEASON: This is Exhibit #6?

17 MR. SISK: This is Exhibit #6 and I'm moving its
18 introduction.

19 JUDGE GLEASON: Any objection?

20 MR. ZAHNLEUTER: I'm unclear about the purpose for
21 this offer. This radiological emergency preparedness plan was
22 produced in 1984 and on other occasions, so it cannot possibly
23 be part of an allegation that it was not produced in response
24 to a discovery request. I just haven't seen any use of it for
25 the purposes of establishing any inconsistencies or anything.

1 I don't see what it's probative of or of what value it could
2 be to the record.

3 MR. LANPHER: Suffolk County joins in that
4 opposition. Further, Mr. Sisk's proffered statement that this
5 document will be used to show some sort of inconsistencies in
6 other answers is just a gross generalization. If there's an
7 allegation that New York State or Suffolk County has been less
8 than forthcoming in discovery, he ought to develop it
9 specifically. We shouldn't be led to guess or to find in
10 closed trial findings some allegation that has not been
11 confronted here before the judges.

12 As Mr. Zahnleuter says, an earlier version of this
13 document, or maybe this very document, was produced in 1984 in
14 discovery. That was when the New York state government got
15 into this case. So there's no question but that it's been
16 produced.

17 MR. SISK: Judge Gleason, the history is a little
18 bit checkered as to this document. I believe the state did
19 produce an earlier version of this plan in 1984, not this
20 specific version. LILCO made document requests again in this
21 proceeding for this particular document. LILCO obtained the
22 document separately, outside the discovery process before it
23 was produced by the state of New York, but after the Board
24 ordered that plans be produced, I believe on May 10. By the
25 time that order had been made we had used this document in

1 various discovery depositions prior to that time. We did not
2 obtain until the Board ordered it late last week the
3 verification that this is in fact the current version of this
4 plan.

5 My point does not really go to whether the document
6 was or wasn't produced, although there are some fuzzy
7 circumstances relating to this particular version of the
8 document. My point goes to the responses that we received in
9 discovery to the effect that state personnel could not
10 identify resources that could be used to respond to an
11 emergency at Shoreham, and this document speaks for itself as
12 to resources identified therein. Lawyers can debate what the
13 significance of that plan is, but a number of witnesses have
14 now verified it, it's been verified under oath by General
15 Papio, it is the state radiological plan, it does have
16 resources listed in it, and I believe it's material to the
17 discovery responses, particularly the answers in the
18 depositions which attempted to evade identifying state
19 resources.

20 MR. LANPHER: Judge Gleason, I want to make a
21 statement because you might object because Mr. Geramo is here.
22 It has something to do with some of the testimony that went on
23 earlier today, and mindful of how you want to sequester
24 witnesses, maybe just briefly Mr. Geramo ought to be asked to
25 leave the room, because there was testimony earlier today, and

1 I think it's very germane to that very point.

2 JUDGE GLEASON: Do you want to step outside a minute
3 Mr. Geramo, and close the door out there. Don't go too far
4 away.

5 (Witness leaves room.)

6 MS. YOUNG: Is he being asked to step out of earshot
7 of the room?

8 MR. LANPHER: He's not going to stand by the door
9 and listen. Give the guy a break.

10 MS. YOUNG: Relax. The only reason I ask is on
11 Tuesday we had a report that some people could hear
12 proceedings going on outside the door. I'm not sure that Mr.
13 Geramo understood that, because he was seated outside the room
14 this morning.

15 JUDGE GLEASON: I'm not going to have him sent
16 downstairs. Just step outside the room and close the door,
17 please.

18 I understand, but we don't have to do a James Bond
19 bit here.

20 MR. LANPHER: Judge Gleason, the reason I asked him
21 to go out of the room, this morning Dr. Axelrod, or maybe it
22 was early this afternoon, was asked questions about his
23 testimony, about why resources couldn't be identified along
24 those lines. The record will speak for itself. If Mr. Sisk
25 wanted to allege that there was some inconsistency about what

1 Dr. Axelrod was saying, he should have brought this to his
2 attention and pursued questions, to try and get it in now
3 after Dr. Axelrod has gotten back on a plane back to Albany, I
4 think is hiding the ball. It's just not the proper way to be
5 doing Cross-Examination.

6 There is no inconsistency. Dr. Axelrod answered
7 forthrightly why New York State did not identify resources.
8 That testimony is in the record. There is no inconsistency.
9 They haven't been hiding something in discovery. This has
10 been presented in discovery, and then Dr. Axelrod testified in
11 deposition, he testified here before you.

12 These sort of generalized allegations of
13 inconsistencies, I think just carry no weight whatsoever, and
14 if they really thought there was an inconsistency it should
15 have been put before Dr. Axelrod.

16 MR. SISK: Judge Gleason, if I may. I believe that
17 I walked Dr. Axelrod through the portion of his deposition in
18 which he was asked specifically about this radiological plan
19 in its entirety and whether that document identified any
20 resources that could be used to respond to an emergency at
21 Shoreham. The answer that he gave at his deposition was very
22 similar to the answer he gave before the Board, that is that
23 he could not identify specific resources and he could not say
24 whether any specific resource set forth in that plan could or
25 could not, might or might not be used in response to an

1 emergency at Shoreham.

2 To bring the matter to a head, Judge Gleason, we
3 just don't believe that that statement is credible. We don't
4 believe it was credible at the time it was made in the
5 deposition. We don't believe it was credible when it was made
6 before the Board today. We believe the document disputes it.
7 I've asked the witness the questions and I have his answer and
8 I'm stuck with what's in the record. But I'm entitled to put
9 the document in that refutes those statements.

10 MR. LANPHER: Is he calling Dr. Axelrod a liar? I
11 think we ought to get that on the record, too. Is that what
12 he's saying?

13 JUDGE GLEASON: Everything's on the record.

14 MR. LANPHER: Is that what you're alleging?

15 MR. SISK: I said what I said.

16 MR. ZAHNLEUTER: I would like to make a statement,
17 please, if I may. I think this raises an important question
18 of fairness and due process, because in a normal hearing there
19 are allegations, there are issues, and those things are set
20 forth in the beginning, and in effect the NRC's rules and
21 regulations establish that same kind of system for licensing
22 proceedings. The purpose of that is to advise the parties
23 what the accusations are, to let the parties know what the
24 matters are in controversy, and to allow the parties to
25 present their cases on each point.

1 What's developing here in this proceeding, and this
2 is a very good example of it, is a system where documents are
3 being introduced into evidence and witnesses are making
4 statements on the witness stand, all out in the open with no
5 cohesion at all, and then in post-hearing findings LILCO will
6 match this with that and come up with an allegation of wrong-
7 doing or misconduct. That's an improper way to conduct the
8 proceeding because it denies the party who's accused of wrong-
9 doing the opportunity to adequately defend itself against the
10 charges, especially when the charges are placed together in
11 the end of the proceeding after all of the witnesses have
12 testified and all of the evidence is in.

13 I think this is an improper use of the state plan,
14 although the state plan does speak for itself and it has been
15 produced and there have been no fuzzy circumstances
16 surrounding its production. The material that's in it speaks
17 for itself, but it's an improper use of the plan to offer it
18 into evidence to make a future allegation of misconduct which
19 no one can later refute.

20 MR. SISK: Judge Gleason, if I may. I think all
21 parties can file legal briefs, findings, whatever it's
22 determined the Board wants after this proceeding, and I'm sure
23 the state will file one, and I think that affords it due
24 process.

25 MS. YOUNG: Judge Gleason, if the staff may be heard

1 for just a moment.

2 JUDGE GLEASON: Proceed.

3 MS. YOUNG: Just a short response to some of Mr.
4 Zahnleuter's comments.

5 The nature of this proceeding, although in many
6 respects is like a formal hearing, is in some aspects a Board-
7 conducted deposition. There was really no full-fledged
8 discovery period that preceded these proceedings, and to that
9 extent the Board has allowed certain liberalness and different
10 lines of questioning pursued by various counsel.

11 As a result, yes it's not always apparent what
12 direction the proceeding has taken, what allegations will be
13 made in post-hearing findings, but in terms of the order of
14 the findings normally set forth, intervenors will have an
15 opportunity to reply to any allegations made by LILCO in its
16 findings, but also request at that time that the record be
17 reopened to consider any additional testimony of witnesses by
18 the state or the county.

19 MR. LANPHER: Judge Gleason, the UCS decision on
20 exercises which admittedly was on some other topics, my clear
21 recollection in 735 F2nd, I believe that's the cite, said the
22 method of reopening the record in that context was not
23 adequate. Everyone knows how hard it is to open an NRC
24 record.

25 JUDGE GLEASON: Let's relax.

1 (Pause)

2 JUDGE GLEASON: The Court concludes that we ought to
3 let the document in and deny the objection.

4 I might say that there is a basic point that has
5 been raised which is a point of fairness, and that is that,
6 and we're letting it in on the basis that there may be some
7 relevance to it. I think Ms. Young is right to a certain
8 extent on her comments, which I have attempted to point out
9 myself, unsuccessfully I might say, to some parties on
10 numerous occasions in these proceedings, that this is not, Mr.
11 Zahnleuter, a usual plaintiff proceeding that we're engaged in
12 here. In the ordinary rules you kind of assume there is going
13 to be a voluntary discovery worked between the parties and
14 that it's going to work. Generally in litigation the court
15 should not be involved in these discovery matters, and things
16 should have worked much more harmoniously than it certainly
17 has in this proceeding.

18 Nevertheless, we are where we are. There is, I
19 think, a fundamental point of fairness we have to be concerned
20 about and that is for people to be able to use something that
21 is in the record in a way that does not allow the other
22 parties to comment on it. I think we will address that at the
23 proper time to make sure there is protection for that.

24 So on that basis, we'll let, I'm not willing to
25 elaborate right now on just what way that will be carried out,

1 I'm going to wait until the end of the hearing.

2 MR. LANPHER: Judge, I'd like just a clarification.
3 I hear your ruling. I'm not asking for the post-trial
4 procedures at this time. But I still don't understand the
5 relevance. Is LILCO disputing that it got the New York State
6 Radiological Emergency Response Plan in 1984?

7 JUDGE GLEASON: No, well we don't know, but they
8 probably dispute they got this version.

9 MS. YOUNG: This is 1987.

10 MR. LANPHER: This is the 1987 version. Of course
11 they didn't get this in '84.

12 MR. SISK: We got an earlier version in 1984.

13 MR. LANPHER: And you got this here, at least, in
14 the 1988 document production, right?

15 JUDGE GLEASON: Just very recently. That's what
16 their point is.

17 MS. YOUNG: That's when the document production was.

18 JUDGE GLEASON: But there is still a question which
19 has not been really addressed here, and we don't want to get
20 into it because you can discuss this as to whether one should
21 have waited on a Board order to produce certain documents. I
22 think this tends to go to some of the controversy that's
23 existing here.

24 In any event, the document is admitted.

1 (The document referred to,
2 having been previously marked
3 for identification as
4 Exhibit #6, was received in
5 evidence.)

6 JUDGE GLEASON: Does that finish your questions, Mr.
7 Sisk?

8 MR. SISK: Judge Gleason, I have very, very few
9 other questions about three additional documents.

10 JUDGE GLEASON: Would you ask Mr. Geramo to come
11 back in please?

12 (Pause, witness returns to room.)

13 JUDGE GLEASON: Mr. Sisk assures me that he only has
14 a very few questions remaining, Mr. Geramo.

15 THE WITNESS: Judge, if I may sir. On Tuesday you
16 swore me in, you sequestered me. I understand what the term
17 sequester means. Let me assure you, as I did at the opening
18 of this testimony, I in no way, shape, manner, or form
19 discussed the case, sir.

20 JUDGE GLEASON: Thank you.

21 BY MR. SISK:

22 Q Mr. Geramo, I will ask that you be handed a document
23 that has been marked for identification as LILCO Exhibit #4.
24 It is a memorandum dated, or a presentation dated October 25,
25 1987 concerning the Ginna congestion pathway exercise, and

1 while you are having a look at that document, Mr. Geramo, I
2 believe you stated that the guidance document we've been
3 referring to is one that related to the Ginna exercise, is
4 that correct?

5 A It did more than relate. It was prepared
6 specifically for that exercise, sir.

7 Q Have you ever seen this particular document before?
8 That is presentation on R.E. Ginna ingestion pathway exercise?

9 A No, it's not familiar.

10 Q Let me ask you whether you know Mr. Lawrence A.
11 Check who is listed on the cover?

12 A Yes I do.

13 Q What is Mr. Check's position?

14 A He is with the Radiological Emergency Preparedness
15 Group.

16 Q Did Mr. Check assist you in any way in the
17 preparation of the guidance document that we referred to
18 earlier that was prepared under your direction?

19 A Yes, he was involved in that preparation.

20 Q Let me ask you to turn to page six of Exhibit #4
21 that has just been placed before you. I'm going to quote a
22 passage and ask you whether you agree with that statement, and
23 if you do not, to clarify it.

24 It states, "Although advised on recommended
25 protective actions, the surrounding counties were not required

1 to take an active response role during the exercise. However,
2 during an actual large scale emergency the counties would have
3 been requested to provide the following types of support:
4 monitor public water supplies, e.g. open reservoirs; provide
5 information on local agricultural activities; guiding state
6 and federal responders; and support state ingestion pathway
7 response as required."

8 Is that a correct statement in the first sentence of
9 the county's participation in the Ginna exercise?

10 MR. LANPHER: Judge Gleason, I object to the
11 question. The witness testified that he's never seen this
12 document. He's now been asked --

13 MR. SISK: I'm asking him about the facts, not the
14 document.

15 MR. LANPHER: Excuse me. Could I finish my
16 objection?

17 He's now been asked to testify whether this is a
18 correct statement, one isolated statement out of this entire
19 document. He hasn't been asked to read the entire document
20 which runs 14 pages single spaced. I don't think he should be
21 allowed to ask any questions about it since the witness is not
22 familiar with it, but if he's going to be asked questions he
23 ought to be given an opportunity to familiarize himself with
24 the whole document.

25 JUDGE GLEASON: I really think you ought to lay a

1 better foundation, Mr. Sisk, for that kind of a question.

2 BY MR. SISK:

3 Q Mr. Geramo, did you observe the Ginna exercise?

4 A No I did not.

5 Q Were you present in any respect at the Ginna
6 exercise?

7 A Yes I was.

8 Q Where were you during that exercise?

9 A I was in Building 22 in Albany.

10 Q What was your role in that exercise?

11 A I was part of the State Emergency Management
12 Office's operation.

13 Q What is the State Emergency Management Office's
14 operation?

15 A We do a number of things. We're responsible for the
16 coordination of the emergency operation center in Albany,
17 responsible for alert and notification, responsible for
18 provision of information, and also coordinate activities
19 within the command room for the decision makers.

20 Q Does the State Emergency Management Office also have
21 various responsibilities that are delineated in Procedure K of
22 the radiological plan?

23 A Of the state radiological plan?

24 Q Yes.

25 A Yes we do.

1 Q Do you know from the participation that you've
2 described in the Ginna exercise whether, what the role of the
3 counties was in the ingestion pathway response, and by that I
4 mean the counties outside the --

5 MR. LANPHER: Judge Gleason, I object to that
6 question. What the counties did in the Ginna exercise of
7 October 1987 is totally irrelevant to whether there has been
8 compliance with the Board's discovery orders in the Shoreham
9 proceeding. I don't understand how this is possibly relevant.

10 JUDGE GLEASON: As I've said so many times before,
11 Mr. Lanpher, you may be right, but you may be wrong, so the
12 objection is denied, and you will answer the question.

13 MR. LANPHER: If I'm right and you let him answer
14 the question, then my client's rights are being --

15 JUDGE GLEASON: What I'm saying to you is that you
16 can't determine that at this particular time.

17 MR. LANPHER: Why can't you ask the counsel to
18 explain why this is relevant? He should have to answer my
19 objection.

20 JUDGE GLEASON: I'm going to deny your objection
21 because we're not going to proceed that way. We've not had
22 discovery before this proceeding. The witness will respond to
23 the question please.

24 BY MR. SISK:

25 Q Mr. Geramo, given the participation in the Ginna

1 exercise, your own participation as you just described it, are
2 you aware of the level or degree of participation of counties
3 in the ingestion pathway portions of that exercise?

4 A No, I'm not aware of the specific level. As I
5 recall, there was no requirement for any of the counties to
6 specifically participate. That was the genesis from the
7 exercise objectives. The winds and who was going to be
8 affected, obviously, was not known. This was an unannounced
9 exercise.

10 With respect to what detail each county may or may
11 not have implemented their own procedure to support such an
12 operation, I'm not aware of it.

13 Q Mr. Geramo, as between the county government and the
14 state government in an ingestion pathway response, which level
15 of government takes the lead on the ingestion pathway
16 response?

17 A That's a difficult question to answer. Obviously
18 the first line of defense would be at the county level, and
19 that would be the County Chief Executive's responsibility.
20 However, when you talk about a radiological ingestion pathway
21 response there are certain activities, obviously, that the
22 state would take the lead on such as monitoring and sampling.
23 So with respect to answering the question yes or no, it's
24 difficult. It's a joint procedure.

25 Q Did you engage in lecturing certain county emergency

1 managers in preparation for the Ginna exercise?

2 A I provided awareness information, yes.

3 Q Did you also make oral presentations at certain
4 meetings?

5 A Yes I did.

6 Q At those meetings did you discuss the issue of
7 whether the state or the counties would take the lead or
8 primary role in the ingestion pathway response?

9 MR. LANPHER: Judge Gleason, I object again. We've
10 had a bunch more questioning. Mr. Sisk has not tied it to any
11 issue in this proceeding. I think now you're in a position to
12 rule on my objection.

13 JUDGE GLEASON: I'm not in that position yet. Your
14 objection is denied.

15 Please proceed.

16 BY MR. SISK:

17 Q During the lectures that you gave in preparation for
18 the ingestion pathway response, did your lectures include any
19 statements concerning whether the state or the counties would
20 take the leading responsibility in the ingestion pathway
21 response?

22 A Yes, I believe we did discuss it.

23 Q Do you recall what you said at those lectures?

24 A Specifically no, only what I answered to you a
25 minute ago in terms of your last question. It would be a

1 shared responsibility. There are certain activities that the
2 state would be better suited to implement, and that's the way
3 the procedure for the ingestion pathway and specifically for
4 Ginna was written. On the other hand, in terms of decision
5 making, coordination with public information, that is
6 something that would be shared. That is the way the procedure
7 is written, and I believe the way the state plan is written as
8 well.

9 Q When you say that you were lecturing various, I
10 assume this was various county emergency managers at this
11 time, is that correct?

12 A That's correct.

13 Q You were trying to brief them on what they were
14 expected to do during the exercise, is that correct?

15 A Even more basic than that. What was the exercise,
16 what was the purpose of it, what would it evaluate, what was
17 the federal criteria, what was the state's responsibility,
18 local government responsibilities, when was the window for the
19 exercise, what was the generic document, guidance document
20 that was prepared, what did that contain in it, relative
21 information with respect to the exercise.

22 Q I'm going to hand you a document that I will ask be
23 marked for identification as LILCO Exhibit #42.

24 JUDGE GLEASON: LILCO Discovery Exhibit #42.

1 (The document referred to was
2 marked for identification as
3 LILCO Discovery Exhibit #42.)

4 MR. SISK: It is a June 1, 1987 letter to the
5 Chairman of the Yates County legislature from Mr. Donald
6 DeVito and it has attached to it an ingestion pathway public
7 awareness meeting agenda. The letter is dated June 1, 1987.
8 The agenda appears to be for a meeting of June 18, 1987.

9 BY MR. SISK:

10 Q This was produced to LILCO in discovery within the
11 past few days by the state of New York. Is the letter from
12 Mr. DeVito a letter that's sent out to various county
13 representatives in order to announce this briefing meeting on
14 June 18, 1987?

15 MR. LANPHER: I object to the question. He hasn't
16 even established whether Mr. Geramo is familiar with this
17 letter. Mr. DeVito was here the other day, but he wasn't
18 asked questions about this for some reason.

19 MR. SISK: I'm sorry. I'm trying to save time.

20 BY MR. SISK:

21 Q Mr. Geramo, do you recognize the signature on this
22 letter?

23 A Yes I do.

24 Q Is that Mr. DeVito's signature?

25 A Yes it is.

1 Q Are you the Chief of Staff of Mr. DeVito?

2 A Yes I am.

3 Q Have you ever seen this letter before?

4 A Yes I have.

5 Q Have you ever seen the attached agenda before?

6 A Yes I have.

7 Q Did you make a presentation in accordance with the
8 notation on that agenda?

9 A Yes.

10 Q If you'll look at line item under 10:30, overview of
11 REP program, Anthony Geramo. Was that the portion of the
12 program or a portion of the program that you presented?

13 A Yes.

14 Q What is the REP program?

15 A That's the state's radiological emergency
16 preparedness program. Actually it goes beyond that. It's the
17 REP, generally the REP program, radiological emergency
18 preparedness program.

19 Q So that would include elements both of SEMO's
20 responsibilities and REPIC's responsibilities, is that
21 correct?

22 A And federal responsibilities. Based on NUREG-0654
23 and other documents.

24 Q So when you say REP program, that would include
25 federal responsibilities, state responsibilities, both SEMO

1 and REPIC, is that correct?

2 A That's correct.

3 MR. LANPHER: Judge Gleason, I object again. We've
4 been 15 minutes now on the Ginna exercise. He has not
5 connected this in any way to the Shoreham proceeding. This
6 letter makes no reference to Shoreham or the Shoreham
7 proceedings whatsoever. I think it's time to rule on the
8 objection. This line of questioning is not in order.

9 JUDGE GLEASON: It's not time at this point.
10 Objection denied.

11 BY MR. SISK:

12 Q Mr. Geramo, look down in that outline where it says
13 to include, is that an outline of the components of the
14 presentation you covered?

15 A Yes.

16 Q Under the line that says "first line of response:"
17 can you interpret for me what that means over on the right,
18 "Plume, county ingestion, state?"

19 A What it's saying is that for, as identified in the
20 plan, as identified in the federal criteria with respect to
21 the differences between the exposure pathway and the ingestion
22 pathway, there are some different operational philosophies and
23 procedures that have been developed. With respect to the
24 plume exposure pathway, the county in the way the state plan,
25 local plans, county plans, and the utility plans have been

1 developed indicate that the county is the first line of
2 defense for those situations. And although, as I said before,
3 it's not easy to give a yes/no answer in that regard, it is a
4 coordinated effort. It has to be a coordinated effort.

5 With respect to ingestion, predominantly because of
6 resources, because of the laboratory capability, sampling, the
7 state would assume and be responsible for those activities and
8 not rely on the counties for sampling and radiological
9 monitoring.

10 Q That is as you stated earlier, in accordance with
11 the state plan and more specifically Procedure K of that plan,
12 is that correct?

13 A Yes.

14 Q Do you know Mr. Richard Watts?

15 A I know of him, yes.

16 Q Do you know whether he was present at that meeting?

17 A I believe he was.

18 Q Richard Watts' name also appeared, did it not, on
19 Exhibit #4 which you were shown, the presentation on the
20 ingestion pathway exercise? On the front cover of that
21 document.

22 A Yes.

23 Q Do you know if Mr. Watts observed the exercise?

24 A I don't know.

25 Q In your line of responsibility at the State

1 Emergency Management Office, do you have any notification
2 responsibilities in connection with radiological accidents at
3 nuclear power plants?

4 A For the State Emergency Management Office? Yes.

5 Q Let me ask that you be shown a document that has
6 been identified as Exhibit #7 and introduced into the record.

7 (Pause)

8 Q That is a procedure RAD-320 dated October 11, 1984
9 from the State Department of Health, Division of Environmental
10 Protection, Bureau of Environmental Radiation Protection.
11 Have you ever seen that document before?

12 A Yes I have.

13 Q Can you tell me what it is?

14 A As you stated, this is the Bureau of Environmental
15 Radiation Protection's document for radiological emergencies.
16 It's really their alert notification procedure.

17 Q Do you have a separate alert notification procedure
18 within the State Emergency Management Office?

19 A For radiological emergencies?

20 Q Yes.

21 A No.

22 Q Is this the notification procedure, the one you have
23 before you, the one that has been used?

24 A Within our office we have an alert and notification
25 procedure for all emergencies. Essentially what you see

1 listed on page four of six in this document for the State
2 Emergency Management Office is the essential procedure. But
3 this is not our procedure.

4 Q Let me ask you to turn to the last page of that
5 document. There is a listing for Suffolk County Health
6 Department, and there is a listing for Mr. Robert J. Shepherd.
7 Are you familiar with Mr. Shepherd?

8 A I know of him, yes.

9 Q Have you ever met him?

10 A I believe I have.

11 Q In what context have you met him?

12 A I don't recall.

13 Q Have you met him on multiple occasions or just one
14 time?

15 A I may have, but I just don't recall.

16 Q Do you recall whether he has ever attended any
17 exercises for nuclear plants inside or outside the state of
18 New York? Do you know?

19 A Not to my knowledge. No, I don't know.

20 Q The last document I want to show you is entitled
21 Brookhaven National Laboratory Emergency Response Plan,
22 revised July 1987. It's a very thick piece of paper.

23 MR. SISK: I'll ask that that be marked as LILCO
24 Exhibit #43.

25 JUDGE GLEASON: That will be designated as LILCO

1 Discovery Exhibit #43.

2 (The document referred to was
3 marked for identification as
4 LILCO Discovery Exhibit #43)

5 BY MR. SISK:

6 Q Mr. Geramo, I will state for the record that LILCO
7 has been informed that Dr. Kareem Rimawi of the State
8 Department of Health received a copy of this document at some
9 point in time from the United States Department of Energy. Let
10 me ask you whether you have ever seen a copy of this document
11 before?

12 MR. LANPHER: Judge Gleason, I'm not sure what
13 evidentiary status this sort of information being provided by
14 counsel that Mr. Rimawi stated --

15 MR. SISK: None.

16 MR. LANPHER: I'd like to inquire how he knows that
17 to be a fact.

18 MR. SISK: My statement is not evidence. I'm trying
19 to help the witness.

20 MR. LANPHER: It's supposed to help the witness, and
21 if it's supposed to help the witness, I think we're all
22 entitled to know how he allegedly knows this.

23 MR. SISK: I will simply say that a representative
24 of the Department of Energy informed LILCO that this document
25 was distributed to a number of individuals, and one of the

1 people who was listed as a recipient is Dr. Kareem Rimawi of
2 the New York State Bureau of Environmental Radiation
3 Protection, Department of Health.

4 MR. LANPHER: Can you tell us who from the
5 Department of Energy?

6 MR. SISK: No.

7 MR. LANPHER: Why not?

8 JUDGE GLEASON: Why not?

9 MR. SISK: Judge Gleason, I'm sorry, is the Board
10 asking us to identify the source within the Department of
11 Energy?

12 JUDGE GLEASON: Yes.

13 MR. SISK: I believe Mr. Irwin got that information.

14 MR. IRWIN: The information was provided to me from
15 sources whom I do not know located in the national laboratory
16 via a contact in the DOE Office of Nuclear in Washington named
17 Marian Novak.

18 JUDGE GLEASON: Is this a document you recognize,
19 Mr. Geramo? Have you ever seen this before?

20 THE WITNESS: No sir, I have not.

21 BY MR. SISK:

22 Q Have you ever seen any version of any plan for
23 responding to emergencies at the Brookhaven National
24 Laboratory?

25 A I may have, but I don't recall. I'm familiar with

1 their procedure for responding to radiological emergencies,
2 but in terms of whether I specifically recall seeing any one
3 of their publications, I don't.

4 Q What procedure are you referring to?

5 A What's contained in the state radiological plan in
6 terms of federal assistance in the event of an emergency.

7 Q So you're referring to assistance by DOE personnel
8 from Brookhaven for a response to a radiological emergency at
9 some other location, is that what you're referring to?

10 A Any type of radiological emergency, really.

11 Q That's the so-called DOE RAP program?

12 A Yes.

13 MR. SISK: That's all I have.

14 MR. ZAHNLEUTER: I think this might be an
15 appropriate time for me to make another motion to strike,
16 because there are questions relating to LILCO Exhibit #4 and
17 #42 that were allegedly related to this proceeding, and they
18 were supposed to be tied into the issues, and I never saw
19 anything develop out of them except I think Mr. Sisk's line of
20 questioning concluded with some correlation between the
21 presence of Mr. Watts at one of Mr. Geramo's conferences and
22 his name on the cover of one of the documents. I don't think
23 that line of questioning generated any relevant information.

24 So at this time at the conclusion of Mr. Sisk's
25 questioning, I ask that testimony he elicited be stricken.

1 MR. SISK: Judge Gleason, I don't think I can
2 respond to that in the presence of the witness.

3 JUDGE GLEASON: I didn't hear you, Mr. Sisk.

4 MR. SISK: If the Board wants a response to that, I
5 don't believe I can respond in the presence of the witness.

6 MR. LANPHER: He's finished with the witness, I
7 thought.

8 MR. SISK: I'm finished with the witness. Other
9 parties are not.

10 JUDGE GLEASON: I really think, I'm going to deny
11 the objection and move this proceeding on. Let's proceed.

12 MR. ZAHNLEUTER: May I have a rationale for the
13 denial?

14 JUDGE GLEASON: Yes, time is getting late. That's
15 enough rationale for the moment. I also might say that
16 because a lot of these things have to be connected with other
17 statements, other documents, it's an unusual proceeding and I
18 just don't think we can be that precise at this time of the
19 day to make those kind of judgments.

20 MR. SISK: Judge Gleason, I will say that the line
21 of questioning I believe does relate directly to other
22 statements and documents that are in the record.

23 JUDGE GLEASON: I understand.

24 MR. LANPHER: I join Mr. Zahnleuter's motion on
25 behalf of Suffolk County. And I don't know to what Mr. Sisk

1 is referring to, we're entitled to know, I don't know if I
2 should do questions of Mr. Geramo because there is some
3 allegation against Suffolk County. I'm at a total loss to
4 understand what relevance any of that has. So unless he
5 connects it I think you ought to grant Mr. Zahnleuter's
6 motion.

7 JUDGE GLEASON: Well I'm not going to grant it.
8 I've denied it and I want to move on please.

9 Do you have questions of the staff?

10 MS. YOUNG: Yes.

11 JUDGE GLEASON: Proceed, please.

12 BY MS. YOUNG:

13 Q Mr. Geramo, let's go back to the time that Mr.
14 Zahnleuter asked you to provide documents responsive to LILCO
15 discovery requests. Do you remember when he first made that
16 request of you?

17 A The specific date I don't, but it was some time
18 within a month and a half ago. Between that time and
19 yesterday. I just don't have a specific date.

20 Q Briefly again, what was the scope of the search you
21 were to do in terms of the documents?

22 A If you're asking me to narrow it down, it had to be
23 some time June, sometime in that time frame. The specific
24 date I don't know.

25 Q You believe he first asked you in June?

1 A Some time in that time frame, yes.

2 Q Do you remember his specific words to you? I think
3 I heard you testify that you received a phone call asking you
4 to find documents.

5 A Yes. Specifically he asked for documents that we
6 would have in our files that may affect Suffolk County.

7 Q On how many different occasions did you meet with
8 him concerning that search for documents?

9 A It had to be at least three or four meetings and I
10 would say a similar number of phone calls, so probably six,
11 eight, nine times in terms of discussion.

12 Q When was your last meeting regarding production of
13 documents?

14 A I'm trying to recall. It had to be approximately
15 two weeks ago.

16 Q During those occasions were you ever asked to review
17 written interrogatories?

18 MR. LANPHER: I can't hear you.

19 MS. YOUNG: I'm sorry.

20 BY MS. YOUNG:

21 Q Were you ever asked to review written
22 interrogatories?

23 A I was provided with some information, and in
24 particular reviewed statements that were made by Dr. Axelrod
25 in direct testimony and also a statement by the Governor.

1 Aside from that I really was given nothing special to review.

2 Q You weren't given any documents with a list of
3 questions for you to answer, to respond to?

4 A No.

5 Q When you say you were asked to search for documents
6 that could be applied to Suffolk County I think I heard you
7 say.

8 A That would affect Suffolk County.

9 Q Did you understand that to mean you were supposed
10 to look for Suffolk County specific documents, or documents
11 that were more of a generic nature?

12 A I assumed that to mean both, and we looked and
13 searched diligently for documents that were either provided by
14 Suffolk County that contained the word Suffolk County in them,
15 or generic application that could be made to Suffolk County.

16 Q How were the documents transmitted to counsel?

17 A I believe they were transmitted by inter-agency mail
18 under the state system.

19 Q Was there any time that counsel for the state of New
20 York came to your offices to review documents that you had
21 collected?

22 A I don't recall.

23 Q Did the request for documents, to your
24 understanding, also have relevancy to planning documents that
25 could be used in radiological emergencies in general?

1 A Yes.

2 Q I believe you said at one time your duties for the
3 State Emergency Management Office included being a
4 radiological defense officer?

5 A No, I didn't say that.

6 Q I withdraw that question.

7 If you could turn for a moment to Exhibit #5, that's
8 the August 27, 1987 memo from you to the 13 county managers I
9 think you said.

10 A That's correct.

11 Q Turn to page 33 as indicated by the telecopied page.
12 It's Attachment 7 near the end of that document.

13 (Pause)

14 Q I believe I heard you say in testimony that you
15 didn't believe this guidance document was pertinent to
16 anything in relationship to Suffolk County, is that correct?

17 A That's correct.

18 Q I see Suffolk County is listed as part of the alert
19 notification procedure for Indian Point for this Attachment 7
20 that I've directed your attention to.

21 A It's part of the ingestion exposure pathway alert
22 notification procedure, yes.

23 Q Is it your testimony that the document attached to
24 your memo is so specific that it could never have any
25 application for Suffolk County?

1 A You're asking me to speculate, but the document, as
2 I said, was prepared for the 13 counties. I won't suppose,
3 but you're asking me to speculate.

4 Q I think I understood your testimony to indicate the
5 initial purpose for the preparation of the document. My
6 question is a different one.

7 Is it your belief this document could not be used by
8 Suffolk County for the purpose of disaster preparedness
9 planning?

10 A Again, you're asking me to speculate.

11 MR. LANPHER: I object to the question. Cannot be
12 used by Suffolk County? Is that your question?

13 MS. YOUNG: This document, he indicated I believe,
14 Judge Gleason, in earlier testimony today that this was the
15 guidance document that contained some generic guidance, but it
16 was prepared specifically for 13 counties. My question is, is
17 it his belief that this document is not so generic in nature
18 that Suffolk County would never have any use of it in terms of
19 disaster preparedness plans.

20 MR. LANPHER: I object. That calls for speculation
21 about what Suffolk County could do. Mr. Geramo can't
22 speculate on that.

23 JUDGE GLEASON: He's an expert. Let him speculate.

24 MR. LANPHER: Even experts aren't allowed to
25 speculate, Judge.

1 JUDGE GLEASON: Let him give his opinion, please.
2 Answer the question in terms of what your best
3 judgment is.

4 THE WITNESS: Again, Judge, I would not want to
5 speculate. It is up to the county to determine what in
6 particular they would like to see included in any plan.
7 That's the way this was developed, as a guidance document.
8 That's all I can say.

9 JUDGE GLEASON: You've got an answer.

10 BY MS. YOUNG:

11 Q Do you believe that the guidance in this document is
12 so specific that Suffolk County would not be able to use this
13 document for emergency planning purposes?

14 MR. LANPHER: Objection. That was asked and
15 answered, Judge.

16 JUDGE GLEASON: Objection denied. Let him answer
17 it.

18 THE WITNESS: One more time I'll say it. The
19 document was prepared specifically as a guidance document for
20 13 counties for the Ginna ingestion pathway exercise. It was
21 not prepared for any other response in any other portion of
22 the state, nor any other operating nuclear reactor.

23 In terms of whether or not any other county in the
24 state other than the 13 could take this document and utilize
25 it, there is no mandate for it. It was never designed with

1 that in mind, nor is there any statutory authority for that.
2 Whether or not another county could use it, it's purely
3 speculation. The planning for that type of an incident is
4 site specific and has to be done so. The federal criteria
5 states that, NUREG-0654, as well as I believe the state plan.

6 So I can't speculate and provide an answer.

7 BY MS. YOUNG:

8 Q So your testimony is that the generic guidance in
9 this document is so specific to Ginna that no other county in
10 New York State could use it for emergency planning purposes.

11 MR. LANPHER: I object. That mischaracterizes ---

12 JUDGE GLEASON: That is a mischaracterization of his
13 testimony.

14 MS. YOUNG: Maybe I'm misunderstanding something
15 you're saying.

16 JUDGE GLEASON: Let's move on because we don't
17 really want to go over it again.

18 MS. YOUNG: All right, I'll withdraw the question.

19 BY MS. YOUNG:

20 Q I that same document could you turn to, I believe
21 it's Attachment 11. The telecopied page 37. That's a table
22 that reads Task/Responsibilities for Ingestion Pathway
23 Planning.

24 A Yes.

25 Q The left column has a listing of departments. The

1 first is Department of Health. I think in response to
2 questions from Mr. Sisk you indicated that Department of
3 Health had procedures for disaster preparedness, is that
4 correct?

5 A I believe they have procedures for what's contained
6 in this document, yes.

7 Q Is it your understanding that LILCO Discovery
8 Exhibit #7 may be one of the procedures of the Department of
9 Health?

10 A This is the #7, for all radiological emergencies by
11 the Bureau of Environmental Radiation Protection.

12 Q That's correct.

13 A Yes.

14 Q Dated 10/11/84.

15 A Yes.

16 Q Are you aware of whether the other agencies listed
17 on the table have procedures that are written?

18 A Again, I'll give the same answer. It's the agency's
19 responsibility. How they determine what form the procedures
20 take, that's entirely up to them. Whether or not they have
21 specific procedures, I'm sure they have. I don't recall
22 seeing any.

23 Q So you don't have specific knowledge of whether any
24 of these agencies have written procedures?

25 A No.

1 Q Along that same line I believe you said the state
2 disaster preparedness plan has procedures that govern SEMO's
3 activities in emergencies, is that correct?

4 A I believe the question was within the ingestion
5 exposure pathway portion of the REP plan, not the state
6 disaster preparedness plan. My answer was yes in that regard.

7 Q Are there any written procedures that cover SEMO's
8 activity? Any other written procedures that govern SEMO's
9 activities during an emergency or say an emergency planning
10 exercise for a nuclear plant?

11 MR. LANPHER: I object. That question is already
12 answered.

13 THE WITNESS: We have checklists, yes.

14 BY MS. YOUNG:

15 Q Do you know if they were turned over to Mr.
16 Zahnleuter in response to the discovery requests made this
17 year?

18 MR. ZAHNLEUTER: Let me say in response to that, do
19 you know if there are any discovery requests that call for
20 those kind of documents? Why don't you tell me what that is.

21 JUDGE GLEASON: I think you ought to address your
22 comments to the bench.

23 MR. ZAHNLEUTER: I'm sorry. I admit that I made a
24 mistake there. I object because the question is improper
25 because it assumes a discovery request, and I haven't seen any

1 such evidence of a discovery request.

2 JUDGE GLEASON: Is there such a discovery request.

3 MS. YOUNG: The staff doesn't have knowledge of
4 discovery requests. My question was more general in nature.
5 Does he know whether any such procedure was turned over with a
6 group of documents that he handed to Mr. Zahnleuter or
7 transmitted to Mr. Zahnleuter over the last couple of months
8 responding to LILCO discovery.

9 MR. ZAHNLEUTER: The question assumes there is a
10 response to a LILCO discovery request, and I'm saying that to
11 my knowledge there is no such discovery request.

12 MS. YOUNG: Judge Gleason, this is my last area of
13 questioning. It shouldn't be so hard.

14 JUDGE GLEASON: I don't like the word area, but the
15 last question --

16 MS. YOUNG: There have been three witnesses today
17 and I get easily confused, but I thought I heard him say when
18 we were talking about the list of documents turned over that
19 there were 13 or 14 documents turned over to Mr. Zahnleuter.

20 JUDGE GLEASON: He did state that.

21 MS. YOUNG: My only question is whether any SEMO
22 procedures were included among those documents that were
23 turned over.

24 JUDGE GLEASON: That's a perfectly valid question.

25 THE WITNESS: The state disaster preparedness plan I

1 believe was provided, and that contains all the
2 responsibilities for which SEMO has in the event of an
3 emergency. I don't believe specific operating procedures of
4 the agency were provided. I think the request was for those
5 materials which we have in our files that may affect Suffolk
6 County, and that's what was provided, whether they be generic
7 guidance documents or specific referenced items.

8 MS. YOUNG: That concludes the staff's questioning.

9 JUDGE GLEASON: Mr. Cumming?

10 MR. CUMMING: Hopefully I have just one question,
11 Judge Gleason.

12 JUDGE GLEASON: I've heard that before.

13 BY MR. CUMMING:

14 Q I've placed before you a copy of a document that's
15 marked in the upper right hand corner, FEMA 9, May '88. It's
16 been previously marked as FEMA Discovery Exhibit #1 I believe.
17 My name is William R. Cumming, and I'm counsel for
18 FEMA.

19 Would you refer to page 15 of that document, and the
20 entry for New York State?

21 (Pause)

22 Q You have described your title in your organization
23 as Chief of Staff of SEMO, and Major General Flynn is also
24 listed as Chief of Staff for the department. Would you
25 explain the distinction between your two positions and the

1 relationships between your organizations?

2 A Sure. Major General Flynn is the Chief of Staff to
3 the Governor for the, and also the head of the New York State
4 Division of Military and Naval Affairs. He is the
5 Commissioner of the agency, if you will. With respect to our
6 office, we are housed within the Division of Military and
7 Naval Affairs, and receive our administrative support from
8 that organization.

9 My title is not the same, obviously, as his title.
10 I am the Chief of Staff for a directorate, if you will, within
11 his organization.

12 MR. CUMMING: I have no further questions.

13 MR. LANPHER: No questions from Suffolk County.

14 MR. ZAHNLEUTER: I have nothing to add except that
15 the phrase "affecting Suffolk County" has come up numerous
16 times today, and I point out to the Board and the parties that
17 that is the phrase, quote/unquote, that appears in LILCO
18 interrogatory 120.

19 I have no questions.

20 JUDGE GLEASON: Mr. Geramo, could you elaborate just
21 a bit about your relationships with Dr. Axelrod, how those
22 relationships are carried out? When I say you I mean SEMO.

23 THE WITNESS: As Chairman of the Disaster
24 Preparedness Commission?

25 JUDGE GLEASON: Yes.

1 THE WITNESS: In his role as Chairman, he is
2 responsible to the Governor for the emergency management
3 policy and the attendant responsibilities of the commission.
4 With respect to how we do business as the State Emergency
5 Management Office, as I said, with respect to DMNA, the
6 Division of Military and Naval Affairs, we receive our
7 administrative support from that organization.

8 JUDGE GLEASON: I understand that.

9 THE WITNESS: With respect to Dr. Axelrod as
10 Chairman of the DPC, in the event of an emergency we receive
11 operational guidance and direction from him as Chairman of
12 that commission.

13 JUDGE GLEASON: How often do you interact with the
14 Commission?

15 THE WITNESS: The Commission as a body established
16 by law meets twice a year. Of course there is interaction
17 before those meetings and after those meetings following up
18 on items that need to be addressed.

19 Indirectly, we also interact with the Commission
20 through the series of liaisons that are assigned for each
21 agency. SEMO more or less meets with those liaisons to go
22 over emergency management activities.

23 JUDGE GLEASON: So there is a liaison officer in
24 each of the departments or represented on the Disaster
25 Preparedness Commission?

1 THE WITNESS: Yes sir.

2 JUDGE GLEASON: And you would interact with those
3 liaison officers as you're carrying out the instructions of
4 the Commission and as you're preparing plans?

5 THE WITNESS: Yes sir.

6 JUDGE GLEASON: Those plans will be modified?

7 THE WITNESS: Not so much in the readiness phase,
8 but more in the response recovery phase in the event of an
9 emergency, hazardous materials incident, or a natural
10 disaster.

11 JUDGE GLEASON: What are the kinds of things that go
12 before, when the Preparedness Commission meets are you in
13 attendance? You personally?

14 THE WITNESS: Sometimes I am, but more times I'm not
15 sir.

16 JUDGE GLEASON: Who would be in attendance?

17 THE WITNESS: Mr. DeVito.

18 JUDGE GLEASON: Who else, would you say?

19 THE WITNESS: General Flynn and the 17 commissioners
20 of the agencies.

21 JUDGE GLEASON: Would you be a participant in the
22 drafting of the agenda for that commission?

23 THE WITNESS: Sometimes I am, yes.

24 JUDGE GLEASON: Does that commission review county
25 disaster preparedness plans or county emergency operating

1 plans?

2 THE WITNESS: Directly, no sir.

3 JUDGE GLEASON: Were you involved in, and I realize
4 this is going to be objected to, and I assure you that your
5 objections have been noted on a longstanding basis to save
6 time, I just want to throw that out for whatever it's worth.

7 Were you involved in the controversy that ensued
8 over Rockland County not participating in an emergency
9 operating plan with respect to the Indian Point facility?

10 MR. LANPHER: I object.

11 MR. ZAHNLEUTER: Objection.

12 JUDGE GLEASON: Objection overruled.

13 Were you involved in that controversy at all?

14 THE WITNESS: Yes I was, Your Honor.

15 JUDGE GLEASON: Would you describe the extent of
16 your involvement?

17 THE WITNESS: I was involved essentially working
18 with the state agency representatives and representing the
19 emergency management structure for Rockland County.

20 JUDGE GLEASON: Were you involved in the development
21 and preparation, if you will, of the Rockland or, I forgot
22 what they call that plan. I think they call it a provisional
23 plan, provisional emergency operating plan for Rockland
24 County.

25 THE WITNESS: I'll have to answer two ways, sir. I

1 was not involved in the preparation of the plan. I was
2 involved in providing information and in coordinating specific
3 responsibilities of state agencies. So more or less the
4 procedural end of it, not the plan itself.

5 JUDGE GLEASON: Do you recall what was used as far
6 as the plan is concerned with respect to Rockland County?

7 THE WITNESS: I don't sir.

8 JUDGE GLEASON: You don't recall that?

9 THE WITNESS: No I don't, sir.

10 JUDGE GLEASON: I don't have any other questions.

11 MR. SISK: Judge Gleason, may I ask just one follow
12 up question?

13 JUDGE GLEASON: Yes, go ahead.

14 MR. SISK: I'd just like to know, Mr. Geramo, what
15 you meant when you said that the Disaster Preparedness
16 Commission is not directly involved in the review of LILCO
17 disaster plans or emergency operations plans. What did you
18 mean by directly?

19 THE WITNESS: The state emergency management
20 provides staff services for the Disaster Preparedness
21 Commission. The Commission itself, the Commissioners, do not
22 review themselves plans. That's done by the respective staffs
23 of the State Emergency Management Office and if deemed
24 appropriate, any other state agency that's a member of the
25 Commission. So the Commissioners or the Commission itself is

1 not directly responsible for the review of plans.

2 MR. SISK: Are they responsible for any approval of
3 those plans?

4 THE WITNESS: No.

5 MR. SISK: Mr. Irwin has one correction to make for
6 the record.

7 MR. IRWIN: Judge Gleason, when the Board asked who
8 the person was in the Department of Energy who informed us
9 that a copy of the Brookhaven plan had been sent to Dr.
10 Rimawi, I answered that it had been Marian Novak in the
11 Department of Nuclear. As I sit here thinking about it, I'm
12 not so sure of that. I believe it may have been an attorney
13 in the General Counsel's Office of DOE, Mao Lee. I'm not
14 positive of either one, but I am more nearly sure that it was
15 Mr. Lee than that it was Ms. Novak.

16 JUDGE GLEASON: Thank you, Mr. Geramo. Your
17 testimony was very helpful. That concludes our session for the
18 day. We come back on Tuesday for I believe the final two
19 witnesses, and we do intend to close this phase of the hearing
20 at the end of that testimony. So we'll proceed at 9:30
21 Tuesday morning.

22 (Hearing was concluded at 5:52 p.m., but immediately
23 reopened.)

24 JUDGE GLEASON: Do we have further comment?

25 MS. LETSCHE: We have not reached Mr. Shepherd. We

1 have left a message. He is supposed to call us as soon as he
2 gets our message to call us. I have not been able to speak to
3 him so I can't say for certain what his availability is.

4 I will say based on conversations that we had at the
5 Board's direction last week with Mr. Shepherd that he has no
6 information relevant to the document productions that took
7 place in '82, '83, or '88 which is the announced subject of
8 this proceeding. But in any event, as I said we haven't
9 reached him so I can't confirm whether he in fact would be
10 available in any event on Tuesday, and I don't know when I
11 will hear from him to be able to find out.

12 MR. LANPHER: Judge Gleason, if I could just add, I
13 spoke with his secretary, and asked at your direction if he
14 was reachable by land or sea. He was not. They thought there
15 might be a possibility that he would phone in or come back to
16 his home or something, and they put a message on his answering
17 service directing that he call me if he did come back, and I
18 have not heard from him. We've done everything we know to
19 attempt to reach him.

20 JUDGE GLEASON: We are at a loss in this thing
21 because Mr. Shepherd's name has come up a number of times
22 related to documents. He should be produced. We don't want
23 to go beyond Tuesday. So --

24 MR. LANPHER: Judge, I thought it was an open
25 question whether he was to be produced or not, and you had

1 made no decision whether he was to be produced.

2 JUDGE GLEASON: That is true, but I based this on
3 the filings I received. Based on my urging counsel to find
4 Mr. Shepherd or to locate him, I assumed you would have
5 implied from that that we were anxious to have him before the
6 Board, and I would like to have him here. The Board would
7 like to have him here.

8 MR. REIS: It's my understanding that perhaps Dr.
9 Harris would do.

10 JUDGE GLEASON: No one knows where Dr. Harris is.

11 MS. LETSCHE: Dr. Harris is unavailable until some
12 time in August.

13 MR. SISK: Our records indicate that Mr. Frank
14 Jones, Mr. William Regan, and Mr. Donald Davidhoff were
15 scheduled for July 19. Mr. Shepherd would be the only
16 additional person. I think the Board can sense that we have
17 fairly limited but potentially important questions of Mr.
18 Shepherd.

19 JUDGE GLEASON: I would ask the counsel for the
20 governments to continue to pursue reaching Mr. Shepherd. We
21 would like to have him produced on Tuesday.

22 (Whereupon, at 5:59 p.m. the hearing was adjourned,
23 to reconvene on Tuesday, July 19, 1988.)

REPORTER'S CERTIFICATE

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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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