

ORIGINAL

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power
Station, Unit 1)

DOCKET NO: 50-322-OL-5
(EP Exercise)

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-5
(Shoreham Nuclear Power Station, : (EP Exercise)
Unit 1) :

-----X

Court of Claims
State of New York
State Office Building
Third Floor Courtroom
Veterans Memorial Highway
Hauppauge, New York 11788
Wednesday, June 17, 1987

The hearing in the above-entitled matter reconvened, pursuant to notice, at 9:00 o'clock a.m.

BEFORE:

JOHN H. FRYE, III, Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Bethesda, Maryland 20555

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2 Atomic Safety and Licensing Board
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5 FREDERICK J. SHON, Member
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* * * * *

C O N T E N T S

Direct Cross Redirect Recross Voir Dire

ROGER B. KOWIESKI

THOMAS E. BALDWIN

JOSEPH H. KELLER

8557 8593 8612

* * * * *

EXHIBITS

Identified Admitted

FEMA Exercise Exhibit No. 7

8594

8676

Suffolk Exercise Exhibit No. 107

8617

Suffolk Exercise Exhibit No. 108

8692

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A. M. RECESS

Page 8592

LUNCHEON RECESS

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P R O C E E D I N G S

(9:00 a.m.)

1
2
3 JUDGE FRYE: Good morning. Are you ready to
4 proceed?

5 MS. McCLESKEY: Yes, sir. Before I do, I had
6 promised that I would consult with LILCO about the member of
7 the public who wants to come along on the tour today, and I
8 spoke with the Director of the Office of Training and he
9 said he would be delighted to have her.

10 So, if she would like to come she is welcome.

11 JUDGE FRYE: Okay. Fine. I don't see her in
12 the courtroom this morning.

13 SPECTATOR: I will convey that to her.

14 JUDGE FRYE: Yeah, okay. Good.

15 Whereupon,

16 THOMAS E. BALDWIN,

17 ROGER B. KOWIESKI

18 and

19 JOSEPH H. KELLER

20 are resumed as witnesses and, having previously been duly
21 sworn, were further examined and testified as follows:

22 CROSS EXAMINATION

23 BY MS. McCLESKEY: (Continuing)

24 Q Gentlemen, the ENC is a joint on-site/off-site
25 facility, isn't that right?

1 A (Witness Kowieski) That's correct.

2 Q And, the rumor control function that is
3 performed at the ENC is an on-site function, right?

4 A (Witness Keller) I believe it may have aspects
5 of the on-site function but it also has aspects of the off-
6 site function.

7 Q So, you would consider that a joint function as
8 well?

9 A Yes.

10 Q What about media monitoring, is that an on-site
11 function?

12 A Well, again I think that would be -- as I
13 understand media monitoring I understand it to mean that
14 someone will monitor the media to see that correct
15 information is being disseminated to the public; and, that
16 would be both information concerning the events on-site and
17 the events off-site.

18 So, I would say that would be a joint function.

19 Q Okay. Now, because of the joint nature of the
20 ENC, the NRC looks at certain aspects of the facility and
21 evaluates it in addition to FEMA; isn't that right?

22 A (Witness Kowieski) I would expect so.

23 Q Ms. Jackson, a FEMA evaluator, attended press
24 briefings at the ENC, did she not?

25 A Yes, she did.

1 Q And, those were joint on-site/off-site
2 briefings, right?

3 A (Witness Keller) That's my understanding.

4 Q Right. Do you-all still have Suffolk County
5 Exercise Exhibit 101? It's Ms. Jackson's exercise
6 evaluation critique form.

7 A Which one?

8 (Witness Kowieski) Which --

9 Q On ENC-3.

10 A (Witness Keller) Yes.

11 (The witnesses are looking at documents.)

12 Q Do you have it?

13 A Yes.

14 (Witness Kowieski) Yes, we do.

15 Q And, do you see there on the right she has
16 written: The following problems are noted. Number 3 is
17 effectiveness of maps and displays can be improved.

18 A Yes, we see that.

19 (Witness Keller) We see that.

20 Q And, do you see Number 2: Briefings should
21 include a review of previous actions and improved in other
22 ways?

23 A Yes.

24 Q Okay. Now, those briefings that she attended
25 were the on-site and off-site briefings, right?

1 A That's my understanding, yes.

2 Q And, the maps and displays she was looking at
3 were all the maps and displays in the room at the briefings,
4 right?

5 A That's my assumption, yes.

6 Q So, some of those were on-site as well?

7 A They certainly could be on-site displays, yes.

8 Q And, in the press briefings if the on-site
9 representative and the off-site representative had
10 contradicted each other she would have heard it?

11 MR. LANPHER: I object to the question. This
12 whole line of questioning is asking these gentlemen to
13 speculate about what someone else might have seen or might
14 have noticed.

15 MS. McCLESKEY: I don't believe --

16 JUDGE FRYE: Well, we have been -- they are
17 being asked to speculate as to what she might have seen or
18 might have noticed, but it seems to me that goes through
19 this entire testimony to a large extent.

20 Do you have very much of this?

21 MS. McCLESKEY: No, sir.

22 JUDGE FRYE: Okay. Well, let's get this in.

23 BY MS. McCLESKEY: (Continuing)

24 Q Mr. Keller, it's true, isn't it, that you had
25 extensive discussions with Ms. Jackson following the

1 exercise about what her evaluation was, isn't it?

2 A (Witness Keller) That's correct.

3 Q Did you talk to her about where she was and what
4 she did at the exercise?

5 A Yes, I did.

6 Q Do you feel as though you are speculating when
7 you say that she was in the briefing room?

8 A No. I am sure that she was in the briefing
9 room.

10 Q And, are you sure that there were on-site and
11 off-site representatives in the briefing room?

12 A That's what she represented to me, yes.

13 Q And, are you sure that there were maps and
14 displays in the briefing room?

15 A Well, she raised the issue she thought that the
16 maps and displays could be improved. I don't remember her
17 distinctly saying that there were no maps and displays in
18 the briefing room.

19 I remember -- and her exercise critique form
20 indicates that she thought there could be better maps and
21 displays and there could be better use of maps and displays
22 which were not there.

23 I do not have any direct recollection of her
24 saying there were no maps, so it would be an assumption that
25 there were some.

1 Q And, your assumption is based on the fact that
2 if Ms. Jackson suggested that a map and display could be
3 improved, the map and display exists?

4 A That's right.

5 Q And, you feel sure that if during the briefings
6 the on-site and the off-site representatives had
7 contradicted each other she would have mentioned that?

8 MR. LANPHER: I object to the question. It
9 calls for speculation again, Judge.

10 JUDGE FRYE: I think we will permit it.

11 WITNESS KELLER: That's my conviction, that one
12 of the things that the evaluator at the joint news center is
13 supposed to be evaluating is the coordination of
14 dissemination of information to the media. Part of the
15 coordination at the joint -- at any joint news center is the
16 coordination between the off-site agency, whoever that may
17 be, state or local or in this case LERO, and the on-site, in
18 this case LILCO.

19 So, it's kind of -- in this particular case,
20 it's a little closer tie. But, one of the things that you
21 would like to look at is the fact that there is a
22 coordinated release of information and that one entity is
23 not saying one thing and the other entity saying something
24 else.

25 That's part of the evaluation that you are

1 supposed to be doing there.

2 JUDGE FRYE: So, she did her job properly?

3 WITNESS KELLER: That's right. And, Ms. Jackson
4 is an experienced evaluator. She has been to many of these
5 things.

6 It is an assumption on my part, but she is an
7 experienced evaluator and she did not make that statement.
8 Therefore, I assume that she was satisfied that that did not
9 occur.

10 BY MS. McCLESKEY: (Continuing)

11 Q And, Mr. Keller, are you satisfied that through
12 Ms. Jackson FEMA did evaluate the on-site and off-site
13 coordination at the ENC?

14 MR. IANPHER: Same objection.

15 JUDGE FRYE: Overruled.

16 WITNESS KELLER: Insofar as part of her
17 evaluation was to look at this coordinated release and
18 insofar as there was information released by the on-site
19 authorities, she should have looked at that evaluation. I
20 believe she is a qualified evaluator; I believe she does her
21 job in a conscientious way.

22 There are no statements to the effect that there
23 was a discoordination of information. I, therefore, assume
24 it was all right.

25 BY MS. McCLESKEY: (Continuing)

1 Q Gentlemen, are any of you aware whether at other
2 New York State exercises KI has been given to emergency
3 workers?

4 A Well, could you rephrase? Recommendation to
5 simulate injection of KI.

6 Q Right.
7 (Laughter.)

8 A Okay. With that in mind, yes, it has occurred
9 at other New York State exercises.

10 Q All right. And, have you ever seen an exercise
11 where the fact that a recommendation that KI be simulated to
12 be taken was announced at the ENC to the media?

13 A (Witness Kowieski) Not to my recollection.

14 (Witness Keller) I don't have any recollection
15 of it. I don't believe that it was, but that's just a
16 recollection.

17 Q Dr. Baldwin?

18 A (Witness Baldwin) Nor do I, no recollection.

19 Q Do you have a copy of the EBS messages up there?

20 A (Witness Keller) I'm sorry, I do not.

21 Q That's quite all right. I will give you one.

22 MS. McCLESKEY: For the rest of the room, I'm
23 going to hand the witnesses the attachments to LILCO's
24 testimony on Contentions 38 and 39 and direct them to
25 Attachment B, Message 8, EBS Message 8, at the top of OPIP

1 3.8.2, Page 49 of 63, and ask them to look at the sentence,
2 "You will be directed along evacuation routes by trained
3 traffic guides who will know which way you should go."

4 MR. LANPHER: Judge, could we have just a short
5 break so we can get our copies?

6 JUDGE FRYE: Surely.

7 MR. LANPHER: Maybe we should ask, are there
8 going to be other documents we should get from the other
9 room?

10 MS. McCLESKEY: No.

11 (Ms. McCleskey provides the witnesses with a
12 document.)

13 WITNESS KELLER: I probably didn't get all of
14 that reference.

15 (Off-the-record.)
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1 BY MS. McCLESKEY: (Continuing)

2 Q All right. Now, gentlemen, you have in front of
3 you in that message the sentence, "You will be directed
4 along evacuation routes by trained traffic guides who know
5 which way you should go."

6 A (Witness Keller) That's what it says, yes.

7 Q And, Mr. Kowieski, I believe you already
8 testified that all the EBS messages were reviewed, the
9 content of the messages were reviewed, as part of the plan
10 review; is that right?

11 A (Witness Kowieski) That's correct.

12 Q And, did FEMA review the content of the EBS
13 messages at the EOC during the exercise?

14 (The witnesses are conferring.)

15 A (Witness Keller) Well, it would have to be an
16 assumption on our part. Mr. Hugh Laine would be evaluator
17 at the EOC, and I believe that was your question -- was it
18 reviewed at the EOC. That -- again, he is a professional
19 PIO, and we are assuming on his part. I did not have
20 extensive discussion with Mr. Laine.

21 I feel reasonably confident in talking about
22 what Ms. Jackson represented to me. I'm a lot less
23 confident about Mr. Laine. And, I would assume that he did,
24 because that was part of his job.

25 MR. LANPHER: Judge, I object to the answer and

1 move that it be struck. Again, we are asking for
2 speculation.

3 The question he should have just answered no, he
4 doesn't know.

5 JUDGE FRYE: You don't know, do you?

6 WITNESS KELLER: That's correct.

7 JUDGE FRYE: All right.

8 BY MS. McCLESKEY: (Continuing)

9 Q Did you three look at the messages in preparing
10 your testimony on Page 70 in response to Contention 40.C?

11 (The witnesses are conferring.)

12 A (Witness Keller) I will speak for myself. I
13 did review the messages that were in Ms. Jackson's files. I
14 reviewed them fairly carefully. I believe -- well, I will
15 let the others say for themselves.

16 (Witness Kowieski) Well, Mr. Keller share some
17 of the EBS messages with me just to prove, I guess, his
18 point, what was presented in our testimony. So, I did not
19 review every single EBS message.

20 Q Mr. Kowieski, are you looking at your testimony
21 on Page 70?

22 A Yes.

23 Q It refers particularly to that sentence that I
24 referred you to in the EBS message about the traffic guides.

25 A Right.

1 Q Did you look at that sentence in preparing this
2 testimony?

3 A (Witness Keller) Yes.

4 (Witness Kowieski) Yes.

5 Q Mr. Keller, you did --

6 A (Witness Keller) Yes.

7 Q And, Mr. Kowieski, did you?

8 A (Witness Kowieski) Yes, I did.

9 Q Dr. Baldwin, did you?

10 A (Witness Baldwin) Well, in the same context
11 that Mr. Kowieski did in developing the testimony. It was
12 written in this case by Mr. Keller, and in going over what
13 was contained in it he pointed out to me what was in the
14 plan and how the EBS messages had been -- what was injected
15 in the exercise.

16 Q Now, on Page 70 your testimony indicates that
17 FEMA's position is that misleading information should not be
18 distributed to the public. And, you say that the EBS
19 messages should be reworded to include statements to the
20 effect that traffic guides are being dispatched to assist
21 evacuation traffic.

22 Mr. Kowieski, would you explain to me how that
23 sentence about traffic guides is misleading?

24 A (Witness Kowieski) Well, I guess what we are
25 referring to is the fact that some of the traffic guides

1 were not at their posts when evacuation was in progress.
2 That's what we are referring to.

3 Q And, so the statement, "you will be directed,"
4 is misleading because some people might not have seen all
5 the traffic guides out; is that your position?

6 A That's correct.

7 Q You didn't find that sentence misleading when
8 you reviewed the plan and the EBS messages, did you?

9 A No, we did not.

10 (Witness Keller) We didn't know at that time in
11 the paper review of the plan when the traffic guides would
12 be on station vis-a-vis when an evacuation message would be
13 aired. That's why you have exercises.

14 (Witness Kowieski) We anticipated when we
15 reviewed the plan that the traffic guides would be
16 dispatched and would be present at their posts when
17 evacuation will start, when evacuation will be in progress.

18 It happened that some of the traffic guides did
19 not arrive at their posts in timely manner.

20 Q Would you look at Contention 44, please? In my
21 set of the contentions, it's on Page 58 if that gives you a
22 ball park.

23 (The witnesses are looking at documents.)

24 Now, you will probably recollect that you
25 testified previously that leaving aside the words "the

1 exercise revealed a fundamental flaw in the LILCO plan in
2 that" that you agree with the remainder of the sentence and
3 that in your opinion there would have been a shadow as a
4 result of the information given out during the exercise but
5 that you could not gauge the magnitude of it.

6 Do you recall that, Mr. Keller?

7 A (Witness Keller) That's essentially correct. I
8 disagreed with -- aside from the first part, the word
9 "substantial." We could not define "substantial evacuation
10 shadow" but we did agree that there could be shadow because
11 of some of the information.

12 Q Now, on what are you basing that opinion?

13 A Well, basically that goes back to our testimony
14 in the planning -- before the planning Board, that Mr.
15 McIntyre who at that time was part of the panel had stated
16 that it was his position, and FEMA's position, that the
17 confidence that the public had in the information and the
18 degree to which it was clear and its meaning was clear to
19 the public would have an effect on potential shadow
20 evacuation.

21 And, all we are saying consistently that if
22 there is some misleading information out there that that
23 could effect the shadow evacuation. We have no way to
24 quantify substantial, minor, very large, minimal. We can't
25 quantify it any way.

1 But, we do believe that shadow evacuation can
2 occur and that would be dependent on the perception of the
3 people who are going to respond, take part in the shadow
4 evacuation, on the accuracy and the credibility of the
5 information they receive.

6 Q Well, let me make sure I'm clear on what you are
7 testifying to. Is it your position that, in fact, as a
8 result of the information at the exercise there would have
9 been some shadow in response?

10 A I think that's a fair statement, yes, because
11 there was some misinformation in the exercise. I mean,
12 clearly rumor control was -- which we have been through at
13 great length, there were problems with the rumor control
14 information. That could have led to some confusion, right.

15 Yes, there could have been some shadow. We
16 cannot quantify the magnitude of it.

17 Q You said that during the exercise, Mr. Kowieski,
18 FEMA assumed that people would follow directions, right?

19 A (Witness Kowieski) That's my position.

20 Q And, you assume that in the construction of the
21 scenarios for all exercises, don't you?

22 A That's correct.

23 Q If you had assumed differently, how would you
24 have taken a lack of following directions into account in a
25 scenario?

1 MR. LANPHER: I object to the question. I don't
2 understand what she means --

3 JUDGE FRYE: I don't understand the question
4 either. I think you had better rephrase it.

5 MS. McCLESKEY: I will rephrase the question.

6 BY MS. McCLESKEY: (Continuing)

7 Q Assume that you were going to try to take some
8 people not following directions into account in a scenario,
9 how would you do it?

10 A (Witness Keller) I think you would have to do
11 it through contingency messages or free-play messages or
12 some kind of message injects. As we have stated more often
13 than we probably should have, the exercise is a
14 demonstration of the implementation of the plan.

15 I know of no plan which is premised on the fact
16 that people are not going to do what is recommended that
17 they should do. The plans are not premised on that
18 principle, none of them, the LILCO plan, state and local
19 plans, none of them that I know of in the country.

20 If you desired to attempt to evaluate a premise
21 that the plan isn't based on, you would have to do it
22 through the injection of messages. In other words,
23 contingencies or free-play messages or something, to tell
24 the participants what's your plan, what you have been
25 trained on, what the procedures say, is not happening. Now,

1 what are you going to do? Or, something to that effect.

2 We have never done it. I don't think I ever
3 want to try it. We haven't really thought about it. But,
4 it would have to be done on some kind of a message inject of
5 that type.

6 How you would evaluate what they do gets very
7 difficult. I mean, I think as we all recognize there are
8 questions on how you evaluate anything. But, if you haven't
9 got the plan to fall back on -- I mean, did they follow the
10 plan, if you haven't got that to fall back on then what is
11 your evaluation going to be based on?

12 I would prefer not to be involved in a situation
13 like that, because you haven't got any basis to make your
14 evaluation. It's pure judgment, then. And, it's a lot of
15 evaluation as it is, but at least with the system that we
16 have we have the plan to go back to. Did they follow the
17 plan.

18 (Witness Kowieski) You mentioned performance of
19 the emergency response organization against the plans and
20 procedures. And, Mr. Keller pointed out if you make an
21 assumption which is not part of the plan, it's very hard to
22 deal with. It would be very hard to deal with, especially
23 we don't have a solid basis to make such an assumption.

24 The literature, whatever I read in preparation
25 for 1984 Board hearing, it's my recollection whatever I read

1 at that time, generally speaking, generally speaking, people
2 that have done a lot of research in this area, people listen
3 to decision-makers. People, generally speaking, follow the
4 orders unless, as Mr. Keller pointed out, if there is a lack
5 of confidence. Lack of confidence of decision-makers,
6 whether true or false, okay, then obviously there could be
7 some confusion.

8 But, generally speaking, people do follow
9 orders.

10 MS. McCLESKEY: Thank you, gentlemen. Judge
11 Frye, I have no further questions.

12 JUDGE FRYE: Does the Staff have questions?

13 MR. PIRFO: Thank you, Judge Frye.

14 CROSS EXAMINATION

15 BY MR. PIRFO:

16 Q Gentlemen, would you turn please to Page 14 of
17 your testimony?

18 (The witnesses are complying.)

19 And, the fourth line of the answer the
20 parenthetical says: See Table 4.4.

21 A (Witness Keller) Yes.

22 Q Is that correct?

23 A I believe that's supposed to be 4.7.

24 Q You believe it to be 4.7?

25 A (Witness Baldwin) 4.7.

1 Q Thank you. Gentlemen, if you would turn to Page
2 121 of the FEMA report, Table 4.1, the deficiency with
3 regard to delay of responding to the two evacuation
4 impediments?

5 (The witnesses are complying.)

6 Do you have that in front of you?

7 A (Witness Keller)

8 Q Now, I understand you state -- well, the FEMA
9 report states that this impacts on NUREG 0654, Element
10 J.10.K.

11 Could you explain to me how that planning
12 standard and that evaluation criterion are linked?

13 A Well, let me read to you Element J.10.K out of
14 NUREG 0654. Element J.10.K: Identification of and means
15 for dealing with potential impediments, i.e., seasonal
16 impassability of roads, to use the evacuation route and
17 contingency measures.

18 Well, the example given in the NUREG is seasonal
19 impassibility. We didn't have a seasonal impassibility; we
20 constructed a temporary impassibility. And, we tried to
21 evaluate the means for dealing with the potential impediment
22 and the contingency measures, information flow, how did they
23 handle it. And, we evaluated that as being a deficiency in
24 the EOC.

25 Q Because of lack of communication in the EOC,

1 right?

2 A Primarily the lack of communication flow,
3 horizontally and vertically.

4 Q But, it was not because of the -- so, you are
5 focusing on the identification aspect of the criterion as
6 opposed to the means?

7 A Well, when they didn't recognize promptly and
8 effectively that they had a problem their means of dealing
9 with the problem were delayed. And, the overall evaluation
10 of that complex complete thing was a deficiency.

11 It becomes problematic to say that they wouldn't
12 have made errors had they identified it and had good message
13 flow. And, that's why you have remedial exercises or drills
14 so that if they resolve the root cause of the problem you
15 can also verify that something else didn't creep up along
16 the line.

17 It's very -- we went through a long discussion.
18 It's difficult to know because of the breakdowns in the
19 communication all the ins and outs. I mean, it was
20 deficient we feel. I mean, it may have been deficient for
21 15 things or it may have only been 13 things. And, that
22 really is not important. The fact is, it was deficient. It
23 has got to be fixed.

24 If this were an operating plant, it would have
25 to be done in a remedial exercise or drill within a very

1 limited prescribed time frame. And, in the remedial
2 exercise you look to see if there are other things.

3 Q Okay. Now, on Page 127 of the FEMA report, the
4 deficiency with regard to the copying capabilities at the
5 ENC.

6 A (Witness Kowieski) Right.

7 Q Mr. Kowieski, yesterday you stated that but for
8 the interrelationship between the rumor control function and
9 the hard copies getting messages to the media this would not
10 have been a deficiency.

11 Is that a fair characterization of your
12 testimony yesterday?

13 MR. LANPHER: Can you please direct us to where
14 in the testimony --

15 MR. PIRFO: No, sir.

16 MR. LANPHER: I don't think that's an accurate
17 characterization.

18 MR. PIRFO: Well, I just asked the witness
19 whether it was.

20 JUDGE FRYE: We will let the witness respond to
21 that.

22 WITNESS KELLER: I think there is a little
23 confusion in the terms. We had stated earlier last week
24 that the issue was the lack of proper information going out
25 promptly, and the big problem was the rumor control not

1 having the proper information.

2 And had -- I believe we stated this before, I
3 think I remember it, that had rumor control had proper
4 information and had given it promptly and correctly, the
5 hard copy portion of this for the hard copy for the media
6 would probably not have been a deficiency in and of itself.

7 WITNESS KOWIESKI: I agree with that.

8 BY MR. PIRFO: (Continuing)

9 Q Absent the interrelationship then --

10 A (Witness Keller) Absent the interrelationship,
11 yes.

12 Q It's only the rumor control function because
13 that has impacted the hard copy to the media that --

14 A (Witness Kowieski) That's correct.

15 (Witness Keller) That's correct.

16 Q Now, on Page 129 with regard to the Patchogue
17 staging area and the bus drivers, one of these has been
18 upgraded, depending on how you say it, upgraded/downgraded,
19 to an ARCA, correct?

20 A That's correct.

21 Q Okay. And, which one was that?

22 A Number 1 which is labeled Number 1 on Page 129.

23 Q With regard to Number 2 then and planning --
24 well, of the two evaluation criterions cited there, J.9 and
25 J.10.J, could you explain to me again how your method of

1 sampling or the number of bus drivers that you sampled
2 illustrates why this evaluation criterion or criteria were
3 not met in this case?

4 MR. LANPHER: Judge, could I please have that
5 question repeated? I didn't understand it.

6 JUDGE FRYE: I didn't understand it either.

7 MR. PIRFO: Let me rephrase it.

8 BY MR. PIRFO: (Continuing)

9 Q You cite two evaluation criteria as impacted by
10 the facts surrounding this, the bus drivers being two hours
11 late, et cetera, evaluation criterion J.9 and J.10.J.

12 JUDGE FRYE: J.10.G.

13 MR. PIRFO: I'm sorry, J.10.G, correct.

14 BY MR. PIRFO: (Continuing

15 Q Could you explain to me how the -- I think you
16 did it yesterday, but could you explain to me again how your
17 sampling method, if you want to call it a sampling method,
18 or your method of testing this planning standard results in
19 a deficiency as gauged by the evaluation criteria?

20 MR. LANPHER: Well, I object to the question. I
21 still don't understand it.

22 MR. PIRFO: Let me just try again.

23 JUDGE FRYE: It seems to me like you've probably
24 got a number of elements there. Maybe you ought to go
25 through them one at a time.

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MR. PIRFO: Let's do that.

BY MR. PIRFO: (Continuing)

Q Okay, gentlemen, let's do J.9 first.

A (Witness Keller) Okay.

1 Q Explain to me why evaluation criterion J.9 was
2 not met in this case?

3 A (Witness Keller) Okay. We did not say that
4 directly. What we said is that this objective bears on
5 evaluation criteria J.9. And, J.9 says that you establish a
6 capability for implementing protective measures.

7 Q All right.

8 A In this particular plan, and at this particular
9 site, there are a significant number of the population who
10 require transportation to leave the plume exposure EPZ in
11 the event of an evacuation recommendation; that is, the
12 implementation of protective action.

13 The utility plan has provided for the provision
14 of buses along prescribed bus routes. We had a problem in
15 the exercise, as delineated on Page 129, that some of them
16 couldn't find the transfer points, et cetera, that the bus
17 drivers were not adequately on these bus routes as called
18 for in the plan. And, that impacts on that first statement
19 of J.9, the capability for implementing protective measures.

20 And, the rest of it, based on the PAGs and all
21 that sort of thing, the protective measure was evacuate.
22 That means, according to this plan, that buses will be
23 provided, okay, for a portion of the population. We felt in
24 the evaluation of this exercise that the plan was not
25 followed in sufficient rigor and that there were indeed

1 problems with some of the bus drivers that we evaluated;
2 and, we said that that was deficient.

3 Q And, I think you stated yesterday you evaluated
4 a very limited number of the bus drivers?

5 A That's correct.

6 Q An extremely limited number of the bus drivers?

7 A (Witness Kowieski) I would disagree with that.

8 JUDGE FRYE: You would not agree with that or
9 you would?

10 WITNESS KOWIESKI: I disagree with that.

11 BY MR. PIRFO: (Continuing)

12 Q Why would you disagree?

13 A (Witness Kowieski) Based on my previous
14 experience at other sites, based on my professional
15 judgment, the way exercise was planned, was designed with
16 the introduction of free-play messages, I think that the
17 sample used in the Shoreham exercise was sufficient to draw
18 a conclusion on the performance of bus drivers.

19 (Witness Baldwin) I think what we testified to
20 yesterday was the element of surprise. And, the
21 confidentiality of the bus routes to be selected, and the
22 randomization of the picking of those bus drivers to be
23 unknown, and so the element of surprise allows the small
24 number to be used in this context.

25 (Witness Kowieski) Especially in the -- I

1 believe already we testified to this effect, that especially
2 in Shoreham situation all the bus drivers were dispatched to
3 the -- well, were present at the staging area. Our
4 evaluators stationed at the staging areas had an opportunity
5 to pick at random the bus drivers to drive buses. So, this
6 is an additional sort of element which sort of adds more
7 confidence when to our judgment on overall performance of
8 bus drivers.

9 (Witness Keller) But, to be strictly honest and
10 on a statistical basis, it was a small sample.

11 JUDGE PARIS: You have accounted for selectivity
12 or bias in your manner of selection, but you have not
13 accounted for random variability, have you? That is,
14 chance.

15 WITNESS BALDWIN: That's correct.

16 MR. PIRFO: Did you have anything else, Judge
17 Paris?

18 WITNESS KOWIESKI: Well --

19 MR. PIRFO: Are you finished?

20 JUDGE PARIS: I'm sorry. I'm finished.

21 WITNESS KOWIESKI: That's another -- you know, I
22 believe in our testimony --

23 MR. LANPHER: Judge, I object. There is no
24 question pending at this point.

25 JUDGE FRYE: What are you responding to, Mr.

1 Kowieski?

2 WITNESS KOWIESKI: I want to just add one more
3 statement.

4 JUDGE FRYE: To Judge Paris' question?

5 WITNESS KOWIESKI: No.

6 JUDGE FRYE: All right. Well, let's hold it,
7 then.

8 WITNESS KOWIESKI: Okay.

9 BY MR. PIRFO: (Continuing)

10 Q Gentlemen, please turn to Page 133 with regard
11 to the deficiency at the Riverhead staging area on traffic
12 guides.

13 JUDGE FRYE: 133?

14 MR. PIRFO: Yes, sir.

15 (The witnesses are complying.)

16 BY MR. PIRFO: (Continuing)

17 Q I understand you tie this to evaluation
18 criterion J.10.J. This is J.10.J.

19 A (Witness Kowieski) Yes.

20 Q Is that the only evaluation criterion against
21 which this deficiency was assessed?

22 A (Witness Keller) Yes. I would like to add that
23 these NUREG 0654 cross-references are basically derived from
24 the set of 35 standard objectives which were first published
25 with the reissuance of GM-17 with the McLoughlin memo of

1 August of '83.

2 And, it was in that context that this cross-
3 reference first appeared. And, we have continued to use
4 it. And, I'm sure that you could argue that you could add
5 other elements if you really wanted to to many of these.
6 But, based on that standard FEMA document, that's where
7 these things came from.

8 Q Okay. But, NUREG 0654, Element J.10.J reads:
9 Control of access to evacuated areas and organizational
10 responsibilities for such control.

11 A Yeah.

12 Q Is that the primary problem? It reads that way,
13 does it not?

14 A Yes, it reads that way. We have interpreted --

15 Q Let me ask the question.

16 A Sure. Excuse me.

17 Q Is that the primary problem with this deficiency
18 here, that it does not provide for control of access?

19 A No, that is not the primary problem. We have
20 lumped perhaps incorrectly over the years access control and
21 traffic control or traffic guide as an entity, okay.

22 In the control of evacuation, depending on the
23 plan, you use more or fewer traffic control points. In this
24 plan, traffic guides. And, we have lumped those two as a
25 single entity.

1 (Witness Kowieski) Because it's the only
2 element that would apply to traffic control and access
3 control.

4 (Witness Baldwin) It's also the way we got
5 there, as Mr. Keller just indicated. It's typically the
6 same people that -- not the same people, but the same
7 staffing personnel. They represent the same kind of
8 organizations that do the access control and the traffic
9 control. It's basically the same function.

10 Q Okay. Now, continuing with the traffic control
11 I want -- if this isn't a fair characterization, tell me
12 that. The traffic guides were evaluated here as if they
13 were the police, let's put it that way, the traffic cop out
14 on patrol; is that fair to say?

15 A (Witness Kowieski) No. The plan clearly states
16 that traffic --

17 Q Okay. Let me just -- the answer is no, right?

18 A (Witness Keller) The answer is no.

19 Q How did you evaluate the traffic guides
20 differently than you would -- explain to me the differences
21 between how you evaluated traffic guides in this context as
22 opposed to the traffic cop on the beat?

23 A (Witness Kowieski) Well, we would have to go
24 back to the plan. The plan states that traffic guides will
25 guide the traffic. This is different than the police --

1 Q Now, let's talk about -- I want to limit it to
2 the deficiency. The deficiency talks in terms of deployment
3 time. Let's limit it to that.

4 We don't have to go through the panoply of
5 differences between the traffic guide and a police officer.

6 A (Witness Keller) But, that was your question I
7 thought.

8 Q Well, maybe. Let me rephrase the question,
9 then. Limiting it to the facts stated in the deficiency,
10 okay, how did you grade the traffic guides? What was in
11 mind in grading the traffic guides as opposed to police
12 officers on routine traffic patrol?

13 A (Witness Baldwin) Limiting it only to the words
14 that are in the deficiency?

15 Q Well, let's not take a strictly literal
16 interpretation, but the facts set out here. I realize that
17 the traffic guides -- there is a number of differences that
18 are between the traffic guides and the police officer on
19 patrol. A traffic guide obviously can't give a ticket,
20 can't do a number of things.

21 But, limiting it to the facts stated in the
22 deficiency.

23 A Based on the facts stated in the deficiency,
24 this same wording would apply if the problem were found with
25 regard to a law enforcement officer. This exact same thing

1 would apply.

2 Q The law enforcement officer would be presumably
3 out on patrol, correct?

4 A (Witness Kowieski) That's a possibility.

5 (Witness Baldwin) He could be.

6 Q They wouldn't be deployed?

7 MR. LANPHER: I object. This is calling for
8 speculation. These gentlemen don't know where the law
9 enforcement officers would be.

10 JUDGE FRYE: I think it is getting pretty
11 speculative at this point.

12 MR. PIRFO: These gentlemen evaluate emergency
13 plans and other plans, use state and local government
14 participation and other state and local entities have
15 police, and they have been involved in a number of plans
16 where police were involved. I don't see how it calls for
17 speculation.

18 They are expert witnesses in emergency
19 preparedness, and the police are involved in emergency
20 preparedness.

21 MR. LANPHER: It also goes far beyond any of the
22 --

23 MR. PIRFO: And, if you think --

24 JUDGE FRYE: One moment. When you assigned this
25 deficiency basically to the time that it took to deploy

1 traffic guides, would it have made any difference if instead
2 of traffic guides a police force were involved?

3 WITNESS BALDWIN: Not in my mind.

4 JUDGE FRYE: The same deficiency would have been
5 assigned?

6 WITNESS BALDWIN: Not in -- it would have been a
7 deficiency.

8 WITNESS KELLER: That's right.

9 WITNESS KOWIESKI: That's correct.

10 JUDGE SHON: I --

11 JUDGE PARIS: It would have taken the same
12 amount of time to get to --

13 WITNESS BALDWIN: That's correct.

14 WITNESS KOWIESKI: That's correct.

15 JUDGE SHON: But, it is in a sense true though
16 that when you said this amount of time was too long, you in
17 some sense had it in the back of your mind that it wouldn't
18 normally take policemen that long to get there; is that
19 right?

20 WITNESS BALDWIN: That's true.

21 MR. LANPHER: I object. That's speculation
22 again. I'm sorry, but I don't think that these witnesses
23 are competent to testify to that, Judge Shon.

24 JUDGE SHON: Well, I simply asked them what
25 standard they had in the back of their minds. It's true

1 that it's probably speculative on their part as to how long
2 a policeman would take to get there.

3 But, I was simply asking whether they felt if
4 the standard they were using was their conception of how
5 long it would take a policeman to get there.

6 JUDGE FRYE: Well, let's get the policemen out
7 of it. What would you consider to be timely? How much
8 time?

9 WITNESS KOWIESKI: Timely to be -- to have
10 traffic guides --

11 JUDGE FRYE: The time between the deployment of
12 a person or individuals to direct traffic and their arrival
13 at the points at which they had to direct the traffic --

14 WITNESS KELLER: I think --

15 JUDGE FRYE: -- how long should -- what would be
16 timely?

17 WITNESS KELLER: We discussed this in our
18 testimony. And, the 20 minute driving time was not the crux
19 of the problem. It was the 30 minute equipment --

20 JUDGE FRYE: That's right.

21 WITNESS KOWIESKI: Waiting in line to receive
22 the kits.

23 JUDGE PARIS: And that was the crux?

24 WITNESS KOWIESKI: Yes.

25 JUDGE FRYE: So, 20 minutes would be timely?

1 WITNESS KELLER: Yeah, something less than 30,
2 10 to 15 minutes to get your equipment and get on the road.
3 The driving time of 20 minutes, we did not find untimely.
4 Now, that came into the whole ball of wax.

5 JUDGE FRYE: Forget what has to happen between
6 the time these individuals are directed to go to these
7 points and the time that they arrive at these points.

8 WITNESS KELLER: About 30 minutes from the time
9 that --

10 JUDGE FRYE: About 30 minutes?

11 WITNESS KELLER: Yes.

12 WITNESS BALDWIN: But, to tie it all together,
13 we would expect that these traffic guides would be at their
14 post when an evacuation is in place.

15 WITNESS KOWIESKI: I think that's the bottom
16 line.

17 WITNESS BALDWIN: I'm sorry, when an evacuation
18 is underway.

19 BY MR. PIRFO: (Continuing)

20 Q When an order has been issued?

21 A (Witness Keller) Well, we testified to this
22 last week I believe.

23 JUDGE FRYE: I think you did, but you had better
24 refresh --

25 WITNESS KELLER: My recollection of what we said

1 was that we were talking about an evacuation order that had
2 been recommended by the decision-maker and the planning
3 process says that roughly an hour will transpire between the
4 time that the order has been issued and the onset of the
5 evacuation.

6
7 Now, we recognize that there may be some people
8 that leave earlier, but that was the time we are talking
9 about. If the order comes down at 10 o'clock, the guides
10 ought to be in place by 11. Again, we are trying to
11 evaluate the implementation of the plan.

12 JUDGE FRYE: All right. So, that's putting it
13 in another context. In other words, in that context the
14 individuals who are going to be guiding traffic should be in
15 place within one hour after the recommendation to evacuate
16 is made to the public?

17 WITNESS BALDWIN: That's correct.

18 MR. PIRFO: That's all I have, Judge Frye.

19 JUDGE FRYE: Mr. Cumming.

20 MR. CUMMING: I realize we have only been going
21 about 45 minutes, but I think we could expedite things if we
22 could take about a five minute recess.

23 JUDGE FRYE: All right. Why don't we take our
24 15 minute recess and give you an opportunity to confer with
25 these witnesses?

(A recess is taken at 9:45 a.m., to reconvene at
10:00 a.m., this same day.)

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JUDGE FRYE: Mr. Cumming.

REDIRECT EXAMINATION

BY MR. CUMMING:

Q Would the panel please clarify the discussion on the deployment of the traffic guides that you just went through with Mr. Pirfo?

I was a little confused as to the basis of the deployment and the time frame.

MR. LANPHER: I object to the question.

JUDGE FRYE: Yes. I think you had better be a little bit more specific than that

BY MR. CUMMING: (Continuing)

Q Mr. Keller, you testified that the deployment of traffic guides required a minimum time of one hour?

A (Witness Keller) Yeah.

Q Is it your understanding that that, in fact, is the basis of the deficiency that you were discussing with --

A No. I misspoke. I'm sorry, I apologize. The one hour after the evacuation order is for the bus drivers to start their routes. That is not the traffic guide situation, and I misspoke.

I was recalling a different set of emergency workers. So, the 30 minute time frame that I had discussed in response to Judge Frye's question I think is a better characterization. Just leave it at that.

1 JUDGE FRYE: Thirty minutes after the order or
2 the recommendation to evacuate is made to the public?

3 WITNESS KELLER: That's right.

4 BY MR. CUMMING: (Continuing)

5 Q Yesterday, FEMA marked into evidence the letter
6 discussed by Mr. Kowieski. Let me pass out copies.

7 (The document is furnished to the Board and the
8 parties.)

9 (The document referred to is marked
10 as FEMA Exercise Exhibit Number 7
11 for identification.)

12 BY MR. CUMMING: (Continuing)

13 Q Mr. Kowieski, would you identify this document?

14 A (Witness Kowieski) It's a cover memo from Roger
15 Kowieski to Robert S. Wilkerson, Chief of Technological
16 Hazards Division, Washington, D. C., dated March the 25th,
17 1986.

18 In this memorandum, I transmitted the State's
19 comments on Guidance Memorandum GM/PR-1 and GM/EV-2. There
20 is a letter from James D. Papile, Acting Director of
21 Radiological Emergency Preparedness Group, State of New
22 York, to Roger B. Kowieski, RAC Chairman, in which State
23 provided their comments on FEMA Draft Guidance Memorandum GM-
24 PR-1, dated January 17, 1986.

25 JUDGE FRYE: That's the date of the letter?

1 WITNESS KOWIESKI: That's right. And, letter
2 dated February 12th, 1986 from James D. Papile, Director of
3 Radiological Emergency Preparedness Group to Roger B.
4 Kowieski, RAC Chairman, in which New York State provided
5 comments on Draft Guidance Memorandum EV-2.

6 BY MR. CUMMING: (Continuing)

7 Q Now, Mr. Kowieski, I would like to ask you a
8 couple of questions about these letters.

9 Mr. Lanpher questioned the panel extensively
10 about the status of exercises in New York with respect to
11 the ingestion pathway; is that correct?

12 A (Witness Kowieski) That's correct.

13 Q With respect to the letter of January 17th,
14 1986, did this letter reflect your understanding of the
15 position of the State of New York on ingestion pathway
16 exercises in New York as of that date?

17 A That's correct.

18 Q And, that was just prior to the date of the
19 exercise?

20 A Prior to the February 13, 1986 exercise.

21 Q Would you read for me the paragraphs you believe
22 indicate most precisely the State of New York's position?

23 A It's -- I will be reading from the letter dated
24 January 17, 1986, first page, Section 3.a. It reads: "In
25 addition, I find that there are other areas of review that

1 need further comment. a. Paragraphs..." And, again that
2 refers to PR-1. "Paragraphs 3,N.1.b Evaluation Criterion
3 (page 2) states that it is a requirement for each state
4 which has a nuclear power plant within its borders to fully
5 exercise its plans and preparedness related to ingestion
6 exposure pathway measures at least once every six years in
7 conjunction with a plume exposure pathway exercised for same
8 site. This is all well and good if FEMA can provide
9 guidance on the conduct of such exercises. FEMA has not
10 provided specific guidance on ingestion pathway criteria.
11 The lack of this guidance places the states in the hold
12 position and will delay meeting the six year requirement.
13 FEMA must designate the time of each exercise after guidance
14 is published."

15 I think that's -- this particular statement
16 clearly expresses the position that New York State took in
17 January of 1986.

18 Q Thank you, Mr. Kowieski. With respect to the
19 letter of February 12th, 1986, do you remember Mr. Miller
20 questioning you with respect to school issues?

21 A Yes, we do.

22 Q And, do you remember your testimony with respect
23 to the status or the position of the State of New York just
24 prior to the exercise?

25 A Yes, we do.

1 Q And, the basis of your opinion is in part this
2 letter of February 12th, 1986?

3 A That's correct.

4 Q Would you --

5 MS. LANPHER: Excuse me. Could I have that
6 question and answer read back, Judge Frye?

7 JUDGE FRYE: The basis of your opinion is in
8 part this letter of February 12, 1986.

9 MR. LANPHER: I don't understand what the
10 opinion was. I think I missed -- I'm not going to have the
11 transcript.

12 JUDGE FRYE: Can you go back and get the
13 question earlier?

14 (The Reporter read the question as requested.)

15 BY MR. CUMMING: (Continuing)

16 Q Mr. Kowieski, would you read to me the portions
17 of the letter upon which you based your opinion as to the
18 position of the State of New York with respect to schools?

19 A (Witness Kowieski) Well, the letter -- I will
20 read from the letter dated February 12th, 1986. I think we
21 can start in the third paragraph of that letter, it states:
22 "In reviewing the Guidance Memorandum EV-2, it is evident
23 that the FEMA is not aware that school districts in New York
24 are separate political entities and the planning for the
25 school districts is not necessarily the responsibility of

1 the local governments. Although the guidance addresses the
2 local government responsibility for coordinating with school
3 officials, there is no assurance that school officials will
4 adopt recommended emergency procedures. The issuance of EV-
5 2 guidance by FEMA indicates that the schools in New York,
6 as part of the State School System, should be required by
7 law to cooperate with local government officials. In the
8 past six years, local officials have worked closely with
9 school officials and they have reached agreements on risk
10 assessment."

11
12 The fourth paragraph also states the position of
13 New York State, and again I will be quoting, reading
14 directly from the letter, "The State of New York has no
15 doubt that in the event of an emergency, local and school
16 officials will implement the protective action option most
17 compatible with the protection of the school children and
18 potential general population evacuation."

19 And, on the second page, somewhere in the middle
20 of that paragraph, the sentence starts, "The Department of
21 Education at Federal and State levels have certain
22 authorities. FEMA should explain what these authorities are
23 before putting out guidance. To attempt to mandate is not
24 the solution. The hands of the Emergency Manager at local
25 and state levels are tied unless cooperation is guaranteed."

I think this clearly, in my opinion, this letter

2 clearly expresses the position --

3 MR. LANPHER: I object.

4 WITNESS KOWIESKI: -- of New York State.

5 MR. LANPHER: I object. There is no question
6 pending.

7 JUDGE FRYE: All he says is that that's what he
8 bases his opinion on.

9 MR. LANPHER: That's not what he was just
10 saying.

11 JUDGE FRYE: What were you saying?

12 MR. LANPHER: He previously answered the
13 question, Judge, to cite the portions of the letter that he
14 was relying upon. And, that was the question and I object
15 to further speeches by the witness that are not responsive
16 to a proper question.

17 MS. McCLESKEY: Judge Frye, I think the answer
18 was responsive. We are on redirect here.

19 I don't know what the problem is.

20 MR. LANPHER: And, on redirect --

21 JUDGE FRYE: Would you read back the answer, the
22 last part of the answer?

23 (The Reporter read back the answer as
24 requested.)
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JUDGE FRYE: Mr. Cumming.

MR. CUMMING: FEMA moves into evidence the two letters and the cover memorandum marked as FEMA Exercise Exhibit Number 7.

JUDGE FRYE: Any objections?

MS. McCLESKEY: No objection.

MR. LANPHER: Could I -- I would just like one clarification. I assume that Mr. -- Mr. Cumming, you are relying just on those portions that were quoted from the letters; is that correct?

MR. CUMMING: The letters were proffered for the position of the State of New York. I think the letters speak for themselves. Mr. Kowieski highlighted those portions, but the entire letters I think are the basis of his opinion.

MR. LANPHER: Judge, if I could then -- I want to have a chance to review the entire letters. I didn't have a chance last night.

JUDGE FRYE: Okay. Fine. We will hold it until you have had a chance to review it. Does New York want a chance to review it as well?

MR. ZAHNLEUTER: Yes, please.

JUDGE FRYE: Fine. Mr. Cumming.

BY MR. CUMMING: (Continuing)

Q Mr. Kowieski, do you wish to add anything with

1 respect to your understanding of these letters?

2 MR. LANPHER: I object to the question. That's
3 not a proper redirect.

4 JUDGE FRYE: Mr. Cumming, I think you need to be
5 more specific.

6 MR. CUMMING: Let's move on.

7 BY MR. CUMMING: (Continuing)

8 Q Mr. Keller, would you locate Suffolk County
9 Exercise Exhibit Number 105 which is a letter from you to
10 Roger B. Kowieski, dated March 19th, 1986?

11 (The witnesses are looking through documents.)

12 Do you have the exhibit?

13 A (Witness Keller) I have a copy of my letter,
14 yes.

15 Q This letter was discussed by Mr. Miller and you
16 last Thursday, June 11th, roughly Pages 8011 through 8016 of
17 the transcript. Do you remember that discussion?

18 A I believe I do, yes.

19 Q In that discussion with Mr. Miller, you were
20 asked the question as to whether you understood whether back-
21 up route alerting had been listed as a deficiency in several
22 reports.

23 Could you identify what those reports were?

24 A Well, Mr. Miller directed me to review the post-
25 exercise assessment at Indian Point on February 27th of 1985

1 at Line 14 of 8016, Page 8016.

2 Q Now, you have been unable to locate that report;
3 is that correct?

4 A That is correct.

5 Q However, you do have with you a later Indian
6 Point report which you have in your hand?

7 A Yes, I do.

8 Q What is the date of that report?

9 A All right. This is the date -- this is the
10 report for the remedial exercise of April the 10th, 1985,
11 and it was prepared on May the 10th, 1985.

12 MR. CUMMING: FEMA counsel doesn't wish to mark
13 this report and place it into evidence; however, I am going
14 to ask several questions of Mr. Keller.

15 There have been extensive rulings on other
16 exercise reports, and I don't want to delay the proceeding.
17 I just want to ask Mr. Keller a question or two on
18 clarification.

19 JUDGE FRYE: One moment.

20 MR. LANPHER: Judge, reviewing my list of the
21 post-exercise reports that were marked for identification
22 and moved into evidence, I don't believe this one is among
23 that list.

24 What is the date again?

25 WITNESS KELLER: This is -- well, there are two

1 dates, sir. There is the date of the exercise which is
2 April 10, 1985; and the report itself is dated May 10, 1985.

3 MR. LANPHER: And, this is for Indian Point?

4 WITNESS KELLER: This is for New York -- yeah,
5 Indian Point.

6 JUDGE PARIS: Which unit?

7 WITNESS KELLER: It's off-site, so it doesn't
8 make any difference.

9 MR. LANPHER: Judge Frye, this was not one of
10 the ones I believe that was marked. And if there are going
11 to be questions asked, we would like to have a copy of it.

12 Do you have extra copies, Mr. Cumming?

13 MR. CUMMING: No, I don't.

14 JUDGE FRYE: Do you have extensive questions?

15 MR. CUMMING: No, Your Honor, I don't.

16 JUDGE FRYE: All right. Let's see how it goes.
17 If there is a problem about it, we will have to stop and let
18 you take a look at it.

19 MR. LANPHER: Thank you.

20 BY MR. CUMMING: (Continuing)

21 Q Now, Mr. Keller, you were asked by Mr. Miller as
22 to whether you remembered whether a deficiency had been
23 assigned to back-up route alerting at Indian Point.

24 What does the report you have just described
25 tell you about the history of that issue, if any?

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2 A (Witness Keller) In all the FEMA reports of
3 recent vintage, there is a tracking of either areas
4 requiring corrective action or deficiencies. And, in this
5 report -- at the back of the report -- in Table 4.5.1, under
6 Rockland County, on Page 87 of this report, there is a
7 tabulation of an issue which was identified in the 11/28/84
8 exercise of Indian Point.

9 Now, I assume -- it's an assumption on my part --
10 that this is the exercise with which Mr. Miller asked me to
11 review, because he asked me to review an exercise report.
12 The question is on Line 13 of 8016 where he says: Did you
13 review the Indian Point post-exercise assessment -- I'm
14 sorry. Did you review the Indian Point post-exercise
15 assessment at Indian Point on February 27, 1985?

16 Well, my records indicate that we did not have
17 an exercise in February of 1985 at Indian Point. We did
18 have an exercise in November. And, since we could not
19 locate the exercise report, it is reasonable to assume that
20 the February date is the date of the exercise report for
21 November. That's about the right timing.

22 But, in this table on Page 87, there is a
23 tabulation of an exercise issue which involves back-up route
24 alerting in Rockland County. And, based on the fact that
25 this was not part -- this issue was not part -- of the
remedial exercise for which this report that I'm reading

1 from is the report, that issue was not rated as a
2 deficiency; it was rated as an area requiring corrective
3 action.
4

5 Now, at that time we were using a slightly
6 different terminology. If you had the previous reports
7 there will be in the tabulation of the report a deficiency
8 which leads to a negative finding which we now call
9 deficiency; and, there will be other deficiencies which we
10 now call ARCA. And, that could have led to the confusion if
11 there was confusion.

12 But, based on this report which I have in my
13 hand, it is my conclusion that there was no deficiency which
14 would lead to a negative finding found with redundant back-
15 up route alerting at the Indian Point exercise conducted in
16 November of '84 and I assume reported in February of '85.

17 Q Dr. Baldwin, do you remember during the course
18 of your cross-examination by Mr. Lanpher you testified that
19 the February 13th, 1986 exercise was limited in scale?

20 A (Witness Baldwin) That's correct. I remember
21 that.

22 Q You were not allowed to finish your remarks;
23 however, do you have anything you wish to add or clarify
24 with respect to that comment?

25 A Well, what I had in mind there was that my
response was solely confined, limited scope meaning that my

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2 thinking on that was solely limited to the issue of the lack
3 of local and state participation. That's the only thing I
4 had in mind.

5 MR. CUMMING: I just have one more question for
6 Mr. Kowieski. I'm going to ask him to refer to a memorandum
7 of order, CLI-86-14. I have some additional copies.

8 (Copies of the document are distributed.)

9 BY MR. CUMMING: (Continuing)

10 Q Mr. Kowieski, CLI-86-14, the copy I furnished
11 you, has a paragraph marked and underlined on Page 5.

12 A (Witness Kowieski) I see that.

13 Q Would you read that into the record?

14 MR. LANPHER: I object to the reading of an
15 opinion of the Nuclear Regulatory Commission into the
16 record. That's improper redirect.

17 JUDGE FRYE: Yes. I don't think it's necessary
18 to read that into the record.

19 Do you have a question based on it?

20 BY MR. CUMMING: (Continuing)

21 Q Mr. Kowieski, is it your understanding that the
22 simulation of state and local activity was consistent with
23 that paragraph which is underlined?

24 MR. LANPHER: I object to the --

25 JUDGE FRYE: Sustained.

MR. CUMMING: I have no further questions, Your

1 Honor. I would like to note, however, that FEMA understands
2 the State of New York, Suffolk, LILCO and the Staff were all
3 on cross-examination of my witnesses; therefore, the scope
4 of recross would be limited to the scope of my redirect.
5

6 JUDGE FRYE: Well, I'm not sure we are going to
7 follow that rule in this particular instance. What you were
8 trying to find out from these witnesses I gather is whether
9 in their opinion the exercise that was conducted on February
10 13, 1986 complied with the Commission's desires; is that
11 right?

12 MR. CUMMING: That's correct.

13 JUDGE FRYE: Do you have an opinion on that?

14 MR. LANPHER: Could you repeat your question,
15 Judge?

16 JUDGE FRYE: Is it their opinion that the
17 exercise which they conducted on February 13, 1986 was in
18 compliance with the Commission's directives, the Nuclear
19 Regulatory Commission's directives or requests, however you
20 care to characterize it?

21 MR. LANPHER: Am I allowed to object to your
22 question?

23 JUDGE FRYE: Sure.

24 MR. LANPHER: I think it's a leading question,
25 and it's improper and outside the scope of any admitted
contentions.

1
2 JUDGE FRYE: It is a leading question, I grant
3 you. I'm not sure that I think it's outside the scope
4 though.

5 MR. CUMMING: Judge Frye, I don't believe it's
6 outside the scope, and that's the reason I asked the
7 question, because there have been extensive cross-
8 examination of my witnesses concerning the simulations and
9 including state and local activities.

10 MS. McCLESKEY: And we have also gone into a lot
11 of detail as to how the exercise was put together.

12 MR. LANPHER: Judge, there has --

13 JUDGE FRYE: I'm going to overrule your
14 objection.

15 (Laughter.)

16 MR. LANPHER: Why don't you hear me out,
17 otherwise the --

18 JUDGE FRYE: Sure.

19 MR. LANPHER: There have been no questions about
20 the simulations. And, there are no contentions in here in
21 this about the simulation.

22 JUDGE FRYE: I didn't ask them about simulation.

23 MR. LANPHER: That's the portion of the
24 directive that was all underlined.

25 JUDGE FRYE: I see. All right.

MR. LANPHER: So, I will also object to your

1
2 question as vague.

3 (Laughter.)

4 JUDGE PARIS: I would like to raise a point of
5 clarification about your question.

6 Is it directed just at the underlined portion of
7 the --

8 JUDGE FRYE: No, no. I hadn't even read the
9 underlined portion when I asked the question, to be frank
10 with you.

11 JUDGE PARIS: Oh.

12 JUDGE FRYE: That's one of the objectionable
13 portions of the question is the fact that --

14 MR. LANPHER: Just one of several.

15 JUDGE FRYE: One of several. Nonetheless, with
16 all of those objections noted, what is your opinion?

17 WITNESS KOWIESKI: Your Honor, it is my strong
18 belief that FEMA in designing -- planning, designing and
19 executing the February 13, 1986 exercise complied with the
20 Commission's order. Our documents, our actions speak for
21 themselves.

22 Our document which was provided to controllers
23 and simulators prior to the exercise, one of the -- under
24 the Purpose clearly stated and described the roles of
25 simulators during the exercise. It clearly states the
purpose to have simulators during the February 13, 1986

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2 exercise is to see, to assess, how LERO organization will
3 accommodate an ad hoc response by the state and local
4 officials, not to take posture, decision-making posture, but
5 basically to ask LERO officials questions on the status of
6 emergency, to ask LERO officials to be briefed on the status
7 of an accident.

8 And, I feel strongly that we complied with the
9 Commission's order.

10 JUDGE FRYE: Okay.

11 MR. LANPHER: Judge, I move to strike that
12 answer unless you can point out which contention that
13 relates to.

14 JUDGE FRYE: I will take that under advisement.

15 MR. LANPHER: Thank you.

16 JUDGE FRYE: Now, I think we are back to you at
17 this point.

18 MR. LANPHER: Just one moment. I want to
19 perhaps follow up on one of the answers that was just
20 given. I was trying to figure out a transcript cite.

21 JUDGE FRYE: Surely.

22 MS. McCLESKEY: Judge Frye, while Mr. Lanpher is
23 looking up his cite, I do understand that the scope of our
24 questioning on the second round is not limited simply to Mr.
25 Cumming's questions but I do think it would be good to
define the limitation.

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And, my understanding of the limitation is that the parties can ask questions raised as a result of the other parties' questions but that's it.

JUDGE FRYE: I think that is appropriate in these circumstances.

MS. McCLESKEY: All right.

MR. PIRFO: Let me qualify that. Limited to the parties that went after them?

JUDGE FRYE: No, let's not -- if there is a problem we will worry about it when it arises.

MR. PIRFO: All right.

BY MR. LANPHER:

1 Q Mr. Kowieski, Mr. Cumming earlier this morning
2 asked you a question about the January 17, 1986 Papile
3 letter having to do with -- I believe his questions went to
4 the ingestion pathway portion.

5 Now, I assume you received that letter some time
6 after January 17, 1986, correct?

7 A (Witness Kowieski) That is correct.

8 Q And as of that time, FEMA had already decided,
9 in fact, back in November I guess, during that time frame,
10 November 1985, that ingestion pathway would not be one of
11 the objectives in the Shoreham exercise, correct?

12 A That is correct.

13 Q This letter did not impact your decision one way
14 or the other, did it?

15 A Just simply --

16 Q Just answer the question, please, Mr. Kowieski.
17 This letter did not impact your decision --

18 A Reaffirmed my judgment.

19 Q I want an answer.

20 JUDGE FRYE: You got it. The answer was it
21 reaffirmed his decision, or confirmed.

22 BY Mr. LANPHER: (Continuing)

23 Q It was after the fact, wasn't it?

24 MR. PIRFO: I didn't hear that question.

25 (Reporter reads back the question.)

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JUDGE FRYE: Is that so?

WITNESS KOWIESKI: Well, generally speaking,
yes.

BY MR. LANPHER: (Continuing)

Q Gentlemen, there was no meeting of the Shoreham RAC between the date of Mr. Speck's letter that we talked about, and I believe it was October 29, 1985, and the date of the Shoreham exercise, February 13, 1986, isn't that correct?

A (Witness Kowieski) If you talk about all the RAC members.

Q That is what I am talking about, sir.

A No, sir. There was no meeting held.

Q And the meeting I believe has been referenced on February 11 and 12, 1986, at which RAC members were in attendance, that was a training session for evaluators, observers, controllers?

A That is also correct.

Q Do you recall your testimony yesterday, gentlemen, in which you stated that each RAC member, for instance the DOE member, the EPA member, has a relatively narrow area of responsibility?

A Generally speaking that is correct. Has a distinct area of responsibility.

JUDGE PARIS: But not necessarily narrow, is

1 that what you mean?

2 WITNESS KOWIESKI: That is correct, sir.

3 BY MR. LANPHER: (Continuing)

4 Q Well, Mr. Kowieski, you stated yesterday at Page
5 8466, quote: Each RAC member has a very narrow
6 responsibility in the area of his or her expertise.

7 Do you recall that statement?

8 A (Witness Kowieski) Yes, I do, and I think --

9 Q And that was a correct statement, wasn't it?

10 A The correct statement was made a few minutes
11 ago, or a minute ago. Distinct. I misspoke. It is
12 distinct area of responsibility related to his or her
13 expertise.

14 Q Was your statement yesterday that I just quoted
15 to you from Page 8466 of the transcript incorrect?

16 A That is correct. It is incorrect. I think it
17 is a better definition, a better answer would be that each
18 RAC member has a distinct area of responsibility related to
19 his or her expertise.

20 Q And in connection with review of exercise
21 objectives, each RAC member when they receive a set of
22 objectives -- proposed objectives from you as RAC Chairman,
23 is expected to review those objectives with respect to their
24 distinct area of responsibility, correct?

25 A That is correct.

1 Q Now, is that your understanding of what the RAC
2 members for Shoreham did?

3 A Generally speaking, yes. On occasion, on
4 occasion RAC members take the liberty to comment on other
5 areas if they feel they have something to contribute.

6 Q I am talking only about Shoreham. The Shoreham
7 objectives that were being decided upon in late 1985 or
8 early '86, was my description of the process accurate?

9 A Sir, I would like to be responsive, but again
10 without going back to each reply to each piece of
11 correspondence that I received from a RAC member, I cannot
12 give you a very accurate --

13 Q Okay, let's do that. That is a fair answer, Mr.
14 Kowieski. Now, from the NRC RAC member, that was Mr. Amato,
15 correct?

16 A That is correct.

17 Q He was the only RAC member other than yourself
18 to review the Shoreham scenario while it was being
19 developed, isn't that correct?

20 A That is also correct.

21 Q And with respect to the objectives for Shoreham,
22 did you receive comments from Mr. Amato ?

23 A I believe I received very late.

24 MS. McCLESKEY: Judge Frye, I am going to object
25 to any further questions about the objectives. There wasn't

1 any questioning about that.

2
3 My questions about the process went to the
4 choosing of observers and evaluators, and how they got to
5 the exercise, and then post-exercise activities. I did not
6 ask any questions about how the scenario was put together,
7 and I don't think Mr. Cumming or Mr. Pirfo did.

8 MR. ZAHNLEUTER: I asked questions.

9 MS. McCLESKEY: If the ground rules are that the
10 State and the County can double team, then I object.

11 MR. ZAHNLEUTER: We are not double teaming
12 anything.

13 MR. LANPHER: Judge, the context of these
14 questions happen to do with questions by the Licensing Board
15 yesterday afternoon. I can give you transcript references
16 if you wish. If you will go to 8440, in that area, about
17 whether there was any kind of collegial decision about
18 whether this was a full participation exercise in late 1985,
19 and I think you will recall Dr. Baldwin talking about his
20 recollection of the consensus of RAC members and that sort
21 of thing, and I have a perfect right to probe what this
22 consensus was, and this is laying the basis for probing
23 that, so these were the Board's questions that sponsored
24 this.

25 JUDGE FRYE: 8440 is Mr. Zahnleuter.

MR. LANPHER: Well, if you go after that, Judge,

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you will find questions --

JUDGE FRYE: I agree with you. Overruled.

MR. LANPHER: By the way, I would like to just note I think there is one fairly significant error in the transcript at 8459. Where I objected to a question, and at Line 19, it is Judge Frye: All right.

And then it goes on: This Board just frankly proceeded through a bunch of speculation. That was my statement. I don't think you made that statement, Judge.

JUDGE FRYE: I agree. I remember that, too.

MR. LANPHER: I thought I might jog your memory a bit or whatever, and when we make transcript changes, we will correct that one. I would like to be the sponsor of that.

JUDGE FRYE: Fine.

BY MR. LANPHER: (Continuing)

Q Now, gentlemen, I would like to have marked for identification Suffolk County Exhibit 107.

(The above referenced document is marked Suffolk County Exercise Exhibit No. 107, for Identification.)

For the record, it is a letter from Terry L. Harpster, of the NRC, to Mr. Kowieski, dated December 3, 1985.

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JUDGE FRYE: This is 107.

MR. LANPHER: Yes, sir. The exhibit notation at the top, the xerox, is from a deposition.

BY MR. LANPHER: (Continuing)

Q Mr. Kowieski, have you ever seen this letter before?

A (Witness Kowieski) Yes, sir.

Q Is this the letter of comments on the proposed objectives which you received from the NRC?

A That is correct.

Q Now, Mr. Harpster is not a member of the RAC, is he?

A No, but he was the supervisor of Mr. Amato .

Q And do you know the circumstances under which it came to pass that Mr. Harpster rather than Mr. Amato provided you comments?

A I believe that is an NRC internal operating procedure. The boss elected to sign the letter.

Q And I am correct, am I not, that this was -- that these were the only comments on the objectives, the Shoreham objectives, which you received from the NRC?

A That is my recollection.

Q And these comments, by the terms of this letter, these comments were made on the basis of the initial draft objectives which you put together in November?

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2 MR. PIRFO: I object to that question. He is
3 asking Mr. Kowieski to speculate on the basis on which NRC
4 made certain comments.

5 MR. LANPHER: Well, I am asking him to look at
6 the letter and see if that is a reasonable deduction, given
7 the expressed statements in the letter.

8 MR. PIRFO: The letter speaks for itself.

9 JUDGE FRYE: Overruled.

10 WITNESS KOWIESKI: That is correct.

11 MR. LANPHER: Thank you.

12 BY MR. LANPHER: (Continuing)

13 Q I apologize if I asked this just a minute ago.
14 You didn't receive any subsequent comments from the NRC
15 about the Shoreham objectives, correct?

16 A (Witness Kowieski) In writing. I had numerous
17 telephone conversations with various RAC members, including
18 Charlie Amato. About the exercise, the scope of the
19 exercise, and exercise objective themselves.

20 Q Are you saying, Mr. Kowieski, that you had
21 additional comments beyond this letter from Mr. Amato about
22 the Shoreham objectives?

23 A In what context, I don't remember, sir, right
24 now.

25 Q It is fair to state you don't have any
recollection of additional comments, isn't that true, sir?

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2 A That is true.

3 Q Is it fair to say that you don't know what kind
4 of a review that Mr. Amato or anyone else at the NRC made
5 of the Shoreham objectives?

6 A What I know sir, I can only testify what I asked
7 for. I asked each RAC member to review the proposed
8 exercise objectives.

9 Q That is not my question. You don't have --

10 A I don't know.

11 Q Okay. Similarly, you don't know what guidance
12 documents, if any, may have been utilized by Mr. Amato or
13 anyone else at the NRC to review the objectives, correct?

14 A That is correct.

15 Q And you don't know what guidance documents, if
16 any, any member of the RAC, other than yourself, perhaps,
17 used to review the proposed objectives, isn't that correct?

18 A That is also correct.

19 Q You don't know what regulations, if any, were
20 reviewed by any member of the RAC, except perhaps yourself,
21 related to the proposed objectives of Shoreham, correct?

22 A That is also correct.

23 Q Mr. Kowieski, am I correct that the only -- the
24 comments from the NRC, which are referenced in Suffolk
25 County Exhibit 107 on the objectives, correct?

A That is correct.

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2 Q Yesterday, Dr. Baldwin, you referenced some
3 conversations with Mr. Fish, with a DOE official about the
4 exercise?

5 A (Witness Baldwin) Correct.

6 Q Was that Mr. Fish?

7 A Yes, it was.

8 Q Can you identify who Mr. Fish is?

9 A Mr. Fish is the Department of Energy
10 representative on the RAC.

11 Q And when you made references to a DOE person
12 yesterday in your testimony on at least two occasions, was
13 it Mr. Fish to whom you were referring?

14 A Yes, it was.

15 Q And he provided comments on the objectives, did
16 he not?

17 A (Witness Kowieski) Yes, he did.

18 Q Am I correct that his comments on -- what is Mr.
19 Fish's area of expertise on the RAC?

20 A (Witness Kowieski) Let me caucus for a minute.
21 (Panel discussion.)

22 MR. PIRFO: Judge Frye, I object to this
23 question in the sense the question calls for the expertise
24 of these various RAC members. The RAC members are chosen
25 because of the agencies they represent, as distinct from
what their particular expertise might be.

1
2 So, to that extent, I object to the question
3 calling for the Chairman to assess the various expertise of
4 the RAC members.

5 JUDGE FRYE: I think it is a proper question.
6 They have already said that they were experts, and that they
7 functioned within their particular field.

8 MR. PIRFO: I am sorry, Judge Frye, but I can't
9 hear you.

10 JUDGE FRYE: I think it is a proper question.
11 The witnesses have already testified that the RAC is
12 composed of various experts who function within their
13 particular area of expertise in their capacity as RAC
14 members.

15 BY MR. LANPHER: (Continuing)

16 Q Have you had a chance to confer, Mr. Kowieski?

17 A (Witness Kowieski) Yes. Well, unfortunately, I
18 don't have a document which would assign responsibility.

19 Q Mr. Kowieski, let me stop you. If you don't
20 know the answer, just tell me, that is fine.

21 A I can answer in general terms. He is the
22 administrator, and as far as the specifics are concerned, I
23 would have to refer to the document, which assigns the
24 responsibility for reviewing the plans and evaluating the
25 exercises to each agency on the RAC.

JUDGE PARIS: Do you have such a document?

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WITNESS KOWIESKI: Yes, sir. Yes.

BY MR. LANPHER: (Continuing)

Q Mr. Kowieski, am I correct that Mr. Fish's comments, or Dr. Baldwin, his comments regarding the objectives for Shoreham concerned the responsibilities and role of the Brookhaven area office of DOE in the exercise?

A (Witness Baldwin) That is one area, correct.

Q He provided written comments, didn't he?

A (Witness Kowieski) Yes, he did.

Q And, his written comments only covered Brookhaven matters, didn't it?

A I have a good recollection of --

Q Let me clarify the question.

A Yes.

Q The objectives dealing with the Brookhaven office?

A That's correct.

Q Do you have a different recollection that his written comments covered anything else, Dr. Baldwin?

A (Witness Baldwin) No.

Q Now, within the area of -- well, within the responsibilities of Mr. Fish in connection with this exercise to reach any kind of a determination as to whether this was a full participation exercise?

A (Witness Kowieski) I specifically did not ask --

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MR. LANPHER: That wasn't my question, Judge.

WITNESS KOWIESKI: Yes.

BY MR. LANPHER: (Continuing)

Q Was it within his area of responsibility to make a determination whether this was being structured as a full participation exercise?

(The witnesses are conferring.)

Isn't the answer to that question no, gentlemen?

A (Witness Kowieski) Yes. No.

(Laughter.)

(Witness Keller) I think the answer to that question is no.

Q Thank you. Now, the only other written comments you've received on the Shoreham objectives were from Mr. Lutz of the Department of Transportation; isn't that correct?

A (Witness Kowieski) That's correct.

Q I meant from the RAC.

A (Witness Keller) From the RAC.

(Witness Kowieski) From the RAC, right.

Q And, he had comments related to the degree of Coast Guard participation and how the objective for evacuation activities should be structured in light of the Coast Guard's anticipated participation; is that correct?

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A That's my recollection.

Q And, gentlemen, except -- Mr. Kowieski, except for the NRC Staff, which we talked about, Mr. Fish and Mr. Lutz, those were the only RAC comments that you received concerning the objectives for the Shoreham exercise; isn't that correct?

A I cannot answer this, your question --

Q To the best of your recollection.

A -- with a great degree of accuracy. I know that during the deposition in January Mr. Miller or Ms. Letsche raised the same question, and I think I provided copies of the RAC comments to either Ms. Letsche or Mr. Miller.

So, maybe you can help me out.

Q I'm asking to the best of your recollection, Mr. Kowieski, the only comments on the objectives you received from RAC members were from Mr. Harpster, the NRC Staff --

A That's --

Q Let me finish the question. Mr. Fish and Mr. Lutz.

A Written comments, that's correct.

Q I didn't say written comments. I said comments on the objectives.

A I thought that I received comments from U.S.D.A. Definitely, Cheryl Malina called me to advise that she didn't have any problems with the proposed exercise

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objectives.

Q Okay. With that addition, you don't recall any other comments, do you?

A No, I don't.

Q And, that time period for Ms. Malina's comments would have been in that December 1985 time frame?

A End of November, beginning of December of 1985.

Q And, the time for Mr. Fish's written comments that we have been discussing were in the December time frame, correct?

A That's my recollection.

1 Q It was not within Ms. Malina's area of
2 responsibility to make a determination whether the Shoreham
3 exercise was constructed as a full participation exercise,
4 was it?

5 A (Witness Kowieski) That's correct. I didn't
6 ask for it.

7 Q If I went through the rest of the RAC members
8 with that same question, the answer would be the same,
9 wouldn't it?

10 A The same.

11 Q Dr. Baldwin, yesterday you testified to the
12 Board about your recollection of some conversations with
13 some RAC members. Do you recall that?

14 A (Witness Baldwin) Yes, I do.

15 Q And, you testified yesterday you cannot recall
16 when these conversations took place; is that correct?

17 A That's correct.

18 Q Is it fair to state that these conversations
19 were in the context of efforts by Region II, Mr. Kowieski
20 and you in assisting Mr. Kowieski, to structure the Shoreham
21 exercise in a manner which was consistent with the practices
22 of Region II at other exercise locations?

23 A That's a fair characterization, yes.

24 Q And, you didn't have any specific discussions
25 with any RAC member whether this was going to be a full

1 participation exercise as defined in the FEMA regulations in
2 Part 350, did you?

3 A Not specifically, that's correct.

4 Q You testified yesterday in response to a
5 question from Judge Frye, "I remember a number of
6 discussions with various RAC members centering on this where
7 we would look up what the participation parts of a FEMA-
8 graded exercise were. Judge Frye: You are thinking in
9 terms of whether this was a full participation exercise as
10 defined in FEMA's regulations?" And, you say, "That's
11 correct, as defined by FEMA, yes."

12 And, that was at 8446.

13 Given the discussion we just had, those
14 discussions with RAC members should not be construed to be
15 specifically about full participation exercises, should
16 they? You just testified you didn't have those discussions?

17 A (Witness Baldwin) Well, my recollection is that
18 they were around that.

19 Q I asked whether you had any discussions with any
20 RAC member about whether the Shoreham exercise would
21 constitute a full participation exercise as defined in the
22 FEMA Part 350 regulations. You testified no.

23 Correct?

24 A Well, I misspoke, since you just -- in reading
25 it back, my recollection -- to keep it straight, my

1 recollection is that when I had these conversations with Mr.
2 Fish we went back and looked at that clause about full
3 participation and we had a discussion about what the various
4 parts of that are.

5 Q Well, Mr. Baldwin, not one minute ago you
6 testified that you had had no discussions with any RAC
7 member focused on full participation exercise. Where was
8 the confusion in my question, do you know?

9 Or, is this just a recollection that just came
10 back to you?

11 MS. McCLESKEY: I object. Mr. Lanpher is
12 arguing with the witness. He has been presented with a
13 conflict --

14 JUDGE FRYE: Overruled.

15 WITNESS BALDWIN: Well, my recollection is just
16 what I told you, that I misspoke when I said that I hadn't
17 had any specific conversations about 350. I specifically
18 recall having discussions with Mr. Fish where I looked up --
19 we looked up together and discussed what those parts are in
20 the definitions of exercises.

21 BY MR. LANPHER: (Continuing)

22 Q Now, what did you look up, sir? What parts did
23 you look up, to use the words you just used?

24 A Well, this one is from October '86 so it's the
25 wrong edition.

1 JUDGE FRYE: Can you tell the Board what you are
2 looking at?

3 WITNESS BALDWIN: Oh, this is 44 CFR 350.

4 MR. CUMMING: The FEMA regulation has not
5 changed so I could give him the October '85 edition if he
6 wishes.

7 JUDGE FRYE: I don't think it's necessary if it
8 has not changed.

9 BY MR. LANPHER: (Continuing)

10 Q My question is, you said that you and Mr. Fish
11 looked something up. Do you recall that statement? What
12 did you look up?

13 A (Witness Baldwin) In Part 350.1 -- I'm sorry,
14 350.2, Definitions, Part J, K, which deal here with full
15 participation and partial participation, this section that
16 deals with these definitions.

17 Q Now, let's leave Mr. Fish for a second. You
18 didn't have any such conversations with any other RAC
19 member, did you?

20 A That's correct.

21 Q So, your recollection, or your corrected
22 recollection, is solely with respect to Mr. Fish?

23 A That's correct.

24 Q And, so your testimony yesterday at 8446 was
25 solely with respect to Mr. Fish. And, you, in fact,

1
2 referenced the DOE representative on the next page, Page
3 8447.

4 A That's correct. Yes. It says DOE
5 representative.

6 (Witness Kowieski) Mr. Lanpher, could I add
7 something to this?

8 Q I would rather continue this line of questions.

9 JUDGE FRYE: Yes. I think we are dealing with
10 the recollection of Dr. Baldwin right now.

11 BY MR. LANPHER: (Continuing)

12 Q Now, in your testimony yesterday at 8446 you
13 said you were going to look up the participation part of a
14 FEMA-graded exercise. Do you see that statement; it's at
15 Lines 15 and 16 on that page?

16 A (Witness Baldwin) Yes, I do.

17 Q Now, was that statement accurate yesterday?

18 A Yes.

19 Q Mr. Keller --

20 A (Witness Keller) Yes, sir.

21 MR. LANPHER: Judge, I asked to question Mr.
22 Baldwin. Mr. Keller is whispering over to him yes. And,
23 this was Mr. Baldwin's testimony yesterday. I don't think
24 it was material this time, but I don't think that --

25 JUDGE FRYE: I think when we are dealing with an
individual's recollections it's best to let him answer.

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WITNESS KELLER: Excuse me.

BY MR. LANPHER: (Continuing)

Q Now, what are the participation parts that you were looking up with Mr. Fish?

A The part that I just cited.

Q No. I asked you, what are the participation parts that are referenced in your testimony, what are the participation parts of a FEMA-graded exercise?

A The participation parts refers to 350.2, Sections J, K, L, et cetera.

Q What is the et cetera? What else? I want to know the full universe of what you are referring to, Mr. Baldwin?

A Well, that's my recollection, J, K and L.

Q Well, which of the three, in J which is full participation, K which is partial participation, and L which is remedial exercise, were you and Mr. Fish focusing on?

A We were discussing all three and focusing on J.

JUDGE PARIS: J is full participation?

WITNESS BALDWIN: Full participation.

BY MR. LANPHER: (Continuing)

Q It's a fact, is it not, that -- have you reviewed Mr. Fish's deposition in this proceeding?

A No, I have not.

Q Mr. Fish did not review the scenario, did he?

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A (Witness Kowieski) He did not.

Q And, this conversation that you had with Mr. Fish was in the December time frame also; is that correct? December 1985.

A (Witness Baldwin) My recollection is -- I'm going to say that it was in the December/January time frame.

Q So, as of that time Mr. Fish had no knowledge about whether the sirens were going to be sounded, did he?

A That's correct.

Q Did you?

A No, I did not.

Q Mr. Fish had no knowledge whether an EBS test message would be broadcast, did he?

MR. PIRFO: I object to the form of these questions. He is asking if Mr. Fish had knowledge, and it's just not -- this witness is incompetent to answer that. If he wants to ask if he conveyed any of that knowledge to him, that's another question entirely.

But, I don't want the record to represent this witness testifying to what Mr. Fish did or did not know.

JUDGE FRYE: Can you rephrase the question?

MR. LANPHER: Yes, sir.

BY MR. LANPHER: (Continuing)

Q Do you have any reason to believe that Mr. Fish knew as of the time you had this conversation with him that

1
2 EBS -- that an EBS test message would not be broadcast?

3 A No, I had no reason to believe that he knew
4 anything about that.

5 Q And, in fact, neither you nor he knew that WALK
6 radio would not be participating at all in the exercise, did
7 you?

8 A Well, I certainly did not.

9 Q You have no reason to believe that he had any
10 such knowledge, do you?

11 A No, I don't.

12 Q You didn't learn that until after the post-
13 exercise assessment was prepared, correct?

14 A Could you ask your question again?

15 Q In fact, you didn't learn about WALK radio's
16 lack of participation until after the PEA was prepared?

17 A I'm just having trouble with "lack of
18 participation."

19 Q If you recall, Dr. Baldwin, we talked about
20 phone calls being made to WALK radio. I believe you agreed
21 that you have learned subsequent to the exercise that those
22 phone calls, in fact, had not gone to WALK radio because
23 WALK radio didn't participate; is that correct?

24 A That's correct, yes, sir.

25 Q And, as of the time that you had your discussion
with Mr. Fish, you have no reason to believe that Mr. Fish

1
2 knew that only Shoreham-Wading River Central School District
3 would participate, did you?

4 A At this point, I wouldn't know. I don't know
5 what the -- I believe we knew that earlier on.

6 Q But, you don't know whether he -- whether it was
7 before or after this conversation, do you?

8 A No, I do not.

9 Q So, you don't know what the bases were for this
10 discussion about those 350 parts that you were talking
11 about, what the universe of knowledge about the scope of the
12 exercise, you just don't recall what that universe of
13 knowledge was at that time, do you?

14 A Yes, I do.

15 Q Well, it included an assumption that the testing
16 was going to be more broad than it turned out to be,
17 correct?

18 MR. CUMMING: Objection, Your Honor. I don't
19 remember the Board asking my witnesses this line of
20 questioning. We are straying pretty far afield.

21 JUDGE FRYE: No. It's clearly related to the
22 questions we asked.

23 BY MR. LANPHER: (Continuing)

24 Q Do you recall the question, sir?

25 A (Witness Baldwin) Let's do it again.

MR. LANPHER: Could you have the Reporter read

1
2 the question back please, Judge?

3 (The Reporter read the question back as
4 requested.)

5 WITNESS BALDWIN: No, not more broad than it
6 turned out to be, because our conversations were focusing on
7 the objectives that dealt with the simulation of the state
8 and local players.

9 BY MR. LANPHER: (Continuing)

10 Q So, your discussions with Mr. Fish were in terms
11 of full participation exercise and were solely in terms of
12 whether the lack of state and local government participation
13 would affect whether this was a full participation exercise;
14 is that correct?

15 A No. They were in the context of whether or not
16 the simulation that was going to be conducted would meet the
17 -- would meet the consistency which had been done in the
18 past for an integrated exercise, to test the integrated
19 capability of implementation of the plan.

20 Q Well, Dr. --

21 A And, they focused on -- they came back to our
22 discussions about the plan review. And, we had that
23 discussion yesterday, too. And, that we were going to be
24 evaluating the plan in the exercise; we were going to be
25 evaluating the implementation of the plan in the context of
the plan review that had been conducted which identified

2 legal authority issues by asterisk marks, et cetera.

3 Q Dr. Baldwin, you referenced in your earlier
4 answer, however, that your discussion with Mr. Fish was
5 focused on the simulation of state and local government
6 officials; isn't that correct?

7 A Yes.

8 Q And, it was in that context -- in the context of
9 that simulation that you and Mr. Fish went to the
10 regulations to look up the participation parts, correct?

11 A Correct.

12 Q And, in doing that, in that context of focusing
13 on the simulation, you were also assuming that the testing
14 of things like sirens, EBS radio stations, would be broader
15 than actually turned out to be the case?

16 A I don't recall any assumption that I was making
17 explicitly about WALK radio, about EBS, about siren
18 soundings. I don't recall.

19 I certainly was not employing those specific
20 kinds of issues.

21 Q You don't recall what your assumptions were then
22 about the extent of the testing?

23 A I recall that I was not focusing on specific
24 issues such as EBS, siren sounding and WALK radio.
25

1 Q Now, Mr. Baldwin, do you have -- I apologize if
2 this is repetitive, but it's just getting into a little
3 different line.

4 Your conversation with Mr. Fish was the only
5 detailed discussion you had with a RAC member other than
6 perhaps Mr. Kowieski, whom you were working with everyday,
7 about the scope of the exercise under the 350 regulations,
8 correct?

9 A (Witness Baldwin) That's correct.

10 Q And, Judge Frye asked you yesterday which was
11 more -- which was a matter of more concern to the RAC, the
12 lack of state and local participation or the question of
13 whether all the major observable portions of the plan were
14 exercised. And, you answered: I think the latter.

15 Well, when Judge Frye asked you about the matter
16 of more concern to the RAC, the only RAC member you had had
17 a detailed conversation with about that was Mr. Fish,
18 correct?

19 A That's correct.

20 Q And, so that answer should be limited to the
21 conversation with Mr. Fish?

22 A Yes.

23 Q And, given the conversation that you have just
24 had this morning with me, I believe you stated that Mr.
25 Fish's concern or the focus -- not concern, the focus of

1 your discussion was in the simulation of state and local
2 government personnel, correct?

3 A That's correct --

4 Q So --

5 A -- in the context of being able to observe the --
6 to evaluate the observable portions of the plan,
7 specifically that portion of the plan that deals with the
8 opportunity of local and state officials to exercise their
9 authority.

10 Q Well, you -- do you have yesterday's transcript
11 handy? Please turn to 8452.

12 (The witness is complying.)

13 It starts at Line 17. Shouldn't that answer
14 have been the former as opposed to the latter? Which was a
15 matter of more concern to the RAC, to Mr. Fish is really
16 what it was -- which was a matter of more concern to Mr.
17 Fish, the lack of state and local government participation
18 or the question whether all the major observable portions of
19 the plan were exercised.

20 Shouldn't you have answered the former?

21 (The witness is looking at the document.)

22 A It's the latter. It's the latter.

23 Q Is it your testimony, notwithstanding what you
24 said earlier today, that Mr. Fish's major concern was that
25 all the major observable portions of the plan be exercised?

1 MR. PIRFO: I object to the question again of
2 Mr. Fish's concern.

3 JUDGE FRYE: I'm sorry?

4 MR. PIRFO: The same objection. He keeps
5 talking in terms of these other person's state of mind.

6 MR. LANPHER: That was the question of Judge
7 Frye yesterday.

8 JUDGE FRYE: Yeah. Overruled.

9 MR. LANPHER: I didn't like your question
10 yesterday, Judge.

11 WITNESS BALDWIN: Well, the question as I
12 understood it yesterday and now reading the transcript,
13 which was a matter of more concern emphasized to you or the
14 RAC rather, to you, okay, and in the context of me speaking
15 with Mr. Fish as a RAC member, which was a matter of more
16 concern to the RAC.

17 I would identify one as the lack of state and
18 local participation or -- and I would identify two, the
19 latter, in this case, the question of whether all major
20 observable portions of the plan were exercised. And, I
21 answered I think the latter emphasis on the question of
22 whether all major observable portions of the plan were
23 exercised.

24 BY MR. LANPHER: (Continuing)

25 Q And, you had no discussions with Mr. Fish about

1 the omission of ingestion pathway objectives, did you?

2 A (Witness Baldwin) That's --

3 Q You can't recall?

4 A I can't recall.

5 Q And, you can't recall any discussions with Mr.

6 Fish about the omission of any public information

7 objectives, can you?

8 A Correct.

9 Q You can't recall any discussion with Mr. Fish
10 about the omission of recovery and reentry objectives, can
11 you?

12 A Correct.

13 Q And, your plan review that you referenced, FEMA
14 Region II had reviewed those portions of the LERO plan,
15 correct?

16 A Yes, we had.

17 Q So, this exercise was not consistent with all
18 the portions of the plan which had been reviewed before, was
19 it? You didn't cover all those portions, did you?

20 A That's correct. We did not cover all those
21 portions.

22 Q Gentlemen, do you recall yesterday you testified
23 that FEMA made no interim finding on the basis of the review
24 of the Shoreham exercise?

25 A (Witness Kowieski) That's correct.

1 Q Am I correct that under the Memorandum of
2 Understanding which we referred to yesterday and which I
3 guess we marked State Exhibit 4 for identification -- I
4 believe that's correct, the number --

5 A (Witness Keller) That's what I have.

6 Q Isn't it true that when FEMA is asked to review
7 a plan, it is provided under the MOU that it will make
8 findings and determinations on the current status of
9 emergency planning and preparedness?

10 A (Witness Kowieski) That's correct, when
11 requested by NRC.

12 Q And, NRC did request FEMA about January 20th --
13 June 20, 1985 to conduct an exercise and to provide findings
14 and determinations; isn't that correct?

15 A That's correct, as full exercise as feasible.
16 That's my recollection.

17 Q That's right. And, the NRC did not direct in
18 that June 20 letter that you conduct a full participation
19 exercise, did it?

20 A As full exercise as feasible.

21 Q The answer to my question then is no, did it?

22 A That's correct.

23 Q Now, you testified yesterday that -- strike
24 that.

25 Now, you made no findings and determinations, no

1 interim findings and determinations, correct?

2 A That's correct.

3 Q And, as I understand your testimony yesterday,
4 it was because policy-makers in Washington, D. C. decided
5 that no findings, either positive or negative, would be made
6 by FEMA, correct?

7 A To give you simple answer, the answer is
8 correct. I would like to expand on it, but that's right.

9 Q All I want is the answer. I don't need an
10 explanation.

11 And, the reason, as set forth in Mr. Speck's
12 letter of the 29th of October and as described at Page 91 of
13 your testimony, was the lack of state and local government
14 participation; isn't that correct?

15 A That's correct.

16 Q Is it fair to state that what that really meant
17 was that even if this exercise were perfectly performed, no
18 deficiencies, no ARCAs even, that on the basis of that
19 exercise FEMA would not have been in a position to provide a
20 reasonable assurance finding because of the lack of state
21 and government -- the state and local government
22 participation; isn't that correct?

23 A That's correct.

24 Q Leave aside the state and local government
25 participation or the lack thereof, you testified yesterday

1 that there were at least three deficiencies identified in
2 the Shoreham exercise that had nothing whatsoever to do with
3 lack of state and local government participation, correct?
4

5 A That's correct.

6 Q So, isn't it fair to state that independent of
7 that caveat, which you discuss at Page 91 of your testimony
8 about the lack of state and local government participation,
9 the only finding if one had been issued by FEMA on the basis
10 of the Shoreham exercise would have been a negative finding,
11 because you identified at least three deficiencies that were
12 independent of state and local government lack of
13 participation?

14 A Again, I would have to speculate. Not only if
15 you -- to give you an example, what would happen at Indian
16 Point if FEMA would have identified similar deficiencies at
17 Indian Point.

18 Q The definition of a deficiency is something that
19 precludes the reasonable assurance finding, correct?

20 A That's correct.

21 Q And, you identified four of them, correct, in
22 the Shoreham exercise?

23 A That's correct.

24 Q So, independent of the lack of state and local
25 government participation, you could not provide reasonable
assurance? In fact, you would have to make a no reasonable

1
2 assurance finding on the basis of those three deficiencies
3 if you had made any finding?

4 MR. CUMMING: Objection to this line of
5 questioning. The FEMA official position has been stated by
6 Mr. Kowieski. Is he asking a personal opinion?

7 MR. LANPHER: Excuse me. The FEMA position is
8 in their testimony.

9 JUDGE FRYE: Yeah, it is. And, I think it's a
10 legitimate question.

11 Overruled.

12 WITNESS KOWIESKI: Would you be kind enough to
13 restate your question again?

14 BY MR. LANPHER: (Continuing)

15 Q Mr. Kowieski, I -- let's go back a second. I
16 understand from your previous testimony that FEMA's initial
17 caveat about not making a finding was it's concern about how
18 to judge an exercise where there was no state and local
19 government participation, correct?

20 A (Witness Kowieski) That's correct.

21 Q But, after the Shoreham exercise you found
22 deficiencies that were entirely independent of that caveat,
23 correct?

24 A That's also correct.

25 Q And, given that fact that you found those
deficiencies, isn't it true that there was no reason that

1 FEMA could not have issued a negative finding on the basis
2 of this exercise?

3
4 A There is -- there was a reason. There was an
5 agreement reached between NRC and FEMA.

6 Q But, that had nothing to do with the merits of
7 the exercise review, did it?

8 A That's correct.

9 Q That was a policy decision having nothing to do
10 with the exercise?

11 A Nothing to do with the results of the exercise,
12 that's correct.

13 Q Okay. And, the results of the exercise, the
14 three independent deficiencies, would have required a no
15 reasonable assurance finding under the MOU in any other
16 exercise?

17 A By definition of deficiency, that's correct.

18 Q In any other exercise, it would have led to a no
19 reasonable assurance finding, correct?

20 (The witnesses are conferring.)

21 A (Witness Kowieski) If -- again, big "if." If
22 NRC would request interim finding on the status of plans and
23 preparedness, most likely FEMA would have to conclude that
24 FEMA cannot give a reasonable assurance that public health
25 and safety can be protected; that's correct.

JUDGE FRYE: Mr. Kowieski, let me put this --

1
2 take it out of the context of Shoreham and put it in the
3 context of an operating plant.

4 WITNESS KOWIESKI: Surely.

5 JUDGE FRYE: Had you conducted this exercise,
6 were Shoreham operating, and you had found these three
7 deficiencies --

8 WITNESS KOWIESKI: Yes, sir.

9 JUDGE FRYE: -- what would have happened?

10 WITNESS KELLER: A remedial exercise would be
11 scheduled.

12 WITNESS KOWIESKI: First of all, in the cover
13 letter -- normally, in the cover letter or cover letters,
14 which are issued simultaneously to FEMA Headquarters Office
15 and to the State, FEMA identify deficiencies. FEMA also
16 requests a schedule of corrective actions from the state and
17 counties. FEMA would state those facts in the letter, to
18 send the letter to Washington, our Washington Office, that
19 here is what we evaluated and we found three deficiencies.
20 We requested the state to take remedial action. And, we are
21 in the process of scheduling remedial exercise.

22 JUDGE PARIS: And, there is a time limit within
23 which that has to be done?

24 WITNESS KOWIESKI: That's correct, 120 days.

25 JUDGE PARIS: So, they have to demonstrate that
they have remedied the deficiencies within 120 days?

1
2 WITNESS KOWIESKI: That's correct.

3 JUDGE FRYE: And, if they did not make that
4 demonstration, then you would issue a finding I would
5 presume that there is not reasonable assurance that the
6 public health and safety can be --

7 WITNESS KOWIESKI: Well, we would go -- it
8 varies. You are right.

9 My recollection is that a number of occasions,
10 that's what actually happened. Regional Director, in his
11 cover letter transmitting post-exercise assessment to FEMA
12 Headquarters Office, stated that based on the fact that we
13 found three, four deficiencies during the exercise we cannot
14 provide reasonable assurance that public health and safety
15 can be protected.

16 I don't think it has happened in every single
17 case when we found deficiencies. But, to answer your
18 question, what would happen if after the remedial exercise
19 still some deficiencies would remain, the --

20 JUDGE FRYE: If I'm following you then, coming
21 back to the context of a plant that does not have a
22 commercial operating license and goes through a full
23 participation exercise --

24 WITNESS KOWIESKI: Right.

25 JUDGE FRYE: -- and FEMA finds three
deficiencies, FEMA then schedules a remedial exercise, the

1
2 exercise takes place but up until this point I gather that
3 FEMA hasn't issued any finding at all?

4 WITNESS KOWIESKI: That's correct.

5 JUDGE FRYE: Now, the exercise takes place and
6 the deficiencies are still present --

7 WITNESS KOWIESKI: Correct.

8 JUDGE FRYE: -- now, at that point would you
9 issue a finding that there is not reasonable assurance that
10 the public health and safety could be protected?

11 WITNESS KOWIESKI: Well, it depends if NRC would
12 ask for it, for interim finding. But, most likely when FEMA
13 submits the results of the exercise to NRC, normally,
14 generally speaking, NRC would take action against the
15 utility.

16 JUDGE FRYE: Well, now taking it out of the
17 context of an operating plant and putting it into the
18 context of a plant that does not have a commercial operating
19 license and --

20 WITNESS KELLER: We have no experience with
21 that.

22 JUDGE FRYE: You have no experience with it?

23 WITNESS KELLER: We have experience with an
24 operating license.

25 JUDGE FRYE: All right. Indian Point, as I
recall that was a 120 day letter --

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WITNESS KELLER: That's correct. We just went through this after Mr. Kowieski was relieved of his RAC Chairmanship duties.

But, Guidance Memorandum EV-2 -- I'm sorry, EX-1, excuse me. Guidance Memorandum EX-1, which I'm not sure is an exhibit or not --

MR. LANPHER: It's an exhibit.

WITNESS KELLER: Okay. And, I don't remember which exhibit it is, but on Page 4 of EX-1 there is a section which is titled "Action on Inadequately Performed Remedial Exercises." Okay. And, you only get into remedial exercises if you have a deficiency.

JUDGE FRYE: Okay.

WITNESS KELLER: There are two actions basically. One, if there isn't a formal 350 -- has not been approved, okay, you haven't gone through a 350 process which is the FEMA finding that reasonable assurance can be assured; that's the formal process, the public hearing, the whole thing, if you don't have that, you do not have the 350 in place, FEMA may, in consultation with NRC, require another remedial exercise and NRC may consider enforcement actions, which is exactly what Mr. Kowieski just said.

And, that was the case at Indian Point last Summer. Okay.

If a 350 process has been finalized and the site

1
2 has been certified by FEMA, you initiate steps to withdraw
3 the 350. And, those are the two options for operating
4 plants.

5 We have no --

6 JUDGE FRYE: But, the point of it, if I
7 understand you correctly, is that if you have deficiencies,
8 you know, that have been demonstrated, whether the plant is
9 operating -- if the plant is operating, a process is going
10 to be started to correct the deficiencies or take
11 enforcement action?

12 WITNESS KELLER: That's correct.

13 JUDGE FRYE: If the plant is not operating, FEMA
14 would not take steps that would permit it to operate under
15 those circumstances, would it?

16 WITNESS KELLER: FEMA makes its position, its
17 opinion, known to the NRC.

18 JUDGE FRYE: That's right.

19 WITNESS KELLER: The NRC is the only entity
20 which can either allow the plant to operate or deny the --

21 JUDGE FRYE: I understand that. But, if FEMA
22 has conducted an exercise and there are deficiencies, FEMA
23 isn't going to say to NRC, yes, there is reasonable
24 assurance that the health and safety of the public can be
25 protected, is it?

WITNESS KELLER: That's a true statement in my

1
2 opinion.

3 BY MR. LANPHER: (Continuing)

4 Q And, in fact, given the deficiencies the only
5 finding that could have been made was that there are
6 deficiencies that may adversely impact the public health and
7 safety that must be corrected, right?

8 A (Witness Keller) If a finding were to be made,
9 that is the only finding that could be made; that's correct.

10 Q And, that's a negative finding, isn't it?

11 A Yes.

12 JUDGE FRYE: We will take a five minute break.
13 (Short recess.)

14 BY MR. LANPHER: (Continuing)

15 Q Gentlemen, you testified yesterday that on only
16 one occasion had you actually evaluated an EBS radio
17 station's performance during an exercise.

18 Do you recall that testimony?

19 A (Witness Kowieski) Yes, I do.

20 Q And, I believe you identified that as the August
21 11th, 1982 Fitzpatrick exercise? Maybe it wasn't clear on
22 yesterday's transcript which it was, and that's what I want
23 to clarify.

24 (The witnesses are conferring.)

25 MR. PIRFO: Could we have a transcript cite, Mr.
Lanpher?

1
2 MR. LANPHER: I think it's 8526.

3 MR. PIRFO: Thank you.

4 BY MR. LANPHER: (Continuing)

5 Q If you look at Lines 7 through 13, you talked
6 about Ginna or Nine Mile Point, and I believe that you meant
7 the Fitzpatrick exercise and which the post-exercise
8 assessment report has been entered into the record as
9 Suffolk County Exhibit 73.

10 Am I correct that that's the exercise you were
11 referencing?

12 A (Witness Kowieski) Well, again I would have to
13 verify in the post-exercise assessment to be certain.

14 Q Gentlemen, let me provide you with a copy of
15 that post-exercise assessment, and I'm going to direct your
16 attention to Page 23 where it states: Significant
17 deficiencies were noted in the performance of the siren
18 system and the familiarity of some radio broadcast personnel
19 with EBS procedures.

20 And, then on page 24 it states: During the
21 exercise, use of the EBS was evaluated as weak. Radio
22 station broadcast personnel at WKFM, the originating EBS
23 station, were neither provided with nor were familiar with
24 the county radiological emergency plan. The master message
25 log was not utilized at the radio station to record EBS
activation as called for in the plan.

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(The witnesses are conferring.)

Gentlemen, did I read those statements
accurately?

1 A (Witness Keller) Essentially, you did. I can't
2 remember the exact words as you read them. But, it looks as
3 though you read them accurately.

4 Q And, from those statements it does appear that
5 FEMA actually evaluated the EBS radio station personnel at
6 the radio station, correct?

7 A (Witness Kowieski) That's correct.

8 Q You couldn't have made those findings from some
9 other location?

10 A No. And, there was a lot of controversy after
11 we presented our evaluation.

12 Q And, your evaluation was that those personnel
13 didn't perform in a satisfactory or adequate manner,
14 correct?

15 A They performed in sort of weak manner.

16 Q Okay. That's not a satisfactory manner, is it,
17 Mr. Kowieski?

18 A That's correct.

19 JUDGE PARIS: Could I ask a quick follow-up?

20 MR. LANPHER: Sure.

21 JUDGE PARIS: Mr. Kowieski, in situations where
22 you don't send anybody to the radio station, do you listen
23 to the broadcast if there is going to be a broadcast
24 following the siren sounding?

25 WITNESS KOWIESKI: Yes. Generally speaking,

1 yes.

2 JUDGE PARIS: You tune in on the radio?

3 WITNESS KOWIESKI: Right.

4 JUDGE PARIS: Fine. Thank you.

5 BY MR. LANPHER: (Continuing)

6 Q And, didn't we establish, gentlemen, I think
7 last week that when you don't send someone to the radio
8 station to evaluate performance you use the broadcast of a
9 test message or the airing of a test message as some sort of
10 a confirmation to you that, gee, everything must be going
11 right because they got it on the air within our time limit?

12 A (Witness Kowieski) That's fair
13 characterization, yes.

14 Q You can't make that kind of a judgment, however,
15 for Shoreham where there was no test message and you didn't
16 evaluate the radio station personnel?

17 A That's correct.

18 Q Now, gentlemen, yesterday there was some
19 discussion with you about the Indian Point June 4, 1986
20 exercise. I don't want to take you back through all that
21 discussion, but you stated -- or, you characterized your
22 evaluation of the school preparedness at that exercise as "a
23 spot check or spot checks."

24 Do you recall that?

25 A Yes, I do.

1 Q Now, am I correct that this spot checking in
2 connection with that exercise involved for Rockland County
3 interviews -- well, first of all, with respect to school
4 preparedness you had EOC activities and school bus runs;
5 isn't that correct?

6 A Could you rephrase your question? I don't know
7 if I --

8 Q If you don't understand the question, just tell
9 me.

10 A Okay.

11 Q Am I correct that each of the local EOC's went
12 through organizational activities related to school
13 preparedness?

14 MS. McCLESKEY: Objection. These questions are
15 follow-ups on Mr. Zahnleuter's questions about the Indian
16 Point exercise, not the other parties. Suffolk County and
17 New York State filed joint testimony on 15 and 16 and 21,
18 and I think it's inappropriate for Mr. Lanpher to be
19 following up on Mr. Zahnleuter's questions.

20 MR. LANPHER: I don't think it's inappropriate
21 at all. We are independent parties, and we have pursued non-
22 repetitive cross-examination.

23 MS. McCLESKEY: They are not --

24 JUDGE FRYE: Is this relevant to 15, 16 and 21?

25 MR. LANPHER: Excuse me?

1 JUDGE FRYE: Is this relevant to Contentions 15,
2 16 and 21?

3 MR. LANPHER: Yes, sir.

4 JUDGE FRYE: Now, you filed joint testimony --

5 MR. LANPHER: We filed joint testimony and we
6 have done independent cross-examination, and we each
7 defended our own witnesses.

8 Now, if I get repetitive that's certainly a
9 valid objection, but there were statements made on the
10 record yesterday that I think have to be clarified.

11 MS. McCLESKEY: Well, to the extent that Mr.
12 Lanpher is going into further depth on questions that Mr.
13 Zahnleuter asked initially, it is repetitive. They had the
14 opportunity to ask these questions about 15 and 16, and I
15 think they've had their shot at it.

16 JUDGE FRYE: Is there very much of this?

17 MR. LANPHER: It depends on what answers I get.
18 I don't think so, but I don't make that kind of prediction,
19 Judge.

20 JUDGE FRYE: All right. Let's -- what is your
21 transcript reference?

22 MR. LANPHER: The spot check is 8408, sir.

23 JUDGE FRYE: All right.

24 MR. LANPHER: I think it was a couple, but
25 that's the one place I found it. I had in my notes a couple

1 of places.

2 MS. McCLESKEY: This is exactly the sort of
3 difficulty we were anticipating when we filed the motion to
4 consolidate the parties for the purposes of 15 and 16. And,
5 the representations that were made was that this wasn't
6 going to be a problem.

7 MR. LANPHER: Well, I don't think it's --

8 JUDGE FRYE: Well, I'm not sure it is a problem
9 yet. But, let's get into it and see.

10 MR. LANPHER: Thank you, Judge. The reference
11 was on Line 24 at sort of the very bottom of the page, a
12 spot check on emergency planning for school children.

13 BY MR. LANPHER: (Continuing)

14 Q Now, each of the local EOC's had organizational
15 activities related to the organizational ability to either
16 evacuate or early dismissal of schools, correct?

17 A (Witness Kowieski) That's correct.

18 Q And, for at least some of the counties
19 surrounding the Indian Point plant actual bus runs were
20 demonstrated; isn't that correct, for schools?

21 A That's my recollection.

22 Q Now, the spot checks at the actual schools in
23 Rockland County involved actual interviews at least at two
24 non-public schools, correct?

25 A That's correct.

1 Q And, in Orange County there were interviews at
2 five schools, correct?

3 A I don't have an instant recall.

4 Q I refer you to Page 102 of Suffolk County
5 Exhibit 66. Do you have a copy of that, sir? It's the June
6 4 exercise report?

7 A (Witness Keller) I don't think we do.

8 Q I can provide mine if you need it.

9 A (Witness Kowieski) Please do.

10 (The witnesses are looking at a document.)

11 Q My reference was Page 102, gentlemen.

12 (The witnesses are conferring.)

13 A (Witness Keller) That's correct.

14 Q I was correct, Mr. Keller?

15 A That is correct.

16 Q And, in Putnam County, gentlemen --

17 A (Witness Kowieski) Wait, wait. Let me add that
18 we have --

19 Q No. I just asked a single question.

20 A Okay.

21 Q Now, gentlemen, in Putnam --

22 (The witnesses are conferring.)

23 Are you through conferring?

24 A (Witness Keller) Yes.

25 Q Gentlemen, in Putnam County, am I correct that

1 there were interviews of a principal of a public school, a
2 teacher at a nursery school and the principal's secretary at
3 yet a third school? You refer to Pages 122 and 123 of the
4 report.

5 (The witnesses are looking at a document.)

6 A (Witness Kowieski) We see that.

7 Q Am I correct?

8 A You are correct.

9 Q Now, yesterday at Page 8398 of the transcript
10 you testified that the spot check -- and maybe this is the
11 other reference to spot check -- were mainly related to
12 checking the adequacy of tone alert radios.

13 MS. McCLESKEY: Objection. In addition to
14 renewing my previous objection, I would also like to object
15 on relevance grounds. The witnesses have previously
16 testified that the review of school children in this
17 exercise came after the issuance of EV-2 which was not
18 issued at the time of the Shoreham exercise.

19 And, I fail to see any connection between this
20 and what went on at the exercise for Shoreham.

21 JUDGE FRYE: EV-2 was what prompted you to -- if
22 I recall correctly, was EV-2 what prompted --

23 WITNESS KOWIESKI: I believe EV-2 in draft form,
24 and what I did not mention yesterday, there was a standing
25 request from NRC to FEMA to provide an interim finding or

1 assessment of the level of preparedness for school children
2 around Indian Point.

3 JUDGE FRYE: I think we had better go on and get
4 this. I think it's getting too complicated to try to
5 exclude it at this point.

6 MR. LANPHER: Thank you, Judge.

7 WITNESS KELLER: Would you repeat your
8 question? I'm sorry.

9 BY MR. LANPHER: (Continuing)

10 Q Well, I was directing your attention to Page
11 8398 of yesterday's transcript. And, you testified I
12 believe, Mr. Kowieski, that you decided to have a very
13 limited spot check on tone alerts and whether school
14 officials were aware of what to do in case of emergencies.

15 Do you recall?

16 A (Witness Kowieski) Yes, I do.

17 Q Now, the two deficiencies that you identified
18 relating to schools out of the Indian Point exercise both
19 related to the lack of awareness by school officials of what
20 to do in an emergency, correct?

21 A In Rockland County, that's my recollection.

22 Q Well, not --

23 A (Witness Keller) And, Orange.

24 (Witness Kowieski) And, Orange, yes.

25 Q One was Rockland and one was Orange, correct?

A Okay. That's correct.

1 Q And, then there were additional ARCAs relating
2 to each, correct?

3 A That's correct.

4 Q Now, you stated yesterday also that special
5 facilities generally are tested by no more than telephone
6 calls. Do you recall that?

7 A Yes, I do.

8 Q Did you mean to include schools as special
9 facilities when you were testifying?

10 A No.

11 Q You meant nursing homes and hospitals?

12 A That's correct, although the plan -- although
13 the plan defines special facilities as --

14 Q But, in your testimony yesterday when you used
15 special facilities you weren't including schools?

16 A That's correct.

17 Q Because usually more than just a telephone call
18 is done with schools?

19 A That's correct.

20 Q And, am I correct that sometimes more than just
21 a telephone call is done for schools in FEMA-graded
22 exercises -- for special facilities, excuse me?

23 (The witnesses are conferring.)

24 Isn't it a fact, gentlemen, that in the Indian
25

1 Point exercise that we've just been talking about, the June
2 1986 exercise, FEMA interviewed the Assistant Director of
3 the Walter Hobby Home which is a special medical facility?

4 You can look at Page 123 of that exhibit.

5 (The witnesses are looking at the document and
6 conferring.)

7 Am I correct that that occurred, Mr. Kowieski?

8 A (Witness Kowieski) That's correct.

9 Q Now, gentlemen, yesterday Ms. McCleskey asked
10 you some questions about whether LILCO had an opportunity to
11 review the draft post-exercise assessment prior to it being
12 finalized.

13 Do you recall those questions?

14 A Yes, I do.

15 Q If LILCO had been given an opportunity, would
16 you -- do you think you would have changed that report in
17 any way?

18 A What first comes to my mind is the deficiency
19 related to timely dispatch of bus drivers. We changed later
20 on -- RAC, after reviewing additional documentation provided
21 by LILCO, the RAC made a decision to lower our rating from
22 deficiency to area requiring corrective action.

23 Q So, LILCO had that kind of an opportunity
24 whether it was before or after the FEA came out; is that
25 correct?

1 A That's correct.

2 Q So, it didn't make any difference whether they
3 had the opportunity before or after, right?

4 A (Witness Keller) Only in timeliness, but on
5 substantive difference in the result, that's right.

6 Q Thank you. You didn't make any other change to
7 the report after the assessment came out --

8 A Well, I think to be perfectly -- we didn't
9 change the report, okay. We did, in the spread sheets that
10 we track deficiencies and ARCAs, make a change in that.
11 But, we didn't -- we did not go back and change the report.

12 Q Right. But, in terms of like the tables which
13 are in the RAC comments on 7 and 8 which basically track
14 what you had in the PEA, the tables, you didn't change
15 anything else?

16 A That is correct.

17 Q Gentlemen, yesterday Judge Paris asked you a
18 number of questions about how a particular sample size,
19 looking at a sample of eight bus drivers, could give you
20 confidence about the universe of the 333 bus drivers, how
21 they would perform when you hadn't looked at any beyond
22 those eight.

23 Do you recall that discussion?

24 A (Witness Kowieski) Yes, I do.

25 Q Now, your testimony in response to Judge Paris

1 yesterday relied on the insert of a free-play message --

2 A Messages.

3 Q -- or messages and the FEMA evaluators being
4 able to select the particular bus drivers who would then go
5 out on particular routes, correct?

6 A (Witness Keller) That's correct.

7 (Witness Kowieski) That's correct.

8 Q Now, just so there is no confusion, that
9 testimony did not relate at all to the route alert
10 situation, did it, where FEMA chose the -- LILCO chose the
11 particular drivers who would go out?

12 A That's correct.

13 (Witness Keller) That's correct.

14 Q It similarly didn't apply to the ambulance
15 situation, did it?

16 A (Witness Kowieski) That's correct, although
17 there were six ambulances and six ambulettes present at the
18 EOC.

19 Q But, FEMA decided the routes they would go and
20 LILCO selected the ambulance?

21 A That's correct.

22 Q Now, Dr. Baldwin, you testified yesterday that
23 the confidentiality -- and I think you mentioned it this
24 morning briefly, the confidentiality of the free-play
25 messages and the routes that would be selected you believed

1 were important to the ability of FEMA to look at a small
2 sample and being able to judge how the entire population
3 would perform.

4 Do you recall that?

5 A (Witness Baldwin) Yes, that's correct.

6 Q And, you also testified this morning that the
7 element of surprise lets a small number of persons be looked
8 at and form that you can judge how the entire universe will
9 perform; is that correct?

10 A Yes.

11 Q Can you tell me, Dr. Baldwin, am I correct that
12 the LILCO bus drivers that were -- that are relied upon in
13 the Shoreham plan, they don't drive buses as their regular
14 job, correct?

15 A Yeah, that's my understanding that they don't
16 routinely drive buses in their job with LILCO.

17 Q And, in other -- at other plants where bus
18 drivers are evaluated, some certain sample of bus drivers,
19 those bus drivers generally are professional bus drivers;
20 isn't that correct?

21 A Generally, yes.

22 (Witness Kowieski) Generally. There are some
23 exceptions.

24 Q But, generally they are, correct?

25 A (Witness Baldwin) That's correct.

1 (Witness Kowieski) Except Indian Point when
2 compensating plan was -- state compensating plan was
3 exercised for the Rockland County.

4 Q And, then some of the bus drivers were utility
5 employees, correct?

6 A That's correct.

7 Q Not all of them, correct?

8 A Most of them.

9 Q But, that's the only exception you can think of,
10 correct?

11 A That's correct.

12 Q Now, gentlemen, I want you to explain why
13 looking at a sample of eight bus drivers that are LILCO or
14 LERO employees who don't drive buses as their regular jobs
15 lets you reach a conclusion or a judgment about how the rest
16 of the bus drivers, the other 300 plus bus drivers, would
17 actually perform?

18 MR. PIRFO: Objection. We have gone through
19 this. I went through it as well this morning. It has been
20 gone through fairly well.

21 JUDGE FRYE: I think that's true unless you've
22 got a different -- it's almost the identical question I
23 believe.

24 MR. LANPHER: Well, I was trying to follow up on
25 Judge Paris. If you think you understand -- I don't

1 understand how you can possibly make that -- reach a
2 conclusion on the basis of eight. And, I added the one
3 additional element here that I don't think was in the
4 Judge's question yesterday or Mr. Pirfo's this morning.

5 JUDGE PARIS: What was that additional element?

6 MR. LANPHER: The understanding that the LERO
7 bus drivers don't do bus driving as part of their regular
8 employment.

9 MR. PIRFO: I don't understand why that's a
10 distinction here. I understand why it's a distinction, I
11 don't understand why it makes a difference.

12 MS. McCLESKEY: It's an irrelevant distinction
13 to Contentions 15, 16 and 21. I object to the question.

14 JUDGE FRYE: Let's move on. I think we've got
15 enough on this.

16 BY MR. LANPHER: (Continuing)

17 Q Now, gentlemen, in the Shoreham exercise, of the
18 eight bus drivers that you evaluated three of them performed
19 inadequately, correct?

20 MR. PIRFO: Objection. I thought we were moving
21 on. I don't see where we are moving on.

22 MR. LANPHER: Well, it's a foundation question.

23 JUDGE FRYE: Overruled.

24 BY MR. LANPHER: (Continuing)

25 Q Does your conclusion based upon looking -- the

1 deficiency that was identified pertaining to bus drivers is
2 that there is no confidence that other Shoreham -- based on
3 the exercise results, there is no confidence that other
4 Shoreham bus drivers can perform adequately?

5 MR. PIRFO: I'm going to object because of the
6 use of the word "confidence." Is he talking about
7 reasonable assurance which FEMA uses, and then confidence is
8 a statistical term which I think is --

9 MR. LANPHER: Use reasonable assurance. That's
10 fine, too.

11 (The witnesses are conferring.)

12 MR. CUMMING: Now we have two questions, Judge
13 Frye.

14 JUDGE FRYE: I think they understand the
15 question, don't you?

16 WITNESS KELLER: I think we do. I would not
17 agree with your characterization. I think you have gone a
18 little far. And, if you would like me to explain or you can
19 ask, however you are going to do it.

20 BY MR. LANPHER: (Continuing)

21 Q Now, a deficiency which means there is no
22 reasonable assurance that bus drivers -- given this
23 deficiency that you have identified, there is no reasonable
24 assurance that bus drivers will perform adequately; isn't
25 that correct?

1 A (Witness Keller) Based on the three of the four
2 at the Patchogue staging area, that is a correct statement.

3 JUDGE FRYE: The deficiency is related solely to
4 Patchogue?

5 WITNESS KELLER: Yeah, three of the four drivers
6 at Patchogue.

7 JUDGE FRYE: And, your exercise, your remedial
8 exercise, would be limited solely to Patchogue?

9 WITNESS KELLER: Probably.

10 JUDGE FRYE: Probably?

11 MR. LANPHER: What was the answer to that?

12 JUDGE FRYE: Probably.

13 BY MR. LANPHER: (Continuing)

14 Q Well, you haven't scheduled any kind of a
15 remedial exercise for this or any of the other problems?

16 A (Witness Keller) That is correct. We testified
17 to that early last week some time. It seems like it was
18 early last week.

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1 Q Mr. Baldwin, I want to clear up what seem to me
2 to be a potential inconsistency in your statement from
3 yesterlay morning to yesterday afternoon, and yesterday
4 morning you testified that --

5 A (witness Kowieski) What page is that?

6 Q Let me find it first. You testified at Page
7 8378 that you believed that a REP-10 test would satisfy
8 exercise objectives for demonstrating the ability to alert
9 the public in a timely manner. 8378.

10 And it was with reference to EOC Contentions 14
11 and 15, generally that the discussions were taking place.
12 Do you see that testimony?

13 A (Witness Baldwin) Yes.

14 Q Then later in the day, you testified that a REP -
15 - I think it was questions from Ms. McCleskey, and then from
16 the Board as well, that in fact REP=10 test plus an exercise
17 would not be adequate because -- plus the exercise that took
18 place -- forget about future exercises -- because you
19 wouldn't have a chance to evaluate the integrated
20 capabilities of all the players that are involved.

21 A That is correct. Can you give me a page
22 citation on that, too?

23 Q There were a number of pages; starting around
24 8521. But my question, Mr. Baldwin, I think you don't have
25 to go to that if you agree generally with my

1 characterization of the later testimony. I think it was all
2 three of you that later testimony.

3 A That is right. Being able to evaluate the
4 integrated capability in the context of an exercise in which
5 we would have objectives such as EOC-14 and 15.

6 Q So, this testimony on 8378 is really modified by
7 that later discussion that we had yesterday?

8 A That is correct.

9 MR. LANPHER: Thank you. Judge, that completes
10 the questions on 15, 16, and my portion of 21, and Mr.
11 Miller has some questions on some of the traffic
12 contentions.

13 JUDGE FRYE: How much more collectively would
14 you estimate?

15 MR. LANPHER: Ms. Letsche tells me that she has
16 about ten minutes on the ENC-type. A half hour or less from
17 Mr. Miller.

18 JUDGE FRYE: Ms. McCleskey?

19 MS. McCLESKEY: I have a few minutes of
20 questions.

21 JUDGE FRYE: One question from Staff. There
22 will be some redirect, I suspect.

23 MR. CUMMING: That depends.

24 JUDGE FRYE: Why don't we take our lunch break
25 now, and come back at 1:45.

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(Whereupon, luncheon recess was taken at 12:15 p.m., to reconvene at 1:45 p.m., this same day.)

A F T E R N O O N S E S S I O N

(1:45 p.m.)

Whereupon,

THOMAS E. BALDWIN,

ROGER B. KOWIESKI,

and

JOSEPH H. KELLER,

resumed as witnesses, and, having previously been duly sworn, were further examined and testified as follows:

JUDGE FRYE: Let's go back on the record. Mr. Lanpher, I believe we had finished with you -- before we leave that, your motion to strike the answer to the question which I asked concerning compliance with NRC wishes is granted.

I agree with you it is not related to any contention.

MR. LANPHER: It might be helpful -- I will try to review the transcript, and maybe we can just make sure we identify exactly what it is.

JUDGE FRYE: You only have one motion to strike pending that I am aware of.

MR. LANPHER: While we are cleaning up some stuff, I have had an opportunity to review FEMA Exhibit No. 7, I believe it is, and we don't object.

JUDGE FRYE: Fine. So it will be admitted.

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2 (FEMA Exercise Exhibit No. 7,
3 previously marked for
4 identification, is admitted
5 into evidence.)

6 JUDGE FRYE: Now, Ms. Letsche?

7 MS. LETSCHE: Yes.

8 MR. ZAHNLEUTER: I had a comment on FEMA Exhibit
9 7. The letter from Mr. Papile, dated February 12, 1986, was
10 also marked as LILCO Exhibit 20.

11 JUDGE FRYE: So, it is in twice in other words.

12 MR. ZAHNLEUTER: I presume it is in twice. I
13 don't recall if it was marked for identification or
14 evidence.

15 JUDGE FRYE: If it is in twice, we will just
16 have to live with that situation. You have no objection to
17 it's admission?

18 MR. ZAHNLEUTER: No objection.

19 JUDGE FRYE: Good.

20 RECROSS EXAMINATION

21 BY MS. LETSCHE:

22 Q Gentlemen, you answered a few questions this
23 morning by Ms. McCleskey concerning media monitoring. Do
24 you recall those questions?

25 A (Witness Keller) Yes.

Q I am correct, aren't I, that the extent of

1 FEMA's evaluation during the exercise of the media
2 monitoring capability of LILCO was to verify that there was
3 radio and television in the EOC, and that there was also a
4 means to monitor EBS messages at the ENC?

5 A (Witness Kowieski) That is correct.

6 Q In response -- do you also recall some questions
7 by Ms. McCleskey concerning recommendations during other
8 exercises that emergency workers ingest potassium iodide.
9 Do you recall those questions?

10 A (Witness Keller) Yes.

11 Q And you were asked some question about whether
12 there had been announcements to the public during those
13 exercises concerning the simulated order that workers take
14 KI, do you recall those?

15 MS. McCLESKEY: I object to that question. That
16 was not my question.

17 MS. LETSCHE: I don't intend to characterize the
18 question.

19 BY MS. LETSCHE: (Continuing)

20 Q I don't intend to characterize the question. Do
21 you recall the line of questions I am talking about,
22 gentlemen?

23 MS. McCLESKEY: There were two questions.

24 WITNESS KOWIESKI: Yes, I do.

25 BY MS. LETSCHE: (Continuing)

1 Q Now, Mr. Keller, at how many exercises have you
2 evaluated functions performed at the emergency news center?

3 A (Witness Keller) To the best of my
4 recollection, three.

5 Q And I take it that your answer to Ms.
6 McCleskey's questions concerning information given to the
7 public about ingestion of KI by emergency workers was based
8 upon your participation in those three exercises, is that
9 correct?

10 MS. McCLESKEY: I object to the characterization
11 of my question. My question went to an announcement at the
12 ENC, and I think Ms. Letsche has broadened it considerable.

13 JUDGE FRYE: That is my recollection.

14 MS. LETSCHE: I didn't intend to broaden the
15 question, and I will rephrase it.

16 BY MS. LETSCHE: (Continuing)

17 Q Am I correct, Mr. Keller, that in responding to
18 Ms. McCleskey's question relating to an announcement at the
19 ENC about the ingestion of potassium iodide, that your
20 answer was based upon your participation as an evaluator at
21 those three exercises, is that right?

22 A (Witness Keller) That is part of it.

23 Q And am I correct that your statement to Ms.
24 McCleskey, or your response to Ms. McCleskey's question on
25 that subject was based on the fact that there wasn't any

1 identified area for corrective action or deficiency related
2 to an ENC announcement about the ingestion of KI?

3 A That is correct.

4 Q Dr. Baldwin, at how many other exercises, or how
5 many exercises have you performed as an evaluator of
6 emergency news center functions?

7 A (Witness Baldwin) None.

8 Q And Mr. Kowieski, have you performed as an
9 evaluator of emergency news center functions at any
10 exercises?

11 A (Witness Kowieski) Well, I was in charge of all
12 exercises held in FEMA Region II when I was appointed as the
13 RAC Chairman, so it was my responsibility to design the
14 evaluation process, evaluation of the entire exercise, as
15 well as emergency news center, or joint news center.

16 In addition, obviously, I was the one who had
17 the final authority to approve the post exercise assessment,
18 including statements regarding joint news center.

19 Q Now, my question, Mr. Kowieski, was at how many
20 exercises have you served as an evaluator at an emergency
21 news center?

22 A I did not -- to the best of my recollection, I
23 did not assign evaluation of joint -- emergency news center
24 or joint news center to myself when I was in the position of
25 RAC Chairman.

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Q At any exercise, is that right?

A That is correct.

Q Now, when you answered Ms. McCleskey's question about announcements at emergency news centers concerning the ingestion of potassium iodide, am I correct that you answered that based on the fact that there haven't been any deficiencies or areas for corrective actions identified in any other exercises concerning ENC announcements about KI?

A That is correct.

Q And would the same be true for you, Dr. Baldwin?

A (Witness Baldwin) Yes.

Q Mr. Keller, yesterday Ms. McCleskey asked you a question at transcript page 8531, to the effect of in your opinion should the radiation health coordinator have changed his protective action recommendation to the Director of LERO if he had had information about traffic conditions.

Do you recall that question?

A (Witness Keller) The transcript indicates slightly different wording. Specific traffic information. Yes, I recall, yes.

Q Right. Now, we discussed this at some length when I was examining you earlier, and I understand your position about whether or not the radiation health coordinator is supposed to be considering traffic impediments as opposed to someone else that you believe

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2 under the LIICO Plan may have that obligation, so I don't
3 want to get back into that discussion.

4 Now, my question is: It is not your testimony,
5 is it, that someone involved in the making of a protective
6 action decision should not consider traffic information in
7 making protective action recommendations?

8 A I think there were a couple of negatives in
9 there, and I am not really sure. Let me try it this way --

10 Q No. If you don't understand the question, let
11 me try it another way.

12 A Try it another way.

13 Q You would agree with me, wouldn't you, that
14 someone in the decision making chain should consider traffic
15 information in making protective action recommendations?

16 MS. McCLESKEY: Objection. That is outside the
17 scope of my cross. And it has also been asked and
18 answered. Ms. Letsche asked them about it, and they
19 answered it a couple of days ago.

20 JUDGE FRYE: I think it is close enough.
21 Overruled.

22 WITNESS KELLER: The answer is, yes. The
23 decision maker should have that input, and he should
24 consider that input in his decision.

25 MS. LETSCHE: Thank you.

BY MS. LETSCHE: (Continuing)

1
2 Q Now, Mr. Keller, in response to a question from
3 Ms. McCleskey this morning, it may have been a series of
4 questions, I am not sure, you discussed with her whether or
5 not you could design an exercise or a scenario to deal with
6 an assumption that people would not follow evacuation
7 recommendations. Do you recall that?

8 A (Witness Keller) I remember the discussion,
9 yes.

10 Q And, basically your response was it would be
11 possible by injecting a contingency message, or a free play
12 message of some sort, is that right?

13 A I think I said that the only way that I saw
14 where it could be possible would be use free play message or
15 contingency message, that is correct; but I also said I
16 thought it would be very difficult.

17 Q Right. Now, in terms of -- when you were
18 talking about it being difficult, you were talking about the
19 evaluation side, correct?

20 A That is correct.

21 Q It wouldn't be hard to draft a message which
22 would say something like assume there are 400 cars on such
23 and such a road, what would you do now?

24 A You could draft messages, but as I think I said
25 this morning, or I hope I did, the evaluation is the
implementation of the plan.

1
2 I know of no plans which make the assumption
3 that the public will not respond in the way -- to directives
4 or recommendations.

5 Q To follow up a little bit on the evaluation.
6 You said the evaluation is the implementation of the plan.
7 In making your evaluation, FEMA determines whether the
8 implementation of the plan is adequate or appropriate by
9 using your professional judgment, correct?

10 A To a large degree, that is correct.

11 Q And some of the evaluating that you do involves
12 whether or not the players appropriately use their own
13 judgment, or -- well, their judgment in reacting to whatever
14 situation there is that they have to react or respond to,
15 correct?

16 A We discussed this judgment issue -- I think it
17 was on Friday of last week, and yes, we had stated at that
18 time while common sense it not to be ignored, the structure
19 of radiological emergency response planning and preparedness
20 is a highly structured one, and we do not want to be in the
21 position of advocating the tearing down of the structure,
22 and allowing individual responder participants a broad range
23 of independent initiative.

24 Q But in fact, at least some of what FEMA
25 evaluates in an exercise involves actions by the players
that are not necessarily all pre-scripted in the plans,

1
2 correct?

3 A I think that is a fair characterization.

4 Q And an example would be, for instance , the
5 response to an impediment free play message. The plan might
6 say that people will respond to it, but exactly how they
7 respond, how they reroute, or where they send the tow
8 trucks, or where they get the tow trucks from, is something
9 which the players must determine in response to that
10 message, correct?

11 A I would say about half of that is right.
12 Clearly, if you say there is an impediment at the corner of
13 Yaphank Road and Middle Island Road, for example, I would
14 expect that the player participant would sent the tow truck
15 to that intersection.

16 There is no option there, right? That is not
17 independent. He has got to send his response unit to the
18 site of the impediment, not some other intersection, but
19 insofar as the rerouting of the traffic, which we did not
20 evaluate in this exercise, that would be based on the
21 judgment of the individual participants as to what the most
22 appropriate rerouting would be, given the injected message,
23 so I would agree with part, and disagree with a part.

24 JUDGE PARIS: The kind of equipment dispatched
25 has to be based on judgment, too, doesn't it? Based on the
information he gets?

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2 WITNESS KELLER: The information that he gets,
3 and either the free play message is sufficiently clear to
4 tell the individual what kind of equipment to respond with,
5 or a recognizance of the scene which then means in an
6 exercise another message gives him that information.
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BY MS. LETSCHE: (Continuing)

Q Now, also in response or in clarification or something of this line of questions by Ms. McCleskey, Mr. Kowieski, you stated your opinion that people listen in general to decision-makers.

Do you recall that statement?

A (Witness Kowieski) Yes, I do.

Q Now, with specific reference to Shoreham and the public around the Shoreham plant, it is FEMA's position that that isn't necessarily the case, correct?

MS. McCLESKEY: Objection. That's outside the scope of the contentions and my questioning.

JUDGE FRYE: The premise of your question was?

MS. LETSCHE: Was Mr. Kowieski's statement that people listen to decision-makers. And, my question --

JUDGE FRYE: I think I would like to hear the answer to that question.

WITNESS KOWIESKI: I think it is hypothetical question. I mean, in general or based what happened during the exercise. I can only testify with respect to what actually happened during the exercise.

We know that some of the information -- that there was some problems with rumor control. We know that; that's a fact. We already testified. Mr. Keller testified to this effect yesterday or on Friday, that actually

1 confusing information communicated to the public could have
2 an impact.

3 JUDGE FRYE: And, you testified as well, as I
4 recall, that you expected -- or Mr. Keller had testified
5 that he expected that there would be some shadow evacuations
6 but he could not say how large.

7 WITNESS KOWIESKI: That's right. And, we
8 disagree with the contention that substantial -- the
9 contention used that term "substantial" evacuation.

10 JUDGE FRYE: I think that's probably largely the
11 answer to the question, isn't it?

12 WITNESS KOWIESKI: Yeah.

13 MS. LETSCHE: My question was a little bit
14 different, Judge Frye.

15 JUDGE FRYE: Okay.

16 BY MS. LETSCHE: (Continuing)

17 Q Isn't it true, gentlemen, that it is FEMA's
18 position that with respect to Shoreham, the evacuation
19 shadow that would be likely would be larger than would be
20 the case at other plants?

21 MR. CUMMING: Objection. It calls for a
22 conclusion rather than an opinion. Isn't it true that --

23 JUDGE FRYE: Well, overruled.

24 WITNESS KELLER: I'm sorry. The counsel was
25 reaching for his microphone and I wanted to wait until he

1 got it.

2 I don't think that -- I think that's a
3 mischaracterization of FEMA's position. FEMA has stated in
4 the prior exercise proceeding -- I'm sorry, prior planning
5 proceeding that shadow evacuation phenomenon is a
6 possibility. The extent of the shadow evacuation phenomenon
7 would largely depend on the credibility and the degree of
8 clear and concise information that was provided to the
9 public. That's the FEMA position, period.

10 With regard to the exercise, we have stated, and
11 I think that there were problems with the information, the
12 rumor control specifically. That would increase the size of
13 the potential shadow evacuation.

14 That's it. We don't know how much.

15 JUDGE FRYE: So, you won't go any farther than
16 that?

17 WITNESS KELLER: I -- not willingly.

18 JUDGE FRYE: Not willingly.

19 WITNESS KOWIESKI: We don't have a basis to draw
20 other conclusions.

21 JUDGE FRYE: Okay.

22 BY MS. LETSCHE: (Continuing)

23 Q Well, it's true, Mr. Keller, isn't it, that Mr.
24 McIntire has testified more recently than 1984 that there
25 would be an evacuation shadow at the Shoreham plant larger

1 than at other plants and that he has a great concern that
2 the public would not follow the direction of a private
3 organizational person from LILCO.

4 MS. McCLESKEY: Objection. That is a planning
5 issue. That is not before this Board. In the exercise, it
6 was credibility and conflict of interest, and it has been
7 litigated.

8 It's outside the scope of this proceeding. And,
9 that's why I objected to the original question. Her
10 question goes to the source of the information, not the
11 credibility of the information.

12 And, we went through this in the motions to
13 strike, and you-all struck all the credibility-related
14 testimony in Suffolk County's testimony on the ENC. And, I
15 don't think that these witnesses can answer that question
16 based on the prior rulings and the prior decisions of the
17 Board.

18 JUDGE FRYE: When did Mr. McIntire testify to
19 this?

20 MS. LETSCHE: He testified to that effect, Judge
21 Frye, on March 6th, 1987. And, I can provide copies of the
22 testimony. Mr. Keller and Mr. Baldwin were present.

23 WITNESS KELLER: It was an OL-3 deposition.

24 JUDGE FRYE: OL-3 deposition, okay.

25 MR. PIRFO: I will object to the use of this

1 deposition testimony, just as I did the other day. I mean,
2 it's nice if you can do it, to get the deposition testimony
3 from another witness and put it in front of these witnesses
4 and say, didn't he testify to this, isn't that true.
5

6 JUDGE FRYE: Yeah. I'm going to have to sustain
7 that one.

8 MS. LETSCHE: Well, Judge Frye, if I could
9 respond please to this objection. What I am doing here is
10 following up on Mr. Keller's testimony and Mr. Kowieski's
11 testimony in response to questions by Ms. McCleskey which
12 went precisely to an issue in this litigation, whether or
13 not the assumption during the exercise that there would be
14 no shadow evacuation and FEMA's stated assumptions, stated
15 by Mr. Kowieski, that in the scenario it was assumed that
16 the public would follow the directions of the decision-maker
17 was an appropriate and accurate assumption.

18 One of our contentions, as you know, is that
19 that was an inappropriate assumption and various results
20 should follow from that.

21 Now, Ms. McCleskey questioned these gentlemen
22 about that this morning, and they had things to say about
23 it. And, I'm following up. And, Mr. Keller just explained
24 that he didn't believe that it was FEMA's position that
25 there would be a higher than normal evacuation shadow at
Shoreham and I have evidence to impeach that statement made

1
2 by Mr. Keller and the statement by Mr. Kowieski that people
3 would follow the decision-maker's statement.

4 It is Mr. McIntire's testimony -- and Mr. Keller
5 and Mr. Baldwin were present during that testimony -- that
6 precisely the opposite is the case. I think because we have
7 an admitted contention on it, we had questioning on it by
8 Ms. McCleskey, we had testimony by these precise witnesses
9 on the subject, I should be permitted to follow up and, if
10 necessary, impeach these witnesses' testimony by the use of,
11 if necessary, a deposition that they were present at.

12 JUDGE FRYE: Well, if it were their deposition I
13 would agree with you.

14 MS. LETSCHE: It was their deposition, sir.
15 They were --

16 JUDGE FRYE: But, you are not quoting their
17 answer. You are quoting another person's answer.

18 MS. LETSCHE: Well, if this is a hearsay
19 objection I might note for the record that for the past two
20 weeks we have been doing nothing but getting hearsay
21 testimony.

22 JUDGE FRYE: I'm also concerned about the fact
23 that this comes out of the OL-3 proceeding and not this
24 proceeding.

25 MS. LETSCHE: Well, Judge Frye, that makes no
difference to sworn testimony.

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2 JUDGE FRYE: OL-3 does not deal with the
3 exercise.

4 MS. LETSCHE: Judge Frye, this question, as I
5 just explained to you, goes directly to whether or not an
6 assumption that was underlying the exercise was accurate or
7 not. And, we have an admitted contention on that.

8 And, I'm following up on these witnesses'
9 testimony on that subject.

10 MR. PIRFO: Judge Frye, the Staff doesn't
11 quarrel with the --

12 (The Board members are conferring.)

13 JUDGE FRYE: Two to one, the objection is
14 sustained.

15 MS. LETSCHE: I think what I would like to do,
16 Judge Frye, in light of your ruling is have marked as
17 Suffolk County Exercise Exhibit 108 for identification a
18 portion of the deposition of Joseph H. Keller, Philip
19 McIntire, Igor Husar and Thomas E. Baldwin, from March 6th,
20 1987. And this is Pages 64 through 73.

21 I would like it marked as identification, for
22 identification. And, I have copies for everyone here.

23 JUDGE FRYE: Fine.

24 (The above-referenced document is
25 marked as Suffolk County Exercise
Exhibit Number 108 for identifica-

1
2 Q Now, Dr. Baldwin, let's start with you.
3 Yesterday you told Ms. McCleskey that you and Mr. Keller
4 together selected the site of the two simulated traffic
5 impediments at the exercise and that you did so at the
6 request of Mr. Kowieski; is that correct?

7 A (Witness Baldwin) We were asked to develop
8 impediment messages. Mr. Kowieski asked us -- did not ask
9 us to specifically select those sites. We selected those
10 sites based on the request of Mr. Kowieski to develop
11 impediment messages which would require us selecting a site,
12 sites.

13 Q Now, Dr. Baldwin, it's true, isn't it, that the
14 fact that the free-play messages were written to block
15 evacuation routes and, in fact, to block the evacuation
16 routes completely including the shoulders of the roadways,
17 was in keeping with the way FEMA Region II normally writes
18 free-play impediment messages?

19 A That's correct. When you use the term "routes"
20 we specifically in that case are talking about that -- in
21 this case, two roadways, separate roadways.

22 Q Two evacuation routes?

23 A Two evacuation routes.

24 Q Now, it's also true, is it not, Dr. Baldwin,
25 that in FEMA's opinion the free-play messages, impediment
messages, that were presented to LERO during the exercise

1
2 presented realistic situations to which LERO was to respond?

3 A I believe that's what we testified to yesterday.

4 Q And, these are the kinds of situations that at
5 other exercises in Region II have been handled in an
6 adequate and timely manner; is that correct?

7 MS. McCLESKEY: Objection. Asked and answered.

8 MR. MILLER: Judge Frye, I'm just trying to lay
9 a foundation.

10 JUDGE FRYE: Overruled.

11 WITNESS BALDWIN: That's correct.

12 BY MR. MILLER: (Continuing)

13 Q Now, in your task of preparing the free-play
14 messages, Dr. Baldwin, you and Mr. Keller actually visited
15 the site of the two impediments, correct?

16 A (Witness Baldwin) That's correct.

17 Q And, as you told Ms. McCleskey yesterday, among
18 other things you looked to see whether the impediment sites
19 presented LERO with feasible options for rerouting traffic
20 around the simulated impediments; is that correct?

21 A That's correct.

22 Q And, in fact, Dr. Baldwin, you and Mr. Keller
23 looked to see if such options for rerouting were evident or
24 obvious; is that correct?

25 (The witnesses are conferring.)

A We didn't specifically look for obvious.

2 Q Did you look to see, Dr. Baldwin, if other
3 routes for rerouting traffic were evident at the scene of
4 the simulated traffic impediments?

5 I thought that was your testimony to Ms.
6 McCleskey. Is that your testimony?

7 A Yes.

8 Q Now, Dr. Baldwin, of course, there were two
9 impediments, the gravel truck impediment and the fuel truck
10 impediment. I want to focus with you for a moment on the
11 gravel truck impediment.

12 Let me show you, Dr. Baldwin, what has been
13 marked Suffolk County Exercise Exhibit 4 in this proceeding.

14 MR. MILLER: If the Board will recall, this was
15 put into the record by way of -- this Suffolk County
16 Exercise Exhibit 4 was reduced and put into the record by
17 way of an 8 1/2 by 11 photograph. A xerox version also
18 appeared as Attachment 10 to Suffolk County's testimony on
19 Contention EX-41.

20 BY MR. MILLER: (Continuing)

21 Q Now, Dr. Baldwin, I will represent to you that
22 this photograph depicts the scene of the gravel truck
23 impediment. Does it look familiar to you?

24 (A photograph is displayed on the easel.)

25 A (Witness Baldwin) No.

(Witness Keller) I haven't seen it from the

1 air. But, I think if I'm correct there is roughly a light
2 car in the upper left-hand --

3 (The witnesses are conferring.)

4 Q Gentlemen, to save time, let me just represent
5 to you --

6 A (Witness Baldwin) How are we oriented here,
7 north or south?

8 Q Dr. Baldwin, listen to me. To save time, in the
9 upper left of the photograph, Suffolk County Exhibit 4, is
10 Yaphank-Middle Island Road. Cutting across the top of the
11 photograph is Walters Drive. Cutting across the right-hand
12 side of the photograph is Everett. And, the bottom is Main
13 Street.

14 So, you have towards the left upper corner of
15 the photograph the intersection, the Y-intersection of
16 Yaphank-Middle Island Road, Main Street, and if I recall
17 correctly the impediment scene was approximately 75 yards
18 north of that intersection.

19 So, about halfway between what I've represented
20 to you was Walters Drive and the intersection of Main Street
21 and Yaphank-Middle Island Road would be the scene of the
22 gravel truck impediment.

23 Does that all sound correct to you, gentlemen?

24 A (Witness Kowieski) Well, we --

25 Q Just take my representations as true.

1 A (Witness Keller) That sounds correct to me, and
2 it looks reasonable.

3 Q Now, I assume, Dr. Baldwin, that when you and
4 Mr. Keller visited the scene of the simulated gravel truck
5 impediment that you would have noticed Walters Drive and
6 Everett; is that correct?

7 A I recall passing the intersection of Walters
8 Drive and Yaphank Road. We did not drive the route that you
9 just suggested. We did not have benefit of aerial
10 reconnaissance at the time.

11 While we were concerned that there would be a
12 means, a way, to reroute traffic we were not looking for a
13 specific way to reroute traffic when we selected this site,
14 is my recollection.

15 Q Well, Mr. Keller and Dr. Baldwin, if you take as
16 true my representations as to the scene of this impediment
17 as depicted in Suffolk County Exercise Exhibit 4, would you
18 agree with me that a logical, appropriate and obvious
19 rerouting scheme around the gravel truck impediment would
20 have been to have detoured the traffic proceeding south down
21 Yaphank-Middle Island Road off on to Walters, down Everett
22 and back to Main Street?

23 MS. McCLESKEY: Objection.

24 MR. CUMMING: Objection.

25 MS. McCLESKEY: I will defer to Mr. Cumming

1 first, since they are his witnesses. But I would like to
2 get my two cents' worth in.

3
4 MR. CUMMING: My objection is based on the fact
5 that the witnesses have testified they didn't evaluate
6 rerouting, so the relevance of this sort of testimony is not
7 apparent to me. And, I would object based on relevancy.

8 JUDGE FRYE: Ms. McCleskey.

9 MS. McCLESKEY: My objection is that this is
10 grossly outside the scope of my three questions about
11 impediments. I did not go into the merits at all.

12 Mr. Miller has given them essentially a
13 hypothetical, since they said they haven't looked at the
14 routing scheme that he has just described as brilliant and
15 asked them if they have agreed.

16 And, I just don't think that this is appropriate
17 questioning.

18 JUDGE FRYE: I think it is outside the scope of
19 her examination.

20 MR. MILLER: Judge Frye, I would like to
21 respond. Number one, it's not the number of questions that
22 counsel for LILCO asked these witnesses. It's what those
23 questions were and what they raised.

24 And, those questions raised the issue of why
25 these gentlemen went to the scenes of the impediments
beforehand. These gentlemen told Ms. McCleskey in response

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2 to that question that among other things they looked to see
3 if rerouting, other secondary roads for rerouting were
4 evident. That's in the transcript. I can find that if the
5 Board wants --

6 JUDGE FRYE: Yeah. I recall that. I recall it.

7 MR. MILLER: In terms of the relevancy, Judge
8 Frye, it's completely relevant to this issue. These
9 gentlemen have stated -- Mr. Kowieski in particular, that he
10 thought rerouting at least at the EOC was included within
11 the scope of FEMA's evaluation.

12 I'm asking these gentlemen's opinion as expert
13 witnesses for FEMA whether or not the rerouting scheme I've
14 described was a logical, appropriate and evident way to
15 reroute traffic.

16 MR. CUMMING: To lend precision, actually it was
17 rerouting in the field that was not evaluated. It was, in
18 fact, evaluated at the EOC or --

19 JUDGE FRYE: But, let's let the witnesses say
20 that.

21 WITNESS KELLER: The report states, and we
22 marked it at lunch -- Tom, do you have the correct page?

23 WITNESS BALDWIN: Page 35.

24 WITNESS KELLER: On Page 35 --

25 WITNESS BALDWIN: I'm sorry, 36. Page 36 --

WITNESS KOWIESKI: Third paragraph.

1
2 WITNESS BALDWIN: Seventh line from the bottom
3 of that paragraph.

4 WITNESS KELLER: This discussed what was done in
5 the EOC. There is also a reference with respect to the
6 gravel truck impediment in the field.

7 WITNESS BALDWIN: Before we leave that, let's
8 just make it clear here that what we are citing here is in
9 the seventh line from the bottom. It says by about 12:45
10 the evacuation coordinator had discussed -- in other words,
11 we observed a discussion of that evacuation coordinator with
12 his staff. And, then there is a colon and a list of things.

13 And, included in that list is the need to
14 reroute traffic around the impediments and the procedures
15 for so doing.

16 JUDGE FRYE: Did you evaluate the merits of the
17 rerouting --

18 WITNESS BALDWIN: No.

19 JUDGE FRYE: -- solution?

20 WITNESS BALDWIN: No.

21 JUDGE FRYE: You did not?

22 WITNESS BALDWIN: No.

23 WITNESS KOWIESKI: We don't have evidence --
24 written evidence to this effect.

25 MR. MILLER: Judge Frye --

JUDGE FRYE: The objection is sustained.

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MR. MILLER: Judge Frye, I submit that the answer just given by the witnesses is irrelevant to my question which calls upon these gentlemen and their expertise as evaluators for FEMA Region II as to whether or not this is an appropriate rerouting scheme that I've just shown these gentlemen through Exhibit 4.

JUDGE FRYE: My problem with it is that I don't recall Ms. McCleskey going into that particular point. You know, if you can show me in the transcript where she went into the merits of the rerouting scheme, then I will permit the question. Otherwise, I have to sustain the objection.

MS. McCLESKEY: Judge Frye, my questions are at Page 8539. I asked three of them, and I asked nothing about the merits of the rerouting scheme.

This is a hypothetical that could have been posed to these witnesses on original cross.

BY MR. MILLER: (Continuing)

Q Let me try this one, gentlemen. Are you aware even today as to the rerouting schemes actually employed by LERO during the exercise?

MS. McCLESKEY: Same objection.

JUDGE FRYE: Sustained.

1 MR. MILLER: We are making a quick review of the
2 transcript, but I will leave before the Board page 8541 -- I
3 am sorry, 40, where Ms. McCleskey asks: Is it fair to say
4 that your main concern was getting an impediment to block
5 the road so that you could see a response of rerouting?
6 Witness Baldwin: Yes.

7 MS. McCLESKEY: That has nothing to do with the
8 merits of the rerouting scheme.

9 MR. MILLER: It brings up the issue or
10 rerouting, Judge Frye.

11 MS. McCLESKEY: Well, the word, 'rerouting' is
12 in the question, yes.

13 MR. MILLER: I am not sure how narrowly the
14 Board is going to try to limit the follow up questions
15 admitted, but rerouting is raised by opposing counsel. I
16 think my question is a fair question. And it is the last in
17 the line of questions I have developed, and I think I am
18 entitled to an answer from this witness panel.

19 JUDGE FRYE: That question in no way it seems to
20 me goes to the question or the merits of the rerouting
21 scheme that they adopted.

22 MR. MILLER: Judge Frye, that is not my
23 question. Judge Frye, my question does not go to the merits
24 of the rerouting scheme adopted by LERO at this point. My
25 question is: I have shown these gentlemen a possible

1 rerouting scheme. I have asked for their expertise as to
2 whether that seems to be the logical --

3 JUDGE FRYE: It could have been asked on cross,
4 and now we are on recross. That is the problem with it.

5 MS. McCLESKEY: That is right.

6 JUDGE FRYE: Sustained.

7 BY MR. MILLER: (Continuing)

8 Q Mr. Keller, yesterday Ms. McCleskey asked you
9 whether or not LERO provides an oversupply of road crews,
10 and whether that would be a factor which you might want to
11 consider in determining whether the data reflected in
12 Attachment 11 of Suffolk County's testimony on Contention
13 41, constitutes a serious problem, or perhaps even a
14 deficiency. Do you recall that line of questions?

15 A (Witness Keller) I recall discussing this
16 issue. I don't remember whether we discussed it was a
17 serious problem or a deficiency. I recall discussing this,
18 yes, that is true.

19 Q Do you recall the part about whether or not an
20 oversupply of road crews is a factor you might want to
21 consider?

22 A That is right. I remember that.

23 Q I thought I gave you the wrong attachment.
24 Actually, it is Attachment 2 to the County's testimony on
25 Contention 41. I will show you again, Mr. Keller,

1 Attachment 2 to the County's testimony on Contention 41.

2 That attachment, assuming that it is true, shows
3 that none of the road crews from the Port Jefferson staging
4 area were dispatched to their posts in the field as of the
5 time of the evacuation recommendation, is that correct?

6 A That is correct.

7 Q In fact, Mr. Keller, the data reflects that none
8 of the road crews from Port Jefferson staging area were
9 dispatched to their post in the field even as of one hour
10 following the evacuation recommendation by LERO, is that
11 correct?

12 MS. McCLESKEY: Asked and answered.

13 JUDGE FRYE: Overruled.

14 WITNESS KELLER: I just want to verify my time,
15 but that is my recollection, that is right.

16 JUDGE FRYE: I thought you asked if the
17 attachment showed that?

18 MR. MILLER: The attachment, yes, sir.

19 WITNESS KELLER: I would have to know the time
20 of the evacuation order, and I think I remember it, but I
21 want to make sure before I say. It was one hour after, and
22 I have to have the starting time, and I can't find the page.

23 WITNESS KELLER: 26.

24 WITNESS KELLER: That is correct.

25 BY MR. MILLER: (Continuing)

1 Q And the same is true as with respect to the road
2 crews dispatched from the Patchogue staging area, correct,
3 Mr. Keller?

4 A (Witness Keller) That is correct.

5 Q Now, given the data in Attachment 2 to the
6 County's Contention 41 testimony, Mr. Keller, where none of
7 the road crews from Patchogue, and none of the road crews
8 from Port Jefferson were dispatched into the field as late
9 as one hour following an evacuation recommendation by LERO,
10 can you tell me how in any way information regarding an over-
11 supply of road crews could impact your testimony given to me
12 previously that the data in Attachment 2 would reflect a
13 serious problem, and perhaps even a deficiency?

14 A My recollection of the testimony we have given
15 previously, and what I told Ms. McCleskey either yesterday
16 or this morning, was that this basically is a hypothetical
17 situation, and if we take just these numbers, with no
18 further information whatsoever, I would be reluctant in my
19 opinion, to evaluate whether or not it was an area requiring
20 corrective action or deficiency; with just these numbers I
21 would need to know a lot more information in order to give
22 an opinion of this situation.

23 I believe that is what we said previously, and I
24 still don't have any more information, and I would be
25 reluctant without more information to say I would say this

1 is a deficiency. I would say this is an ARCA. It
2 definitely is a problem. I agree there is a problem. The
3 seriousness of the problem, my point is without more
4 information I am very reluctant to say this would be a
5 deficiency.

6 Q Mr. Keller, you are assuming that the data in
7 Attachment 2 to the County's Contention 41 testimony is
8 true, would you please give me an example of what other kind
9 of data you might need to know in order to determine the
10 seriousness of the problem reflected in this attachment.

11 A Okay. The particular evacuation recommendation
12 that was being issued at the time --

13 Q Mr. Keller, first of all, you know that
14 information. You know that as of the time of the evacuation
15 recommendation that at least portions of the Port Jefferson
16 and Patchogue staging areas were involved. Zones in those
17 areas were involved, is that not correct?

18 A I thought that this was a hypothetical question,
19 because we said we did not evaluate these things.

20 I thought that you had said assume with me that
21 this is the correct information, and that gets us into a
22 hypothetical, I think.

23 Q Let's start again. Everything that happened at
24 the exercise that you and FEMA know about remains, of
25 course, as it was. All I have asked you to do is to assume

1 that the data in Attachment 2 to the County's testimony on
2 Contention 41 is, in fact, true.

3 Given that assumption, is it not the fact that
4 there should -- would have been a deficiency found with
5 respect to the dispatching of road crews from the Patchogue
6 and Port Jefferson staging areas on the day of the exercise
7 had this data been known to FEMA?

8 MS. McCLESKEY: Objection. This is also outside
9 the scope of my question. I asked one question. It is on
10 Page 8517 of the transcript, and it was simply following up
11 on a series of questions that Mr. Miller asked. It referred
12 to whether over-supply of road crews was one of the factors
13 that these people wanted to think about in determining
14 whether the data in Attachment 2 constituted a deficiency,
15 ARCA, or other.

16 And when Mr. Miller started his questioning, he
17 used over-supply of road crews in his question, and I have
18 no objection if he wants to pursue the over-supply of road
19 crews as a factor further, but to go back to the original
20 questions that he asked, and asked again, what is the basis
21 of your deciding it is a deficiency, creating new
22 hypotheticals, is outside the scope.

23 JUDGE FRYE: I am inclined to agree with that.

24 MR. MILLER: Judge Frye, again I submit that the
25 Board has construed too narrowly the proper follow up

1 questions that should be permitted.

2 I established last week through Mr. Keller that
3 the data reflected in this Attachment to the County's
4 testimony reflects a serious problem, and perhaps even a
5 deficiency.

6 Ms. McCleskey tried to get Mr. Keller to back
7 off from that testimony by suggesting that he may need other
8 information, including whether or not there was an over-
9 supply of road crews.

10 I am following up on that. I want Mr. Keller to
11 go back to where we was last week, with respect to his
12 testimony regarding the data in Attachment 2 to the County's
13 testimony on Contention 41, and I think I am entitled to do
14 that.

15 MS. McCLESKEY: Judge Frye, I am not sure Mr.
16 Miller has adequately represented the earlier testimony, and
17 I know that he has over-extended the one question that I
18 asked, and that question is on Page 8517.

19 JUDGE FRYE: Ms. McCleskey, we would like to let
20 Mr. Miller pursue this one for a short while and see where
21 it goes.

22 Overruled.

23 MR. MILLER: Thank you.

24 WITNESS KELLER: When we make --

25 BY MR. MILLER: (Continuing)

1 Q Let me just make sure everyone knows the
2 question. The question is simply this: Given the data in
3 Attachment 2 to the County's Contention 41 testimony, and
4 assuming that data is true and accurate, is it not correct
5 that had this data been made known to FEMA, FEMA would have
6 concluded that there was a deficiency with respect to the
7 dispatching of road crews during the day of the exercise?

8 A (Witness Keller) I cannot agree that that is
9 correct.

10 Q You agree that there would be a serious problem
11 indicated by this data, but the degree of that seriousness,
12 you are unable to say at this point in time, is that
13 correct?

14 A That is correct.

15 Q It is an ARCA, and perhaps a deficiency, but you
16 are unable to say whether it would have been a deficiency,
17 is that correct?

18 A That is correct.

19 Q I think this is the last question, Mr. Keller.
20 Can you tell me how, if at all, whether or not LERO provides
21 an over-supply of road crews would change the conclusion you
22 just gave to me regarding this data in Attachment 2?

23 A I don't think it would change the conclusion
24 regarding the data in Attachment 2.

25 Q Thank you. Now, gentlemen, I want to explore

1 very briefly the 45 minute time frame of AN-1, and I submit
2 NUREG 0654. Mr. Keller, here is my initial question:

3 MR. CUMMING: Judge Frye, I would just like to
4 note for the record that the correct version of current AN-1
5 was objected to, and is not in the record.

6 So, in fact, current AN-1 is not in the record.

7 MR. MILLER: I think it is in the record. I
8 thought it was put in as a separate exhibit by FEMA.

9 MR. CUMMING: It was marked, the version I
10 served was Exercise Exhibit No. 4. That is not current AN-
11 1. The Board sustained Suffolk's objection to FEMA Exercise
12 Exhibit No. 6, and did not put it in the record.

13 JUDGE FRYE: Exercise Exhibit 6 is current AN-1,
14 is that correct?

15 MR. CUMMING: That is correct.

16 MR. MILLER: Mr. Cumming, is Exhibit 4 -- the
17 version of AN-1 that is Exhibit 4 is different from the
18 version in Exhibit 6?

19 MR. CUMMING: That is correct.

20 MR. MILLER: And yet a different version is FEMA
21 Exhibit 2, which was another draft version of AN-1?

22 MR. CUMMING: That is correct.

23 JUDGE PARIS: Which version was in effect at the
24 time of the exercise?

25 MR. CUMMING: Neither. Or none of the above.

1 JUDGE FRYE: I am going to suggest, Mr. Miller,
2 that you go by the version in FEMA Exhibit No. 6, which has
3 been identified.

4 MR. MILLER: I am not even sure it is necessary
5 to my questions. Let me try my question.

6 BY MR. MILLER: (Continuing)

7 Q Mr. Keller, you told Ms. McCleskey yesterday
8 that -- and this is pretty close to a quote -- clearly it is
9 FEMA's policy that Appendix 3 of NUREG 0654 does not apply
10 to back-up route alert functions. Do you recall that
11 statement?

12 A (Witness Keller) Yes, I recall the statement.

13 Q And you believe that statement to be true?

14 A I believe that statement to be true.

15 Q Now, this policy as you have described it, Mr.
16 Keller, was not established until after the Shoreham
17 exercise on February 13, 1986, is that correct?

18 A We testified to that last week, that is correct.

19 Q And as of the time of the Shoreham exercise, Mr.
20 Keller, FEMA's policy was quite the contrary wasn't it? In
21 fact, the policy of FEMA was that Appendix 3 of NUREG 0654
22 did apply to back-up route alert functions, correct?

23 Mr. Keller, I would like your answer.

24 A Fine. In FEMA Region II, we had, as we
25 discussed this morning, on redirect from our counsel, rated

1 redundant back up route alerting as an ARCA in the past. I
2 am not aware of any firm written policy decision out of FEMA
3 headquarters prior to Mr. Wilkerson's letter to Mr.
4 Kowieski, which is an exhibit in this proceeding.

5 Q And Mr. Kowieski, you would agree with that,
6 correct?

7 A (Witness Kowieski) That is correct.

8 Q Now, with respect to the status of things as of
9 the time of the Shoreham exercise, Mr. Kowieski and Mr.
10 Keller, you would agree that it was FEMA's Region II opinion
11 that the 45 minute requirement of NUREG 0654, Appendix 3,
12 clearly applied to backup route alert functions, correct?

13 A It was our interpretation of Appendix 3 of NUREG
14 0654, that is correct.

15 Q And could you tell me, gentlemen, just briefly,
16 could you tell me or show me the basis for that
17 interpretation by Region II in Appendix 3 of 0654? Point me
18 to the language that you relied upon?

19 A On Page 3-3 of Appendix 3 of NUREG 0654, under
20 section entitled, Criteria for Acceptance, Part 2.C, it
21 states: Special arrangements will be made to assure hundred
22 percent coverage within 45 minutes of the population who may
23 not have received initial notification of the entire plume
24 exposure EPZ.

25 Q Now, is it a fair statement to say, Mr.

1 Kowieski, that as of the time of the exercise, Region II
2 interpreted that language to mean that when a siren or
3 sirens failed to sound, there was 45 minutes within which to
4 notify the population by means of a backup system?

5 A It was my interpretation.

6 Q And Mr. Keller, you discussed with Ms. McCleskey
7 yesterday when the clock starts to run, under the provisions
8 of 0654, Appendix 3, the clock would obviously start to run
9 from the time the sirens failed to sound, correct?

10 A (Witness Keller) I disagree with your term,
11 'obviously.' That is certainly one place to start the
12 clock, and if I were going to start a clock, that is where I
13 would start it, but I am not sure that is obvious.

14 Q The only other place it could start, Mr. Keller,
15 would be from the time the EOC learned of the failure of the
16 sirens to sound, correct?

17 A That is another place to start the clock, that
18 is true.

19 Q Under the facts as developed during the exercise
20 on February 13, 1986, LERO did not come close to meeting the
21 45 minutes one way or the other, correct?

22 A That is correct.

23 Q This provision on Page 3-16 of Appendix 3,
24 gentlemen. It talks about notification of the public in
25 remote areas, such as hunting trails, hiking trails, it says

1 in cases such as that a best efforts basis can be used to
2 notify the public.

3 Are you familiar with that provision?

4 A (Witness Kowieski) Yes, I am.

5 Q Do you equate in any way notification of the
6 public in areas around failed sirens with notification of
7 the public in areas on hiking trails on hunting areas?

8 A (Witness Keller) We do not. I think the
9 language of 0654 is fairly clear.

10 Q So, Mr. Keller, it is fair to say that it is not
11 acceptable for LERO to use a best effort basis to notify the
12 public in the areas around failed sirens, correct?

13 A FEMA's position, as enunciated in Mr.
14 Wilkerson's letter --

15 Q Mr. Wilkerson's letter has been superseded, Mr.
16 Keller.

17 A And as stated in -- if you will let me finish my
18 answer -- and as is stated in the accepted version of AN-1,
19 is that redundant backup route alerting should use as a
20 guide 45 minutes.

21 However, if the guideline is not met, the only
22 weighting which can be given in an exercise, is an area
23 recommended for improvement. By definition, an area
24 recommended for improvement is not a trackable issue. It is
25 not something that has to be fixed. It, therefore, cannot

1 in my opinion be called a requirement.

2 Q Mr. Keller, that wasn't at all my question. My
3 only question is: It is correct, is it not, that the use of
4 a best efforts to notify the public in the area around
5 failed sirens, would not be acceptable. Is that not a true
6 statement?

7 MS. McCLESKEY: I am going to object to the
8 question as outside the scope of my questions.

9 JUDGE FRYE: I think it is, but let's get the
10 answer to it. I think it is just one question.

11 WITNESS KELLER: I have a problem. The current
12 policy is you can't give anything other than an area
13 recommended for improvement, which by definition is not a
14 problem. That is a definition of an area recommended for
15 improvement.

16 JUDGE FRYE: So, a best effort --

17 WITNESS KELLER: Best effort is okay.

18 JUDGE FRYE: Is okay.

19 BY MR. MILLER: (Continuing)

20 Q Wait a second. Mr. Keller, AN-1, which you
21 submit controls these days, says there is a 45 minute time
22 frame that should be met, is that not correct?

23 A (Witness Keller) That is correct.

24 Q Now, do you equate a 45 minute time frame with a
25 best effort basis? Is that your testimony?

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A No.

Q I ask you again, Mr. Keller, is a best effort basis sufficient with respect to notification of the public in the areas around failed sirens?

A I am going to have to say yes.

Q Do you agree, Mr. Kowieski?

A (Witness Kowieski) FEMA regulations --

Q Mr. Kowieski, could you give me a yes or no, and then you can clarify if you need to.

A I am sorry, but you will have to restate the question.

Q Is it your testimony, Mr. Kowieski, that a best effort basis is sufficient with respect to notification of the public in areas around failed sirens?

A The answer is yes. I think the guidance document speaks for itself.

Q Can you show me in AN-1 where a best effort basis is stated to be sufficient with respect to notification of the public in areas around failed sirens. Show me the sentence.

MS. McCLESKEY: Objection. I renew my objection about outside the scope of my questioning. In addition, we have plowed this ground before. Mr. Miller is simply arguing with the witnesses because he is not getting the answer he wants, and I think enough is enough.

1 JUDGE FRYE: It seems to me it is getting
2 argumentative. Would your answer Mr. Kowieski, be any
3 different from Mr. Keller's?

4 MR. MILLER: The question, Judge Frye, is I want
5 them to show me -- they say AN-1 controls. I don't
6 understand how that can be the case given the fact that even
7 AN-1 still has a 45 minute time frame. I ask them to show
8 me anywhere in AN-1, where the term, 'best effort basis' is
9 indicated to be sufficient?

10 And of course I am arguing with the witnesses, I
11 think they are wrong.

12 JUDGE FRYE: We will take official notice of AN-
13 1, and you may argue the point, and I am sure you are
14 correct, that it doesn't appear. The term, 'best efforts'
15 doesn't appear anywhere in there.

16 I think we should move along now to a new topic.
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1 BY MR. MILLER: (Continuing)

2 Q Mr. Keller, yesterday you told Ms. McCleskey
3 that -- let me start this again.

4 Mr. Kowieski, Ms. McCleskey asked you yesterday
5 whether you could offer any opinion as to whether the number
6 of training problems identified during the Shoreham exercise
7 was about average; and, your testimony was that you were
8 unable to do so.

9 Do you recall that?

10 A (Witness Kowieski) Well, I do recall discussion
11 to this effect.

12 Q Now, Mr. Keller, following Mr. Kowieski's
13 inability to respond to the question, you ventured the
14 opinion that the number of training problems at Shoreham was
15 probably about average or probably about the same as at
16 other first-time exercises.

17 Do you recall that?

18 A (Witness Keller) That's my recollection, yes.

19 Q Now, if I told you, Mr. Keller, that the number
20 of training problems identified at Shoreham based upon an
21 analysis conducted by Suffolk County of all other Region II
22 post-exercise assessment reports, that based upon that
23 analysis the number of training problems at Shoreham is at
24 least three times the number as at other first-time
25 exercises, would that change your opinion in any way?

1 MS. McCLESKEY: Objection. There is no basis in
2 the record for Mr. Miller's question.

3 BY MR. MILLER: (Continuing)

4 Q Make the assumption, Mr. Keller.

5 MS. McCLESKEY: And, if it's a hypothetical it's
6 vague.

7 JUDGE FRYE: No. Overruled. He can connect it
8 up if possible.

9 WITNESS KELLER: When I made my statement, I was
10 using my experience not only in Region II, because I don't
11 believe the question specified first-time exercises in
12 Region II, it just said in first-time exercises. And, your
13 data base may be perfectly valid for Region II, and I don't
14 dispute it.

15 I have reviewed lots of other exercises outside
16 of Region II. It is my opinion that on average this is
17 about the same. I am a little surprised that even in Region
18 II it was three times larger, but if you say that's what the
19 data says -- and I'm directed to accept those numbers --
20 that's fine.

21 But, as I think we discussed I thought in
22 response to one of the Judge's questions, there are three
23 kinds of corrections. There is a planning or procedures,
24 there is an equipment and there is a training. Recently, as
25 the process has evolved, most of the procedures and most of

1 the equipment issues have gone away and you are left with
2 training issues.

3 So that the percentage of training issues, as
4 the root cause, has gone up for all exercises. The absolute
5 number -- it's just my impression that it's about average,
6 but that includes the totality of my experience not only in
7 Region II but in other regions.

8 BY MR. MILLER: (Continuing)

9 Q And, Mr. Keller, is it fair to say that's more
10 or less your top-of-the-head belief?

11 A (Witness Keller) It was not based on any
12 statistical evaluation, adding them up and -- no, that's
13 correct. That's based -- that's my impression based on
14 having been to a lot of exercises, having reviewed a lot of
15 exercise reports. That's my impression.

16 Q Okay. Gentlemen, let's try one last question
17 here if we could. You indicated to Ms. McCleskey yesterday,
18 Mr. Keller, I think you in particular, that you might need
19 more data or information before you would be able to draw
20 any conclusions regarding how post-exercise training
21 problems at Shoreham might reflect upon the adequacy and
22 approach to training used by LERO.

23 Do you recall that?

24 A I recall a discussion, but I don't -- I thought
25 it was a little different than you characterized it there.

1 That's just my recollection and you may be right. Go ahead.

2 MS. McCLESKEY: Judge Frye, rather than have
3 people speculate, can Mr. Miller give us a transcript
4 citation? The transcript has been available since this
5 morning.

6 JUDGE FRYE: Well, let's get the question and
7 then get to the transcript citation.

8 BY MR. MILLER: (Continuing)

9 Q Now, Mr. Keller, I want to give you some more
10 data. And, if you will please focus carefully -- it's going
11 to be rather long, but if you pay attention I think it will
12 be fairly simple.

13 A We will try.

14 Q Assume with me the following, Mr. Keller. In
15 post-exercise training drills, there have been the following
16 kinds of problems -- make this assumption with me -- all of
17 which were similar to problems during the exercise: Delays
18 in dispatching traffic guides into the field after an
19 evacuation recommendation is made by LERO; confusion in
20 communications and the dispatching of road crews and other
21 field personnel to respond to simulated traffic impediments,
22 many of which have involved the same impediments used at the
23 exercise, i.e., the field truck and the gravel truck;
24 including failures of road crews to ever arrive at
25 impediment scenes despite repeated requests to do so; delays

1 in issuing EBS messages relating to simulated road
2 impediments; breakdowns in EOC copying machines; breakdowns
3 with respect to field personnel understanding dosimetry
4 usage and procedures; delays in the dispatching of route
5 spotters due to communications breakdowns at the EOC; delays
6 in the flow of information from the EOC to the staging areas
7 and vice-versa; phones of key coordinators going unanswered;
8 delays in dispatching route alert drivers and in the time
9 required to cover simulated siren territories, in some cases
10 taking two, three, four hours or more even using multiple
11 drivers.

12 Now, gentlemen, if you, in fact, assume that
13 these kinds of problems and others have occurred since the
14 exercise during training drills, and keeping in mind that
15 LERO has been training its personnel upwards of three years
16 prior to the exercise, is it fair to say that in your
17 opinion LERO's approach to training, LERO's training
18 methodology and its conceptual training approach are likely
19 inappropriate, inadequate and wrong?

20 MS. McCLESKEY: Objection.

21 MR. PIRFO: I object to that question. It was
22 so loaded with assumptions and so loaded with these kinds of
23 problems and other problems and inappropriate, inadequate.
24 I mean, there's only one possible answer. There is just no
25 room for judgment in that.

1 MS. McCLESKEY: I object because it's an
2 incredibly complex question. I don't think anybody can
3 orally take it all in.

4 MR. MILLER: Judge Frye, the only complexity of
5 the question is the assumption I've asked these gentlemen to
6 make. I will be glad to go back through those.

7 MR. PIRFO: My objection is not on the grounds
8 of complexity. My objection is there is no possible answer,
9 and the answer won't be probative of anything.

10 MR. MILLER: That's for the Board to decide.

11 JUDGE FRYE: The objection is sustained.

12 MR. MILLER: What's the basis of the objection
13 being sustained?

14 JUDGE FRYE: I agree with the Staff counsel.

15 MR. MILLER: That --

16 JUDGE FRYE: The Staff counsel stated an
17 objection and that objection has been sustained. Now, let's
18 move on.

19 MR. MILLER: But, I want to understand the basis
20 of the Board's --

21 JUDGE FRYE: You have been given the basis of
22 the Board's objection -- sustaining of the objection. We
23 are sustaining Staff counsel's objection on the grounds
24 which he stated.

25 Now, move on.

1 MR. MILLER: Judge Frye, I don't mean to argue
2 with the Board, but I just simply want to understand. Is it
3 the Board's position that there is only one answer that
4 could be given to the question I have asked?

5 JUDGE FRYE: It certainly seems that way.

6 MR. MILLER: I will represent to the Board that
7 I have reviewed the post-exercise training drills which are
8 an exhibit in this case; they have been admitted into the
9 record. I would not intend to take these witnesses through
10 those training drill reports.

11 Rather than do that, I have gone through the
12 drill reports and I have pulled out problems which have
13 consistently appeared in those drill reports. I have
14 attempted to present to these witnesses that data in the way
15 of a question.

16 I have, therefore, asked these witnesses to make
17 assumptions. If there is only one answer that can be given,
18 therefore, I submit that's the answer that the Board has to
19 live with. But, the answer is based upon facts and data in
20 the records that I've pulled from the training drill
21 reports.

22 And, I don't consider that a proper objection to
23 my question, given that representation that I've made. And,
24 I would ask the Board to reconsider.

25 JUDGE FRYE: Okay. Sustained.

1 BY MR. MILLER: (Continuing)

2 Q Mr. Keller, let me try it this way then to make
3 sure we can try to straighten out the record somewhat. I
4 had asked the other day for you to assume that if the same
5 substantive kind of problems occurred in post-exercise
6 training drills as occurred during the exercise that that
7 would lead you to conclude that LILCO's approach to training
8 is likely wrong.

9 Is it your testimony that their approach to
10 training is likely wrong given the hypothetical I have
11 presented to you?

12 A (Witness Keller) No. That is one possibility.
13 And, I think we went through this two days ago or whenever
14 it was.

15 One of the possibilities is that the approach is
16 wrong. That's not the only possibility in my mind. I
17 cannot agree with you that definitely their approach is
18 wrong even if the same kind of substantive problems reoccur.

19 Q And, could you give me one other example, Mr.
20 Keller, of another possibility that would explain the
21 results that I've just conveyed to you?

22 MS. McCLESKEY: Objection. Asked and answered.

23 JUDGE FRYE: I think we have been through this.

24 MR. MILLER: Judge Frye, I'm asking --

25 JUDGE FRYE: We've been through this.

1 MR. MILLER: We have not been through this. I'm
2 simply --

3 JUDGE FRYE: Mr. Miller, you asked him these
4 questions the other day.

5 WITNESS KOWIESKI: Same question.

6 MS. McCLESKEY: That's right.

7 MR. MILLER: Judge Frye, I'm asking -- Mr.
8 Keller has now told me that is one possibility. I've asked
9 him this question, could you give me one other possibility
10 that would explain --

11 JUDGE FRYE: This is recross, you know. We are
12 not going back over cross again. So, I have to sustain the
13 objection.

14 Move on.

15 MR. MILLER: Judge Frye, Ms. McCleskey asked the
16 question. I'm following up on her question. This is
17 completely within the scope of her cross-examination.

18 JUDGE FRYE: I don't think Ms. McCleskey ever
19 asked that question. I think you did.

20 MS. McCLESKEY: Yes, sir. He asked these exact
21 questions he has just asked. Mr. Keller gave the same exact
22 answers.

23 I did -- now, to be fair, on my cross I did ask
24 Mr. Keller whether he wouldn't want to know some other
25 things before he answered a hypothetical, and he said he

1 would. And, I take it Mr. Miller came in with gillions of
2 other things that you might put in a hypothetical. You have
3 rejected that question.

4 We are now back to Mr. Miller's original
5 questions of last week.

6 MR. MILLER: So, I would like to ask, give me
7 one other thing you would like to know, Mr. Keller.

8 JUDGE FRYE: Sustained. Let's move on.

9 MR. MILLER: Judge Frye, given the Board's
10 rulings and the inability to permit me to even ask any kind
11 of follow-up questions, I have no further questions.

12 JUDGE FRYE: Okay. Mr. Zahnleuter, do you have
13 very much?

14 MR. ZAHNLEUTER: I have no questions.

15 JUDGE FRYE: You have no questions. Ms.
16 McCleskey, do you have very much?

17 MS. McCLESKEY: I don't have very much, but if
18 you want to take a five or ten minute break --

19 JUDGE FRYE: Well, I'm just wondering about our
20 field trip. Do you have any questions, Mr. Pirfo?

21 MR. PIRFO: No.

22 JUDGE FRYE: Are you going to have any redirect?

23 MR. CUMMING: I have no re-redirect.

24 JUDGE FRYE: Re-redirect, I should say. Well,
25 why don't we go ahead with your questions, then.

1 MS. McCLESKEY: Yes, sir.

2 MR. CUMMING: I'm assuming I have no re-redirect
3 but based on Ms. McCleskey's questions --

4 JUDGE FRYE: We understand that.

5 RE CROSS EXAMINATION

6 BY MS. McCLESKEY:

7 Q Mr. Keller, the plan provides, does it not, that
8 congestion after the evacuation declaration would begin at
9 about one hour after the declaration; isn't that right?

10 A (Witness Keller) That's my recollection, yes.

11 Q And, the evacuation time estimates in the plan
12 assume that?

13 MR. LANPHER: I object to the question. I don't
14 know what that follows up on.

15 JUDGE FRYE: Are you going to connect that up?

16 MS. McCLESKEY: I certainly am, and it will take
17 one minute.

18 JUDGE FRYE: Okay.

19 MR. LANPHER: Could we get a proffer to what
20 it's supposedly going to connect up with before --

21 JUDGE FRYE: Yes.

22 MR. LANPHER: -- the question?

23 MS. McCLESKEY: Do you want a proffer?

24 JUDGE FRYE: Yes.

25 MS. McCLESKEY: Mr. Keller has testified that

1 traffic guides have to be out within 30 minutes of the
2 declaration of an evacuation order; and, I think that's
3 wrong.

4 JUDGE FRYE: Okay.

5 MR. LANPHER: Well, I don't understand what the
6 evacuation time estimate questions have to do with that.

7 JUDGE FRYE: Well, she is going to have to
8 connect it up; otherwise, you can move to strike it. We
9 will find out how it's going to connect up, if it does.

10 MR. LANPHER: Well, I thought you were asking,
11 Judge, for a proffer before we went through a line of
12 questions and I didn't hear that proffer, sir.

13 JUDGE FRYE: Let's just -- to keep it simple,
14 let's just let her go on, and if it doesn't connect up with
15 anything move to strike it at this point.

16 Repeat your question, would you?

17 BY MS. McCLESKEY: (Continuing)

18 Q Mr. Keller, the LILCO plan assumes that the
19 traffic guides will be out within one hour of the
20 evacuation; isn't that right?

21 A (Witness Keller) I don't recall.

22 Q You don't recall? Do you recall that the
23 Licensing Board found in the partial initial decision that
24 the mobilization for the traffic guides was to be within one
25 hour, they were to be in the field within one hour of the

1 declaration of the evacuation?

2 MR. LANPHER: I object. That's far outside the
3 scope of anything that went on since Ms. McCleskey's --

4 MS. McCLESKEY: He stated specifically in
5 response to Mr. Pirfo's question that it had to be 30
6 minutes, not one hour.

7 JUDGE FRYE: Yes, he did. Overruled.

8 MR. LANPHER: That's right, but what --

9 MS. McCLESKEY: I misspoke. It was Mr.
10 Cumming's question that elicited the 30 minutes, not Mr.
11 Pirfo.

12 JUDGE FRYE: Okay.

13 MR. LANPHER: But, the PID citation that I
14 believe she was just referring to has to do with
15 mobilization. That's just a different subject.

16 MS. McCLESKEY: I'm sorry --

17 JUDGE FRYE: I must be missing something here.

18 MS. McCLESKEY: The PID says that traffic guides
19 are assumed to be out in the field within one hour of the
20 evacuation order.

21 JUDGE FRYE: All right. Let me get something
22 straight, because I'm confused at this point. You testified
23 at one point that the traffic guides had to be out within
24 one hour and at another point within 30 minutes.

25 Now, can you straighten that out for us?

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(Laughter.)

WITNESS KELLER: I have a coin.

(Laughter.)

WITNESS KELLER: No. The first round, I thought it was your question, to tell you the truth, and we were talking about 30 minutes and I said an hour.

JUDGE FRYE: I think it was my question.

WITNESS KELLER: Okay. And, we had a break and I was convinced in the break -- and I was testifying from recall, I was convinced in the break that the hour was for the bus drivers, okay.

JUDGE FRYE: That's right.

WITNESS KELLER: And, we came back and I recanted my hour vis-a-vis the traffic guides after the break on a response to Mr. Cumming's question to amplify what we had said. And, to be honest, I did not recall the specific plan provision for the hour or the PID decision over the hour, but the hour had been in my mind the first go-around.

And, I allowed it to be shaken during the break.

JUDGE FRYE: Okay. But, your -- you also put a specific point at which that time should begin to run.

WITNESS KELLER: Yes, when the evacuation order is --

JUDGE FRYE: The evacuation order is made to the

1 public?

2 WITNESS KELLER: That's correct. That's
3 correct.

4 JUDGE FRYE: Okay. Now, your question is --

5 BY MS. McCLESKEY: (Continuing)

6 Q I believe my only remaining question is, you
7 would evaluate whether the traffic guides were out in time
8 based on what the plan says, isn't that right?

9 A (Witness Keller) That is our general rule. We
10 try to follow the plan and made our evaluation based on the
11 plan.

12 Q So, are you still with your 30 minutes or are
13 you back to your hour?

14 A I do not recall the specific time in the plan
15 for the traffic guides. We would evaluate based on whatever
16 the plan says.

17 JUDGE FRYE: Is that different from the 30
18 minutes?

19 WITNESS KELLER: It's my recollection -- and I
20 believe counsel for LILCO suggested that the plan says an
21 hour, and I think that's right.

22 JUDGE FRYE: So, if the plan says an hour that's
23 the --

24 WITNESS KELLER: That would be the time, that's
25 right. We would not impose --

1 JUDGE FRYE: A different requirement?

2 WITNESS KELLER: -- a different requirement than
3 what is in the plan.

4 JUDGE FRYE: Okay.

5 BY MS. McCLESKEY: (Continuing)

6 Q Mr. Kowieski, at any time during the exercise
7 process for Shoreham, did you instruct RAC members and
8 evaluators to review the exercise as anything other than a
9 full participation exercise?

10 A (Witness Kowieski) I did not.

11 Q And, regarding the Indian Point exercise report,
12 the discussion you had I believe it was with Ms. Letsche
13 today about that, do you know what the Walter Hobby Home
14 is? Do you know?

15 A I believe it was a school.

16 Q A school?

17 A I believe. It's my recollection it was a
18 school.

19 Q And, isn't an interview a phone call?

20 A (Witness Keller) It could be.

21 (Witness Kowieski) It could be.

22 (Witness Keller) It could be, but in that case
23 it wasn't.

24 COURT REPORTER: Was that your answer, sir, in
25 that case it wasn't?

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WITNESS KELLER: It could be. I'm sorry.

MR. LANPHER: But, then --

WITNESS KELLER: Yeah. And, I said in that case my recollection is it wasn't.

JUDGE FRYE: I believe your last question was, isn't an interview a phone call?

MS. McCLESKEY: Yes.

JUDGE FRYE: Okay.

JUDGE PARIS: Did you mean isn't a phone call an --

WITNESS KOWIESKI: An interview, I guess.

MS. McCLESKEY: I don't think the question or the answer changes if you interpose "interview" and "phone call" in it, but what I meant was -- they stated that the Walter Hobby Home had been interviewed as a result of the Indian Point exercise, post-exercise assessment.

And, what I wanted to know was whether that interview is a phone call.

JUDGE PARIS: Oh, whether --

JUDGE FRYE: That particular one? Oh, I see.

WITNESS KELLER: My recollection is that we had people in the field who went --

WITNESS KOWIESKI: In the field, yeah.

WITNESS KELLER: -- to these facilities, the ones that were enumerated in the exercise report. It could

1 have been a phone call, but in that particular case it was a
2 face-to-face --

3 WITNESS KOWIESKI: That's my recollection.

4 WITNESS KELLER: Yes.

5 BY MS. McCLESKEY: (Continuing)

6 Q Okay. Thanks for that clarification. Now, as
7 to the Attachment 2 to the Suffolk County testimony on I
8 believe it's 41 with the data about the drivers, and the
9 fact that there is an over-supply of drivers, I mean of road
10 crew members in the LIICO plan doesn't change the data in
11 Attachment 2; isn't that right?

12 A (Witness Keller) That's correct.

13 Q But the fact that there is an over-supply of
14 road crew drivers might change your conclusion about the
15 data in Attachment 2?

16 A I think that's what I told Mr. Miller, or at
17 least I hope that's what I told Mr. Miller.

18 MS. McCLESKEY: Okay. Well, I thought that
19 might be but I wanted to clear it up.

20 Those are all my questions.

21 JUDGE FRYE: Mr. Pirfo.

22 MR. PIRFO: Thank you, Judge Frye. The Staff
23 has no questions. I just did want to clear up one thing.

24 Shortly before Suffolk County's offer of proof
25 on Exhibit 108, Ms. Letsche I believe was speaking at the

1 moment and in responding to her I said the Staff does not
2 quarrel with her and look. and saw the Board was
3 conferring, and I cut myself off.
4

5 So, the record as it stands now says the Staff
6 does not quarrel with her. I think it's obvious from the
7 record, since we made the objection, that we did quarrel
8 with her. But, the sentence on the record now says that the
9 Staff does not quarrel with her.

10 So, I don't want to -- if they should appeal on
11 that, I don't want the record to reflect that we agreed with
12 them at hearing and opposed them on appeal.

13 Thank you.

14 MR. LANPHER: We wouldn't want the record to
15 reflect the Staff agreed with the County on that point.

16 (Laughter.)

17 JUDGE FRYE: Mr. Cumming.

18 MR. CUMMING: No questions.

19 TUDGE FRYE: No questions.

20 MR. MILLER: Judge Frye, I have one follow-up
21 which now I think for sure I'm entitled to ask, which is to
22 Mr. Keller in response to Ms. McCleskey's last question
23 regarding whether or not an over-supply of road crews could
24 affect the data in Attachment 2 of the County's Contention
25 41 testimony.

Mr. Keller said that it could. And, my question

1 is how.

2
3 WITNESS KELLER: I'm sorry. That's not what I
4 said. I said that it cannot affect the data but it could
5 affect the seriousness with which you reviewed and evaluated
6 what the consequence of that data was.

7 RE CROSS EXAMINATION

8 BY MR. MILLER:

9 Q And, my question is how, given the fact that the
10 attachment demonstrates, Mr. Keller, that not a single road
11 crew from two of the three staging areas were dispatched
12 into the field until more than one hour following an
13 evacuation recommendation by LERO?

14 A (Witness Keller) My recollection is that one of
15 the staging areas, all of the people were dispatched within
16 one hour and four minutes. And, I'm not going to quibble
17 about four minutes.

18 JUDGE FRYE: But, how does the number or the
19 theoretical over-supply of road crews affect your
20 conclusions? I thought that was the question.

21 WITNESS KELLER: If there are more crews than
22 you need in the field for a particular situation, it seems
23 to me that all of them not being there as rapidly as you
24 would like to see them mitigates the seriousness of the
25 problem.

JUDGE FRYE: An over-supply in the field?

1 WITNESS KELLER: Yes.

2 BY MR. MILLER: (Continuing)

3 Q But, Mr. Keller, the attachment reflects that
4 eight of the 12 were not in the field at the time they
5 should have been in the field and none of the road crews for
6 two of the three staging areas were present in the field at
7 the time they should have been in the field; therefore, how
8 could a theoretical over-supply change your conclusion that
9 this attachment reflects a serious problem?
10

11 A I didn't say that it changes the fact that it's
12 a serious problem. We are -- I thought last week and again
13 today we were trying to address a hypothetical.

14 Q I understand. Mr. Keller, if you will tell me
15 that it does not change, then that's fine. That's the
16 answer.

17 A I think it could affect.

18 Q And, my question is how?

19 JUDGE FRYE: Wait a minute. I think I see
20 what's happening here. I think you-all are talking past
21 each other.

22 You, I think, have taken the theory out of it,
23 Mr. Miller, when you gave him the numbers of people who are
24 actually there.

25 MR. MILLER: Yes, sir. That's what the
attachment reflects.

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JUDGE FRYE: Okay. That's what the attachment reflects. So, based on the data in the attachment --

WITNESS KELLER: Right.

JUDGE FRYE: -- which we are assuming, subject to verification, reflects what happened during the exercise you've got a serious problem.

WITNESS KELLER: That's right. There is a serious problem clearly.

JUDGE FRYE: Okay. If somehow those data change, the seriousness of the problem might change?

WITNESS KELLER: That's right.

JUDGE FRYE: I think that's it.

MR. MILLER: Thank you.

JUDGE FRYE: Now, Judge Paris and I think Judge Shon have questions.

1 JUDGE PARIS: I have a quick follow up question
2 on something I heard you say this morning, and if I did hear
3 you say it, I would like a little more information about it.

4 I thought I heard you say that there is an
5 unusually large number of people in the Shoreham EPZ that
6 would require bus service in order to be evacuated. Did you
7 say that?

8 WITNESS KELLER: I hope I didn't say unusually
9 large number. I said there is a significant number of
10 people that would require transportation by bus to evacuate.

11
12 JUDGE PARIS: A significant number.

13 WITNESS KELLER: Yes.

14 JUDGE PARIS: Any more compared to say, Indian
15 Point, which is also a densely populated EPZ?

16 WITNESS KELLER: I think, at least as far as
17 this region is concerned, clearly those are the two that had
18 the largest transportation requirements.

19 Based on my experience at other sites in the
20 country, I think these two are the largest that I have been
21 to, and I have been to about 50 of the sites.

22 JUDGE PARIS: Is that a function of something
23 more than just the dense population density within the EPZ?

24 WITNESS KELLER: Yes, it is.

25 JUDGE PARIS: What is it?

1 WITNESS KELLER: Well, in California, for
2 example, everybody has at least two cars, and you have a
3 densely populated area around San Onofre, for example, and
4 you do not require anywhere near the number of public
5 transportation buses that you require in these two sites.

6 I think it is affected by the caliber of the
7 normal public transportation system that is available. You
8 have lots of subways, you have lots of trains and buses, and
9 people are used to using public transportation in this area,
10 where in other areas of the country, that is not quite as
11 prevalent as it is.

12 JUDGE PARIS: I see. Okay. Thank you.

13 JUDGE FRYE: Anything further? Nothing
14 further? Gentlemen, thank you very much. Appreciate your
15 patience and your testimony.

16 WITNESS KOWIESKI: Hope we have been helpful to
17 you.

18 JUDGE FRYE: I think you have. I think you have
19 been indeed.

20 WITNESS KOWIESKI: Thank you.

21 WITNESS PANEL STANDS ASIDE.

22 JUDGE FRYE: So, I think we are now adjourned
23 until 9:00 tomorrow morning, at which time we will have the
24 Staff witnesses, am I correct on that.

25 MR. PIRFO: Yes, sir.

1 MR. LANPHER: Could we talk just briefly about
2 tomorrow's schedule.

3 JUDGE FRYE: Surely. Do you want to talk on the
4 record or off the record?

5 MR. LANPHER: I think it would be useful to be
6 on the record. I indicated last week, I guess, that I
7 believe I can complete the examination of the Staff in less
8 than a half day. I hope that is still accurate. I will let
9 people know in the morning if it is not.

10 But I wanted to know what examination estimates
11 for the Staff other people had, and then Mr. Simon will be
12 here. What the estimates are for him, and finally, I know
13 Dr. Hockert is supposedly arriving today, and I want to know
14 whether LILCO plans to submit testimony by Dr. Hockert, and
15 if so, when we will know about it.

16 JUDGE FRYE: Let's take Staff first. Mr.
17 Zahnleuter, do you have an estimate as to how much time you
18 might want with the Staff?

19 MR. ZAHNLEUTER: Several minutes.

20 JUDGE FRYE: Several minutes. Ms. McCleskey?

21 MS. McCLESKEY: Fifteen minutes.

22 JUDGE FRYE: Fifteen minutes. FEMA, I take it,
23 probably has no questions of Staff?

24 MR. CUMMING: Unlike Mr. Pirfo's brutal cross
25 examination of our witnesses, FEMA doesn't intend to ask the

1 Staff any questions.

2 JUDGE FRYE: All right. So, we should be able
3 to finish up with the Staff probably in about half a day, I
4 would say. Now, the next question is how much time for Dr.
5 Simon, am I correct?

6 MR. LANPHER: I think that is right, Judge.

7 JUDGE FRYE: Is that a New York witness as well
8 as a Suffolk County witness?

9 MR. LANPHER: Suffolk County witness.

10 JUDGE FRYE: Is New York going to want to
11 examine him at all?

12 MR. ZAHNLEUTER: Usually LILCO precedes New
13 York, and I really don't have any substantial questions of
14 Dr. Simon. Again, a few minutes. It will be dependent on
15 other parties.

16 MS. McCLESKEY: Judge Frye, LILCO would object
17 to Mr. Zahnleuter cross examining Mr. Simon at all. He is a
18 witness on 15 and 16, and they have filed their testimony
19 jointly on that. I don't think he is entitled to cross
20 examine Mr. Simon.

21 JUDGE FRYE: Well, cross I would agree. It is a
22 question of whether he is entitled to examine is perhaps
23 another question. It is not a hostile witness.

24 MR. ZAHNLEUTER: I will also state for the
25 record that the State of New York was involved in no way in

1 the preparation of Dr. Simon's testimony that will be
2 presented.

3 MS. McCLESKEY: But they have joined themselves
4 in together on the issues, and you have to assume that --

5 JUDGE FRYE: Let's don't create problems where
6 it seems that none exists.

7 MS. McCLESKEY: All right.

8 JUDGE FRYE: If it turns out to be a problem, we
9 will face it then, but Mr. Zahnleuter has indicated that if
10 he has any questions at all it will be very brief.

11 Let's see where we are tomorrow. Do you have
12 extensive examination?

13 MS. McCLESKEY: About half an hour.

14 JUDGE FRYE: Half an hour? Staff?

15 MR. PIRFO: Nothing.

16 JUDGE FRYE: Nothing. FEMA nothing.

17 MR. CUMMING: Nothing.

18 JUDGE FRYE: And then the question of testimony
19 of Dr. Hockert.

20 MS. McCLESKEY: Dr. Hockert will be here. It is
21 probable that we will put him up for short testimony. It
22 will be oral, and it won't take very long.

23 JUDGE FRYE: Very long is what?

24 MS. McCLESKEY: Ten minutes.

25 JUDGE FRYE: Ten minutes.

1 MR. LANPHER: Well, if it is going to be so
2 short, I would --

3 JUDGE FRYE: Why don't you tell Mr. Lanpher what
4 you anticipate his answers to be. The questions you are
5 going to ask, and the answers you anticipate.

6 MS. McCLESKEY: I will ask Mr. Zeugin to do
7 that.

8 JUDGE FRYE: Not right now, not on the record,
9 but give them some advance warning as to what it is going to
10 be.

11 MR. LANPHER: If it can be prefiled, that is
12 preferable; if not, I would just like to know what, so we
13 don't have to take a long break tomorrow.

14 MS. McCLESKEY: We don't intend to prefile
15 anything, unless the Board orders us to do so.

16 JUDGE FRYE: That sounds almost as though we
17 might finish up tomorrow.

18 MS. McCLESKEY: Judge Frye, I would like to
19 raise one other matter that I raised last week, and that is
20 we would very much like to discuss the finding schedule
21 while we are all here tomorrow.

22 JUDGE FRYE: And there was a question of how you
23 view the question of what a fundamental flaw might be.

24 MS. McCLESKEY: Right. You had asked about that
25 as well.

1 JUDGE FRYE: Perhaps Friday morning would be the
2 time to get into those things, in the assumption that
3 tomorrow will be pretty well taken up with testimony.

4 Do you have a view on that, Mr. Lanpher. You
5 look like you are not happy with that.

6 MR. LANPHER: I have a long standing preference
7 to -- for getting home when it is possible to get home.
8 Frankly, you asked the question about fundamental flaw quite
9 a while ago, Judge, and it was put on.

10 I think that is a matter that is appropriately
11 dealt with in our briefs. I think it is going to have to be
12 dealt with in the briefs. I think it is an important
13 question, and rather than try to put together an oral
14 presentation that will have to be repeated anyway in briefs,
15 I think that is not an appropriate matter to be taken up at
16 the end of the trial.

17 Obviously, the finding schedule is appropriate
18 to take up, but the fundamental flaw thing, it is far too
19 important to do at the end of this trial.

20 MS. McCLESKEY: I disagree with Mr. Lanpher. I
21 think it would be helpful to the Board and to the parties to
22 get an articulation of what people are meaning when they
23 say, 'fundamental flaw,' and my experience has been that
24 oral discussions, supplemented by written papers, are
25 understood better.

1 JUDGE FRYE: Let's do it this way, and I would
2 assume that you all would be in a position to do this. Tell
3 us briefly what your definition of 'fundamental flaw' is,
4 and I just mean just define it. That is all. You can
5 argue, you know, for your definition and opposing the other
6 person's definition in your briefs.

7 I think that would be helpful to us when we go
8 back, that we would know what your definition is, and we
9 will reserve the detailed argument in support of it for the
10 briefs.

11 MR. PIRFO: Judge Frye, one other matter.
12 Counsel of Suffolk County has informed the parties as well
13 as the Board that they will move to strike one question of
14 the Staff testimony.

15 The practice in the past has been for motions of
16 strike to be filed in writing, usually, some time before.
17 So, I think it would be only fair that Suffolk County state
18 its grounds for its motion to strike now, and that we be
19 able to respond to it tomorrow morning.

20 JUDGE FRYE: How are we doing on this field
21 trip?

22 MS. McCLESKEY: We can still do the field trip.
23 We can do the field trip at four.

24 JUDGE FRYE: Why don't you --

25 JUDGE PARIS: Would we have to be there at four?

1 MS. McCLESKEY: No. I mean as late as four. I
2 am assuming it won't take more than 40 minutes for Mr.
3 Lanpher to articulate his motion to strike.

4 JUDGE FRYE: I was just going to suggest, tell
5 Staff counsel on what grounds you are moving to strike, and
6 we will have the argument tomorrow morning, but give them
7 some advance notice.

8 MR. LANPHER: I will sit down with them right
9 after this.

10 MR. PIRFO: I would prefer it on the record,
11 candidly.

12 JUDGE FRYE: It will be on the record tomorrow,
13 you are going to get it on the record tomorrow; so you are
14 aware in advance of what you are going to have to face
15 tomorrow, he is going to tell you this afternoon what it is
16 all about.

17 MR. PIRFO: Okay. As long as what we are told
18 this afternoon is a limitation on what they can argue, no
19 problem.

20 JUDGE FRYE: Anything else?

21 (No reply.)

22 JUDGE FRYE: Well, we will plan then to finish
23 up tomorrow afternoon with everything, and even on the
24 assumption we might have to go a little bit late. I would
25 think that would be preferable than planning now to come

1 back Friday morning. That would leave everybody's Friday
2 free.

3 MS. McCLESKEY: Fine.

4 JUDGE FRYE: So, with that let's be adjourned
5 until 9:00 tomorrow morning.

6 (Whereupon, the hearing adjourned at 3:20 p.m.,
7 to reconvene at 9:00 a.m., Thursday, June 18, 1987.)
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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING: LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power
Station, Unit 1)

DOCKET NO.: 50-322-OL-5 (EP Exercise)

PLACE: HAUPPAUGE, NEW YORK

DATE: WEDNESDAY, JUNE 17, 1987

were held as herein appears, and that this is the original transcript thereof for the file of the United States Nuclear Regulatory Commission.

(sig)

(TYPED)

Garrett J. Walsh
GARRETT J. WALSH

Official Reporter
ACE-FEDERAL REPORTERS, INC.
Reporter's Affiliation

Sue Walsh
MYRTLE S. WALSH