

LILCO, January 11, 1984

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USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning
(Shoreham Nuclear Power Station,)	Proceeding)
Unit 1))	

LILCO'S REQUEST FOR LEAVE TO FILE
OUT OF TIME A MOTION TO STRIKE
LEON J. CAMPO'S TESTIMONY ON
CONTENTIONS 25.C AND 25.D

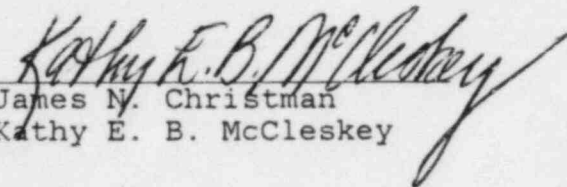
The Long Island Lighting Company (LILCO) requests leave to file out of time a motion to strike in its entirety Leon J. Campo's written testimony filed by Suffolk County on the issue of role conflict and its effect on early dismissals from schools. This testimony is entitled "Direct Testimony of Leon J. Campo on Behalf of Suffolk County Concerning Emergency Planning Contentions 25.C and 25.D." The basis for this request is information obtained during the deposition of Leon J. Campo on January 5, 1984.

The Campo testimony was filed on November 18, 1983, and motions to strike that testimony were due on November 28, 1983. On that date, LILCO filed a motion for further discovery on Mr. Campo's testimony (among others). The Board granted LILCO's motion for additional discovery on December 1, 1983, and Mr. Campo's deposition was taken on January 5, 1984. During his

deposition, LILCO obtained information not stated in Mr. Campo's testimony that, in LILCO's view, supports a motion to strike Mr. Campo's testimony as irrelevant and cumulative. LILCO therefore seeks leave to file out of time a motion to strike in its entirety Mr. Campo's testimony.

LILCO is mindful that unauthorized pleadings should not be attached to requests to file those pleadings. See, e.g., Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), LBP-81-18, 14 NRC 71, 72 (1981); Public Service Co. of Oklahoma (Black Fox Station, Units 1 and 2), LBP-76-38, 4 NRC 435, 441 (1976). Under the circumstances here, however, where Board-ordered discovery has brought information to light that supports a motion to strike testimony, we have attached the motion.

Respectfully submitted,


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Kathy E. B. McCleskey

Huntor & Williams
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DATE: January 11, 1984

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-3
)	(Emergency Planning
(Shoreham Nuclear Power)	Proceeding)
Station, Unit 1))	

LILCO'S MOTION TO STRIKE THE TESTIMONY
OF LEON J. CAMPO ON BEHALF OF SUFFOLK
COUNTY REGARDING EMERGENCY PLANNING
CONTENTIONS 25.C AND 25.D

The Long Island Lighting Company (LILCO) moves the Board to strike in its entirety the written testimony of Leon Campo filed by Suffolk County on role conflict and its effect on early dismissals from schools. This testimony is entitled "Direct Testimony of Leon J. Campo on Behalf of Suffolk County Concerning Emergency Planning Contentions 25.C and 25.D" (Campo testimony).

The bases for striking this testimony are that (1) it is irrelevant to the issues in this proceeding, and (2) to the extent it is not irrelevant, it is cumulative and therefore unnecessary.

Under the NRC's Rules of Practice, testimony must be relevant to the issues in contention. 10 CFR § 2.743(c).1/

1/ Title 10 CFR § 2.743(c) provides:

Irrelevant or cumulative testimony is the proper subject of a motion to strike. See 10 CFR Part 2 Appendix A, V(d)(7). The Board has the power to implement these provisions, both through its general power to regulate the conduct of a hearing, 10 CFR § 2.718, and through the specific authority under 10 CFR § 2.757(b) to strike argumentative, repetitious, cumulative, immaterial, unreliable or irrelevant evidence.

The definition of "relevant evidence" from Rule 401 of the Federal Rules of Evidence is as follows:

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

It is the "of consequence to the determination of the action" part of the definition that is missing in the Campo testimony. The issues considered in Contentions 25.C and 25.D are whether role conflict would be experienced by school personnel during a radiological emergency at Shoreham, whether any such conflict would be resolved in favor of abandoning roles at school and

(footnote continued)

Only relevant, material, and reliable evidence which is not unduly repetitious will be admitted. Immaterial or irrelevant parts of an admissible document will be segregated and excluded so far as is practicable.

going home to be with family during a radiological emergency, and whether that role abandonment, if it exists, would make it impossible to implement protective actions in schools within the 10-mile EPZ.^{2/}

^{2/} Contention 25.C reads as follows:

The LILCO plan fails to take into account the role conflict that will be experienced by school bus drivers. In fact, a substantial number of school bus drivers are likely to attend to the safety of their own families before they report (if they report at all) to perform the bus driving duties which LILCO assumes will be performed. Role conflict of school bus drivers will mean that neither school buses nor school bus drivers will be available to implement the LILCO plan. Without an adequate number of buses or bus drivers, LILCO will be incapable of implementing the following protective actions:

1. early dismissal of schools (necessary under the LILCO Plan to permit school-children to be sheltered or to evacuate with their parents);
2. evacuation of schools;
3. evacuation of persons without access to cars; and
4. evacuation of persons in special facilities.

Contention 25.D reads as follows:

The LILCO plan fails to take into account the role conflict that is likely to be experienced by teachers, other school employees, and crossing guards. In fact, a substantial number of such personnel are likely to attend to the safety of their own families rather than remaining at the schools or at their posts in the event of

(footnote continued)

It is fair to say that the Campo testimony sheds no light whatsoever on the question of whether role conflict will be experienced by school personnel within the 10-mile emergency planning zone, or whether that conflict is likely to be resolved by school personnel abandoning their work. And the Campo testimony does not provide information regarding the early dismissal process within any school district in the 10-mile EPZ. To the extent that the Campo testimony echoes statements of other County witnesses regarding the complexity of early dismissal processes generally, or that role conflict may be experienced by school personnel generally, it is cumulative to the testimony filed by other County witnesses in this proceeding and therefore should be excluded. Each of these points is addressed in turn below.

(footnote continued)

an emergency. Accordingly, there is no assurance that under the LILCO Plan, adequate personnel will be available to supervise children, including those required to walk home, during the early dismissal process, during school evacuations, or in the event that children are sheltered in the schools. As a result, the following protective actions could not and would not be implemented:

1. early dismissal of schools;
2. sheltering of schoolchildren in schools; and
3. evacuation of schools.

I. THE CAMPO TESTIMONY DOES NOT ADDRESS
WHETHER ROLE CONFLICT WILL BE EXPERIENCED
BY SCHOOL PERSONNEL WITHIN THE 10-MILE EPZ

The Campo testimony sheds no light on whether role conflict will exist for school personnel within the 10-mile EPZ during a radiological emergency. The stated purpose of the testimony is "particularly to explain the logistical difficulties involved in implementing an early dismissal of schools." The only mention of role conflict comes at page 1 of the testimony, where Mr. Campo states that "[i]f there is role conflict such that necessary personnel are not available, no early dismissal will be possible." That notion is repeated in the last sentence of the testimony: "[i]f there is role conflict such has been suggested by other [County] witnesses such that bus drivers and/or teachers and/or administrators are not available, early dismissals will not be implemented." It is clear from the Campo testimony that, as to the issues of whether role conflict will exist for school personnel, and whether they would resolve any conflict by abandoning their work, Mr. Campo is relying upon other witnesses' testimony in the proceeding to address the issues in Contentions 25.C and 25.D. Consequently, the relevance of the Campo testimony cannot be established based upon any discussion of role conflict contained in it.

II. THE CAMPO TESTIMONY DOES NOT
DESCRIBE EARLY DISMISSAL PLANS FOR ANY
SCHOOL DISTRICT WITHIN THE 10-MILE EPZ

The Campo testimony contains the following question and answer on page 2:

Q: What familiarity with early dismissal of schools do you have?

A: In Nassau and Suffolk Counties, the region is broken down into numerous separate school districts. Each district has its own schools (or in some cases arranges for children in its district to attend schools in the neighboring district) and arranges for transportation and dismissal of children. I am particularly familiar with the early dismissal procedures in the East Meadow Schools, and also those for Mt. Sinai, which is where I live. Further, from my years as a school administrator, I am quite familiar with the logistical factors which must be considered in any early dismissal.

(Emphasis added.) Thus Mr. Campo represents in his testimony that he is "particularly familiar with the early dismissal procedures" for Mt. Sinai, which is a school district within the 10-mile EPZ. During his deposition, however, Mr. Campo indicated that he is not familiar with any details regarding early dismissal plans for Mt. Sinai, and knows only that plans exist and have been used in the past:

Q. Do the Mt. Sinai Schools have emergency dismissal, early dismissal, or "go home" plans of any kind?

A. Well, what I would have to say about Mt. Sinai would be from the perspective of being a parent living in the district and

not an administrator who is in charge of any operation there. And that, you would have to seek out those people who are responsible.

Campo Dep. 18 (attached). Mr. Campo indicated that he had no knowledge of the details of the Mt. Sinai plans:

Q. Are you familiar with those plans?

A. I am familiar with those plans. I am not familiar with every nuance of the plan, no, I'm not.

Q. Does each school in the Mt. Sinai district have its own plan?

. . .

A. My understanding is yes. I have youngsters in both those schools. Yes.

Q. And do you know how those plans are developed?

A. How they are developed, no.

Q. Do you know what the provisions of the plans are?

A. No.

Q. So you don't know what happens within the Mt. Sinai school district if it starts snowing one afternoon and early dismissal is being contemplated?

A. Well, when you say I don't know what happens, the objective -- I know what the objective is of the plan, is to get the youngster to the homes of their parents.

Q. Do you know how that is done, any specifics of how that is done in Mt. Sinai?

- A. When you say specifics, no -- I would say yes and no. The specific of the use of transportation facility is the specific instrument. As to the specific direction given and the particulars of the plan, I'm not familiar with.

Campo Dep. 19-20 (attached). And Mr. Campo was unable to describe how early dismissal is accomplished in Mt. Sinai, or what difficulties have been encountered in implementing early dismissals in Mt. Sinai:

- Q. Do you know anything about whether there was any difficulty in implementing the early dismissal plan at that time [in the 1st two years]?

- A. I am not aware of the particulars of that.

- Q. Is it your understanding that the early dismissal plans for Mt. Sinai involve staff personnel riding on buses with school children?

- A. With respect to the specific plan, I really couldn't say as to who is assigned what. So my understanding of the plan is not on who directs whom, but generally it is the use of the transportation system to return the youngsters to their homes.

. . . .

- Q. On page 3 of your testimony, you state that teachers and administrators telephone home to ascertain if a parent or guardian is available to receive a child at the elementary level. Is it your understanding that that is what is done in the Mt. Sinai school district?

- A. As far as the calling home, that I couldn't comment on as far as Mt. Sinai, as to whether or not calls go home to the parents

of Mt. Sinai. That is what is done in East Meadow.

Q. So is it fair to say that your description of early dismissal programs in your testimony refers to East Meadow and not Mt. Sinai?

A. I kind of made it clear that what my knowledge of the Mt. Sinai early dismissal is basically I know they have one; and two, I have been the parent on the receiving end of the program. So I don't have any specific play by play knowledge of who directs whom in order to make it happen.

In East Meadow I am a front-line administrator, so to speak, and I am speaking from the position of a person who would be involved in making that happen. So those are two different perspectives.

Campo Dep. 21-23 (attached). In addition, Mr. Campo indicated that he was unfamiliar with any early dismissal plans other than the one for the district in which he works, East Meadow:

Q. Mr. Campo, have you reviewed early dismissal plans for any schools?

A. Other than my own?

Q. Yes.

A. No.

Campo Dep. 67 (attached).

As Mr. Campo indicated in the portions of his deposition set out above, he is familiar with the East Meadow School District's early dismissal plans, and it is the East Meadow plans that are described in his testimony. The East Meadow School

District is outside of the 10-mile EPZ for Shoreham. Campo Dep. 17 (attached).

Mr. Campo has been put forward by Suffolk County as a factual witness to describe how an early dismissal is accomplished. His testimony indicates that he is "particularly familiar" with early dismissal plans for the Mt. Sinai school district, which is within the 10-mile EPZ. His deposition indicates, however, that he is unfamiliar with the early dismissal plans of any school districts within the 10-mile EPZ, including the Mt. Sinai plans. And his testimony does not indicate how the details of the early dismissal plans for East Meadow, described in his testimony, are related to the early dismissal plans for any school district within the 10-mile EPZ, or to Contentions 25.C and 25.D. The early dismissal activities of schools outside the 10-mile EPZ have no bearing on whether the emergency plan for Shoreham can and will be implemented. Therefore, Mr. Campo's testimony is irrelevant and should be excluded.

III. TO THE EXTENT THE CAMPO
TESTIMONY REPRESENTS EARLY DISMISSAL
PLANS GENERALLY, IT IS CUMULATIVE

Mr. Campo states in his testimony that "from my years as a school administrator, I am quite familiar with the logistical factors which must be considered in any early dismissal." Campo Test. 2. He then discusses the process for early

dismissal based, as he stated in his deposition, upon the details of the East Meadow early dismissal plans. To the extent that Mr. Campo's testimony on early dismissals might be viewed as relevant testimony discussing early dismissals generally, the testimony is cumulative and should be excluded under 10 CFR § 2.743(c) and Rule 403 of the Federal Rules of Evidence.^{3/}

Suffolk County filed testimony in this proceeding from Messrs. Jeffers, Muto, Smith, Petrilak and Rossi, all school administrators in school districts within the 10-mile EPZ, providing details of early dismissal plans for their schools and discussing early dismissal generally. Mr. Campo's testimony adds no new facts to the testimony of these other school administrators. In addition, the testimony of these other school administrators is more probative of the issues raised in Contentions 25.C and 25.D, because the facts stated in those pieces of testimony describe dismissal plans used at schools within the 10-mile EPZ, while Mr. Campo's testimony does not. Therefore, to the extent that the Campo testimony is relevant, it is unduly repetitious and should be excluded.

^{3/} Rule 403 of the Federal Rules of Evidence provides as follows:

Rule 403. Exclusion of Relevant Evidence on
Grounds of Prejudice, Confusion, or Waste of Time

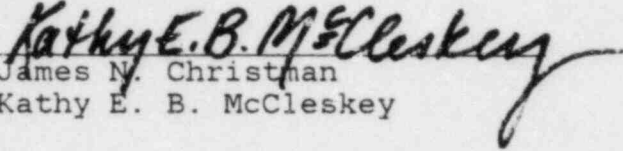
Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

IV. CONCLUSION

For the reasons stated above, LILCO requests that the Board strike in its entirety the Campo testimony filed by Suffolk County on Contentions 25.C and 25.D.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY


James N. Christman
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DATE: January 11, 1984

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322-OL-3
(Emergency Planning Proceeding)

I certify that copies of LILCO'S MOTION TO STRIKE THE TESTIMONY OF LEON J. CAMPO ON BEHALF OF SUFFOLK COUNTY REGARDING EMERGENCY PLANNING CONTENTIONS 25.C AND 25.D, and LILCO'S REQUEST FOR LEAVE TO FILE OUT OF TIME A MOTION TO STRIKE LEON J. CAMPO'S TESTIMONY ON CONTENTIONS 25.C AND 25.D were served this date upon the following by first-class mail, postage prepaid, or (as indicated by one asterisk) by hand, or (as indicated by two asterisks) by Federal Express.

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DATED: January 11, 1984

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Kathy E. B. McCleskey

1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD
4 - - - - - x
5 In the Matter of: :
6 LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
7 (Shoreham Nuclear Power Station : (Emergency Planning)
8 Unit 1) :
9 - - - - - x

10 DEPOSITION ON SUFFOLK COUNTY
11 CONTENTIONS 25.C and 25.D

12 Hauppauge, N.Y.
13 Thursday, January 5, 1984

14 Deposition of LEON J. CAMPO, called for examination
15 by counsel for Long Island Lighting Company, having been
16 duly sworn by Raymond H. Heer, a Notary Public for the
17 District of Columbia, in the Ninth Floor Conference
18 Room, Dennison Building, Veterans Memorial Highway,
19 Hauppauge, N.Y., beginning at 5:10 p.m., and the
20 proceedings being taken down by Stenomask by Raymond H.
21 Heer and transcribed under his direction.

22

1 Q As a teacher?

2 A No. As a teacher, not that I recall.

3 Q And other than the school administrator jobs
4 that you have held with East Meadow, have you been an
5 administrator in any other schools or school districts?

6 A Specifically schools, no.

7 Q Do you hold any other positions in any school
8 districts, paid or unpaid?

9 A No.

10 Q Are you a member of a board of education or
11 anything like that?

12 A No.

13 Q And the East Meadow schools are outside the
14 emergency planning zone for Shoreham, is that right?

15 A Yes, that's true.

16 Q But you live within the Mt. Sinai school
17 district, which is within the emergency planning zone?

18 A Yes.

19 Q Are you testifying on your own behalf or on
20 behalf of a school district?

21 A On my own behalf, based upon my experience and
22 my professional duties. But I am not representing East

1 Meadow Schools. I am representing myself.

2 Q And you're not representing the Mt. Sinai
3 School District, either?

4 A No. No, I'm not.

5 Q Do the Mt. Sinai Schcols have emergency
6 dismissal, early dismissal, or "go home" plans of any
7 kind?

8 A Well, what I would have to say about Mt. Sinai
9 would be from the perspective of being a parent living
10 in the district and not an administrator who is in
11 charge of any operation there. And that, you would have
12 to seek out those people who are responsible.

13 In the case of East Meadow, what I would be
14 saying would be based upon --

15 MS. LETSCHE: Wait a minute. Let me stop you
16 for a second. Just try to answer the question. Do you
17 know whether or not Mt. Sinai schools have an early
18 dismissal plan, I think was the question.

19 THE WITNESS: Yes.

20 BY MS. McCLESKEY: (Resuming)

21 Q Yes, you know, or yes, they do?

22 A Yes, they do.

1 Q Are you familiar with those plans?

2 A I am familiar with those plans. I am not
3 familiar with every nuance of the plan, no, I'm not.

4 Q Does each school in the Mt. Sinai district
5 have its own plan?

6 A When you say "each school", Mt. Sinai is an
7 unusual school district in that some of the youngsters
8 go to -- grades 10 through 12 particularly do not attend
9 a school within the district. They go to an adjacent
10 district. So the Mt. Sinai situation is maybe a little
11 bit different than some other school district in that
12 regard.

13 Q Well, for the Mt. Sinai schools that are
14 sitting within the Mt. Sinai boundary, the school
15 boundary, do they each have early dismissal plans?

16 A My understanding is yes. I have youngsters in
17 both those schools. Yes.

18 Q And do you know how those plans are
19 developed?

20 A How they are developed, no.

21 Q Do you know what the provisions of the plans
22 are?

1 A No.

2 Q So you don't know what happens within the Mt.
3 Sinai school district if it starts snowing one afternoon
4 and early dismissal is being contemplated?

5 A Well, when you say I don't know what happens,
6 the objective -- I know what the objective is of the
7 plan, is to get the youngster to the homes of their
8 parents.

9 Q Do you know how that is done, any specifics of
10 how that is done in Mt. Sinai?

11 A When you say specifics, no -- I would say yes
12 and no. The specific of the use of transportation
13 facility is the specific instrument. As to the specific
14 direction given and the particulars of the plan, I'm not
15 familiar with.

16 Q Do you know if the early dismissal plans in
17 the Mt. Sinai school district have been used in the last
18 year?

19 A In the last year? I believe they have not
20 been used in the last year, just from recollection,
21 anyway.

22 Q How about in the last couple of years?

1 A I can recall the Mt. Sinai plan being used I
2 believe once since I have been living there. I believe
3 it happened once.

4 Q Do you remember when?

5 A Four years ago, and I'm guessing now, but it
6 is some time in the past and not the recent past, that
7 there was an early dismissal in the Mt. Sinai schools.

8 Q Do you remember what the cause of the early
9 dismissal was?

10 A I believe it was snow.

11 Q Do you know anything about whether there was
12 any difficulty in implementing the early dismissal plan
13 at that time?

14 A I am not aware of the particulars of that.

15 Q Is it your understanding that the early
16 dismissal plans for Mt. Sinai involve staff personnel
17 riding on buses with school children?

18 A With respect to the specific plan, I really
19 couldn't say as to who is assigned what. So my
20 understanding of the plan is not on who directs whom,
21 but generally it is the use of the transportation system
22 to return the youngsters to their homes.

1 Q Do you have a copy of your testimony in front
2 of you to refer to if you need to?

3 MS. LETSCHE: That's my copy, but he can use
4 it.

5 MS. McCLESKEY: I will be glad to give him
6 one.

7 MS. LETSCHE: Fine. That will be easier.

8 BY MS. McCLESKEY: (Resuming)

9 Q On page 3 of your testimony you state that
10 teachers and administrators telephone home to ascertain
11 if a parent or guardian is available to receive a child
12 at the elementary level. Is it your understanding that
13 that is what is done in the Mt. Sinai school district?

14 A As far as the calling home, that I couldn't
15 comment on as far as Mt. Sinai, as to whether or not
16 calls go home to the parents of Mt. Sinai. That is what
17 is done in East Meadow.

18 Q So is it fair to say that your description of
19 early dismissal programs in your testimony refers to
20 East Meadow and not Mt. Sinai?

21 A I kind of made it clear that what my knowledge
22 of the Mt. Sinai early dismissal is is basically I know

1 they have one; and two, I have been the parent on the
2 receiving end of the program. So I don't have any
3 specific play by play knowledge of who directs whom in
4 order to make it happen.

5 In East Meadow I am a front-line
6 administrator, so to speak, and I am speaking from the
7 position of a person who would be involved in making
8 that happen. So those are two different perspectives.

9 Q Do you know -- on page 4 of your testimony you
10 refer to the fact that dismissals and arrivals of
11 children are usually done on a staggered basis for
12 schools. Is that the way it is done in East Meadow? Do
13 children come in at different times?

14 A Yes.

15 Q And is that to accommodate the transportation
16 needs of the school district?

17 A Well, that is something that for districts
18 that do transport youngsters is common. The reason is
19 simple. There is an economic reason. It is very costly
20 to transport everyone at the same time. It would simply
21 mean you would need many, many more buses, as opposed to
22 staggering the start time and the finish time, which

1 (Recess.)

2 BY MS. McCLESKEY: (Resuming)

3 Q Mr. Campo, have you reviewed early dismissal
4 plans for any schools?

5 A Other than my own?

6 Q Yes.

7 A No.

8 Q Have you reviewed the Shoreham emergency plan
9 that was drafted by LILCO?

10 A The LERO plan?

11 Q Right.

12 A Yes. I wouldn't say reviewed, but I read
13 that.

14 Q You've read the entire plan?

15 A No, not the entire plan. But I am familiar.
16 I focused on some things and I'm generally familiar with
17 it, although I don't consider myself an expert on that
18 plan.

19 Q Are you familiar with the provisions in the
20 LERO plan for the schools within the ten-mile zone?

21 A Yes. My recollection is that early dismissal
22 was a component of the LERO plan.