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August 20, 2014

VIA E-MAIL

Dr. Ernest Moniz
Secretary
c/o Robert Palmer, Staff Attorney, Office of Hearings & Appeals
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: In the matter of James E. Doyle, Case No. WBU-14-0002

Dear Secretary Moniz:

This is an appeal pursuant to 10 C.F.R. § 708.19 of the Decision and Order issued June 24, 2014 (Attachment “A”, hereinafter referred to as “Decision”) by the Department’s Office of Hearings and Appeals (“OHA”) which denied Appellant James E. Doyle’s Complaint against Los Alamos National Laboratory (“LANL”) pursuant to Sections 708.4(d) and 708.17(c).¹

The origins of this dispute arise from the publication of an article in an international journal for which the Appellant had properly obtained in advance a favorable determination that the document was unclassified. That classification decision was then overturned, after publication had already occurred, retroactively by LANL’s Chief Classification Officer.

This case has already received significant media attention and expressions of concern, particularly from the scientific community to include, but not limited to:

- (1) Los Angeles Times, “Did Los Alamos fire a researcher for questioning U.S. nuclear doctrine?” August 15, 2014, at <http://touch.latimes.com/#section/-/article/p2p-81091983/> (Attachment “B”);

¹ Although OHA dismissed Appellant’s Complaint it did reverse the Manager’s determination that § 708.4(d) independently served as grounds for denial.

- (2) Albuquerque Journal, “LANL fires anti-nuke article author”, August 1, 2014, at <http://www.abqjournal.com/439038/news/lanl-fires-anti-nuke-article-author.html> (Attachment “B”),
- (3) Science Magazine, “Firing of Los Alamos political scientist spurs criticism,” August 15, 2014, at <http://news.sciencemag.org/people-events/2014/08/updated-firing-los-alamos-political-scientist-spurs-criticism> (Attachment “B”);
- (4) Union of Concerned Scientists, “Los Alamos, Freedom of Speech, and Nuclear Disaster,” at <http://blog.ucsusa.org/los-alamos-freedom-of-speech-nuclear-disaster-612>, August 4, 2014 (Attachment “B”);
- (5) Santa Fe New Mexican, “LANL worker says firing tied to anti-nuke article,” July 31, 2014, at http://www.santafenewmexican.com/news/local_news/lanl-worker-says-firing-tied-to-anti-nuke-article/article_7dfc32da-869a-5504-9b31-8b6688249d68.html (Attachment “B”); and
- (6) The Center for Public Integrity, “Nuclear weapons lab employee fired after publishing scathing critique of the arms race,” July 31, 2014, at <http://www.publicintegrity.org/2014/07/31/15161/nuclear-weapons-lab-employee-fired-after-publishing-scathing-critique-arms-race> (Attachment “B”).

While the article at the center of the dispute has not been identified in the appeal documentation, media reports have asserted it was a 27–page article entitled “Why Eliminate Nuclear Weapons?” that was published in the February – March 2013 issue of *Survival: Global Politics and Strategy*. This article, while supportive of the current Administration’s nuclear policies, is viewed as expressing opinion contrary to other political forces including those held by LANL. While Appellant is neither confirming nor denying that is the article in question, it can be reviewed at <http://www.tandfonline.com/doi/full/10.1080/00396338.2013.767402#.UO8aSjAU08>.

The key determination issued by the OHA Director for which review is being sought was as follows:

In our view, a debatable assertion that an official misapplied classification guidance does not rise to the level of disclosing a “substantial violation” of a law, rule or regulation. Accordingly, we conclude that the Appellant has not met his evidentiary burden of showing that he disclosed information which he reasonably believes revealed a substantial violation of a law, rule or regulation.

Decision, at 5.

Factual And Procedural Background

Appellant adopts and incorporates the factual background set forth in the Decision. *Id.* at 1-3.

On November 6, 2013, Appellant filed a complaint of retaliation with the National Nuclear Security Administration (“NNSA”). Under Part 708, the DOE office initially receiving a complaint may dismiss the complaint for lack of jurisdiction or other good cause. 10 C.F.R. § 708.17. NNSA did so by letter dated January 23, 2014 (Attachment “C”). A complainant may appeal such a dismissal to the OHA Director, 10 C.F.R. § 708.18, and Appellant did so. OHA upheld the denial of the dismissal on June 24, 2014 (Attachment “A”).

By letter dated August 13, 2014 (and verified telephonically on August 19, 2014), Robert Palmer, Staff Attorney, OHA, approved an extension until or before August 20, 2014, to submit Appellant’s arguments in support of his position. Thus, this appeal has been timely submitted.

Arguments

Whether Appellant’s Article Was Improperly Classified, Perhaps Intentionally, Can Give Rise To A Violation of Law, Rule Or Regulation Thereby Requiring Remand For Further Proceedings

Within days of publication of Appellant’s article, congressional staff asked lab officials whether it contained classified information. A week later the head of LANL’s classification office decided that it did—a decision later backed by DOE. After accusing LANL officials of retaliation Appellant soon lost his high-level security clearance, and became persona non grata among his co-workers. Center for Public Integrity, at 8–9 (Attachment “B”).

OHA upheld the dismissal of Appellant’s claim on the mistaken premise that an official’s misapplied classification guidance does not rise to the level of disclosing a “substantial violation” of a law, rule or regulation. Decision at 5.

First, OHA improperly failed to consider the prospect that the classification determination, which occurred *after* the publication, i.e., disclosure, of the article, was part of the retaliation and intentional. Instead, without any evidence to support the notion, OHA simply assumed this was nothing but a reasonable difference of opinion separate and apart from the retaliation. Appellant should have had the opportunity to develop factual evidence to demonstrate otherwise.

Second, OHA failed to acknowledge the force of law that underlies the classification system. In fact, Section 1.7(a) of Executive Order 13526, which can be viewed at <http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information>, specifically prohibits as a matter of law that:

In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to:

- (1) conceal violations of law, inefficiency, or administrative error;
- (2) prevent embarrassment to a person, organization, or agency;

- (3) restrain competition; or
- (4) prevent or delay the release of information that does not require protection in the interest of the national security.

This is a mandatory provision of law. The language is quite clear: In no case *shall* . . .” (emphasis added). *Id.* This is not, as OHA articulated, a legal standard that is “debatable”. Decision, at 5. Moreover, “[b]asic scientific research information not clearly related to the national security shall not be classified.” *Id.* at (b). Appellant’s arguments regarding retaliation through abuse of the classification process following his public disclosure of a position that, among other things, embarrassed LANL and some of its officials fit squarely within the prohibitions of Section 1.7.

The very essence of Appellant’s reasonable belief is that the classification of his article violated Executive Order 13526 – *as a matter of law*. As set forth in OHA’s other Part 708 appeal cases, the standard of review for appeals is well-established. Conclusions of law are reviewed *de novo*. *See Curtis Hall*, Case No. TBA-0002 at 5 (2008). OHA failed to properly apply these standards.

Appellant’s challenge to the improper classification of his article disclosed a “substantial violation of a law, rule or regulation.” This is by no means an insignificant challenge and OHA’s casual disregard of the process as something merely “debatable” fails to recognize the importance and legal impact of the Appellant’s actions. The Executive Order explicitly encourages and expects authorized holders of classified information, such as Appellant, to “challenge the classification status of the information in accordance with agency procedures”. Executive Order 13526, Section 1.8(a).

That the LANL classification determination was later reviewed and upheld by officials at DOE and the Department of State, Decision at 2, does nothing to render this legal argument invalid, particularly given OHA never permitted the factual record to be developed as to the applicability of Executive Order 13526. OHA also rejected Appellant’s argument that the classification decision was an abuse of authority. Decision, at 5 fn.3. As noted, OHA has defined an abuse of authority as “an arbitrary or capricious exercise of power by an official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons.” *See Thomas L. Townsend*, OHA Case No. TBU-0082 (2008). The Decision concluded “that the Appellant has not sufficiently alleged a claim of abuse of authority” or that “his rights were adversely affected by [the classification].” Decision, at 5 fn.3. Again, OHA never allowed Appellant the opportunity to further develop the factual record concerning arbitrary and capricious conduct, particularly concerning any intention on the part of LANL to deliberately misclassify the article in question in violation of the Executive Order.

Contrary to OHA’s belief, the impact of this classification retaliation was severe. The simple decision to classify Appellant’s article resulted in disciplinary action, professional ostracization, harm to his reputation, removal of his sponsorship for a Q clearance and ultimately his termination from employment. Part 708 imposes an affirmative duty on DOE contractors not to retaliate against whistleblowers: “DOE contractors may not retaliate against any employee because the employee . . . has taken an action listed in Secs. 708.5(a)-(c).” 10 C.F.R. § 708.43. LANL violated this provision by its actions.

Even beyond the illegality of the underlying classification of the article, given the evidence that the article was first properly cleared for release as unclassified but then classified after the fact can be construed as yet another violation of Section 1.7. In subsection (c) specific procedures are required to reclassify already declassified information:

(c) Information may not be reclassified after declassification and release to the public under proper authority unless:

- (1) the reclassification is personally approved in writing by the agency head based on a document-by-document determination by the agency that reclassification is required to prevent significant and demonstrable damage to the national security;
- (2) the information may be reasonably recovered without bringing undue attention to the information; [and]
- (3) the reclassification action is reported promptly to the Assistant to the President for National Security Affairs (National Security Advisor) and the Director of the Information Security Oversight Office.

None of these provisions can be met by LANL/U.S. Government, especially given there is no dispute that the article in question had already been published and is available to anyone with an Internet connection. Further evidentiary proceedings would also reveal that the procedural steps described in Section 1.7(c) were neither attempted nor followed, thereby again demonstrating a “substantial violation” of a law, rule or regulation. Prior OHA cases instruct that a motion to dismiss, which is the functional equivalent of what occurred when OHA upheld the jurisdictional dismissal of Appellant’s Complaint, should be granted only where there are clear and convincing grounds for dismissal, and no further purpose will be served by resolving disputed issues of fact on a more complete record. *Curtis Broaddus*, Case No. TBH-0030 (2006); *Henry T. Greene*, Case No. TBU-0010 (2003)(decision of OHA Director characterizing this standard as “well-settled”). OHA’s dismissal should be held to fall short of that hurdle.

Part 708 protects a DOE contractor employee from retaliation for, among other things, disclosing to her “employer . . . , information that [she] reasonably and in good faith believe reveals . . . a substantial violation of a law, rule, or regulation.” 10 C.F.R. § 708.5(a)(3). The record already contains partial evidence of the Appellant’s efforts to challenge the after-the-fact classification of his article; steps that brought retaliatory wrath down upon him. The NNSA Manager’s January 23, 2014, dismissal of Appellant’s complaint does not touch upon any of the appropriate legal issues. Nor does the OHA decision to affirm the denial.²

² The OHA decision asserts that “[i]t is clear from the record that what the Appellant is asserting in his Complaint is his disagreement with the classification decision related [sic] his article.” Decision, at 5. This is an inference by OHA of a pro se Appellant’s attempts to articulate a legal theory. The same applies for the notion that Appellant could not allegedly demonstrate that abuse of authority existed. Neither inference should serve as the basis for dismissal of an Appellant’s claims for jurisdictional reasons at such an early stage of the process. See Robert Bacharach &

(continued ...)

In *Clarrisa V. Alvarez*, Case No. TBU-0084 (2009) it was held:

It is possible with further factual development that Ms. Alvarez might meet her evidentiary burden of showing that her allegations constituted protected disclosures under Part 708 as “a substantial violation of a law, rule or regulation.” These kinds of matters are the very type of issues that OHA is charged with investigating under 10 C.F.R. § 708.22 and considering through the hearing process described in 10 C.F.R. § 708.28.

Here Appellant similarly was not afforded the opportunity to pursue any factual development to meet his evidentiary burden. Therefore, the OHA decision to dismiss Appellant’s Complaint on jurisdictional grounds should respectfully be reversed and remanded for further proceedings.

Subsequent Retaliation By LANL To Terminate Doyle Requires Remand For Further Proceedings³

Shortly following the issuance of OHA’s June 24, 2014, Decision, on July 8, 2014, LANL suddenly terminated Appellant’s employment after 17 years. The timing alone renders this action in a suspicious light. Although Appellant was informed his termination was due to a reduction in force in light of alleged budget cuts, he was conveniently the only victim within his 50–person group. The statistical odds that the Appellant alone would be the one person terminated was 2%. It is Appellant’s position that this action was further retaliation for his continuing challenge to LANL’s conduct, to include pursuit of this very appellate process, in violation of Part 708. The very core of the DOE’s Contractor Employee Protection Program, which is to “protect those ‘whistleblowers’ from consequential reprisals by their employers”, has been undermined. Decision, at 1. Appellant has now suffered further significant personal and professional damages because of these reprisals and believes that clear and convincing evidence exists to demonstrate that LANL would not have taken the personnel action against him if not for his protected activity. *Kalil v. Dep’t of Agriculture*, 479 F.3d 821 (Fed. Cir. 2007).

Mr. Secretary, this retaliatory action cries out for further investigation prior to the dismissal of the Appellant’s appeal. Employees of DOE contractors who believe they have been retaliated against in violation of the Part 708 regulations are encouraged to file a whistleblower Complaint with the DOE and are normally entitled to an investigation by an investigator assigned by OHA, followed by a hearing by an OHA Administrative Judge, and an opportunity for review of the Administrative Judge’s Initial Agency Decision by the OHA Director. 10 C.F.R. §§ 708.21, 708.32.

(...continued)

Lyn Entzeroth, *Judicial Advocacy in Pro Se Litigation: A Return to Neutrality*, 42 IND. L. REV. 19, 22-26 (2009)(noting that courts created ways to ensure that meritorious pro se suits would not be dismissed simply because the litigants lacked legal knowledge and experience, one of which was liberal construction).

³ A separate Complaint is also being contemporaneously filed pursuant to Part 708 to challenge Appellant’s retaliatory termination.

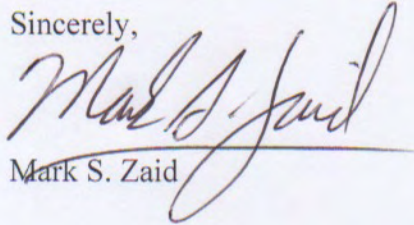
Appellant's Complaint was, however, prematurely dismissed based on jurisdictional grounds and he never received the opportunity he deserved, and which DOE's procedures envision, to have the substance of his allegations adjudicated.

Conclusion

Pursuant to your authority in Section 708.19(d), we respectfully request that you conclude extraordinary circumstances exist to direct the OHA to issue an order for further processing of Appellant's Complaint.

We appreciate your consideration of this appeal, and await your decision.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark S. Zaid", written over a horizontal line.

Mark S. Zaid

Attachments

cc: Philip I. Kruger, Esq. (via e-mail)
Senior Attorney, LANL
Michelle Rodriguez de Varela (via e-mail)
NNSA Whistleblower Program Manager
James E. Doyle (via e-mail)

EXHIBIT “A”

United States Department of Energy
Office of Hearings and Appeals

In the matter of James E. Doyle)
)
Filing Date: February 19, 2014) Case No.: WBU-14-0002
_____)

Issued: June 24, 2014

Decision and Order

Dr. James E. Doyle (the Appellant) appeals the dismissal of his complaint of retaliation (the Complaint) filed under 10 C.F.R. Part 708, the Department of Energy (DOE) Contractor Employee Protection Program.¹ DOE's Whistleblower Program Manager at the National Nuclear Security Administration (NNSA) dismissed Dr. Doyle's Complaint on January 23, 2014. As explained below, we will deny the Appeal.

I. Background

The DOE's Contractor Employee Protection Program was established to safeguard "public and employee health and safety; ensur[e] compliance with applicable laws, rules, and regulations; and prevent[] fraud, mismanagement, waste and abuse" at the DOE's government-owned, contractor operated facilities. 57 Fed. Reg. 7533 (Mar. 3, 1992). Its primary purposes are to encourage contractor employees to disclose information which they believe exhibits unsafe, illegal, fraudulent, or wasteful practices, and to protect those "whistleblowers" from consequential reprisals by their employers. The regulations governing the DOE's Contractor Employee Protection Program are set forth at Title 10 Part 708 of the Code of Federal Regulations.

Dr. Doyle has been employed with the Los Alamos National Security, LLC (LANS), at the Los Alamos National Laboratory (LANL) since 1997. He alleges that he was retaliated against for an article he published in an international journal and his subsequent post-publication challenge of a classification decision relating to the article. According to Dr. Doyle, the information in his article was reviewed prior to publication and authorized for unlimited public release by Ms. Diana Hollis in the LANL classification office on January 29, 2013. Appeal Letter at 1. Subsequently, after publication of Dr. Doyle's article on February 6, 2013, Mr. Dan Gerth,

¹ The OHA reviews jurisdictional appeals under Part 708 based upon the pleadings and other information submitted by the Appellant. See 10 C.F.R. § 708.18(b) (appeal must include a copy of the notice of dismissal, and state the reasons why the Appellant thinks the dismissal was erroneous).

Chief Classification Officer, determined that a portion of the information disclosed in the article was classified. *Id.* Dr. Doyle asserts that Mr. Gerth misapplied classification guidance and policy with respect to his article. *Id.* He states that a meeting to resolve disagreement over the classification of the article took place on February 7, 2013. According to Dr. Doyle, at the meeting, four derivative classifiers, including Dr. Doyle, judged the article to be unclassified. However, Mr. Gerth's determination became the official LANL determination regarding the classification of Dr. Doyle's article. *Id.* The record indicates that Mr. Gerth's decision was reviewed by classification officials at DOE's Office of Classification and by the Department of State (DOS), and that both DOE and DOS agreed that the information at issue was classified. LANL Response at 1.

Dr. Doyle asserts that he was retaliated against because his article was "found objectionable by LANS . . . and [the] classification policy was misused to classify it when other publications containing the same or similar information were authorized for unlimited public release and no retaliation was taken against their authors." Complaint at 1. He further asserts that he was retaliated against when his programmatic travel was cancelled without justification, he was placed on investigatory leave without pay for one day after filing a complaint with the LANL Employee Concerns Program (ECP), his Q Clearance was suspended for 30 days and his SCI Clearance was revoked. *Id.*

On November 6, 2013, the Appellant filed a complaint of retaliation under Part 708 with Michelle Rodriguez de Varela, the NNSA Whistleblower Program Manager (Manager). The Appellant asserted that he had been subject to retaliation for challenging a classification decision on his publication in an international journal. In his Part 708 Complaint, the Appellant described the retaliation he experienced and requested the following remedies:

- (1) A determination by DOE that the document was classified in error and that the "no comment" policy should apply as advocated by GEN-16 guidance, identical to the manner in which the document I raised as an example was handled.
- (2) Acknowledgement that LANL did not follow proper procedure.
- (3) A letter to DOE personnel security stating that my initial reaction to the SIT investigation was understandable given the unique circumstances and that LANL has no concerns regarding my fitness for a clearance.
- (4) Restoration of pay for one day to cover the day I was placed on leave without pay.
- (5) Assurance of no further retaliation or negative personnel actions against me related to this matter.
- (6) Reimbursement of all personal legal fees that I paid to attorneys related to this matter.
- (7) Restoration of my SCI clearance.

November 6, 2013, Part 708 Complaint at 4.

In a letter dated January 23, 2014 (Dismissal Letter), the Manager dismissed the Appellant's Part 708 Complaint. In the Dismissal Letter, the Manager found that pursuant to Section 708.4(d), "the complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation." In

addition, the Manager dismissed the Appellant's complaint under Section 708.17(c)(4) for lack of merit on its face. The Manager refers to the Appellant's assertion that there was a "possible" violation of security policy, procedure and classification guidelines, including a potential reportable security infraction, and asserts that a "possible" violation does not describe a law, rule or regulation that was substantially violated. Dismissal Letter at 1. The Manager further asserted the following: "A protected disclosure comes first then the alleged retaliation. They are two separate actions. One follows the other. Therefore, 'abuse of authority' cannot be used as a protected disclosure and the same abuse of authority as the retaliation." *Id.*

In his Appeal, the Appellant contends that the Complaint was erroneously dismissed. He specifically contends that Section 708.4(d) is not relevant to his case and further that the Complaint has been misinterpreted with respect to 708.17(c)(4). Appeal at 1.

II. Analysis

Under the DOE's regulations, an employee of a contractor may file a whistleblower complaint against their employer alleging that he has been retaliated against for:

(a) Disclosing to a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site, your employer, or any higher tier contractor, information that you reasonably believe reveals-- (1) A substantial violation of a law, rule, or regulation; (2) A substantial and specific danger to employees or to public health or safety; or (3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority.

10 C.F.R. § 708.5. The whistleblower complaint must contain:

(a) A statement specifically describing (1) the alleged retaliation taken against you and (2) the disclosure, participation, or refusal that you believe gave rise to the retaliation; (b) A statement that you are not currently pursuing a remedy under State or other applicable law, as described in § 708.15 of this subpart; (c) A statement that all of the facts that you have included in your complaint are true and correct to the best of your knowledge and belief; and (d) An affirmation, as described in § 708.13 of this subpart, that you have exhausted (completed) all applicable grievance or arbitration procedures.

10 C.F.R. § 708.12.

The DOE may dismiss a complaint for lack of jurisdiction or good cause if:

(1) Your complaint is untimely; or (2) The facts, as alleged in your complaint, do not present issues for which relief can be granted under this part; or (3) You filed a complaint under State or other applicable law with respect to the same facts as alleged in a complaint under this part; or (4) Your complaint is frivolous or without merit on its face; or (5) The issues presented in your complaint have been

rendered moot by subsequent events or substantially resolved; or (6) Your employer has made a formal offer to provide the remedy that you request in your complaint or a remedy that DOE considers to be equivalent to what could be provided as a remedy under this part.

10 C.F.R. § 708.17(c). In reviewing cases such as this, we consider all materials in the light most favorable to the party opposing the dismissal. *See Billie Joe Baptist*, OHA Case No. TBZ-0080, at 5 n. 13 (May 7, 2009) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970)).²

In his Complaint, the Appellant alleges that he engaged in a protected activity when he publicized information in an international journal and challenged a subsequent classification decision. He also alleges that he made a protected disclosure when he communicated “a possible violation of security policy, procedure and classification guideline, including [a] potential reportable security infraction.” The Appellant asserts that his article was reviewed prior to publication and authorized for unlimited public release by a LANS classification officer on January 29, 2013. However, on February 6, 2013, the Chief Classification Officer determined that a portion of the information disclosed in the article was classified. The Chief Classification Officer’s decision was subsequently reviewed by classification officials at the DOE’s Office of Classification and by the Department of State, both of which agreed that the information was classified. The Appellant unsuccessfully appealed the classification determination. Appeal at 1.

A. Whether Section 708.4(d) Applies to the Appellant’s Complaint

The Manager first determined that the present Complaint must be dismissed under Section 708.4(d) of the Part 708 regulations. We do not agree. Section 708.4(d) provides that a complaint is not covered by Part 708 if “the complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation.” 10 C.F.R. § 708.4(d).

As stated above, Section 708.4(d) applies to the dismissal of complaints based on the same facts in which an employee improperly discloses restrictive data, national security information or classified information “*in the course of a covered disclosure or participation.*” In this case, however, the Appellant did not disclose restrictive data, national security information or classified information to “a DOE official, a member of Congress, any other government official who has responsibility for the oversight of the conduct of operations at a DOE site . . .” as the course of a covered disclosure or participation is defined in Section 708.5, but rather the Appellant disclosed information, later determined to be classified, in an article that he published in an international journal. Accordingly, we find that Section 708.4(d) does not apply to Appellant’s Complaint.

² Decisions issued by the DOE Office of Hearings and Appeals (OHA) are available on the OHA website at: <http://energy.gov/oha>.

B. Whether the Manager Properly Dismissed Appellant's Complaint Pursuant to Section 708.17(c)(4)

The Manager concluded that the Appellant's Complaint was dismissed for lack of merit on its face. Dismissal Letter at 1. She concluded that the Appellant's reference to a "possible" violation does not describe a law, rule or regulation that was substantially violated. *Id.* The Appellant asserts that his Complaint was misinterpreted by the Manager.

After carefully reviewing the subject Complaint, we agree with the Manager's conclusion that the Complaint lacks merit on its face and should therefore be dismissed. In his Complaint, the Appellant asserts that his publication in an international journal was "improperly classified by the LANL [Classification Officer] after it had been reviewed and released for publication by LANL classification." Complaint at 1. The Appellant further asserts, in his Appeal letter, that LANL misapplied classification guidance or policy. He specifically states that, "specific misuse of guidance was to use DOE Classification Bulletin WPN-136 as the most relevant guidance in making a classification determination on my published article rather than following DOE Classification Bulletin GEN-16 Revision 'No Comment' Policy for Classified Information in the Public Domain," and asserts that disclosure of this misapplication was made to a number of LANL organizations and managers. Appeal Letter at 1. It is clear from the record that what the Appellant is asserting in his Complaint is his disagreement with the classification decision related his article. At most, he asserted his opinion that the LANL Chief Classification Officer misapplied classification guidance. In our view, a debatable assertion that an official misapplied classification guidance does not rise to the level of disclosing a "substantial violation" of a law, rule or regulation. Accordingly, we conclude that the Appellant has not met his evidentiary burden of showing that he disclosed information which he reasonably believes revealed a substantial violation of a law, rule or regulation. For this reason, we will uphold the dismissal.³

III. Conclusion

As indicated by the foregoing, we find that NNSA/Albuquerque correctly dismissed the complaint filed by Dr. James E. Doyle. As clearly proscribed by the jurisdictional provisions of Part 708, the Complaint cannot be accepted for further consideration at this time.

³ Although not explicit, the Appellant also appears to assert that Mr. Gerth "abused his authority" regarding his classification decision of the Appellant's article. Complaint at 1. The OHA has defined an abuse of authority as "an arbitrary or capricious exercise of power by an official or employee that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *See Thomas L. Townsend*, OHA Case No. TBU-0082 (2008). Based on this definition, we conclude that the Appellant has not sufficiently alleged a claim of abuse of authority. He has not demonstrated that, as Chief of Classification, Mr. Gerth made an "arbitrary or capricious exercise of power." Rather, it was inherently part of Mr. Gerth's job responsibilities as a Chief Classification Officer to make classification decisions. In addition, the Appellant has not demonstrated that his rights were adversely affected by Mr. Gerth's actions. As noted above, the Appellant appealed Mr. Gerth's determination and the classification was upheld by the DOE's Office of Classification and by classification officials at the Department of State.

It Is Therefore Ordered That:

- (1) The Appeal filed by Dr. James E. Doyle (Case No. WBU-14-0002) is hereby denied.
- (2) This Appeal Decision shall become a Final Agency Decision unless a party files a petition for Secretarial review with the Office of Hearings and Appeals within 30 days after receiving this decision. 10 C.F.R. § 708.18(d).

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 24, 2014

EXHIBIT “B”

ADVERTISEMENT

Did Los Alamos fire a researcher for questioning U.S. nuclear doctrine?

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ANDREW MILLIGAN / AP

A ban-the-bomb protest in Scotland, 2007. A Los Alamos researcher says he was fired for calling for an end to nuclear weapons.

August 15, 2014, 2:41 p.m.

Los Alamos may be a government laboratory with lots of classified secrets, but it also guaran-

tees its researchers intellectual freedom on a par with that enjoyed by university professors. Political scientist James Doyle says that freedom was violated when he was fired last month after questioning U.S. nuclear weapons doctrine in a published article.

The New Mexico lab maintains that Doyle, a 17-year veteran of Los Alamos, wasn't fired, but laid off "due to the lack of available or anticipated funding in his area of expertise." (Virtually all the lab's funding comes from congressional appropriations.) According to an email from lab spokesman Kevin Roark, "the separation was unrelated to his publications or professional writings."

But the lab has also asserted that Doyle's article contained classified information he wasn't authorized to divulge. It has classified the article itself, so its voluminous paperwork on the case doesn't even refer to the piece by name, and Doyle and his attorney, Mark Zaid, can't discuss it with one another. (But you can read it [here](#), on the website of Survival: Global Politics and Strategy, where it was published originally.)

Doyle's case was laid out in [a lengthy piece](#) by Douglas Birch of the Center for Public Integrity. [A follow-up](#) appears in the current issue of Science. Zaid says he'll be appealing Doyle's termination to the secretary of Energy and bringing it before other Washington officials who investigate allegations of retaliations against whistleblowers. So you can expect to hear more about it.

We've asked for a comment from the University of California, which is a major partner in the consortium that manages Los Alamos for the government and has [three representatives on its board](#), including the board chairman, UC Regent Norman J. Pattiz, but haven't received an answer.

Zaid, who says he represents other government whistleblowers, doesn't buy the lab's explanation. "It's very easy for a government agency to independently justify any personnel action against someone," he told us. But he questions how "someone with Doyle's expertise, long-standing history with the lab, and stellar personal evaluations can suddenly be [laid off] as 'non-essential.'"

The 8,100-word article at the center of the case appeared in Survival in February 2013 under the title, "Why Eliminate Nuclear Weapons?" Written on Doyle's own time and presented explicitly as the author's own views, it's a sober and closely argued analysis of the postwar doctrine of "deterrence."

Doyle, an expert in nuclear politics, challenges the received wisdom that the theory of mutually assured destruction, and world leaders' awareness of the horrific consequences of nuclear war, are responsible for the absence of great-power warfare for more than a half-century--in other words, that nuclear weapons are a force for stability. His conclusion is that the risks of nuclear stockpiles far outweigh their stabilizing influence, which in any event is a myth.

On the surface, Doyle's argument that "nuclear weapons should be eliminated" parallels the

[Obama administration's stated goal](#) of "a world without nuclear weapons." But it's at odds with the defining mission of Los Alamos, which is devoted to weapons development. Los Alamos has been sensitive about safeguarding that mission since the end of World War II. And that, Doyle maintains, accounts for its harsh reaction to his article.

Doyle says he bent over backwards to have the piece vetted for classified information before publication. (A mandate to protect national security is a specific limitation on intellectual freedom at Los Alamos, lab regulations say.) According to [an internal Los Alamos investigation](#) cited by the Center for Public Integrity, several classification experts at the lab examined Doyle's paper and concluded nothing in it was a problem.

After its publication, however, their rulings were overturned by higher-ups, possibly acting after an inquiry came down from an unidentified congressional staff member. Doyle was briefly suspended without pay, his security clearances were lifted, his earlier articles were scrutinized and his home computer was searched. Finally, on July 8, he was laid off.

Security experts queried by Science are appalled: "It sends a chilling message not just to employees, but also those beyond the lab, that their ability to work on topics subject to classification could be restricted if they become too critical of policies that the lab holds dear," the journal was told by Frank von Hippel, a physicist at Princeton.

Los Alamos hasn't indicated what material in the article was supposedly secret, and Zaid says he doesn't know. The technicalities of government secrecy notwithstanding, it's impossible to pinpoint anything in the piece that might qualify--it's based almost entirely on public sources, reasoned analysis, and the author's opinion. The Center for Public Integrity observes that here or there Doyle may refer to facts that haven't been officially acknowledged by the U.S. government, such as that Israel is a nuclear power, but that's hardly tantamount to divulging a U.S. government secret.

The internal investigation did find that "classification guidance" for researchers at Los Alamos is a mess. The rules are hopelessly "vague and confusing" and lack "consistency and transparency," the investigation found. In this case, four officials ruled that Doyle's article was clean, and two later decided that it contained classified materials. "How many...opinions is a LANL staff member expected to obtain before he/she believes the result?" asked the investigator, David Clark.

Although Clark found "no evidence of a violation of intellectual freedom," plainly the confusion and inconsistencies can only lead to suspicions that classification decisions are taken for political purposes or, as in this case, for retaliation.

Clark's findings and other elements of the affair point to several obvious remedies. Doyle should be reinstated. Los Alamos should codify its classification system so its researchers have clear guidance and the murky rules can't be used to punish and retaliate.

And perhaps most important, Doyle's analysis should be heeded. The U.S. government's nu-

clear doctrine must be updated to the 21st century. Mutually assured deterrence doesn't work against the nonstate groups that pose the greatest threat to national security. More than ever, a world awash with nuclear weapons is in peril.

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LANL fires anti-nuke article author

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By [T.S. Last / Journal North](#)
 PUBLISHED: Friday, August 1, 2014 at 12:05 am

This story has been changed since its original publication to correct the first name of James E. Doyle

A long-time employee at Los Alamos National Laboratory was fired after portions of an article he wrote for a British nonprofit journal were later determined to be classified material, even after national security officials had reviewed the article and deemed it unclassified, according to a news report published Thursday by the Center for Public Integrity.

James E. Doyle, 55, a nuclear safeguards and security specialist at LANL's nonproliferation division, wrote an article titled "Why Eliminate Nuclear Weapons?" that was a critique of nuclear proliferation policies since the Cold War.

It was published in February 2013 in "Survival," which is published by the London-based International Institute of Strategic Studies.

The article states that "the world must reject the myths and expose the risks of the ideology of nuclear deterrence if it is to meet the challenges of the Twenty-first Century." Los Alamos is the birthplace of the atomic bomb and one of two labs in the United States where the design of nuclear weapons is conducted.



DOYLE: Says he was victim of campaign of retribution

The Center for Public Integrity, or CPI, is a nonprofit investigative journalism organization based in Washington, D.C.

LANL would not comment on the matter, sending the **Journal** a short statement by email that read "We do not publicly discuss the specifics of personnel matters. Likewise, it would be inappropriate to discuss specifics surrounding security classification." Calls to the National Nuclear Security Administration were not returned Thursday.

Doyle also did not return messages left on his Santa Fe home and his cell phone.

The CPI article by Douglas Birch states that Doyle, officially a contractor who had worked at LANL for 17 years, first had his pay docked, lost his security clearance and was ultimately fired July 8. That was the day after CPI made inquires with the National Nuclear Security Administration about the controversial article.

Doyle was told he was being let go as part of a layoff program.

"But he says he believes the sudden firing was instead part of a Washington-inspired campaign of retribution for his refusal to stay on message and support the lab's central mission, namely its continued development and production of nuclear arms, at a cost of almost \$2 billion per year there," the CPI article states.

Survival's editor, Dana Allin, is quoted as saying Doyle's article was a "think piece."

"This was driven by a keen understanding of concerns about nuclear deterrence. It's the kind of thing we publish all the time."

Jay Coghlan, director of the watchdog group Nuclear Watch New Mexico, said Doyle's article was reposted on its website about a year ago and remains on the Nuclear Watch website.

He called Doyle's dismissal "a clear political firing and abuse of classification procedures" in a statement issued Thursday.

He demanded that federal officials reprimand the lab, reinstate Doyle, fire those responsible for his dismissal and cut award fees for Los Alamos National Security, the contractor that runs the lab, because of "chronically poor performance and leadership."

Coghlan says that Doyle was let go because LANL didn't like his message and sought to kill it through retroactively deciding his article contained classified information that is not supposed be released

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publicly.

“Any quick reading shows it had no information whatsoever about nuclear weapons designs and materials that would merit classification,” it said. “The study is instead a 28-page narrative argument by a nationally recognized nonproliferation expert for eliminating the (nuclear weapons) stockpile, while citing the aspirations of both Presidents Reagan and Obama to abolish nuclear weapons.”

More details are revealed in a decision by the U.S. Department of Energy’s Office of Hearings and Appeals, which in June rejected a retaliation claim filed by Doyle.

It says that Doyle claimed the information he used in his article had been reviewed by LANL’s classification office prior to its publication and had been authorized for “unlimited public release.”

But after the article was published by “Survival,” Dan Gerth, the chief classification officer, determined that some of the information disclosed was classified.

A meeting was then held to resolve the disagreement and three other derivative classifiers sided with Doyle. But Gerth’s opinion was the one that mattered and his became LANL’s official determination.

Gerth’s decision was later upheld by classification officials at DOE and the Department of State.

The CIP report suggests that the hammer may have come down on Doyle from Washington.

Shortly after his article was published, his supervisor told him that senior managers wanted to see copies of all his publications.

When he asked why, he was told that someone at the House Armed Services Committee wanted to see them, but didn’t tell him who or why.

Later that day, he was visited by two members of the Security Inquiries Team, who informed him that the article published in Survival contained classified information. His work and home computers were also inspected by computer experts on the security team and purged drafts of the CPI report.

The CPI article concludes with a quote from Doyle saying that now that he has left the lab, his motivation is improving his country’s national security policy.

“And there’s nothing conflicting in advocating the elimination of nuclear weapons and maintaining the security of the United States,” he said.

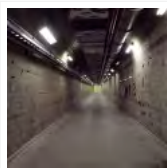
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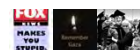
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CENTER FOR ARMS CONTROL AND NON-PROLIFERATION

James Doyle (*right*) in 2012 at a nuclear policy conference at the University of California, San Diego, sponsored by the Center for Arms Control and Non-Proliferation. With Doyle are Miles Pomper (*left*) and Duyeon Kim.

Updated: Firing of Los Alamos political scientist spurs criticism

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By [Jeffrey Mervis \(/author/jeffrey-mervis/\)](/author/jeffrey-mervis/) | 15 August 2014 11:30 am | [9 Comments \(/people-events/2014/08/updated-firing-los-alamos-political-scientist-spurs-criticism#disqus_thread\)](/people-events/2014/08/updated-firing-los-alamos-political-scientist-spurs-criticism#disqus_thread)

Political scientist James Doyle had spent almost 2 decades working at the Los Alamos National Laboratory (LANL) on nonproliferation and nuclear security

issues when he decided to write a scholarly article questioning the dogma of nuclear deterrence. Suspecting that his bosses at the Department of Energy (DOE) weapons lab in New Mexico might not agree with his analysis, Doyle researched and wrote the article in his free time and included a disclaimer saying the views were his own. And just to be safe, he got a lab colleague steeped in classification reviews to vet the article before he submitted it to a journal.

The 27-page article—“Why Eliminate Nuclear Weapons?”—was published in the February-March 2013 issue of *Survival: Global Politics and Strategy*. And that’s when Doyle’s professional life was suddenly turned upside down.

Within days of publication, congressional staff asked lab officials whether the article contained classified information. A week later, the head of the lab’s classification office decided that it did—a decision later backed by DOE. Doyle soon lost his top-level security clearance, and he says he became persona non grata among his co-workers after accusing lab officials of retaliation and impinging on his intellectual freedom. Those complaints were dismissed, and last week, after 17 years at the weapons lab, Doyle was laid off—the only victim within his 50-person group of what lab officials told him was a reduction in force due to budget cuts.

The reasons behind Doyle’s termination, first reported by [the Center for Public Integrity \(http://www.publicintegrity.org/2014/07/31/15161/nuclear-weapons-lab-employee-fired-after-publishing-scathing-critique-arms-race\)](http://www.publicintegrity.org/2014/07/31/15161/nuclear-weapons-lab-employee-fired-after-publishing-scathing-critique-arms-race), an investigative news service based in Washington, D.C., may never be clear. The lab’s official statement says “we do not publicly discuss the specifics of personnel matters. Likewise, it would be inappropriate to discuss specifics surrounding security classification.” A spokesperson for the Armed Services Committee of the U.S. House of Representatives says a staffer there only inquired about classification issues and did not raise objections to the article’s policy positions.

Many outside arms control specialists are skeptical and believe Doyle’s downfall is the result of his airing of views that are unpopular among those opposing disarmament, including some of the panel’s Republican leaders and staff. Doyle himself believes the lab fired him because it decided he “was problematic and someone who had committed some type of misconduct.”

Amid the murky circumstances, many nuclear security experts are sharply criticizing the lab’s actions. “It sends a chilling message not just to employees, but also those beyond the lab, that their ability to work on topics subject to

classification could be restricted if they become too critical of policies that the lab holds dear,” says Frank von Hippel, a physicist at Princeton University. “It’s a very disturbing situation,” adds Daryl Kimball, executive director of the Arms Control Association in Washington, D.C. “DOE leadership needs to reverse this decision.”

An in-house critic

Doyle’s article opens with President Barack Obama’s 2009 promise that the United States will “seek the peace and security of a world without nuclear weapons.” It goes on to argue that nuclear deterrence is not effective and that nuclear weapons should be eliminated for a host of political, military, humanitarian, and environmental reasons.

Doyle’s arguments are squarely in the mainstream of nuclear security debates, says George Perkovich, an arms control specialist at the Carnegie Endowment for International Peace in Washington, D.C. “The only thing unusual about [the article] was that it came from somebody at a weapons lab,” which typically touts the merits of nuclear deterrence, he says. Nor does it represent a change of heart for Doyle, who until his dismissal was one of the few political scientists at a 10,000-person laboratory dedicated to maintaining the U.S. nuclear stockpile. “I probably decided that nuclear weapons didn’t make sense by the age of 21,” says Doyle, now 55.

Despite his personal beliefs, Doyle has spent most of his career working on nuclear issues. After earning a master’s degree in public and international affairs from the University of Pittsburgh, where he grew up, he came to Washington, D.C., in 1987 to take a job with a defense contractor. In the mid-1990s he helped draft a U.S. government plan to track and safeguard nuclear material in the former Soviet Union. Upon completing his Ph.D. in 1997 at the University of Virginia, he was invited to Los Alamos as a postdoc by people he had met who were charged with helping implement that plan. Within a year he was hired to work on nonproliferation issues.

“I thought working at Los Alamos full-time would be really exciting,” he explains. “I was also ready to move my family out of the relative bustle of the D.C. area and to a quieter place.”

Over the past decade, Doyle has published numerous papers, opinion pieces,

and a textbook, as well as spoken at conferences, without causing a stir. His *Survival* article, however, caught the eye of a staffer on the House Armed Services Committee. The staffer was concerned that it contained classified information and asked lab officials if it had been cleared for publication, according to a committee spokesperson.

Soon after that inquiry, lab managers asked Doyle for copies of his other articles; he gave them about 20 publications. Security officials told him that the article contained classified material and later searched his office and home computers for copies. Doyle says he thought he had followed the proper rules for prior review of articles not intended as official lab publications. “I was confident I knew where the lines were drawn.”

Even so, Doyle, who describes himself as “cautious,” took an extra step. Before submitting the article, he also had received approval from a classification analyst, Diana Hollis, who he called “the subject matter expert for national security information, who had done a number of similar reviews.” Hollis is one of dozens of lab employees designated to help out with classification reviews—a job that Doyle himself has performed many times.

But Daniel Gerth, the lab’s chief classification officer, ultimately decided to classify the article, despite disagreement among lower ranking staff about whether it contained classified information. In a *Catch-22*, neither lab officials nor Doyle will discuss the paper, which is still on *Survival*’s website, because it is now classified. Reviews by lab officials backed the classification decision. But one, by David Clark of the lab’s research integrity office, concluded that the lab’s classification rules were “vague and confusing,” that implementation lacked “consistency and transparency,” and confirmed that reviewing officials had, in good faith, disagreed on whether Doyle disclosed secrets.

Classification conundrum

One problem is that the lab has traditionally followed a different review process for articles like Doyle’s than for articles carrying the lab’s imprimatur. For articles by those not claiming to represent the lab, approval from “derivative classifiers” like Hollis was generally considered sufficient to make sure that the author wasn’t spilling any nuclear beans.

In contrast, drafts of official lab publications typically trigger a two-part review. In addition to looking for secrets, officials may also weigh the overall content to determine whether it is consistent with lab policy positions. As Doyle explains, “in theory, management would have the option of saying, ‘There’s nothing classified in here, but we think your article needs to be more balanced.’ ” That process could take much longer, and, to Doyle’s mind, was likely to be more onerous: “I had reason to believe it would have been difficult,” he says.

That bifurcated system may have contributed to Doyle’s confusion, Clark said. “How many [derivative classifier] opinions is a LANL staff member expected to obtain before he/she believes the result?” Clark asked rhetorically in his September 2013 report.

The solution, Clark says, is a change in existing policy to make clear that employees are, in effect, always on the clock when writing for outside publications. “[W]hen an author is clearly identified as an employee of LANL, then the individual is considered a representative of the US Government,” Clark writes. The type of disclaimer used by Doyle and countless others is meaningless, Clark argues, because the public is not able to make the necessary distinction. Quoting Gerth without naming him, Clark writes approvingly about his opinion that “[w]hile a paper may not express a LANL or US Government opinion, if the author is clearly identified as an employee of LANL, it is inferred to express the knowledge gained as a cleared Government employee.”

With respect to classification, outside experts—including several who have handled similar classified material—say they see nothing problematic in Doyle’s paper. But they speculate that two sections might have caught the attention of classification officers. One lists Israel as possessing nuclear weapons, which the United States has never officially confirmed. The other discusses documents related to a Cold War misunderstanding that some historians believe could have led to nuclear war.

Siegfried Hecker, who created a Center for National Security Studies at Los Alamos that incorporated the work of nontechnical experts like Doyle after becoming lab director in 1986, thinks that lab officials overreacted. “Is it typical to fire someone who has made a classification mistake?” Hecker says. “The answer is no.”

Hecker stepped down as director in 1997 and left the lab in 2005. But he and others worry that Los Alamos may be turning its back on contributions from

political scientists like Doyle, who can bring a different perspective to its work. “I think his writing about these issues is beneficial to both the laboratory and the country,” says Hecker, a professor of engineering and management science at Stanford University in Palo Alto, California. “The question is whether Los Alamos, in today’s world, still values their input.”

Others believe Doyle got caught in the increasingly intense political crossfire over the future of the U.S. nuclear stockpile and the role of the DOE weapons laboratories. Massive cost overruns, technical glitches, and management missteps have plagued the nuclear weapons programs in recent years and delayed construction of expensive facilities at Los Alamos and elsewhere. An article questioning the need for nuclear weapons, say some weapons experts, could have been seen as giving those critics more ammunition. “He’s a pawn in this fight,” Perkovich believes.

Doyle’s boss denies that he was fired as a result of the article. “I would like to assure you that this is not the case,” wrote division leader Michael Baker on 7 August, Doyle’s last day, in an e-mail to lab staff obtained by *Science*. Baker urges employees to continue publishing “thoughtful, articulate and technically sound work in the public domain, to the extent we can do so within laboratory policy.”

But Doyle hears a different take-home message in Baker’s memo, which does not mention him by name. When congressional staff complained, Doyle argues, “What the lab could have said to the committee was, ‘We may not agree with Dr. Doyle’s article, but we stand by the right of our employees to express their opinion.’ That was certainly an option. But they chose not to take it. What the lab is really saying is that, if you work for the federal government or for a contractor, you might have restrictions on freedom of expression that haven’t been spelled out to you.”

***Update, 15 August, 11:27 a.m.:**

After this article appeared, Los Alamos officials sent *Science*Insider the following statement:

"James Doyle's separation from Los Alamos National Laboratory was a layoff due to the lack of available or anticipated funding in his area of expertise. The separation was unrelated to his publications or professional writings.

"Laboratory policies fully support intellectual freedom and the publication of professional writing and scientific findings related to the work of the Laboratory, with certain restrictions for security.

"Over the past 18 months, the laboratory has had several small layoffs due to unavailable funding."

With reporting by David Malakoff.

**For the print version, [see this week's issue of](http://www.sciencemag.org/content/345/6198/719) (<http://www.sciencemag.org/content/345/6198/719>) [Science](http://www.sciencemag.org/content/345/6198/719) (<http://www.sciencemag.org/content/345/6198/719>).*

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Los Alamos, Freedom of Speech, and Nuclear Disaster



August 4, 2014

Lisbeth Gronlund, physicist & co-director, Global Security

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As every high school student learns, the first amendment to the U.S. constitution guarantees the right to freedom of speech. That’s why government employees have the right to express their opinions as long as they make clear that their opinions do not represent those of their employer.

Apparently some folks at Los Alamos National Laboratory—one of the two labs that design and help maintain U.S. nuclear weapons—missed that day in class.

Last year, Jim Doyle, then a nuclear security and non-proliferation specialist who had been at the Lab for 17 years, published an article in the journal *Survival* titled [Why Eliminate Nuclear Weapons?](#) Doyle included the requisite disclaimer: “The views presented in this article are the author’s own and do not represent those of the Los Alamos National Laboratory or the US government.” So far, so good.

But soon Los Alamos officials claimed the article contained classified information. Then they docked Doyle’s pay, took away his security clearance, and ultimately fired him. Not subtle.

The shameful tale of Los Alamos and Jim Doyle is thoroughly detailed in an [article](#) by Douglas Birch, an investigative journalist who works at the [Center for Public Integrity](#). Among other things, Birch interviews several experts with security clearances who say that Doyle’s article contains nothing classified.



Source: National Archives

What’s at Stake Here?

So what does Doyle’s article say that so upset Los Alamos officials? His call for eliminating nuclear weapons is consistent with long-standing official U.S. policy: as a nuclear weapon state signatory to the Nuclear Non-Proliferation Treaty, the United States is obligated to work for nuclear disarmament. His call is also consistent with President Obama’s April 2009 [speech](#) in Prague, where he stated that the United States would “seek the peace and security of a world without nuclear weapons.”

But Doyle’s article is more than a call for the eventual elimination of nuclear weapons—it is a critique of nuclear deterrence itself. He writes: “The international community must reject the myths and expose the risks of the ideology of nuclear deterrence if it is to successfully meet the mutual global challenges of the twenty-first century.”

He writes that the price of deterrence outweighs its value, and that the price “is the constant risk that a complex, tightly coupled and largely automated system subject to normal, systemic and human error will, as science tells us, inevitably fail, and fail catastrophically, with unprecedented and unjustified loss of civilian life. Mistakes with conventional weapons can have limited physical impact. Small mistakes are not possible with nuclear weapons.”

Doyle is right. All systems are fallible, and when it comes to nuclear weapons a system failure could be catastrophic. For example, as I have written about [previously](#), the United States keeps almost all its 450 land-based nuclear missiles on high alert ready to be launched within a few minutes. This policy increases the risk of an accidental or unauthorized launch or one in response to a false warning of an incoming attack. These risks outweigh any potential benefits, and President Obama should remove these missiles from hair-trigger alert.

An informed public debate about U.S. nuclear weapons policies is essential. That Los Alamos Lab officials went out of their way to stifle such debate is especially disturbing. Ironically, their actions have now brought Doyle’s article to the attention of a much larger group of people.

Frontpage photo courtesy of [Paul Shambroom](#).

Posted in: [Nuclear Weapons](#) Tags: [hair-trigger alert](#), [nuclear weapons](#)

About the author: Lisbeth Gronlund is a physicist and co-director of the Global Security Program. She is an expert on technical issues related to U.S. nuclear weapons policy, and new nuclear weapons, space weapons, and ballistic missile defenses. [See Lisbeth’s full bio.](#)

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LANL worker says firing tied to anti-nuke article

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Posted: Thursday, July 31, 2014 10:00 pm | Updated: 11:48 am, Fri Aug 1, 2014.

By Patrick Malone
The New Mexican | 6 comments

Santa Fe resident James Doyle says he's been burned by political retaliation for bucking the pro-nuclear weapons culture at Los Alamos National Laboratory.

After 17 years of employment, Doyle was fired by the lab July 8. His story was first reported Thursday by the nonprofit Center for Public Integrity, an online investigative reporting organization that had questioned the National Nuclear Security Administration about the lab's decision to classify an article Doyle had written and to strip some of his security clearances. A day later, Doyle was fired.

Doyle's troubles began in February 2013, one month after the article he wrote, defending President Barack Obama's nuclear nonproliferation stance, appeared in an online international journal, *Survival: Global Politics and Strategy*. Doyle says lab officials had cleared the article for publication.

"The timing of the lab's actions raised my suspicions that I was being treated unfairly from the beginning," Doyle, 55, told *The New Mexican* on Thursday. "Starting with the decision to classify the article after I had it cleared by the lab classification office and after it was published, it felt like I was being punished."

A LANL spokesman declined to comment about Doyle, saying the lab does not publicly discuss personnel matters or security clearance circumstances.

The lab had informed Doyle he was let go as part of a series of layoffs, but he believes the termination is tied to his stance against nuclear weapons.

"The laboratory is going to regret this — mark my words — making a political firing," said Jay Coghlan, executive director of the watchdog organization Nuclear Watch New Mexico.

In nuclear watchdog circles, Doyle is revered for his work verifying the drawdown in nuclear stockpiles by the United States and Russia, Coghlan said.



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“Obama, and others who seek a world without nuclear weapons, are right,” Doyle, a contract employee of the lab, wrote in the article, titled “Why Eliminate Nuclear Weapons?”

“Eliminating nuclear weapons is profoundly in the national-security interest of the United States and its allies and friends,” the article says.

The article projects a clear tone of opposition to nuclear weapons, citing near brushes with cataclysm during the Cuban Missile Crisis, tense standoffs during the Cold War and aggressive political postures from weapons-bearing nations in the aftermath of the United States’ use of the atomic bomb on Japan during World War II.

“Many citizens, scientists and laymen alike, view nuclear-weapons abolition as an essential milestone in the development of human civilisation, a moral, ideological and practical campaign that could catalyse the transformation of international relations and improve the outlook for civilisation at a critical time,” Doyle wrote in the article.

With duties that included fostering a global reduction in nuclear weapons at a lab created to develop them, Doyle straddled two disparate worlds.

“Developing technology and techniques to prevent the spread of nuclear weapons and nuclear materials is one of the core missions of the lab. It is taken very seriously, and valuable contributions to national and global security are made by Los Alamos employees,” Doyle told *The New Mexican*. “But there is something inherently contradictory about an organization that affirms the benefits of nuclear weapons for the United States and its allies but wants to deny them to everyone else. This is a U.S. government policy issue, but the lab cannot pretend that this contradiction does not exist.”

Doyle’s article noted that the views reflected in it “are the author’s own and do not represent those of the Los Alamos National Laboratory,” so he expected no trouble to come from it, according to a whistleblower complaint he filed with the U.S. Department of Energy. After all, a representative of the lab’s security division had screened the article in late January 2013 and deemed it unclassified, fit for public release. Doyle had written the controversial piece on his own time and rendered it to lab monitors for clearance, even though he wasn’t obliged to.

But when it published online Feb. 1, 2013, Doyle’s standing at the lab began to teeter. On Feb. 6, 2013, the lab reversed course on the suitability of his article for public release. The lab’s chief classification officer judged a portion of the information in the report to be classified. A subsequent review by classification officers at the Department of Energy and the Department of State upheld the decision.

Retribution for the article ensued because the lab’s administration found it objectionable, Doyle alleged in a whistleblower action that subsequently was rejected by the U.S. Department of Energy’s Office of Hearings and Appeals.

Planned travel related to his duties in the lab’s Nuclear Nonproliferation Division was canceled. He was placed on investigatory leave without pay for one day after filing a complaint with the LANL Employee Concerns Program. His top-secret clearance was suspended for 30 days, and his clearance to access classified information about foreign countries’ nuclear stockpiles was revoked.

“[The] classification policy was misused to classify it when other publications containing the same or similar information were authorized for unlimited public release and no retaliation was taken against their authors,” Doyle stated in the

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complaint.

Attempts to smooth out the situation at the lab were fruitless, Doyle said.

“I appealed to every level of management at the lab, expressing my view that I was being discriminated against for the argument of the article, but no one listened,” he said. “I filed several complaints through the lab’s employee complaint process, all of them were found to be unsubstantiated.”

In his whistleblower complaint filed Nov. 6 with the Department of Energy, Doyle sought declassification of his article, acknowledgements that LANL had failed to follow proper protocol, one day’s pay for the time he spent on leave, reimbursement of legal fees and restoration of his clearance to access classified information.

But on Jan. 23, his whistleblower complaint was dismissed, based on Doyle’s release of restricted information in the article, according to federal records. His appeal of that decision was rejected June 24, but he is still pursuing consideration of it.

More trouble came Doyle’s way when the Center for Public Integrity inquired with NNSA about his complaint. A day later, he was fired. He has filed another whistleblower complaint over his termination.

“My career at Los Alamos is unfortunately over,” Doyle said. “I have not yet decided what remedy I will seek.”

He said he hopes to work again in “a position where I can be more active in advocating the elimination of nuclear weapons and creating the conditions in which this objective can be achieved.”

Coghlan, of Nuclear Watch New Mexico, which has posted an unabridged copy of the classified report on its website, nukewatch.com, said the lab’s treatment of Doyle raises questions about how far its administration is willing to go to silence critics of its mission to produce nuclear weapons.

“It’s absurd that the laboratory would retroactively classify Jim’s report,” Coghlan said. “Any reasonable reader would conclude that there is no classified information in the report to begin with, and secondly, it’s been on the Internet for a substantial amount of time. There’s no bringing it back. The laboratory is foolish in this and its political retribution to a messenger whose message they don’t like.”

Contact Patrick Malone at 986-3017 orpmalone@sfnewmexican.com. Follow him on Twitter @pmalonenm.

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Nuclear weapons lab employee fired after publishing scathing critique of the arms race

Los Alamos lets a 17-year employee go after retroactively classifying his published article

By Douglas Birch [🐦](#) [✉](#) email 6:00 am, July 31, 2014 Updated: 2:12 pm, August 1, 2014



Los Alamos National Lab in Los Alamos, New Mexico. Larry Lamsa/Flickr

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James E. Doyle's ordeal with Washington began one morning in early February last year, when his supervisor stopped by his desk at Los Alamos National Laboratory and told him that senior managers wanted copies of all his publications.

The 55-year-old political scientist asked the reason for the request, and he eventually was told that someone at the House Armed Services Committee wanted to see the publications. But Doyle said officials refused to tell him who it was or why.

Later that day at the lab's New Mexico campus, he said, two members of a Security Inquiries Team abruptly arrived with a special, silver-colored briefcase for secure documents, and pulled out an article he published a few days earlier on the website of a London nonprofit group.

They claimed that **the article**, an impassioned critique of the political theories undergirding the nuclear arms race and a defense of President Obama's embrace of a nuclear weapons-free future, contained classified information.

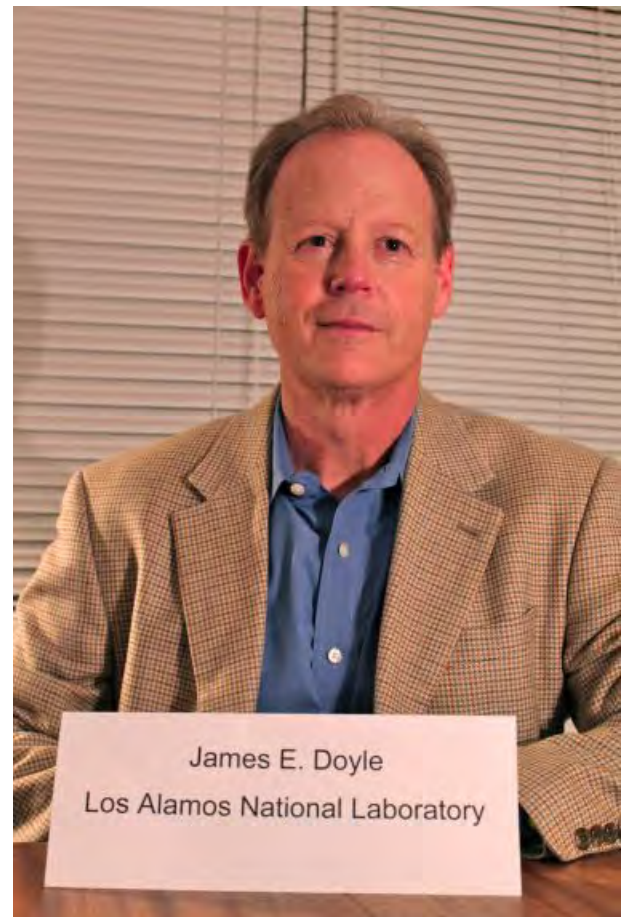
The assertion astonished Doyle, since the laboratory's security authorities had already reviewed the article and declared it unclassified. But it was the start of a series of events in which Doyle first had his pay docked and his security clearance withdrawn, and then eventually was fired.

He got that final news last month -- on July 8, a day after the Center for Public Integrity asked the Energy department's National Nuclear Security Administration, which runs the nation's nuclear labs, about the dispute over his article. "I was shocked," he said, shortly afterward. "I am still shocked."

Experts say Doyle's treatment raises questions about the commitment of the nuclear weapons labs — which face increased competition for resources amid declining military interest in their key product — to intellectual independence in their workforce. Top lab and Energy Department officials have responded to the case by urging that all writing by their employees on topics related to their work be subjected to pre-publication review, even when written on their own time.

Doyle, officially a contractor, said he was told that he was being let go as part of a program of layoffs at the New Mexico lab. But he says he believes the sudden firing was instead part of a Washington-inspired campaign of retribution for his refusal to stay on message and support the lab's central mission, namely its continued development and production of nuclear arms, at a cost of almost \$2 billion per year there.

"Classification has been used against me for the purposes of censorship of the article and retaliation against me for writing the article," said Doyle, who is



James Doyle, a former nuclear policy specialist at Los Alamos, one of the country's three nuclear weapons labs, ran into trouble after publishing an article calling for the abolition of nuclear arms. Courtesy of James Doyle

"It sure looks like he's being fired for supporting the President's policy."

- Jon Wolfsthal, special adviser on nuclear matters to Vice President Biden from 2009 to 2012

now looking for work with two children in college and another headed there.

Los Alamos officials did not respond to several requests for an interview with an official who could discuss the case. Derrick Robinson, a spokesman for the Energy department's National Nuclear Security Administration, which oversees Los Alamos, said he was seeking official comment. But none was received by the time of publication.

Doyle's treatment has nonetheless already attracted criticism from former Obama appointees and from his editor at *Survival*, a journal published by the International Institute for Strategic Studies where the article appeared in February 2013.

"It sure looks like he's being fired for supporting the President's policy," said [Jon Wolfsthal](#), a special adviser on nuclear matters to Vice President Joseph Biden from 2009 to 2012 who knows Doyle.

"Nobody would go after this article on classification grounds unless they were pursuing a political agenda, and it is amazing to attack someone politically for writing an article in support of a policy of the president of the United States," said [Matthew Bunn](#), a former White House official under President Clinton and now a nonproliferation expert at Harvard's Kennedy School of Government.

"The classification system, of course, is not supposed to be used for political purposes," Bunn said. "It is only to prohibit the release of information if it would damage the security of the U.S. And there's nothing in this article that could in any way damage the security of the United States."

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Calling nuclear deterrence an outmoded myth

Although Doyle has left Los Alamos, he said in a telephone interview that he cannot discuss the published article that started it all — not even its name or the title of the publication it appears in. Doing so might violate the Laboratory's nondisclosure agreement pertaining to information it deems classified.

An Energy department Office of Hearings and Appeals **decision** last month, which dismissed a whistleblower claim Doyle filed over his treatment, also did not name Doyle's article, in keeping with lab classification rules.

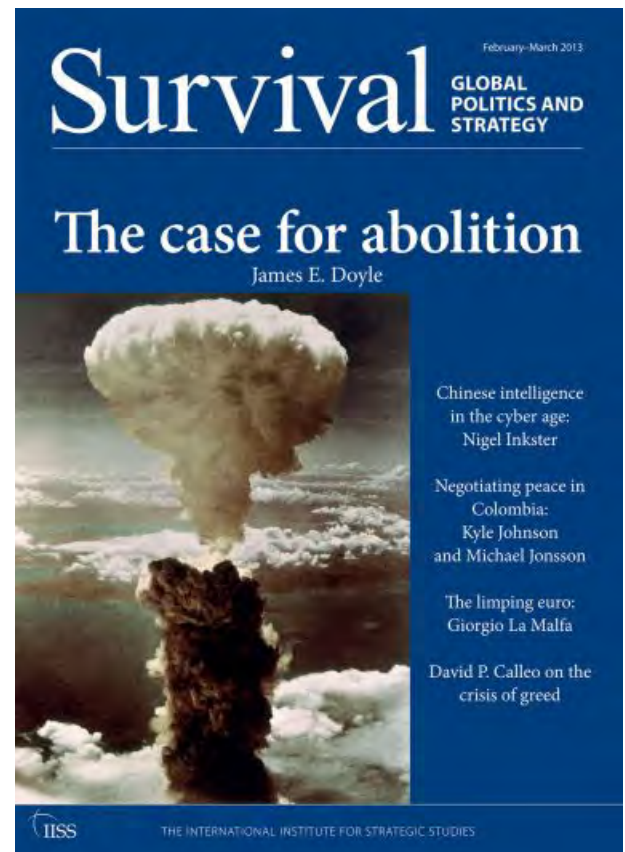
But the Hearings report said it was published in "an international journal" in early February 2013. Doyle's 8,644-word article, entitled "Why Eliminate Nuclear Weapons," is the only article Doyle published in an international journal around that time. Its subtitle asserted that "the world must reject the myths and expose the risks of the ideology of nuclear deterrence if it is to meet the challenges of the twenty-first century" — foreshadowing its detailed critique of the nuclear policies supporting most of Los Alamos' work over the past 71 years.

Doyle, who holds a doctorate in international studies from the University of Virginia, has been at Los Alamos for the past 17 years. Before he joined the lab, he said, he wrote the Department of Energy's strategic plan for keeping weapons-grade uranium and plutonium stored at hundreds of sites scattered across the former Soviet Union from falling into the wrong hands. He referred to this risky state of affairs as "the babushka-with-uranium-in-the-chicken-shed" problem.

As a nuclear safeguards and security specialist in the lab's Nuclear Nonproliferation Division, which has 250 employees and an annual budget of about \$185 million, Doyle has studied ways to verify reductions in United States and Russian nuclear weapons stockpiles beyond the current levels. He also edited a textbook, *Nuclear Safeguards, Security and Nonproliferation: Achieving Security with Technology and Policy*, which, he said, is used in three dozen universities in the U.S. and abroad.

To perform his analytical work, Doyle long held a "Q" clearance giving him access to sensitive nuclear weapons-related information, as well as a separate clearance to review secure, compartmented information on foreign nuclear programs. He was trained to classify documents and, he says, for a time wrote the weekly intelligence briefings for the Los Alamos lab director.

Doyle said he worked for months, in his spare time, on the article at the center of the controversy. Since it was not prepared at work, lab rules didn't require him to submit it for pre-publication classification review, according to a Sept. 26, 2013, internal Los Alamos review of the episode, obtained by



The February 2013 cover for *Survival*, the journal affiliated with the International Institute for Strategic Studies which published a controversial article by James Doyle. Courtesy of the International Institute for Strategic Studies

"The idea that this is revealing secrets is ridiculous."

- Dana Allin, editor of *Survival*

the Center. But he did so anyway, “in the spirit of following best practice,” the review said.

He expected it to cause a stir, partly because of management’s reaction to his 2010 [article](#) for *Defense News* proposing that Congress set aside \$75 million to \$100 million annually for research into new technologies to implement the Obama administration’s ambitious arms reductions goals.

Doyle said Tammy Taylor, a former White House official and then the leader of Doyle’s division at the lab, told him at the time that he should not suggest how federal policies should be implemented and that in the future, under a new policy, articles would be reviewed for “message and political content” as well as classification.

Doyle said he objected that this would violate academic freedom. But he said Taylor, who is now a manager at the Energy Department’s Pacific Northwest National Laboratory, didn’t agree. Taylor did not respond to requests for comment.

So this time, Doyle sent a draft of his new article on the flaws in nuclear deterrence in late 2011 or 2012 to Bryan Fearey, director of the Los Alamos National Security Office. Fearey told him he needed to balance his anti-nuclear views with pro-nuclear arguments, Doyle recalls.

Fearey’s clear message, Doyle recalled, was that otherwise it would hurt the laboratory. But Doyle said Fearey never raised any concerns about classification. Contacted by telephone, Fearey declined to answer questions about the meeting.

Richard Wallace, who was Doyle’s supervisor at the time in the Nonproliferation Division and is now retired, suggested that Doyle’s views had long made him a bit of a fish out of water at the lab. “He was extremely knowledgeable; he was well respected in his field,” Wallace said. But it had been hard in recent years to find funding for “the expertise he had. The lab isn’t known for looking at political issues related to nonproliferation and disarmament.”

Still, Wallace said that no one at the meeting involving Fearey, which he also attended, raised classification concerns. “They didn’t necessarily agree with the logic that he used and the conclusion he came up with,” Wallace said, but “they wouldn’t ask the laboratory to stop publication.”

Wallace said his impression was that Fearey and other senior managers wanted Doyle to “re-evaluate” his approach. Doyle said he asked Fearey to send him suggested changes, but Fearey never did.

Another laboratory employee familiar with the controversy, who spoke without approval and so asked not to be named, said that Doyle’s views upset management, but not the scientists and others who worked with him and who expect the labs to respect academic traditions of open inquiry.

“It’s a well-argued opinion piece by a subject matter expert,” the employee said. “A scientist can respect that. Los Alamos National Labs should not be political.”

Doyle argued in the piece that nuclear deterrence was a “myth” and that declassified documents showed that the world avoided several nuclear catastrophes during the Cold War only by sheer “luck.” He said that “a growing number of strategists and technical and political elites regard nuclear weapons and deterrence theory as anachronistic,” since even limited nuclear exchanges would have damaging consequences elsewhere in the world.

He wrote that nuclear weapons don’t build confidence in crises but raise the price of miscalculation. There is, he added, little evidence that building nuclear weapons keeps one’s enemies at bay, noting that Egypt, Iraq, and Syria have attacked Israel at various times, Argentina attacked Britain, and Al Qaeda attacked Pakistan, Britain, the United States, and Israel.

“Eliminating nuclear weapons is profoundly in the [U. S.] national-security interest,” Doyle concluded. Though it hardly appears to have been necessary, a note appended to the printed article said its views “are the author’s own and do not represent those of the Los Alamos National Laboratory.”

Dana Allin, the editor of *Survival*, said in an interview he had heard that there was a reaction to Doyle’s article at Los Alamos but not that any disciplinary measures were taken. “This was a think piece,” Allin said. “This was driven by a keen understanding of concerns about nuclear deterrence. It’s the kind of thing we publish all the time.”

He added: “The idea that this is revealing secrets is ridiculous.”

Doyle’s references to Israel’s nuclear arsenal could not possibly be considered secret, said Nate Jones, who deals with nuclear-related, declassified documents at the nonprofit **National Security Archive**, affiliated with George Washington University. “We have a bunch of postings on our site [referring to Israel’s bombs] that were declassified officially through regular channels,” he said.

Jones said that as far as he can tell, the article did not betray any secrets.

Demanding the surrender of a home computer

After his “international journal” article was published online Feb. 1, 2013, Doyle’s life at Los Alamos took on a surreal quality, according to his recollection.

First came the mysterious demand Wednesday, Feb. 6, for his published works.

Did the office really want all of the scores of publications? he asked officials.

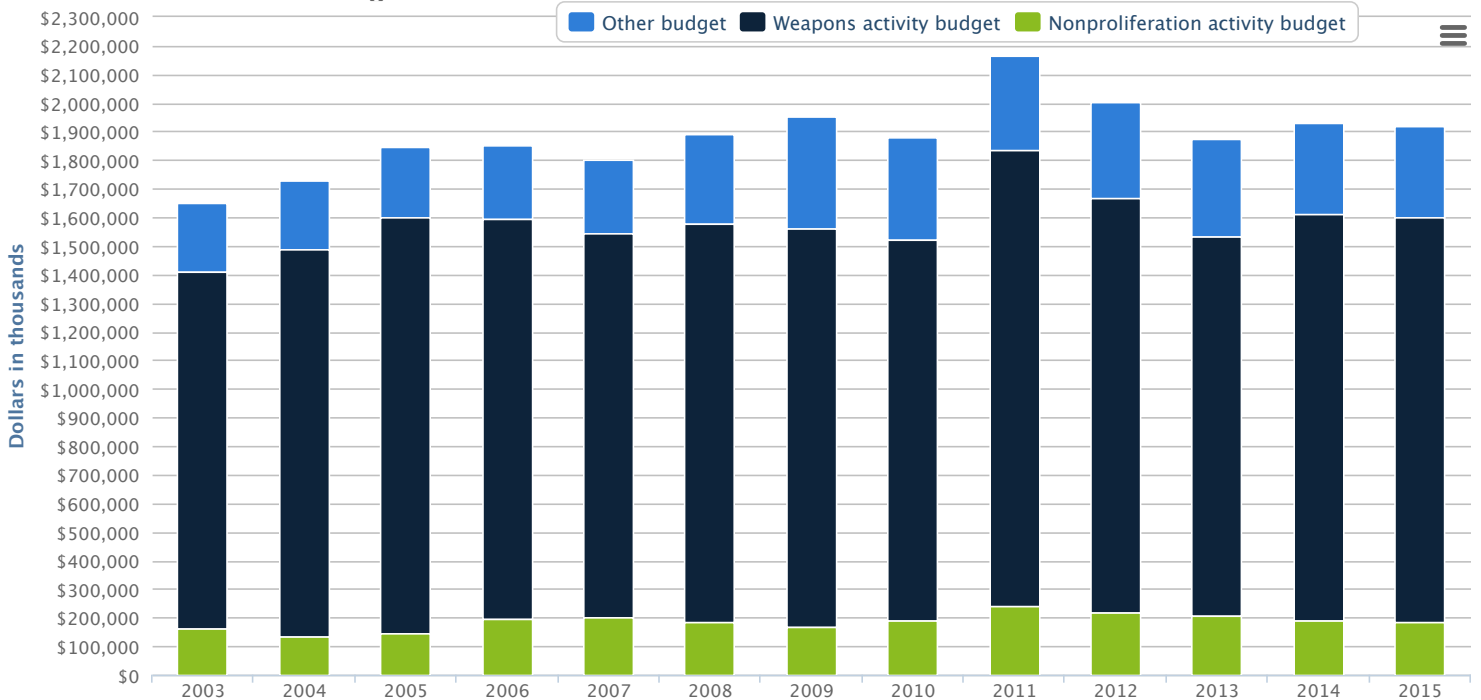
Doyle had published more than 100 articles in a variety of journals, magazines and websites since joining the lab in 1997. Yes, he said he was told, they wanted everything. His superiors would not tell him why, emails obtained by the Center show.

Scott Gibbs — the associate director at Los Alamos for threat identification and response at the time and Doyle’s superior — provided some answers in a telephone interview. He said he heard complaints about Doyle’s article from a scientist with the lab’s Weapons Program Directorate, which makes the products the article savaged.

It was a sensitive moment for an anti-nuclear message to emerge from within the lab. During this period, Los Alamos officials and their Republican supporters on the House Armed Services committee were trying to find the funds for a new \$6.5 billion factory at Los Alamos for plutonium “pits,” the baseball-sized spheres that form the core of most nuclear weapons.

Although the Obama administration had sought to defer the project’s start, Rep. Michael Turner, R-Ohio, who in 2012 chaired a strategic forces subcommittee, sponsored a successful amendment that year requiring construction of the factory by 2024 and authorizing \$160 million to keep design work going. Obama signed the bill on Jan. 2, 2013, that included Turner’s amendment, but it still lacked support from appropriators.

Los Alamos National Lab budget



Source: Nuclear Watch New Mexico & Department of Energy

Gibbs said he personally did not agree with the views expressed in Doyle’s disputed article because he believes in the mission of the weapons lab. “One of the reasons Los Alamos exists, one of the reasons I spent my career there, is to ensure that the things that we are able to do in this country, no one else

is able to do, can be done," he said.

But Gibbs said in the interview that the complaint he heard from the weapons directorate, after its publication, was that it might contain classified information. He declined to specify which details had raised this concern. But he said he immediately alerted the lab's Security Inquiries Team and called the classification office. Officials there told him the article had been cleared before its publication.

Within hours, he said, he got a call from the lab's top government relations office in Washington, Patrick Woehrle, a former congressional staffer who had worked closely with the Energy Department and whose job it now is to ensure smooth relations between the lab and the lawmakers and staff who fund its work.

Gibbs, who retired in May after 28 years at the lab, said Woehrle told him someone — Gibbs said he didn't know who — on the House Armed Services Committee staff had also raised concerns that the article might contain classified information. He said the staffer to his knowledge had not complained about its content or point of view.

"We're looking at it, and we're on top of it," Gibbs recalls telling Woehrle. He added that "it's not unusual for them to call and ask the lab questions if they see something they question," referring to the committee staff. Woehrle did not respond to requests for comment.

On Feb. 7, 2013, according to the internal lab report and Energy Department documents, the lab's chief classification officer Daniel Gerth summoned Doyle to a meeting in his office. There, three "derivative" classifiers — people who have been trained to review documents for classified material — told Gerth that they found no secret information in the article.

But Gerth overruled them all and declared that the document — published a week earlier on a website that reaches thousands of people a month, according to *Survival* editors — was classified. Reached by phone, Gerth declined to discuss the meeting or his rationale but said that he had the final word on classifying the article. "I'm the only classification officer at the lab," he said.

Gerth and other lab officials made no effort to have the published article withdrawn from circulation, according to *Survival*'s editor. But for Doyle, events took an even stranger turn. After a computer expert on the security team learned Doyle had transferred drafts of the article, retroactively deemed classified, between his work computer and his home computer, lab officials ordered him to bring his home computer to the office so all traces of it could be expunged.

Doyle promptly refused, and the internal lab report described him as "initially combative and uncooperative," though he later was fully cooperative.

Doyle admitted he was upset, but denied losing his temper. “This doesn’t feel good to me and I’m not doing it,” he recalls telling them. But he relented, he said, because officials told him that for every day he refused to surrender his home computer, he would lose a day’s pay.

He said he then watched as a security expert spent 20 minutes searching his computer, which held one of his children’s college applications and his personal banking and insurance information, purging drafts of the article. He said he later discovered that they had missed one of the copies.

As a result of his initial resistance, the lab also suspended his Q clearance for one month. And it suspended all his work-related travel.

Later in February, Doyle said, they also “withdrew” — but did not revoke — his access to Sensitive Compartmented Information on foreign nuclear programs.

Gibbs said the decision was part of what he called a “routine” review of such clearances. “If you’re not working on a project in which you need clearance, you don’t get it,” he said. “You get it back later if you’re working on a project that requires it.”

Mark Zaid, Doyle’s Washington-based lawyer, said that if the clearance had been revoked, Doyle could have appealed. But instead the lab said it would no longer sponsor Doyle’s clearance. “That’s not uncommon,” Zaid said. “That is a retaliatory tool that agencies can use without affording employees, or contract employees, any type of due process because there’s no challenge that can be made to that. It’s not viewed as a retaliatory action. That can be incredibly significant to their career.”

Doyle, deeply shaken by the lab’s handling of the incident, was unwilling to let the episode drop. He emailed the laboratory’s chief representative in Washington, asking who at the Armed Services committee had contacted him. Woehrle responded in an email: “Please run this request up through your management chain.”

Doyle also pressed Gibbs for the name of the person at HASC who raised questions about his article. “We will not release information about the individuals from HASC who provided feedback about your article, nor will we go into the specifics of that feedback,” Gibbs wrote in an email. “We consider those communications to be in confidence. You are free of course to contact any member of the HASC or their staffs as a private citizen.” But he warned Doyle that he couldn’t use his Los Alamos email to do so.

A knowledgeable congressional source said the complaint about the *Survival* article did not come from the Democratic side of the House committee. Claude Chafin, a spokesman for the Republican staff, said “we have a constant back and forth with the agencies we deal with on a variety of topics.” But he said “I’m not going to comment on conversations this committee has with anyone we routinely engage with.”

“I’m not confirming or denying that any complaint was ever forwarded [to Los Alamos],” Chafin said. “If DOE has taken some kind of action against one of their employees, ask them about it. I think this is silly.”

Confusion and ambiguity but no relief

Before being fired, Doyle lodged several complaints about his treatment with ethics officers at the lab and the Energy Department, without any success.

In Sept. 2013, David Clark, program director of the lab’s National Security Education Center, wrote in a [5-page report](#) for its research integrity office that did not mention Doyle by name — but clearly addressed his case — that he had examined whether the lab had used classification policy “to suppress his views on nuclear weapons policy” and later retaliated for his protests by withdrawing his security clearances.

In his report, Clark concluded the employee in question had followed the rules and acted “in good faith.” He also wrote that the lab’s policies regarding privately-conducted work were unclear and that enforcement of classification guidelines was marked by poor training and the absence of consensus. For Los Alamos employees, Clark wrote, “this is an unacceptable situation.”

But Clark also concluded that those who felt the article in question contained classified information “were all acting in good faith” and so he found “no evidence of infringement of intellectual freedom.” His opinion did not detail how he reached this conclusion, but recommended that in the future the laboratory make clearer to its employees that anything they write as private citizens must be submitted for classification review if it relates to their lab work.

The director of DOE’s Classification Office in Washington, [Andrew Weston-Dawkes](#), also turned Doyle’s appeal aside, ruling instead that Gerth had reasonably decided the *Survival* article was classified. Weston-Dawkes, who has been in the office for the past 20 years, further warned that anytime a lab employee is identified as such in any publication — even a privately-written one — “it is inferred to express the knowledge gained as a cleared Government employee” and thus needs review.

Doyle’s complaint was also reviewed by the State Department’s classification office, which affirmed that the *Survival* article contained classified information pertaining to national security. (The department has no jurisdiction over atomic energy secrets.)

A State Department spokesman did not respond to repeated requests for comment on the case. But Gibbs, in the interview, noted that the material at issue was the subject of a “long-standing disagreement” within the government over whether it should be considered classified.



The Los Alamos main gate, from the Atomic Testing Museum. Jess Sand/Flickr

“I certainly don’t see any classified or even sensitive information in this article,” said [Steve Fetter](#), a nuclear physicist and associate provost at the University of Maryland who served in the White House Office of Science and Technology Policy during President Obama’s first term. “I can only imagine that Doyle is being punished for the policy views that he espouses.”

Doyle also filed a complaint with a whistleblower protection office at the National Nuclear Security Administration, which funds and oversees the labs, claiming that the lab had broken the law by retaliating against him for protesting the article’s retroactive classification.

His complaint was summarily dismissed by NNSA, and when [he appealed](#) to the Energy Department’s Hearings and Appeal Office, director Poli A. Marmolejos [ruled in June](#) this year that Doyle’s case didn’t meet the department’s standard for whistleblowers.

To qualify for special protection, Marmolejos wrote, Doyle would have to have disclosed “substantial” law-breaking by the lab. “In our view, a debatable assertion that an official misapplied classification guidance does not rise to the level of disclosing a ‘substantial violation’ of a law, rule or regulation,” Marmolejos wrote.

Doyle’s lawyer, Mark Zaid, said that the decision was an example of how the executive branch agencies don’t take the manipulation of classification rules as seriously as they should. “Misclassifying information... is clearly a violation of a rule, law or regulation to me. It goes to the heart of our system,” Zaid said. Marmolejos referred requests for comment to the public affairs office.

[Clark’s report](#), however, makes clear that both Los Alamos and the Energy Department have had difficulties following classification guidelines. He said that the lab had declared another article was unclassified that DOE said was classified, after its publication. “The subject area in question is subjective and ambiguous,” he wrote.

Doyle said he is not certain where he will end up, though he plans to continue to work on nonproliferation and disarmament issues. “I pursued a career in national security with the motivation of improving the national security policy of my country,” he said. “And there’s nothing conflicting in advocating the elimination of nuclear weapons and maintaining the security of the United States.”

Managing editor for national security R. Jeffrey Smith contributed to this article.

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EXHIBIT “C”



Department of Energy
National Nuclear Security Administration
Employee Concerns Program
P. O. Box 5400
Albuquerque, NM 87185



January 23, 2014

Dr. James E. Doyle
624 Calle de Valdes
Santa Fe, NM 87505

Re: WB-1403 James Doyle vs LANL/LANS

Dear Dr. Doyle:

This is in reference to your 10 CFR Part 708 Complaint for alleged retaliation for your publication in an international journal and the challenge of the classification decision of the information published.

Having carefully reviewed your complaint and the Los Alamos National Laboratory (LANL) operated by Los Alamos National Security (LANS) response, the complaint is dismissed under §708.4(d), "the complaint is based on the same facts in which you, in the course of a covered disclosure or participation, improperly disclosed Restricted Data, national security information, or any other classified or sensitive information in violation of any Executive Order, statute, or regulation. This regulation does not override any provision or requirement of any regulation pertaining to Restricted Data, national security information, or any other classified or sensitive information[.]" Additionally, the complaint is dismissed under §708.17 (c) (4) your complaint is dismissed for lack merit on its face. What was the protected disclosure; who did you make the protected disclosure to; and when did you make the protected disclosure? A protected disclosure is:

- (1) A substantial violation of a law, rule, or regulation;
- (2) A substantial and specific danger to employees or to public health or safety; or
- (3) Fraud, gross mismanagement, gross waste of funds, or abuse of authority.

"Possible" violation does not describe a law, rule or regulation that was substantially violated. A protected disclosure comes first then the alleged retaliation. They are two separate actions. One follows the other. Therefore, "abuse of authority" cannot be used as a protected disclosure and the same abuse of authority as the retaliation.

If you wish to appeal this dismissal, you may do so in accordance with the provisions set forth below.

§708.18 How can an employee appeal dismissal of a complaint for lack of jurisdiction or other good cause?

- (a) If your complaint is dismissed by the Head of Field Element or EC Director, the administrative process is terminated unless you appeal the dismissal to the OHA

Director by the 10th day after you receive the notice of dismissal as evidenced by a receipt for delivery of certified mail.

(b) If you appeal a dismissal to the OHA Director, you must send copies of your appeal to the Head of Field Element or EC Director (as applicable) and all parties. Your appeal must include a copy of the notice of dismissal, and state the reasons why you think the dismissal was erroneous.

(c) The OHA Director will issue a decision on your appeal and notify the parties of the decision by the 30th day after it is received.

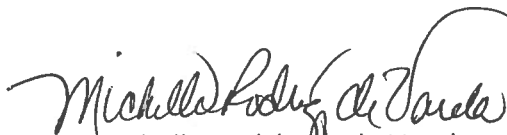
(d) The OHA Director's decision, either upholding the dismissal by the Head of Field Element or EC Director or ordering further processing of your complaint, is the final decision on your appeal, unless a party files a petition for Secretarial review by the 30th day after receiving the appeal decision.

All submissions permitted under this section must be filed with the Office of Hearing and Appeals to:

Office of Hearing and Appeals
1000 Independence Avenue, SW
Washington, D.C. 20585-0107

If you anything else is needed, please feel free to contact me at 505.845.4935.

Sincerely,



Michelle Rodriguez de Varela
Whistleblower Program Manager

cc:

Philip I. Kruger, LANL Staff Attorney
Silas DeRoma, LAFO Counsel
Cynthia Casalina, LAFO ECP