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U.S. DEPARTMENT OF ENERGY  
POLYGRAPH EXAMINATION REGULATION  
Notice of Proposed Rulemaking  
Docket Number CN-RM-99-POLY

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In Re the matter of the:

NOTICE OF PROPOSED RULEMAKING  
AND PUBLIC HEARING

LAWRENCE LIVERMORE  
NATIONAL LABORATORY

\_\_\_\_\_ /

AFTERNOON SESSION  
September 14, 1999  
3:00 p.m. to 7:00 p.m.

Taken by Lesley D. Schneider,  
a Certified Shorthand Reporter  
in and for the State of California  
CSR No. 10580

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P A N E L M E M B E R S

GENERAL GENE HABIGER, Presiding  
Official for the Hearing Director, Office of  
Security and Emergency Operations, SO-1.

DOUGLAS HINCKLEY, Program Director,  
Counterintelligence Evaluation Board Office of  
Counterintelligence, CN-1.

LISE HOWE, Attorney at Law, Office  
of General Counsel, GC-73

WILLIAM HENSLEY, Acting Director,  
Office of Security Support Office of Defense  
Programs, DP-45.

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PROCEEDINGS

September 14, 1999 - 3:00 a.m.

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GENERAL HABIGER

Good afternoon and welcome.

I'm General Gene Habiger, United States Air Force Retired, Director of the Office of Security and Emergency Management, headquarters at the Department of Energy, also known as the Security Czar.

On behalf of the Department of Energy and particularly Secretary Richardson, I'd like to thank each and every one of you for taking the time to participate in this public hearing concerning the proposed Polygraph Examination Program. Secretary Richardson has personally asked me to be here today to listen carefully to your comments and concerns and to personally report back to him. Let me assure you, we take this issue and your concerns very, very seriously.

The purpose of this hearing is for DOE to listen to your comments on the Department's

1 Notice of Proposed Rulemaking. This is the time  
2 for us to listen and to understand your concerns.  
3 It is not a forum to debate the issues. We are  
4 here with our ears tuned to what you have to say.  
5 Your comments are not only appreciated, they are  
6 essential to this rulemaking process.

7 The Department of Energy proposes  
8 regulations for the use of polygraph examinations  
9 for certain DOE and contractor employees,  
10 applicants for employment and other individuals  
11 assigned or detailed to Federal positions within  
12 the Department of Energy. The proposed  
13 regulations describe the categories of  
14 individuals who would be eligible for polygraph  
15 testing and controls for the use of such testing  
16 as well as for the prevention of unwarranted  
17 intrusion into the privacy of individuals.

18 These regulations are being proposed to  
19 comply with various executive orders which would  
20 require the Department to protect classified  
21 information. These regulations for the use of  
22 polygraph examinations for certain DOE and  
23 contractor employees are intended to protect  
24 highly sensitive and classified information and  
25 materials to which such employees have access.

1           This rulemaking also proposes conforming  
2           changes to regulations concerning the  
3           Department's Personnel Security Awareness  
4           Program, also known as PSAP, and to the Personnel  
5           Assurance Program, also commonly known as the  
6           PAP program.

7           If you have not already read the Federal  
8           Register notice from August 18th, 1999, I  
9           strongly urge you to do so. Copies are available  
10          at the registration desk.

11          The comments received here today and those  
12          submitted during the written comment period will  
13          be taken into consideration. This period ends on  
14          the 4th of October and will assist the Department  
15          in the rulemaking process.

16          All written comments must be received by  
17          this date, October 4th, to ensure consideration  
18          by DOE. The address for sending in comments is:  
19          Douglas Hinckley, U.S. Department of Energy,  
20          Office of Counterintelligence, CN-1, Docket  
21          Number CN-RM-99-POLY, 1000 Independence Avenue,  
22          Southwest, Washington, DC 20585.

23          In approximately 14 days, a transcript of  
24          this hearing will be available for inspection and  
25          copying at the Department of Energy's Freedom of

1 Information Reading Room in Washington, DC. The  
2 address is specified in the Federal Register  
3 notice and is also available at the registration  
4 desk.

5 The transcript will also be placed on  
6 DOE's Internet web site at the following address:  
7 [home.doe.gov/news/fedreg.htm](http://home.doe.gov/news/fedreg.htm). In addition,  
8 anyone wishing to purchase a copy of the  
9 transcript, may make their own arrangements with  
10 the transcribing reporter seated down here in the  
11 front.

12 This will not be an evidentiary or  
13 judicial type of hearing. It will be conducted  
14 in accordance with Section 553 of the  
15 Administrative Procedure Act 5 U.S. Code Section  
16 553 and Section 501 of the DOE Organization Act,  
17 42 U.S. Code Section 7129.

18 In order to ensure we get as much  
19 pertinent information and as many views as  
20 possible and to enable everyone to express their  
21 views, we will use the following procedures:

22 \* Speakers have been allotted five  
23 minutes for their verbal  
24 statements.

25 \* Anyone may make an unscheduled

1 statement after all the scheduled  
2 speakers have delivered their  
3 statements. To do so, please submit  
4 your name to the registration desk  
5 before the conclusion of the last  
6 scheduled speaker.

7 \* Questions for the speakers will be  
8 asked only by members of the DOE  
9 panel conducting this hearing.

10 As I said, the purpose of this hearing is  
11 to receive your comments and concerns on DOE's  
12 Notice of Proposed Rulemaking. I urge all  
13 speakers to provide us your comments, opinions  
14 and pertinent information about the proposed rule.

15 Please remember that the close of the  
16 comment period is October 4th, 1999. All written  
17 comments received will be available for public  
18 inspection at the DOE Freedom of Information  
19 Meeting Room in Washington, DC, and a phone  
20 number of (202) 586-3142.

21 If you submit written comments, include  
22 ten copies of your comments. If you have any  
23 questions concerning the submission of written  
24 comments, please see Andi Kasarsky at the  
25 registration desk out front. She can also be



1 reached at area code (202) 586-3012.

2 Any person submitting information which he  
3 or she believes to be confidential or exempt by  
4 law from public disclosure should submit to the  
5 Washington, DC, address a total of four copies:  
6 one complete copy with the confidential material  
7 included and three copies without the  
8 confidential information.

9 In accordance with the procedures  
10 established in 10 CFR 1004.11, the Department of  
11 Energy shall make its own determination as to  
12 whether or not the information shall be exempt  
13 from public disclosure.

14 We appreciate the time and effort each and  
15 every one of you has taken in preparing your  
16 statements and are pleased to receive your  
17 comments and opinions.

18 I would now like to introduce the other  
19 members of the panel joining me today: To my  
20 near left, Doug Hinckley, Program Manager,  
21 Polygraph Evaluation Board, Office of  
22 Counterintelligence. Lise Howe, an attorney with  
23 DOE's Office of General Counsel. Lise. And Bill  
24 Hensley, Director, Office of Security Support  
25 with DOE's Office of Defense Programs.



1 information about the polygraph in general and  
2 then David Renzelman will give you specifics  
3 about the DOE Polygraph Program.

4 There are some 22 Federal agencies that  
5 use the polygraphs, either for criminal  
6 investigation or for security screening or both.  
7 And of those 22, there are 12 agencies that use  
8 it for security screening, one of which is the  
9 Department of Energy.

10 I'm not from the Department of Energy.  
11 I'm from the Department of Defense, and,  
12 specifically, I'm from the DOD Polygraph  
13 Institute, located at Ft. Jackson, South  
14 Carolina.

15 DPI or DODPI is the sole source of  
16 polygraph training for the initial training that  
17 polygraph examiners receive within the Federal  
18 government, that is, we train them for all of the  
19 armed services, for CIA, GIA, FBI, Secret  
20 Service, and all the other agencies that use the  
21 polygraph. In addition to the basic polygraph  
22 training course, we also have about 15 advanced  
23 training courses, typically about one-week long,  
24 on various, specific phases of the polygraph.

25 Federal regulations require that all

1 Federal examiners must have at least 80 hours of  
2 continuing education within every two-year  
3 period.

4 Each agency of the 22 using the polygraph  
5 has an internal Polygraph Quality Control Office,  
6 such that every single Federal polygraph  
7 examination conducted is reviewed blindly or  
8 independently by at least one other Federal  
9 polygraph examiner.

10 Recently, DODPI received the requirement  
11 to oversee the Quality Control Offices for the  
12 Federal government for most of the Federal  
13 Quality Control Offices.

14 There are now written Federal standards as  
15 to how polygraph examinations are conducted, and  
16 the American Society for Testing Materials now  
17 has a committee which is working up national  
18 polygraph standards for the administration of  
19 tests.

20 In terms of the training that is given to  
21 the polygraph examiners, all entering polygraph  
22 examiners entering the DOD Polygraph Institute  
23 must have at least a baccalaureate degree prior  
24 to training.

25 The training that is conducted at DODPI is

1 conducted at the graduate level, and we are  
2 currently seeking approval or authority through  
3 the Department of Education, which would have to  
4 be authorized by Congress to become a  
5 degree-granted institution, where we would offer  
6 a Master's Degree in Forensic Psychophysiology.

7 Our curriculum at the Institute is based  
8 upon a number of things: research findings, the  
9 accepted professional standards within the field,  
10 and codified standards. And the changes that we  
11 make in our curriculum are based primarily on new  
12 research findings.

13 Now the \$64,000 question: How accurate is  
14 the polygraph? It is a very difficult question  
15 to answer, and in all candor, even after decades  
16 of research, we don't know precisely. We can  
17 give you only ballpark estimates.

18 There are two types of accuracy that we  
19 have to be concerned about: One is the ability  
20 to detect the lies of the person who is trying to  
21 conceal significant information from the  
22 examiner. And the other is the accuracy of the  
23 polygraph at clearing the truthful person who is  
24 not holding anything back.

25 Those two types of accuracies are called

1 "true positives" and "true negatives"  
2 respectively, and this implies that there are two  
3 types of errors that can occur. There can be  
4 false positives, where a truthful person is  
5 called deceptive; and there can be false  
6 negatives, where a deceptive person can  
7 erroneously be cleared by the polygraph.

8 One reason why we don't know with any  
9 degree of precision exactly how accurate it is,  
10 is that there is a lot of variables involved, a  
11 lot of different types of tests, and a lot of  
12 testing situations and test formats and so on.

13 Another is that there is no device or  
14 means known to be more accurate at determining  
15 who is lying or telling the truth independent of  
16 the polygraph. If there were something that were  
17 more accurate than the polygraph, we'd be using  
18 it.

19 Furthermore, every methodological approach  
20 that we use to try to conduct research on the  
21 accuracy of the polygraph has its inherent sets  
22 of strengths and weaknesses, its capabilities and  
23 limitations.

24 I've been doing research on the accuracy  
25 of the polygraph for going on 30 years now. Both

1 my masters and doctoral research were on  
2 precisely this question.

3           There are two major approaches that are  
4 taken in trying to determine the accuracy of the  
5 polygraph: First of all, laboratory research in  
6 which you have a mock crime and people who  
7 volunteer for the studies are put through one of  
8 several different scenarios. One scenario might  
9 be having a person take some money from a desk  
10 drawer and then lying about whether he took the  
11 money, denying that he took the money; then you  
12 would have a controlled group that would be  
13 innocent of having taken the money. So the  
14 polygraph examiner has no idea who was in the  
15 experimental group, that is, who was programmed  
16 to be deceptive versus who was programmed to be  
17 truthful on the polygraph test. He has to make  
18 his decisions based solely upon tried  
19 interpretation of the polygraph.

20           The great strength of this type of  
21 research is that we do know independently of the  
22 polygraph precisely who is lying and who is  
23 telling the truth. On the other hand, there is a  
24 significant weakness to this: It is very  
25 difficult to know how heavily we can generalize

1 from this mock crime in a laboratory situation to  
2 the accuracy in a real life situation. The  
3 psychodynamics are completely different. There  
4 are no real life consequences for people who are  
5 volunteers for these studies. They know that  
6 they are just playing a role, and there is a  
7 different level of emotional affect.

8 The other major approach to studying the  
9 accuracy of the polygraph is looking at field  
10 studies, trying to determine how accurate it is  
11 in real-life cases. The strength of that,  
12 obviously, is excellent generalized ability. You  
13 are looking at the pool of subjects that you want  
14 to generalize to, you're using the field  
15 examiners, you're using field technology, field  
16 equipment, field formats and so on.

17 But a significant weakness of the field  
18 research approach is that in most cases,  
19 independently of the polygraph, we have no idea  
20 whether the polygraph is -- who was telling the  
21 truth or not on the relevant questions. We have  
22 a very good idea in a small subset of the  
23 population, maybe 10 percent. But in most cases,  
24 we really don't know if they were telling the  
25 truth on the polygraph or not.



1           So the accuracy that we come up with with  
2           the 10 percent where we do know whether they were  
3           telling the truth or not, it's hard to know to  
4           what extent we can generalize from that small  
5           subset to the total population at large.

6           But let me share with you some of the  
7           research findings regarding the accuracy of the  
8           polygraph. At the DOD Polygraph Institute, we  
9           have conducted three mock crime or laboratory  
10          studies that are employing the same type of test  
11          format the DOE is considering using on the DOE  
12          program, the same type of polygraph examiners,  
13          the same type of equipment and techniques and  
14          such. So from that standpoint, it should have  
15          good generalized ability.

16          In the three studies, which had a total of  
17          208 subjects, if we set aside the 6 percent of  
18          the cases where the examiner when the test was  
19          over said "I just can't tell whether the person  
20          was lying or telling the truth," if we set those  
21          aside and look at the cases where he did make a  
22          definite decision, the decisions were correct 93  
23          percent of the time on the people who had been  
24          guilty of committing the mock crime. 94 percent  
25          of the time on the people who were innocent of

1 committing the mock crime.

2 There has also been a field study that has  
3 been conducted using generally the same type of  
4 procedure. This is what has been done on a  
5 contract basis from the Federal government to a  
6 private security firm in Georgia.

7 This study is still ongoing in the sense  
8 that the final report has not yet been written.  
9 The data collection has been completed, the  
10 preliminary analyses have been made, but there is  
11 a lot about the study that I wouldn't be able to  
12 answer the questions to because the report has  
13 not been written yet.

14 It was a large study, nearly 800 subjects  
15 in it. There was an 11 percent inconclusive  
16 rate, and in the cases where the polygraph  
17 examiner did make a definite decision, he was  
18 right 72 percent of the time with what we're  
19 calling the "criterion deceptive subjects."  
20 According to the best estimate we can come up  
21 with of what the ground truth really was on those  
22 people who were probably being deceptive, the  
23 polygraph got 72 percent of them correct, cleared  
24 the other 28 percent, and we got 87 percent  
25 correct on the subjects that, according to the

1 criterion, were probably telling the truth on the  
2 polygraph, a 13 percent false positive error  
3 rate.

4 Why the difference between this approach  
5 and the laboratory approach? Lots of potential  
6 reasons. For one thing, as I mentioned, it's  
7 very hard to know to what extent the criteria for  
8 ground truths were correct.

9 Another thing is that they were not using  
10 Federal examiners in this study. They were using  
11 the same technology and the same test format, but  
12 they were not Federal examiners.

13 Another difference is that they ran only  
14 one test, whereas in the Federal government,  
15 under certain situations, if there is a problem  
16 on the test, the person is going to be brought  
17 back for re-examination, and quite often if the  
18 first test was inconclusive or was a false  
19 positive error, that can often be cleared up on  
20 a re-examination.

21 There is a third approach that we ought to  
22 take a look at, I think, because this bears a  
23 strong parallel to the type of test that you'll  
24 be given. Within the Department of Defense,  
25 there has been, for quite some years now,

1           probably about a decade, a specially,  
2           congressionally authorized security screening  
3           program using the polygraph. And the figures  
4           that I'm going to give you are from the latest  
5           information available, which was for the last  
6           fiscal year, FY '98.

7                     The data does not include the examinations  
8           that were conducted by the National Security  
9           Agency or the National Recognizance Office  
10          because their data is classified, and I had to  
11          take information from an unclassified source  
12          here.

13                    But there were altogether in last year's  
14          screening program a total of 7,461 persons,  
15          employees, examined on the polygraph. Nobody who  
16          was asked to take the test for this purpose  
17          declined. Of the 7,461, 7,334, or 98 percent,  
18          came out truthful on the polygraph. 98 percent.

19                    Now, I'm not going to kid you and say oh,  
20          this was the first test they took, and it was  
21          perfect, and there were no problems anywhere.  
22          There were 208 people altogether that had to be  
23          brought back for a total of three or more  
24          examinations before they finally achieved the  
25          truthful outcome. Furthermore, there were people

1           who made significant explanations about why they  
2           thought they were going to have problems on the  
3           polygraph, but fortunately they made these  
4           admissions during the pre-test interview so that  
5           when they did go on the polygraph, they knew they  
6           were not holding anything back, and so they  
7           cleared the polygraph in that regard.

8                        There were 110 people last year who came  
9           out showing reactions to one or more of the  
10          relevant questions on the test. The "SR" stands  
11          for "Significant Response," or they were reacting  
12          significantly to one or more of the questions on  
13          the test. And of these 110 people, when the  
14          examiner said "You're having problems on the  
15          test," they said, "Well, okay. You've got me.  
16          Here is what was bothering me," and they made an  
17          explanation. They were then given another test,  
18          and they cleared the second test showing to the  
19          examiner that they had, in fact, told what had  
20          been bothering them.

21                       So these are not false positive errors.  
22          They are verified. They are true positive  
23          results because they explained to the examiner  
24          what the problem was.

25                       There were only two cases out of 7,400

1 something -- that's amazing: only two cases --  
2 where the examiner could not make a definite  
3 decision.

4 There were only four cases where the  
5 person showed significant reactions to one or  
6 more of the questions. When the examiner brought  
7 it to his attention, they said, "Gosh, I have no  
8 idea why I'm reacting to that question. I'm not  
9 concealing any information." Four cases.

10 Now, in these four cases, we don't know if  
11 they, in fact, were telling the truth and these  
12 were false positive errors. It could also be  
13 that they just didn't want to tell the examiner  
14 what was bothering them. But we can label these  
15 as potential false positive errors because it's  
16 conceivable that they were.

17 There were 11 people who showed reactions  
18 on the test, and they made some admissions, and  
19 when they were re-tested, it showed they were  
20 still holding back information. Now, was the  
21 polygraph correct and they were still lying? We  
22 don't know. It's conceivable here that they had,  
23 in fact, explained everything that they knew  
24 about the situation and for some reason the  
25 polygraph might have been wrong.

1           In any event, if we combine those last two  
2 categories, the 4 and the 11, we come up with 15  
3 cases out of 7,400 -- or 7,334, or whatever. We  
4 have 15 cases in which there are potential false  
5 positive results. This would be a bottom line of  
6 a maximum false positive error rate last year in  
7 the DOD program of 1 person out of 480 people  
8 examined.

9           Now, we do not know what the  
10 false-negative error rate was, and if we cleared  
11 a spy, at this point, we don't know, and  
12 hopefully some day we will know, but at this  
13 point we don't.

14           We do know that there were a lot of things  
15 uncovered in these tests that would not have been  
16 uncovered had it not been for the polygraph, and  
17 four of these involved people who were in contact  
18 with foreign intelligence services -- clandestine  
19 contact with foreign intelligence services.

20           In one case there was a soldier who  
21 decided to defect, and he walked into the embassy  
22 of a foreign country over in Europe and gave them  
23 some classified information and it was bona fides  
24 that he wanted to defect, and, of course, the  
25 intelligence service said, "Hey, man, if you want

1 to help us out, you can help us out a lot more by  
2 not deserting from the Army, stay in, get your  
3 discharge, and then apply for employment at this  
4 really sensitive Federal agency and then you can  
5 feed us all the information you want."

6 This information came out only as a result  
7 of his in-processing for the security clearance  
8 that was required at that particular Federal  
9 agency. Without the polygraph, he could possibly  
10 be a spy today.

11 There was another case, also which  
12 happened last year, in which a person was in  
13 contact with a foreign intelligence service. The  
14 foreign intelligence service said, "We would like  
15 to recruit you; we would like you to get a job at  
16 this particular Federal agency and then you can  
17 feed us all the information you'd like." And  
18 this person says, "Well, I'm not going to agree  
19 to work for you just yet because in order to get  
20 that job, I've got to take a polygraph test, so  
21 let me see how that turns out first."

22 This information came out only as a result  
23 of a polygraph. In fact, he told the examiner  
24 that he had a meeting with his foreign  
25 intelligence case officer that evening to brief



1 him on how the polygraph turned out, at which  
2 point if he would have passed, he would have been  
3 starting his polygraph career. And, man, that is  
4 catching a potential spy at the 59th minute of  
5 the 11th hour. Literally hours before he would  
6 have started his espionage career.

7 Since the fall of the Communist Empire,  
8 the polygraph has been expanding throughout the  
9 world tremendously. 68 countries now have  
10 polygraph capability. That's about 1 country  
11 out of every 3 in America, about 35 percent. So  
12 it's not just the DOE or the Federal government  
13 that is using polygraphs. Obviously an  
14 increasing number of counterintelligence services  
15 are using the polygraph.

16 Now, one of the criticisms that has been  
17 leveled at the polygraph is that any  
18 self-respecting spy would have been taught how to  
19 beat the polygraph, and therefore you're not  
20 going to be able to catch spies using the  
21 polygraph.

22 Although, I mentioned some cases already,  
23 one thing I'd like to mention is that yes, it is  
24 easy to teach a person how to, quote, "beat the  
25 polygraph." You can do it in about half an

1 hour in a laboratory situation. Fortunately,  
2 from the counterintelligence standpoint or  
3 unfortunately from the other standpoint that  
4 you're so inclined, it's much harder to apply  
5 this information in a real-life situation. There  
6 is a lot of uncertainties in the case.

7 You are familiar with the case of Hammond,  
8 who was a spy for the Soviets, and he was given a  
9 couple of polygraph tests while he was spying,  
10 and yes, he did pass his polygraph, and yes, he  
11 had been briefed by the Soviets on how to beat  
12 the polygraph, and I believe in my mind he beat  
13 the polygraph fair and square.

14 However, one can argue that he didn't really beat  
15 the polygraph; he beat the system. He was able  
16 to talk his way out of it on the first exam that  
17 he did, and there were significant responses, but  
18 when he came back for re-examinations, he was  
19 able to alibi his way out, and the examiner  
20 accepted that.

21 We now are training our examiners how to  
22 detect people who are trying to manipulate their  
23 results, and we have learned a lot about how  
24 people go about doing that.

25 Earlier this year we published a case

1           where Doug Williams had given information to a  
2           person on how to beat the polygraph, but he was  
3           not successful.

4                       There is a relatively recent espionage  
5           case where the person was working for a foreign  
6           country; there was no suspicion attached to him  
7           at the time he had to take his periodic,  
8           every-five-year type polygraph examination, but  
9           he didn't pass that polygraph, and he came back  
10          for a re-examination, and he didn't pass that  
11          one either. In fact, he was given multiple  
12          polygraph tests, and did not pass a single  
13          one.

14                      At this point an investigation was  
15          opened up on him, and it was discovered that  
16          he was, in fact, working as an espionage agent  
17          for a foreign government, and had it not been  
18          for the polygraph, it's conceivable that he  
19          would still be working today as a spy. And  
20          yes, he had been taught how to beat the  
21          polygraph.

22                      Thank you very much for your  
23          attention. The next speaker is Dave Renzelman  
24          who is going to be talking about the DOE  
25          program.

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DAVID RENZELMAN

I thought it would be important should you be one of the people, if a program at DOE is implemented and your task is to take a counterintelligence polygraph test, I would like to tell you what to expect, what not to expect, what it can do, what it can't do, what it has done, and what we're expecting it to do.

Polygraph is often called by various names. You see it in the media as a lie detector, a polygraph. Now the scientists have brought it into the field calling it forensic psychophysiological detection in deception, and I choose to call it a polygraph because that's what most people understand it to be.

And I can tell you without reservation there is no such thing as a lie detector. I cannot show you a lie. I can show you emotion, and I'll explain that on how we do our polygraph testing. The only lie detectors I was ever aware of was, one, my mother, and I married the second one, and I don't know of any others in existence.

What I'd like to leave you with or have you take with you is a polygraph is a means and a

1 mechanism by which we can view externally what  
2 you are emotionally feeling internally during a  
3 testing process. And in that testing process,  
4 DOE would like to verify -- and that's the  
5 methodology that I like to call it -- we're going  
6 to verify that the person has not committed  
7 espionage or sabotage against the United States,  
8 that they are only working for our government and  
9 not another government as well. Additionally,  
10 we're interested in unauthorized and illegal  
11 disclosure of classified information in an effort  
12 to commit espionage or unauthorized contact with  
13 a foreign intelligence service.

14 So when the General has been on television  
15 before and has talked about the four questions on  
16 polygraph tests, there are four security  
17 questions, and they are very simply: Have you  
18 committed espionage against the United States?

19 Now, you don't wake up one morning and  
20 fall out of bed and become a spy. The answer for  
21 that is really simple, and if you don't know what  
22 the answer ought to be, I can tell you what we  
23 would like it to be. We would presume that the  
24 greater majority of people in this country have  
25 never done it, but we know that people have, and

1 we're just going to verify that you haven't and  
2 that the trust, faith and confidence that the  
3 Department of Energy has placed in you is  
4 well-founded and warranted.

5 Now, what do they look for in a polygraph  
6 test? We use computerized equipment, and we  
7 record three parameters of physiology during the  
8 testing process. We record your respiratory  
9 activity, or the process of breathing, inhale,  
10 exhale, during a period of time which we can  
11 determine "Do you have a normal pattern?"

12 Now, we monitor and we record your  
13 electrodermal activity, which is nothing more  
14 than the fight flight free syndrome, and, lastly,  
15 your cardiovascular activity: How fast is your  
16 heart beating and what is your blood pressure on  
17 a mean level?

18 And during the questioning process, if we  
19 ask you a question, "Have you committed espionage  
20 against the United States?" and that begins to  
21 trouble you, the question itself, or your answer  
22 to it, then, of course, it's going to trouble us,  
23 because really it shouldn't if you have not done  
24 it.

25 Now, you can recall looking at your

1 children at home being a parent, or someone close  
2 to you, that you can tell by looking at them that  
3 they are not telling you the truth about  
4 something specific. Essentially, it's the same  
5 principle. But what we're doing here is  
6 recording it on paper -- or with a computer first  
7 and then print it out on paper, and then we get  
8 to see what is going on inside your emotional  
9 system when you listen to, think about and answer  
10 that question. Then when the test is  
11 completed -- and in order just to prepare you to  
12 answer those four security questions, we spend  
13 about an hour, because it's important that you  
14 understand what the question means.

15 I ran the very first exams for NRO back in  
16 the early '80s and down at TRW. I thought we had  
17 an audience of about 47 people, and I thought it  
18 would be so important to me to understand what  
19 these people really thought espionage was. We  
20 gave them a little card to fill out and asked  
21 them to write down in one paragraph, 25 words or  
22 less, what they thought espionage was. And the  
23 one incident that I'll take to my grave is where  
24 a female captain came back and said, "Yes, I  
25 committed espionage, but I only did it twice, and

1 I was on travel both times, and when I came back,  
2 I told my husband, and we are now going to  
3 marriage counseling, and I promised him I would  
4 never do it again."

5 Now, I don't really know what she thought  
6 espionage was, but it's not what I thought  
7 espionage was, and I shutter to think what would  
8 have happened if we would have asked her that  
9 question without explaining what espionage really  
10 is, and that's the preparation time.

11 Polygraph is done in three phases: a  
12 pre-test, an end test and a post-test. During  
13 the pre-test interview, that's when we explain  
14 the questions and what they mean, and then we ask  
15 you to explain it back, so we are convinced and  
16 sure and certain that it means the same thing to  
17 you that it does to us.

18 Then after the data is collected, it's  
19 analyzed. DOE is required, as Dr. Barland  
20 alluded to before, that we have to have a quality  
21 assurance, at least one other examiner look at  
22 your test. We do four. If a DOE examiner runs  
23 your test, it is given to a peer examiner who  
24 does a blind analysis without the benefit of  
25 knowing what the data was analyzed by the



1 administering examiner; then it goes to a  
2 supervisory examiner, and ultimately the quality  
3 control, and it doesn't make any difference who  
4 you are because your test is just as important to  
5 us as General Habiger's was to him.

6 People are people, and it's your future  
7 career reputation and the work that you do that  
8 is important to us, and all we're verifying, as I  
9 indicated before, is that you only work for our  
10 government.

11 Then we have that fourth layer of quality  
12 control. We're the only Federal agency that does  
13 that, but, you know what, we're the only Federal  
14 agency that makes nuclear weapons, too.

15 All right. The Secretary of Energy has  
16 told us in writing that just a response on a  
17 polygraph test in and of and by itself will not  
18 be the sole reason for denying a person access to  
19 classified information. Every possible effort  
20 must be exhausted, every means that we have, to  
21 and including an investigation by the FBI who has  
22 the charter to investigate espionage in this  
23 country.

24 There are only two people that get the  
25 results of your test. One of them is sitting

1 right there, General Habiger, who is a Security  
2 Czar, if it happens to be a test under his  
3 supervision or responsibility, and Edward J.  
4 Curran, who is the Director of  
5 Counterintelligence for the Department of Energy.

6 I think the secretary made two choices  
7 that I don't believe anybody else could  
8 duplicate. You've got a guy who is in charge of  
9 the strategic air command for the Air Force --  
10 for the whole Air Force, the people who employ  
11 and use the weapons that you guys build. Then  
12 you've got Curran, who is a guy who is the  
13 Assistant Director of the FBI. He is the one  
14 that they brought in to help out the CIA when  
15 they had their investigative problems with Ames  
16 and subsequent to Ames. Curran is the guy who  
17 worked the Nicholson case and the other cases  
18 with the FBI.

19 Well, the data is provided, the opinion is  
20 provided to the source that requested and  
21 approved the test. And Counterintelligence  
22 testing is approved by Ed Curran, so the results  
23 of your test can only go to his office and only  
24 to him. It's put into what is called a  
25 Counterintelligence Analytical Research Data

1 System, the acronym is called CARS. It's a  
2 clarified system. And only he can read that. He  
3 makes a decision based upon whether or not there  
4 were responses or no responses to the security  
5 questions of your test. If we need to do  
6 additional testing, it's done, and it's done  
7 right away, because we don't want any unresolved  
8 issues. The idea is to finish the job for you as  
9 painlessly as we possibly can.

10 Every examination that we conduct is  
11 recorded on videotape simultaneously with an  
12 audio track. There is a camera that is placed  
13 upon the person taking the exam, and the data  
14 that is recorded physiologically that you're  
15 providing into the computerized polygraph is  
16 inserted into that videotape so that we can  
17 correlate any artifacts that might be made during  
18 the testing process or any countermeasures that  
19 might be employed.

20 At the same time that you're being tested  
21 in the room, the supervisor sits right outside  
22 that office on a video screen where it's being  
23 recorded and can have the benefit of seeing the  
24 test as it is run realtime. Those recordings  
25 are kept only for quality assurance review.

1           No later than 90 days from the final date  
2 of adjudication of the data of your test, they  
3 are destroyed on non-issue polygraph tests. That  
4 means that there was no reason to test you any  
5 further, and they are destroyed by incineration.  
6 We wait 90 days. So we collect them from the  
7 point of the last date of destruction -- until  
8 that date, and then they are incinerated.

9           We only use the polygraph programs and  
10 procedures and policies that were initiated and  
11 requested by the Joint Security Commission and  
12 put out by the Department of Defense Polygraph  
13 Institute.

14           I served as a Chief of Instruction for  
15 that institute from 1986 to 1991, and I know what  
16 those procedures are.

17           The Quality Assurance Program that he  
18 talked about where DODPI goes out and certifies  
19 Federal agencies, DOE has the only polygraph  
20 program in the Federal government that has been  
21 inspected by DODPI that had zero findings,  
22 because we do things the correct way. I believe  
23 in doing it once and doing it right and doing it  
24 now.

25           The Secretary of Energy has said that no

1 adverse action can be taken against you unless  
2 every other measure and procedure has been  
3 followed to resolve that issue. All of our  
4 examiners have to go through DODPI, as  
5 Dr. Barland indicated.

6 I don't believe in hiring a kid out of  
7 college and teaching him to run your tests, so we  
8 have experienced examiners in the Department of  
9 Energy that were taken from other agencies. I  
10 have one from the agency, the CIA, I have one  
11 from NRO, I have one from NSI and one from MI and  
12 one from Naval Investigative Service and three  
13 from the Air Force Office of Special  
14 Investigations and one Marine Corps. All of them  
15 have proven counterintelligence experience that  
16 has been demonstrated by their past careers.  
17 They have all been either 1811 Federal  
18 investigators or military in the branches that I  
19 just talked about. They have to be DODPI  
20 certified and DOE certified. I require they must  
21 maintain full and complete membership in national  
22 associations, both the APA and AAPP.

23 Several of our people, including myself,  
24 hold leadership positions in these national  
25 associations, and I serve as the Director of

1           Quality for the AAPP and a subcommittee chairman  
2           for the APA Quality Control.

3                   And we've been inspected by everybody that  
4           has the capability of inspecting polygraph  
5           programs in this country, and in each instance --  
6           we have it in writing, and should you come down  
7           to take your exam you're welcome to review --  
8           there are letters of endorsement indicating,  
9           bottom line, that DOE has the best program in the  
10          Federal government.

11                   There are only two people who really count  
12          in administering this program. One of them is in  
13          the audience and chairing this public hearing  
14          today, and that's General Habiger. The other one  
15          is my boss, who pays my salary, which is Edward  
16          J. Curran, the Director of Counterintelligence  
17          for DOE.

18                   And that was a seven-and-a-half minute  
19          tour of normally an hour and a half presentation,  
20          and I was told to keep it short, so I did. Later  
21          on if you have a specific question about  
22          polygraph procedures that you'd like to talk to  
23          me about, I'll be happy to discuss that one on  
24          one maybe out in the hallway.

25                   General Habiger.



1           which I will be making up later today. I speak  
2           for myself alone as a private citizen, who just  
3           happens to be employed by the Lab.

4                        I've had a very enjoyable career at  
5           Lawrence Livermore National Laboratory working in  
6           Defense Sciences, Inertial Confinement Fusion,  
7           and Extreme Ultraviolet Metrography.

8                        In each of these areas, I've had the  
9           pleasure of working with many singularly  
10          brilliant people who continue to work here  
11          despite the sometimes contradictory requirements  
12          coming from DOE. These scientists and engineers  
13          have created a tremendous intellectual property  
14          for the country and for the taxpayers' dollar,  
15          much of which is protected by secrecy  
16          requirements.

17                       When I joined the Laboratory, it was not a  
18          condition of my employment that I submit to  
19          polygraph testing. Had the polygraph been  
20          required, I would have thought long and hard  
21          about my future employer. I have to believe that  
22          the same thought and question would be on the  
23          minds of many of my colleagues.

24                        So why should I oppose polygraph testing?  
25          If I have nothing to hide, I should have nothing



1 to fear, correct? And that was stated earlier as  
2 well. Then if you have nothing to fear, for  
3 example, why not allow police searches of our  
4 houses at random, or why not grant the IRS full  
5 access to all of our personnel records at a  
6 random time, or perhaps we permit authorities to  
7 periodically come to our houses to inspect or  
8 child-rearing techniques.

9 Polygraph testing is not generally  
10 accepted in criminal proceedings, as I  
11 understand, and I believe it is ultimately a  
12 violation of our Fifth Amendment rights to be  
13 compelled to submit to polygraph testing.

14 Now, back to the Lab. In my opinion,  
15 polygraph testing will only alienate present  
16 employees, and it will act to dissuade the best  
17 and the brightest from joining the Lab in the  
18 future. This will be bad for the Lab. It will  
19 be bad for the employees, and but for a small,  
20 dubious security value, it will result in a  
21 significant future devaluation of the Lab's  
22 scientific and technical value to the country.

23 So thank you very much.

24 GENERAL HABIGER: Thank you, sir. I  
25 appreciate your comments.

1                   The next unscheduled speaker is Steve  
2                   Pollaine, and if I've mispronounced your name,  
3                   sir, please correct me.

4

5   STEVE POLLAINE

6                   You got it. Hello. Let me first thank  
7                   you for giving me the opportunity to speak to  
8                   you, and my name is Steve Pollaine, and I am  
9                   representing myself. I'm a Livermore physicist  
10                  in X Division, and my job is to provide targets  
11                  for the next laser.

12                  And although I agree with the sentiments  
13                  expressed by the speaker, I've come not to say  
14                  why I don't think we should be polygraph tested,  
15                  but to provide two suggestions on how it might be  
16                  implemented in the event that we are tested.

17                  So the first one is that we were told by  
18                  David Renzelman just now that all the tapes  
19                  without any deception found on it would be  
20                  destroyed within 90 days. I looked for this in  
21                  the Federal Register that they passed out to us  
22                  as we can come in, and I couldn't find that  
23                  anywhere here. Maybe I didn't read it right, but  
24                  if it's not in there, I would ask that that be  
25                  put in there.

1           Second of all, I would suggest that a  
2           panel of our peers be set up. Those members  
3           would come from those of us who will be polygraph  
4           tested, and this panel will issue a report once a  
5           quarter that will say in effect yes, the  
6           polygraph testing is being conducted fairly.

7           I believe this panel will be helpful  
8           because there is a severe moral problem at our  
9           Lab amongst the designers. And it's even worse  
10          at Los Alamos. I have a lot of friends there,  
11          and I have talked to them. A big contradiction  
12          to this moral problem at both Labs is the fate of  
13          one of our colleagues at Los Alamos who has been  
14          fired from his job as an ICF designer.

15          And I wanted to thank you, General  
16          Habiger, for responding to my concerns that I  
17          previously expressed in this case.

18          And I and all my colleagues that I've  
19          talked to at both labs believe that had this  
20          individual committed these two security  
21          violations a year ago, he would have received an  
22          administrative penalty, but he would not have  
23          been fired.

24          In the politically-charged atmosphere that  
25          now prevails, the prevailing belief among

1 designers and the people I've talked to is that  
2 he is a scapegoat to prove to Congress that the  
3 Department of Energy is taking security  
4 seriously. Now, whether or not this perception  
5 is true, and we really don't know, but the fact  
6 is that this perception does exist, and it does  
7 contribute to a moral problem.

8 And then along comes polygraph testing,  
9 and it kind of fits into this. You know, like  
10 who do we trust here? Do you trust us? Do we  
11 trust you? And if there is a false positive, how  
12 will this be handled administratively?

13 And the firing of this particular  
14 individual doesn't give us too much confidence.

15 So I believe that a panel of our peers  
16 that is allowed to review the policy and follow  
17 its implementation on a quarterly basis will  
18 contribute to our sense that the process indeed  
19 has been impartial.

20 And I'm not asking that the overseers have  
21 executive authority, but just that they look at  
22 it, and if we think there is a problem or  
23 something is not fair, we can go to them and say,  
24 "What about this?" And then, should problems  
25 arise, we would have more confidence that both

1 national security and our personal interests are  
2 being protected.

3 And I thank you again for the opportunity  
4 to express these ideas.

5 GENERAL HABIGER: Thank you, sir. It was  
6 good seeing you again.

7 Next, call to the podium Mr. Joe Nilsen.

8

9

JOE NILSEN

10 My name is Joseph Nilsen, and I represent  
11 myself. I have been a physicist at Livermore for  
12 22 years and spent most of my career in the  
13 Nuclear Weapons Program. Thank you for this  
14 chance to address the panel concerning the  
15 proposed polygraph testing of Livermore  
16 employees.

17 I am quite concerned that the polygraph  
18 testing will do great harm to our national  
19 security.

20 LLNL is a great scientific institute full  
21 of many talented scientists, engineers,  
22 technicians and other support staff. We are all  
23 concerned about protecting the secrets which we,  
24 after all, created and which are used for the  
25 national defense of our country. We therefore

1           agreed to thorough background checks periodically  
2           as a condition of doing classified research;  
3           however, we did not agree to polygraph tests as a  
4           condition of employment.

5                        So on Mr. Barland's own admission, the  
6           validity of the polygraph is unknown. Reading  
7           the literature, it is clear that polygraph has no  
8           scientific basis.

9                        Police agencies like the polygraph because  
10          it is an effective method of intimidation and  
11          interrogation which occasionally results in  
12          confessions. These confessions are used as the  
13          justification for the polygraph.

14                      I do not think you will find many  
15          scientists at LLNL, whose careers involve  
16          questioning every assumption, who will believe in  
17          the validity of the polygraph. I think  
18          Mr. Renzelman is going to encounter many people  
19          who have an attitude problem.

20                      Given the subjective nature of the  
21          polygraph test, I am very concerned that the  
22          careers of many of these people could be ruined  
23          by these tests.

24                      I think a good analogy to the subjective  
25          nature of the polygraph is the metal detector.

1           There are many occasions when I travel and  
2           successfully go through the metal detector at the  
3           airport with keys in my pocket and a pocket full  
4           of change; however, the sensitivity of the  
5           detector can easily be changed.

6                        When I visited the Denver Mint, officials  
7           there said that all their employees go through  
8           their metal detector and it is set so sensitive  
9           that it can detect the aluminum foil from the  
10          wrapper on a piece of gum.

11                      General, I suspect that when you had your  
12          polygraph, the machine was set as in the first  
13          case. Would you want to be the interrogator for  
14          who failed the General on a polygraph? I think  
15          in your case, the interrogator was the one  
16          concerned about his job.

17                      However, I am sure that when the  
18          Chinese-American weapon scientists or scientists  
19          with extensive foreign travel or someone whose  
20          opinions management does not like is subject to  
21          the same machine, the situation will be reversed,  
22          and the sensitivity of the machine and the  
23          interrogation process will be quite different;  
24          since there is no accountability, the  
25          interrogator can do whatever he pleases.

1           I think the polygraph tests will do great  
2           harm to the future vitality of the DOE weapons  
3           labs. I cannot imagine bright, young people  
4           would come to work at Livermore and subject  
5           themselves to this degrading experience when they  
6           have many other employment options. As Doug Post  
7           pointed out, PeopleSoft is nearby and Silicon  
8           Valley is not much farther away. I do not think  
9           we can be hiring the best and the brightest in  
10          the future.

11          The older employees may tolerate this  
12          insult to their honor because of their vested  
13          interest in the UC retirement system. But I  
14          suspect many older employees will leave once they  
15          got the opportunity.

16          I think there is a significant danger that  
17          the UC will not want to renew the contract with  
18          DOE to manage the Lab since polygraph tests run  
19          counter to normal university policy.

20          I suspect many retired employees, who are  
21          now Lab associates, will decide it is not worth  
22          the abuse to continue to work at LLNL. I can  
23          only imagine the response you will get from  
24          consultants in academia when you call them for  
25          their polygraphs. In the long term, the



1 polygraph tests risk turning the DOE labs into  
2 second-rate scientific institutes.

3 I have many specific concerns, but only  
4 have time to mention a few.

5 Section 709.4, regarding who is eligible  
6 for the polygraph, is so vague in item 6 that  
7 anyone with a Q clearance is potentially subject  
8 to the polygraph. We need clarification as to  
9 who is actually subject, how that will be  
10 determined and what access they will be denied if  
11 they refuse. The vagueness of this rule  
12 certainly opens up endless possibilities for  
13 abuse. Will any manager at the Laboratory be  
14 able to put someone on the polygraph list because  
15 of personality conflicts?

16 At a recent conference I attended in  
17 Denver, several foreign colleagues asked if the  
18 U.S. was returning to the McCarthy era.

19 Section 709.23, concerning the voluntary  
20 nature of the polygraph is an insult. If someone  
21 does not take the polygraph, they will lose  
22 access, whatever that means, which effectively  
23 means they will lose their job.

24 Under LLNL policy, anyone who loses their  
25 Q clearance can be terminated in 14 days.

1           This polygraph is not voluntary, so why  
2           pretend it is.

3           Since we are allowed to seek legal advice,  
4           I think it is essential that the consent form be  
5           provided as soon as possible so that people know  
6           what they are being forced to sign under the  
7           threat of losing their job, having their career  
8           ruined, losing most of their retirement benefits,  
9           losing the medical insurance for their family,  
10          et cetera.

11          These are just a few of my concerns. It  
12          is unfortunate that you have already decided the  
13          outcome of these hearings as indicated by your  
14          admission that you have more than doubled your  
15          staff of polygraph operators. Clearly, you plan  
16          to begin these tests as soon as possible.

17          In conclusion, I am concerned that we are  
18          being denied our constitutional rights and being  
19          forced to submit to the polygraph. Without our  
20          constitutional rights, our society is a little  
21          different from the totalitarian regime in other  
22          countries.

23          Thank you.

24          GENERAL HABIGER: Thank you, sir. We  
25          appreciate your observations.

1                   Our next scheduled speaker is Mr. Tom  
2 Harper.

3

4                   TOM HARPER

5                   Good afternoon and thank you for allowing  
6 me access to the podium.

7                   I would like to echo the previous  
8 speaker's sentiments. Those are sort of my  
9 thoughts, also. I do not have a written  
10 statement. I'm going to speak off the cuff, and  
11 I hope you will respect my remarks.

12                  I joined the Lab in 1969 after attending  
13 the University of California at Berkeley and  
14 receiving a Ph.D. at MIT. The reason I joined  
15 the Lab, it was a natural progression of my  
16 scientific career. I'm a physicist, and I was a  
17 physicist at the Laboratory in diagnostics and  
18 nuclear testing. I served in that position for  
19 several years, later serving as an  
20 experimentalist in the Laser Program and then  
21 later going to what is known as Z Division of  
22 this Laboratory.

23                  Z Division, as you know, is the  
24 intelligence division of this Laboratory, and we  
25 try to figure out what other people are doing.

1 As you know, other people try to figure out what  
2 we are doing. We have interacted also with  
3 Stratcom over the years, and that interaction, I  
4 think, has been positive.

5 And in 1993, I retired. I took a DOE  
6 buyout, and I now serve as a Laboratory associate  
7 and for which I'm grateful.

8 Over the years I've had a good career and,  
9 I think, productive career, and it's always been  
10 with the University of California. We were  
11 always the University employees that were working  
12 to develop this technology.

13 This work we do at Livermore, it is in the  
14 academic environment, and some people have said  
15 you've been academically arrogant. I don't know  
16 if we have been arrogant or not. Some people  
17 perceive that, but there is also the perception  
18 today.

19 Now we are going to be forced to take  
20 polygraphs. This is not in the tradition, in the  
21 history of what the University of California has.  
22 So I would like to comment on your rulemaking, as  
23 other people have commented today, of just a  
24 few -- of what I have read.

25 The Employee Polygraph Protection Law Act

1 generally prohibits the use of polygraphs in  
2 private employment, but this law does not apply  
3 to Federal government. As an investigative tool,  
4 polygraph examination results are superior to  
5 random interviews relying on purely subjective  
6 evaluations. I haven't seen that presented in  
7 the briefings that we were given. It may be  
8 true. I just haven't seen it. I'm an  
9 experimentalist, remember. We look for the  
10 percents, the errors.

11 If an employee refuses to take the  
12 polygraph, the refusal cannot be put into the  
13 employee's personnel file, the fact of the  
14 refusal, sort of carrying this academic stuff  
15 further; however, it can be put in the personnel  
16 security file. That to me, there is no  
17 difference. But legally, I suppose, there is.

18 I won't read No. 4.

19 No. 5. If a person takes the polygraph  
20 test -- this is in 709.25. If a person takes a  
21 polygraph test and deception is indicated or the  
22 examiner has no opinion, that results in what I  
23 consider is a negative. I question the "no  
24 opinion" because, as a scientist, if I have no  
25 opinion, that means I don't know. I don't know

1           within the reasonable, technical ability of what  
2           I'm supposed to be doing.

3                     If a designer asks me something about his  
4           nuclear weapon and our experiment can't prove it  
5           to him and I say "No opinion," I mean "No  
6           opinion." It looks to me like this rule places  
7           some weight -- inappropriate weight on "no  
8           opinion." That will have to be changed.

9                     The last two points, in Executive Order  
10          12612, it says the rules -- basically it says the  
11          rules that the Federal government make ought not  
12          to impose -- how does it go? "The relationship  
13          between the Federal government and the States, or  
14          in the distribution of power and responsibilities  
15          over the Federal various levels of government."

16                    I work for the University of California.  
17          I believe that I'm considered a State of  
18          California employee. I am not considered a  
19          Federal employee. This rule usurps the State of  
20          California's rule over me, if you wish, as I  
21          understand it. It may not, but it's a legal  
22          question I wish to raise.

23                    I raise it in the context with the fact of  
24          the no opinion and in the fact that with regard  
25          to -- in section -- well, it's page 45068, "With

1 regard to a contractor employees" -- as I  
2 understand the University and its employees are  
3 contractor employees to the Department of  
4 Energy -- "discharge, discipline, or denial of  
5 employment or promotion, or any other  
6 discrimination in regard to the hire or tenure of  
7 employment or any term or condition of employment  
8 is possible under this polygraph rule." I think  
9 that violates the State and Federal separation.

10 Thank you very much.

11 GENERAL HABIGER: Thank you, Dr. Harper.

12 Next Rene Steinhauer, and please correct  
13 the pronunciation, sir, if I have butchered that,  
14 and I apologize in advance.

15

16 RENE STEINHAUER

17 Yes, I will. General, my name is Rene  
18 Steinhauer. I'm here in place of Marylia Kelley,  
19 who would have been here earlier this morning,  
20 representative of Tri-Valley CAREs. I'm the  
21 community organizer for that organization.

22 CARE is an acronym for Communities Against  
23 a Radioactive Environment, and we're frequently  
24 kind of locked in different battles going on with  
25 the Lab in terms of the environment situations

1           and some of the accidents that have been reported  
2           here.  However, I've come here today to speak and  
3           express my concern about this development with  
4           the lie detector test.  And I think there is no  
5           need to -- I mean, one of the first of the two  
6           issues, the Constitutional Rights, because I  
7           think other people have expressed them very  
8           adequately and profoundly, so I'll move from  
9           that, but I would like to just go on the record  
10          that Tri-Valley CAREs is concerned about the  
11          potential threat to the rights of individuals and  
12          citizens who work here.

13                        I'm not a Lab scientist.  I'm an  
14          individual resident.  I've lived here for a  
15          quarter of a century, and I have a lot of good  
16          contacts and friends who work here, and what I do  
17          I'll get into in the next moment.

18                        One of the other issues that I wanted to  
19          touch upon was the matter of the polygraph exam  
20          itself.  And I know that we have had very  
21          impressive numbers and a presentation of what it  
22          can do and all of that.

23                        From 1962 through 1972, I was employed as  
24          an insurance investigator, and then thereafter up  
25          until now and continuing, I'm continuing.  I've



1           been a licensed private investigator here in the  
2           state of California. I would not wish to pass  
3           myself off as an expert in the polygraph  
4           business, but I have seen enough of what it does  
5           to people and yes, admittedly almost all my  
6           experience has been in the criminal justice area,  
7           where you deal with police departments and  
8           district attorneys and other area, and not the  
9           very elaborate system that is reported here with  
10          governmental agencies.

11                        But the fact remains that there are still  
12          percentages that remain unresolved. The fact  
13          remains, as was, again, very eloquently pointed  
14          out, that fine tuning can be made to different  
15          tests and that these tests ruin people's lives  
16          and their careers, their relationships, their  
17          very relationships with wives and children and  
18          employers and others. And this is a very  
19          dangerous undertaking that I don't think is going  
20          to produce much more in the way of the positive  
21          results that you are seeking.

22                        I would just like to point out that I  
23          believe, and Tri-Valley CAREs believes, that this  
24          business of the polygraph examinations is the  
25          wrong medicine for the wrong illness.

1           The real problem has to do with the  
2 proliferation of this knowledge, and years  
3 ago, it was Teller himself, co-inventor of the  
4 hydrogen bomb, co-founder of the Lab, that said  
5 that secrets can't be kept beyond a set number of  
6 years -- I think he set it at five -- but that  
7 sooner or later everything gets out. And as long  
8 as we keep going on with this -- oh, things like  
9 the stockpile stewardship and NIF and other  
10 things that are really working, some of the time  
11 in contradiction to existing treaties and other  
12 things, other governments are going to be  
13 striving very hard to learn all they can from  
14 this.

15           And we publish a lot of unclassified  
16 material. We send our scientists to a lot of  
17 conferences, and this is where some of the  
18 information comes out, and it's not that there  
19 are spies; it's not that there are traders. It's  
20 a theme of people that are dealing in a certain  
21 work environment, and sometimes maybe they  
22 wrongfully assume that the other scientist knows  
23 a little bit more than he does, but that's what  
24 the real problem is.

25           Lie detectors aren't going to shut this

1 down. What is really going to shut it down is to  
2 put this proliferation of new scientific data  
3 going on that is in contrast -- in contradiction  
4 to the existing treaties.

5 So we wish that you would take a harder  
6 look at that, and we wish that you would take a  
7 harder look at the potential destruction that  
8 exists to very good men of high caliber and  
9 absolutely the loss of interest in young  
10 scientists coming to work here, because I think  
11 that's part of the risks that are here.

12 Tri-Valley CAREs has always wanted to  
13 shift the Lab from what we call green directions,  
14 but that's besides the point. The point is that  
15 we're now getting beyond what is a good American  
16 tradition. And, you know, people always like to  
17 talk about the Founding Fathers, and one of  
18 them, Benjamin Franklin, used to say "Three may  
19 keep a secret if two of them are dead." And  
20 that's really what this is about.

21 And you can't hold these things down, and  
22 the more you move in that direction, the more you  
23 yourselves become a reflection of the very thing  
24 you say that you're combating, and I think that  
25 is a great moral responsibility on you. I don't

1           envy it of you, but I think that you have to take  
2           a very hard look at this.

3                     And, if I may just -- I guess that's  
4           basically what I had to say. I have a lot of  
5           respect and admiration for the people, the men  
6           and women, who work here, and I think they are  
7           doing a very difficult job, and sometimes we're  
8           at odds with what they are doing, but beyond that  
9           there comes a point where people start to forget  
10          what it is to be American, and when you start  
11          throwing up rules and laws that curtail the  
12          rights and invade the rights of others, perhaps  
13          you're as far away from Americanism as you seem  
14          to suspect they are.

15                    Thank you.

16                    GENERAL HABIGER: Thank you, sir, for your  
17           comments.

18                    If anyone sitting in the audience would  
19           like to come down and speak, I would ask that you  
20           go to the registration desk and sign in, and then  
21           we'll get you in the cube.

22                    GENERAL HABIGER: Mr. Hugh DeWitt.

23

24                                    HUGH DEWITT

25                    Thank you for this opportunity. I'm

1 speaking for myself. This is totally unplanned.  
2 I did not bring a prepared statement. My name is  
3 Hugh DeWitt. I was a Laboratory employee for 39  
4 years, from 1957 until three or four years ago.  
5 I'm currently still at the Lab as a participating  
6 guest. I've been here since receiving my Ph.D.  
7 from Cornell University in 1957. I've been a  
8 theoretical physicist in several divisions of the  
9 Lab, doing primarily unclassified basic research  
10 in Plasma Physics, Astro Physics. Not too much  
11 connection with classified work, although I've  
12 tangled quite a bit with the classified  
13 classification system and have had a number of  
14 conflicts.

15 Now, I want to speak mainly to one  
16 particular point on this polygraph business. I  
17 think it will do great damage to the Livermore  
18 Laboratory and Los Alamos Laboratory. I think  
19 it's a fundamental and grave mistake to try to  
20 hunt for spies, espionage by means of polygraph  
21 testing.

22 I am very skeptical that you will ever  
23 catch any Lab staff member guilty of espionage,  
24 admitting it or not admitting it, through a  
25 polygraph test. I think that you will simply

1 draw blanks.

2 On the other hand, you will make the  
3 people very unhappy and very uncomfortable and  
4 fill people who are perfectly good American  
5 citizens and good scientists with such revulsion  
6 that they will not want to have anything more to  
7 do with this institution.

8 And I think that point was brought up very  
9 well by my former colleague Joe Nilsen who spoke  
10 a few minutes ago. In fact, I want to echo  
11 essentially everything that he said. He very  
12 obviously prepared a very careful written  
13 statement, which I approve of in every detail.

14 Now, I have had very strong academic  
15 connections during my career. All the time I was  
16 at the Laboratory, I was teaching at Berkeley.  
17 I've been a professor at a number of  
18 institutions, and I have dealt with graduate  
19 students and faculty members, and I have dealt  
20 with the people who were doing consulting work  
21 here at the Livermore Laboratory. Some of my  
22 students and colleagues have worked here and have  
23 then completed their careers at other academic  
24 institutions.

25 The principal thing I wanted to point out

1 is that most people -- most scientists in  
2 academia regard polygraphs as a very questionable  
3 means of detecting deception or lies. Maybe they  
4 do, maybe they don't. What they do measure is  
5 emotional responses, which may perhaps correlate  
6 with something that the investigator is  
7 interested in, but by and large, the polygraph  
8 testing has little to do with establishing  
9 whether a person is truly reliable and  
10 trustworthy or not.

11 But giving the test in a very  
12 bureaucratic, intimidating procedure as you  
13 people are setting up, will be regarded as very  
14 offensive. This is the opinion I get from most  
15 of my friends in the universities, and for that  
16 matter, most of my friends in two national  
17 laboratories, Livermore and Los Alamos.

18 The net effect, I think, will be that  
19 bright, young physics students who might  
20 otherwise consider a job at the Livermore  
21 Laboratory will decide not to come here, and it's  
22 going to cause the quality of the Laboratory  
23 scientific staff to decline. I mean, there is  
24 just simply no reason why a very promising grad  
25 student about to get his Ph.D. from MIT or

1           Cornell or Stanford will want to come to a second  
2           rate place like the Livermore Laboratory that  
3           imposes this kind of an indignity on them. I'm  
4           just giving an impression of what I think will be  
5           perceived around the United States.

6                     And over the next very few years, I think  
7           the Laboratory is going to find it increasingly  
8           difficult to recruit the best scientists that it  
9           claims it needs to continue even the nuclear  
10          weapons work that is going on here right now.  
11          That is my main point.

12                    The polygraph testing is antithetical to  
13          what you're after. I mean, you think that you  
14          may detect a rare spy. I mean, it would be nice  
15          if you could detect an Aldridge Ames, if we have  
16          one here, but I would doubt that very much. I  
17          mean, even the CIA indicated that they failed to  
18          detect Aldridge Ames by that method.

19                    But what you will do is drive away staff  
20          members who are already here who are offended by  
21          the whole procedure, and you will drive away good  
22          candidates who can improve the scientific quality  
23          of the Livermore Laboratory.

24                    And I think that's it. I think it's a  
25          mistake to even consider this whole program.



1 Thank you.

2 GENERAL HABIGER: Thank you, Dr. DeWitt  
3 for giving us your views. We very much  
4 appreciate that.

5 Mr. Michael Axelrod, you've asked for a  
6 revisit and, sir, we'd like to have you come  
7 back.

8

9 MICHAEL AXELROD

10 Thank you very much. This morning I spoke  
11 mainly with a technical voice. This afternoon I  
12 would like to speak with a more personal voice.

13 You may very well think that since  
14 institutions like the CIA and the NSA undergo  
15 both pre-employment polygraphing and repeat  
16 polygraphing, why not do it at the national labs,  
17 and this may have already been covered by prior  
18 remarks this afternoon. I wasn't here for them,  
19 but I'll give you my opinion.

20 My opinion, this is a really different  
21 institution than those two institutions. We are  
22 not in the espionage business; we are not in the  
23 business of deception. While we have secrets, we  
24 don't try and deceive. That's the whole core of  
25 science, is not to deceive.

1           So therefore there is a different culture  
2 here. What may be tolerated at those  
3 institutions is not going to go down well here,  
4 as I'm sure you have heard.

5           Moreover, when we signed on here, we had  
6 no expectation that this would be a requirement,  
7 as is the case at NSA or CIA. When you take a  
8 job there, you know you will be regularly  
9 screened, and you accept the job under those  
10 conditions.

11           Here there is, apparently, going to be no  
12 grandfathering. You will be forced, in some  
13 cases, if you are working on sensitive projects,  
14 to either take the test or work on something else  
15 or work somewhere else, perhaps at an advanced  
16 stage in your career. That is very serious.

17           I must tell you, in my personal opinion,  
18 if you go through with this, you are in danger of  
19 killing this institution as we know it now. And  
20 you have to have that on your conscience if that  
21 should come to pass.

22           I don't believe it will work. I believe  
23 that people don't like the fact that they are  
24 going to have to go into a room in a situation  
25 where they have no control. They don't even have

1 the option, as I understand it, of, say, being  
2 polygraphed by an independent examiner.

3 So those are my personal remarks. Thank  
4 you very much for listening. I hope you will  
5 give them due consideration.

6 GENERAL HABIGER: Thank you, sir, and we  
7 appreciate you coming back.

8 Next unscheduled speaker, Mr. Ray Kidder.

9

10 RAY KIDDER

11 I'm grateful to have the opportunity to  
12 speak to you very briefly, General Habiger and  
13 ladies and gentlemen.

14 My name is Ray Kidder, and believe it or  
15 not, I worked in the Manhattan District Project  
16 in 1943, and I've been working at the Lawrence  
17 Livermore Laboratory since 1956, and until the  
18 present time as a Laboratory associate.

19 Now, they say that age brings wisdom.  
20 Now, I can't say anything about the wisdom, but I  
21 can guarantee you the age.

22 I've been involved in almost everything  
23 this Laboratory has done, the major things at  
24 least. Initially, I was involved in the design  
25 of nuclear weapons, and I chaired the committee

1           which reviewed all of the nuclear weapons in  
2           their hope for performance before the 1962  
3           Dominique Test Series. Now that was a long time  
4           ago.

5                        I also was involved with the beginning of  
6           the Laser Program here at Livermore. In fact, I  
7           was the one that recommended it to Johnny Foster,  
8           and he then said "Let's go" in 1962.

9                        In 1972 I recommended to the AEC in  
10          Washington at a meeting before the commissioner,  
11          who was in charge of isotope enrichment, that we  
12          begin in Livermore the Alice Program, Dominique  
13          Paper, Laser Isotope Enrichment Program.

14                      And I've done a number of other things. I  
15          was involved in top secret work, nuclear weapons,  
16          in the late '50s and early '60s, and I've been  
17          working off and on lasers, nuclear weapons and  
18          this and that ever since.

19                      I retired in 1990, and I've been a  
20          low-level, meaning 5 -- I should say 5 percent  
21          full time, which is kind of a nice activity, as a  
22          Laboratory associate ever since I retired in  
23          1990, and that's my present position.

24                      So I have the age, if not the wisdom;  
25          however, I must point out, as you all know, that

1 in spite of the fact that I have been working  
2 with classified matters of a very high degree of  
3 classification ever since 19 -- well, not ever  
4 since, I had a hiatus; I worked for Standard Oil  
5 for a while -- ever since 1943.

6 And I worked closely with Johnny Foster,  
7 the director, when I was working primarily on  
8 nuclear weapons in the early days of this  
9 Laboratory.

10 And the thing that strikes me is that I'm  
11 not aware that during that whole period of time  
12 there was that much significant nuclear weapons  
13 information released. Now, it just may be a  
14 matter of my ignorance, but I do know, or I think  
15 I know, that during that entire time, I was never  
16 subjected or threatened to be subjected or asked  
17 to be subjected to polygraph tests, and I don't  
18 think it did a whole lot of harm. I mean, look  
19 at what this Laboratory has done, and there is no  
20 question about that.

21 And I think there is, to my mind -- maybe  
22 it's just my own ignorance, but there is to me a  
23 lot of questions about the relative merits of  
24 stopping what seems to me to be very little real  
25 information that has gotten out in the form of

1 nuclear weapons, inadvertence or espionage.

2 On the one hand, and what I believe, it  
3 would be a serious impact on many good people to  
4 come to this Laboratory if polygraph tests are,  
5 in fact, instituted for a large part of the  
6 population here, that is, the population that has  
7 a Q clearance as I do.

8 That's about all I have to say. But I am  
9 disconcerted, honestly, and I've worked in this  
10 business probably longer than -- I won't say  
11 longer than Edward Teller. He's ahead of me by a  
12 few years.

13 But other than that, I have been in this  
14 business about as long as anybody, and I have  
15 worked with all kinds of information and in all  
16 kinds of fields and all kinds of classification.  
17 I've had special access clearances for Z  
18 Division things, and all that too, and I just  
19 think this is a bad idea, and it will have very,  
20 very poor results, frankly, in maintaining the  
21 great status of this Laboratory and the quality  
22 of the people that work here.

23 Thank you.

24 GENERAL HABIGER: Thank you, sir.

25 Appreciate your comments, and I'll be seeing

1 Dr. Foster next week, and I'll say hello for you.

2 RAY KIDDER: Thank you very much, please  
3 do.

4 GENERAL HABIGER: Any other unscheduled  
5 speakers who would like time at the podium, we  
6 are open at this time, and we will be open until  
7 1900 hours or 7:00 p.m.

8 Let the record reflect, Mr. Rene  
9 Steinhauer.

10

11 RENE STEINHAUER

12 There was one other thing I had meant to  
13 point out in there, but, you know, with the press  
14 of time, things go out of your mind.

15 And, again, as I said before, I would not  
16 put myself forward as an expert on the polygraph,  
17 but over the years, I did attend a couple of  
18 seminars and special classes, and what sometimes  
19 happens is that other investigative agencies have  
20 gotten into a particular niche, will hold special  
21 classes and demonstrations to encourage one to  
22 enroll and become a part of a similar program.

23 And mainly out of the fomented, I've tried  
24 it a couple of times, and without giving details,  
25 because that would be teaching people how to go

1 around the system, I have found a way to at least  
2 confound the system.

3 I don't know that I could get away with a  
4 lie, but I could confound the system, and I  
5 wanted you to know that I would offer myself as  
6 an experiment in this area, and, again, it  
7 just -- it happens that the experienced people  
8 can get away with something, and that the naive,  
9 the innocent, the human people can sometimes give  
10 these false positives that lead to a great deal  
11 of grief in their lives.

12 And, as I said, my main involvement has  
13 been in criminal affairs with regard to lie  
14 detector tests and, oh, sometimes store managers  
15 or cashiers or others that were put through this,  
16 and I surely see this as a way to intimidate  
17 people, and it's a way of holding control over  
18 them that they might not otherwise have.

19 And the only other concept I would like to  
20 put forward, and this may be a little bit afield,  
21 but we're trying to do this to a group of people  
22 who have already stated that they don't believe  
23 that they are covered under these results. But  
24 if we really were to revert to this kind of  
25 big-brother state where we are going to be



1 looking over each other's shoulders, what we are  
2 really on -- we started out with Chinese  
3 espionage, but now we're dealing with American  
4 treason, and when we're looking at American  
5 treason, there are other forms of treason around  
6 us, and one of the most obvious is all those  
7 elected officials that sell themselves out  
8 against the interest of the people they represent  
9 in favor of vested interests. Why not submit  
10 them to polygraph tests? Why not look for  
11 treason elsewhere, and this is the kind of  
12 disease that can run away with you if you start  
13 looking over the shoulders of these scientists.

14 I think somehow, somewhere along the way,  
15 the people running the government, we have to  
16 start looking over the shoulders of those who  
17 represent us at all levels and -- the  
18 directorships and the departments, the  
19 secretaries, and others. This is a very  
20 dangerous thing you're getting into. We have  
21 problems with it ourselves, but it really is an  
22 unAmerican activity.

23 Thank you.

24 GENERAL HABIGER: Thank you, sir.

25 Mr. Andreas Toupadakis.

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ANDREAS TOUPADAKIS

Hello. My name is Andreas Toupadakis. I was originally born in Greece, and I came to the United States 20 years ago.

I will say whatever comes to my mouth from my heart. I have not prepared myself, and the words that I will speak, you will probably think don't have any connection with what is going on with the issue of polygraphs.

As some speakers pointed out today, we should not look at what is presented to us without looking behind that. The importance of everything we hear today in our world is lying behind what we hear and we see.

In one way, every one of us has a duty to become a philosopher, and, like I said, before I start talking, if we look back at the ancient wisdom, it really doesn't matter if you look at the Greek ancient to Greek philosophers or if you look at the Founding Fathers of this nation, you will see that these people had a great wisdom. And if we are willing to follow their words, their spirit, we know what they said, we know how they thought, but the way things are going today in this nation -- which I chose to be a citizen

1 for a second time; how do I mean by that?

2 I came here in 1978. I had lived in eight  
3 different states. I know very well what is  
4 America, what it is all about, and I know why I  
5 came to this country. And I left five, six years  
6 ago to go and stay permanently back there, and I  
7 came still back here, because I do believe that  
8 there are a lot of beautiful things in this  
9 country and that is why people come here.

10 But I do also see that the ones that they  
11 go over this place have nothing to do with the  
12 philosophy, the spirit, the truth of the Founding  
13 Fathers that they brought this nation to  
14 existence had today. They have no relationship  
15 what these people in Washington DC are planning  
16 to do.

17 They are send you here to tell us what you  
18 will have to do, and we are crying here telling  
19 you we don't want this because this is going to  
20 hurt the country, not just the Lawrence Livermore  
21 Laboratory. It's going to hurt the whole  
22 country. What is happening, as many speakers  
23 pointed out, is a way of doing business that is  
24 not the right way.

25 And I argue this, you might laugh when you

1 go out of this door, but I'm pretty sure some of  
2 you will think about this: From what you have  
3 been told from above and what you have thought  
4 about this, what is happening about the specific  
5 issue of polygraphs and what you have heard from  
6 the speakers this morning and this afternoon, do  
7 you honestly, honestly believe that this action  
8 is the correct action according to wisdom and to  
9 the benefit of the United States?

10 And if you do not believe that it is  
11 right, I would urge you to resign, to go back to  
12 your office and say, "Tonight, I made a decision,  
13 I put down my thoughts, and I found out they do  
14 not match with what I really believe. This is a  
15 wrong action."

16 Let us, some of us, make a start like the  
17 people of the old days, that they were willing to  
18 suffer, they were willing to put the truth to the  
19 test, and people would follow them and things  
20 would change.

21 This nation today is the most powerful  
22 nation of the earth, but I guarantee to you, if  
23 it follows the way it follows, the way it  
24 follows, it will not stand for too long. And it  
25 is not good, because it was based on a Greek word

1 democracy, and it is diminishing. It is  
2 diminishing not only here but everywhere because  
3 this model is followed.

4 We have great responsibility as American  
5 citizens, and I am an American citizen. I  
6 forsook the citizenship of my own country years  
7 ago to become a citizen of this country, and  
8 therefore I feel that I have to speak for the  
9 benefit of this country.

10 And therefore I say to each one of us  
11 today that heard these words that they were  
12 spoken here, let us go alone under the dark and  
13 look at the moon and the stars and be honest with  
14 ourselves. Do we want to continue the way we  
15 continue in this country?

16 It starts with one man. Who said this? A  
17 change starts with one man. You do not need  
18 two. So I'm inviting that man from this small  
19 audience today to take that step and speak truth  
20 like the founders of this country. That is the  
21 only way this nation, as powerful as it is, will  
22 give the best example for the whole world and  
23 will survive -- and the whole world will survive.  
24 Otherwise, if it goes the other direction,  
25 certainly this country is not going to survive,

1 and the whole world will not survive.

2 This is the greatest responsibility of the  
3 United States today, and it is tied up to the  
4 polygraph things that we're talking about.

5 What I'm speaking about today is not  
6 irrelevant of the polygraph. The polygraph is  
7 just a tiny case that shows the spirit that is  
8 going on in this nation today.

9 And I thank you very much that you heard  
10 my words and you gave me the time.

11 GENERAL HABIGER: Thank you, sir.

12 Ladies and gentlemen, we don't have any  
13 other unscheduled speakers. Out of the  
14 prerogative and the authority invested in me as  
15 the panel chairman, we'll take a break and come  
16 back at 15 minutes past 1700 or 5:15.

17 (Whereupon, a recess was taken.)

18 GENERAL HABIGER: We're reconvened. The  
19 panel is in place. I understand Dr. Ray Kidder  
20 would look some additional time, and, sir, we  
21 certainly welcome you back. Thank you for taking  
22 the time to give us your views.

23

24 RAY KIDDER

25 Well, I hadn't expected to be back this

1 time, but we were chewing the fat, as it's said,  
2 outside there, and in the process of that  
3 mastication, why I happened to think of something  
4 else which is a subject that I happen to know  
5 quite a bit about that has some bearing, I think,  
6 on all this, but it has nothing -- well, it has  
7 something to do with law rather than nuclear  
8 weapons.

9 What I thought of has to do with the  
10 Progressive Magazine case. Now, I don't know if  
11 you are familiar with that, but I think it was in  
12 1972, or sometime around then, when there was an  
13 article published, and it was something to the  
14 effect of how the hydrogen bomb is named,  
15 something -- some name of that sort by a young  
16 fellow, and I won't go into the preliminaries of  
17 it. That would take too long.

18 But the result that came up was that this  
19 was taken to court in Madison, Wisconsin --  
20 Federal court in Madison, Wisconsin, and the  
21 question was: "Would the government be on a prior  
22 restraint to prevent publication of this article?  
23 And that's how -- that was the way the thing got  
24 into court in Madison.

25 And the judge in the court -- Federal

1 court in Madison came to the conclusion:  
2 Affirmative, "Yes, I will deny the publication,"  
3 or whatever the term he used, "of this article."  
4 And the question then was the thing -- well, the  
5 up-shot of the whole thing was that there was  
6 going to be testimony in Washington, and I was  
7 scheduled to be one of the people, nuclear  
8 weapons expert.

9 I read the article at the request of the  
10 Progressive Magazine, and I filed a classified  
11 affidavit and an unclassified affidavit both.  
12 The unclassified affidavit saying that I saw no  
13 reason having to do with the material in this  
14 article that would justify the prevention of this  
15 publication, and the classified affidavit gave  
16 the reasons why -- the documentary reasons why.

17 And so what happened was that the court in  
18 Madison decided that there would be no discovery,  
19 which is generally a fundamental principle in law  
20 courts. You have the right to find out what your  
21 opponent is going to use against you. There was  
22 to be no discovery. There would be no  
23 cross-examination of witnesses. All testimony  
24 would be by written affidavit. And so -- and  
25 that's the way it was.



1           And I happened to be -- since I stated  
2           that I felt that the Progressive article should  
3           not be used to -- would not damage national  
4           security if it was published, and, on the other  
5           side of the fence was the Secretary of State,  
6           the Secretary of Energy -- not energy. I think  
7           he was the Secretary of Defense. He's been known  
8           as the secretary of everything, namely  
9           Schlesinger; he filed an affidavit against the  
10          publication. Harold Brown, who was the Secretary  
11          of Defense I believe then, filed an affidavit  
12          against the publication. Hans Beta filed an  
13          affidavit against publication, and -- well,  
14          anyway, you can see that it was a fairly formal  
15          bunch of people that felt that it would be  
16          detrimental to the national security if this was  
17          published. I was on the other side.

18                 And, again, I haven't got time to go  
19                 through the fascinating details of all this. As  
20                 they say, I was the person who was the expert  
21                 witness on the side of the Progressive Magazine,  
22                 and I had very much looked forward to getting my  
23                 opponents on the witness stand.

24                 The attorney for the Progressive and I  
25                 were -- we were both pretty clear that if we

1           could get these guys on the witness stand, we can  
2           make mince meat out of them, so we weren't  
3           allowed to do that. There was no  
4           cross-examination, and everything was done, of  
5           course, in a closed court. What do you expect in  
6           a matter of this kind?

7                     The only way to make a long story short,  
8           this eventually went to the appeals court, and it  
9           became obvious to me, and I think most everybody,  
10          from remarks that were being made by the  
11          justices -- the three justices in the court of  
12          appeals that the government is going to lose the  
13          case.

14                    And so finally the government asked  
15          permission of the court to withdraw from the  
16          case. Permission was granted, and that was the  
17          end of it.

18                    But the point of all this is that when  
19          matters of national security, particularly  
20          classified matters having to do with nuclear  
21          weapons are involved, the Justice Department,  
22          generally, is extremely, and I mean extremely  
23          unlikely to want to go into any kind of court of  
24          law unless they have a very, very open-and-shut  
25          case, because they can see the Progressive

1 Magazine fiasco, and that's exactly what it was  
2 for the government, clearly in their rearview  
3 mirror.

4 So, as I say, I feel that the correct  
5 outcome actually was achieved, mainly that --  
6 this was '72, I guess it was, when the article  
7 was published. I subsequently had -- or, in  
8 fact, during this process, I exchanged oh, I  
9 would say, six or eight letters with Hans Beta.  
10 We were arguing this matter back and forth.  
11 Some of those letters were classified. I had to  
12 find out where he was going to be because at that  
13 time he didn't have a classified address. So he  
14 would write me and say, "Well, I'm going to be at  
15 Hanford up in Washington, so write me there."

16 But he finally agreed that if all of the  
17 information, which I had brought to his  
18 attention, were put in one place, that indeed he  
19 would not have supported his position against  
20 publication. The information was clearly out  
21 there, and I had pointed out to him that we  
22 weren't talking about an individual gathering  
23 this information at that time. We were talking  
24 about what I called a committee X, or a group of  
25 people X, which we defined, Beta and I, as being

1 a group of scientists, engineers, research  
2 people in librarianship to look up things in a  
3 hurry, that had a real motive for finding out how  
4 these nuclear weapons worked, and he agreed that  
5 with that kind of a -- I forget the term, but it  
6 was something X, with the information that I had  
7 given him to see with his own eyes, he said,  
8 "Yes, there isn't any question anymore in my mind  
9 that these things would have been" -- "they would  
10 have discovered the secrets that were trying to  
11 be withheld at this time."

12 So that's all I have to say about it. I  
13 was in that process, and I do recall that once  
14 you get a matter of national security, in  
15 particularly classified information of the SRD  
16 type, and you try to do anything with that in a  
17 court of law, you have got a can of worms on your  
18 hands.

19 Thank you.

20 GENERAL HABIGER: We appreciate your  
21 insight, sir. Thank you for coming back.

22 The next speaker, Mr. Charles Landrum,  
23 and if I mispronounce your name, please correct  
24 me.

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CHARLES LANDRUM

I'm Charles Landrum, mechanical engineer, Lawrence Livermore Lab. I'm speaking for myself, and I am opposed to the polygraph testing for the reasons that have been stated, and I support the SBSE position.

Aside from that, I think that there is great abuse potential in this program. I think it would be a very convenient way to get rid of people that are undesirable in the views of many people, either DOE or in management, and I think it's a convenient way of doing that. There is no way that any of this can guarantee that that won't happen.

Aside from that, part of a senior level people like myself, my colleagues, one of our duties that is implied is recruitment. We go to universities; we deal with other national laboratories; we have many professors on staff that we deal with, especially with respect to recruitment.

As many of my colleagues have already mentioned, academia is not fond of this program whatsoever, and it would be very difficult to get anything other than C students hired. There are

1 a lot of C students out there that will come  
2 here. I don't think this place wants C  
3 students. I graduated number one in my class at  
4 Berkeley.

5 I'm a Phi Beta Kappa, and I'm a fellow of  
6 the American Society of Mechanical Engineering,  
7 so I'm respected in the mechanical engineering  
8 community, and this place is not going to be on  
9 everybody's dream list to come to with this  
10 program.

11 Thank you.

12 GENERAL HABIGER: Thank you, sir.

13 Okay. We have no further speakers at  
14 this point, and if anyone else would like to  
15 speak, please let us know, and we will  
16 reconvene.

17 Thank you.

18 (Whereupon a recess was taken.)

19 GENERAL HABIGER: The panel has  
20 reconvened. I'd like to ask Ms. Janice  
21 Diane, who has asked to speak on an unscheduled  
22 basis.

23 Ms. Diane, if you would come down to the  
24 podium. We appreciate you taking the time to  
25 speak to us this morning.

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JANICE DIANE

Thank you. My name is Janice Diane. I am not a Lab or government employee. I am here representing myself as an individual whose personal life as the wife of a Lab employee will be affected, indeed has already been affected, by this proposal for polygraph testing. I am also here representing myself as a concerned citizen of the United States with a deep love for this country and the principles upon which it was founded.

I had not planned on addressing you here today, and I'm sorry I missed the afternoon session, but after listening to the excellent presentations that were given this morning, I felt compelled to lend my local support to their efforts to be heard and to emphasize to you that this is not just an issue for the employees. Members of the public also do care very much about this issue. I care very much about this issue.

With this proposal, the DOE seems to send a message that you believe your employees cannot be trusted. This leads me to think that perhaps I cannot trust the DOE. Where is the reciprocal

1 trust in all of this? What are the true motives  
2 for instituting such an intrusive and insulting  
3 procedure?

4 If the motives were based on the need for  
5 national security, then surely you would  
6 recognize, as one of the presenters stated this  
7 morning, that "You are shooting yourselves in the  
8 proverbial foot." Unfortunately, it's my foot  
9 too. Please don't shoot it.

10 I cannot believe the DOE would enforce the  
11 use of lie detectors in this way solely as a  
12 means of catching spies. There is simply not  
13 enough evidence that this is a viable method of  
14 doing so, and, in my opinion, you would be going  
15 about it backwards anyway. If there is just  
16 cause, conduct an investigation first, and then  
17 if there is good reason and evidence to suspect  
18 espionage or sabotage, consider the possibility  
19 of using a polygraph to further the  
20 investigation. But don't start by testing every  
21 classified employee or potential employee as if  
22 you think they are guilty of something until  
23 proven innocent.

24 Suspending my disbelief in this as the  
25 prime motivation for a moment, how successful do



1           you honestly expect the testing procedure to be?  
2           Will it lead to the discovery of two or three  
3           spies? Four? Half a dozen? And does the DOE  
4           truly believe that this will be worth the  
5           incredibly high price that we will have to pay?  
6           The price that our country will have to pay? I  
7           personally do not think so.

8                     Is the DOE really willing to risk losing  
9           some of the finest, most intelligent and most  
10          trustworthy employees that you now have or could  
11          potentially have? And if so, why? I personally  
12          do not want to take this risk. I am not willing  
13          to lose these people. I want the best, most  
14          skilled and most dedicated scientists that you  
15          can find, and I want you to support them, applaud  
16          their efforts and appreciate their loyalty.

17                    It is my sincere hope that when you walk  
18          away from these hearings, you will have a better  
19          understanding of the far-reaching implications  
20          that these regulations will have. Please do not  
21          ignore the potential for the abuse of power that  
22          is inherent in the proposed results.

23                    And, finally, listen with your hearts as  
24          well as your minds so that you may more fully  
25          comprehend why what you are proposing is so

1 offensive and so impossible for men and women of  
2 integrity and honor to accept.

3 Thank you very much for hearing me.

4 GENERAL HABIGER: Thank you very much for  
5 coming down and speaking to us.

6 Anyone else in the audience like to make a  
7 presentation? Why don't we take another recess,  
8 and we'll reconvene, if required, at 1830.

9 (Whereupon, a recess was taken.)

10 GENERAL HABIGER: Let the record reflect  
11 that the panel has reconvened.

12 We have our next scheduled speaker,  
13 Mr. Robert Palasek. Mr. Palasek, if you are  
14 here, we invite you to come down to the podium.

15

16 ROBERT PALASEK

17 Thank you very much for taking my  
18 comments. Good evening. My name is Robert  
19 Palasek. I'm a computer scientific here at the  
20 Lab, and I speak for myself.

21 In the time that I've been here at  
22 Livermore, there have been flush periods and lean  
23 periods where important research and development  
24 projects need the support of engineers and  
25 computer scientist, and also times where the same

1 people have to look beyond their department in  
2 the Laboratory for employment for their  
3 particular skills.

4 I've observed that during leaner periods,  
5 trust gets shorter, which will result that this  
6 campus becomes less like a university and more  
7 like a military base.

8 For example, during one lean period, the  
9 Lab instituted a policy whereby the Protective  
10 Service officers could search vehicles entering  
11 uncleared areas in the Lab for drugs, weapons and  
12 other contraband.

13 Because of where I worked, I had to drive  
14 onto the Lab property to park, so my pickup  
15 eventually got pulled to the side of the gate and  
16 got searched. I stood there and watched the  
17 Protective Service officer as he went through my  
18 glove box and under my seat.

19 I may have been the first guy to do this:  
20 I was standing behind him, looking in the door,  
21 watching. He asked me to move to the front of  
22 the truck where he could keep an eye on me.  
23 Somehow I was supposed to trust him while he, on  
24 behalf of the Laboratory, was going through my  
25 car and not trusting me.

1           I never did hear whether the same kind of  
2           degree of trust was shown to the Lab's associate  
3           directors and Lab director, that when a random  
4           number came up on a director's vehicle that it  
5           was, in fact, searched.

6           Several years after that, the testing for  
7           drugs in the workplace took on a national  
8           prominence with the result that the terms of  
9           employment at these Labs were changed so that the  
10          management took the right to insist that I pee  
11          into a cup on demand.

12          In a survey the question was asked: "Who  
13          do I think would be subject to such a test?" I  
14          could only think of the people who would come out  
15          very publically in favor of it: the police chief  
16          in the neighboring town of Pleasanton, Bill  
17          Eastman, and the first lady, Nancy Reagan.

18          I have already once in my life declined to  
19          take a lie detector test. I was 17 years old in  
20          1963 applying for a job at a hamburger stand.  
21          The issue was: If there was cash missing from  
22          the till, would I be willing to take a lie  
23          detector test? I wrote, "No." After all, I was  
24          an honest guy with good references.

25          My father, who had grown up through the

1 Depression, did not think it was an issue that  
2 one should use to exclude themselves from a job.  
3 I didn't think it was that great of a job.

4 It's likely that if I decline to be  
5 tested, there will be areas in computer security  
6 where I work from which I will be excluded, and  
7 so my father's position on the issue is a lot  
8 closer to me now, especially after I have put  
9 roots in this community and have a family.

10 When I came here 20 years ago, a condition  
11 of continued employment was getting and  
12 maintaining a Q clearance. I have taken pride in  
13 being accepted here to work on programs in the  
14 national interest and have gotten satisfaction in  
15 accomplishments here.

16 In my circumstance, the bar is being  
17 raised, and it's going to be a hard choice.

18 Thank you for listening to my comments.

19 GENERAL HABIGER: Mr. Palasek, thank you  
20 very much for coming and sharing your views.

21 MR. PALASEK: I appreciate it.

22 GENERAL HABIGER: The time is now 1900.

23 The official public hearing is now  
24 adjourned, and we certainly want to thank the  
25 people who participated today. We gained some

1           valuable insights as to what is on the minds of  
2           the employees who do great work here at Los  
3           Alamos. I also, on behalf of the panel, would  
4           like to thank the staff of the Laboratory here  
5           for making our stay as painless as possible.  
6           Very well done. Thank you. The meeting is now  
7           adjourned.

8                         (Whereupon the hearing  
9                         adjourned at 7:00 p.m.)

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