

EDWARD J. MARKEY
MASSACHUSETTS

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SUITE SR-218
RUSSELL BUILDING
WASHINGTON, DC 20510-2107
202-224-2742

975 JFK FEDERAL BUILDING
15 NEW SUDBURY STREET
BOSTON, MA 02203
617-565-8519

222 MILLIKEN BOULEVARD, SUITE 312
FALL RIVER, MA 02721
508-677-0523

1550 MAIN STREET, 4TH FLOOR
SPRINGFIELD, MA 01101
413-785-4610

November 17, 2014

The Honorable Ernest Moniz
Secretary, Department of Energy
1000 Independence Ave. S.W.
Washington, DC 20485

Dear Secretary Moniz,

I write to urge you in the strongest possible terms to quickly conclude your investigation into the recent termination of Dr. James E. Doyle, a nuclear security and non-proliferation specialist who had been employed at the Los Alamos National Laboratory (LANL) for 17 years. Dr. Doyle was terminated after an article he published criticizing the deterrence value of nuclear weapons was retroactively classified. At best, the Department of Energy's (DOE) classification procedures are too vague to be uniformly applied. At worst, it appears that these classification procedures were used to silence and retaliate against those who express dissenting opinions.

In February 2013, Dr. Doyle published an article arguing for the elimination of nuclear weapons. According to a report¹ on the matter, this article, written using Dr. Doyle's personal time, was reviewed by security contractors at the lab prior to publication to ensure it did not contain any classified information. Days after the article was published the lab reversed its decision, claiming the article should have been classified, and then proceeded to launch an internal investigation into Dr. Doyle. During this investigation his personal computer was seized, his pay was docked, and his Q clearance and work-related travel were suspended.² Dr. Doyle filed multiple complaints including a formal whistleblower complaint to the National Nuclear Security Administration (NNSA), which was later appealed to the DOE's Hearings and Appeal Office. His complaints were dismissed, his appeal was denied³ on the grounds that he was not a whistle-blower and therefore his case did not merit investigation. Subsequently, on July 8, 2014, his employment was terminated.

LANL's own internal investigation⁴ found that Dr. Doyle, "acted in good faith [and] followed the relevant rules." The report confirms that multiple trained classifiers at LANL reviewed the article and determined that it did not contain classified information. It goes on to say that their opinion was overturned after the article was published by the laboratory's Classification Officer. It also indicates that the classification procedures used to retroactively classify Doyle's article are "vague and confusing" and were applied with a "lack of consistency and transparency."

¹ <http://www.publicintegrity.org/2014/07/31/15161/nuclear-weapons-lab-employee-fired-after-publishing-scathing-critique-arms-race>

² <http://www.publicintegrity.org/2014/07/31/15161/nuclear-weapons-lab-employee-fired-after-publishing-scathing-critique-arms-race>

³ <http://energy.gov/sites/prod/files/2014/07/f17/WBU-14-0002.pdf>

⁴ <https://www.documentcloud.org/documents/1219678-clark-report-integrity.html>

The recent announcement that NNSA will review classification procedures and that the DOE's Inspector general will investigate whether Dr. Doyle was terminated as a result of his article⁵ is a step in the right direction. However, this case continues a troubling trend of DOE contractors retaliating against whistleblowers and DOE failing to take quick action to remedy the situation even when internal investigations vindicate employee claims.^{6,7,8,9}

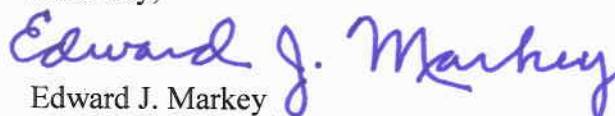
In order to ensure that Dr. Doyle's case is quickly resolved and remedied, I therefore request that you include in your investigation:

1. The apparent lack of consistency in methods for determining classification between DOE and its contractors that caused the decision of multiple classification experts to be overturned by LANL and DOE employees.
2. The clear lack of procedures for classification review, including determining what work needs to be reviewed, who must carry out that review, and when an employee's work has cleared the review process.
3. If classification review procedures were used as a retaliatory measure against Dr. Doyle or have been used for political purposes or to limit the speech of any other DOE employee or contractor.
4. If the initiation of a classification review or the suspension of Dr. Doyle's security clearance were contributing factors to his termination.
5. Whether Dr. Doyle's position and security clearances should be fully reinstated and how to ensure no further retaliatory or negative personnel actions are taken against him in this matter.
6. How to ensure that Dr. Doyle's case does not produce a chilling effect and result in an environment where other DOE employees or contractors fear retaliation for expressing support for nuclear weapons reductions, in an article or otherwise.

I additionally request that you provide me with an accounting of any reimbursement of legal fees associated with this case that have been requested by LANL or granted by DOE.

Appropriate classification procedures are vital to the protection of security-sensitive information. However, classification should never be used to compromise scientific integrity, or to silence or discourage academic debates. This is especially true when the debates surround the policies that govern the most destructive weapons known to the world. The only way to advance our understanding of complex issues, such as nuclear deterrence, is to have a free flow of ideas, including dissenting opinions. Retroactively and punitively classifying a debate because it is politically unpopular is an unacceptable and intolerable affront against freedom of speech. I urge you to take immediate measures to investigate and remedy this particular situation and take all necessary steps to prevent its future recurrence.

Sincerely,


Edward J. Markey
United States Senator

⁵ <http://fas.org/sgp/news/2014/09/nnsa-doyle.pdf>

⁶ <http://www.markey.senate.gov/news/press-releases/nov-22-2011-possible-whistleblower-retaliation-unsafe-operations-at-hanford-nuclear-waste-plant>

⁷ http://www.markey.senate.gov/imo/media/doc/2013-10-09_Markey_DOE_HanfordLetter1.pdf

⁸ http://www.markey.senate.gov/imo/media/doc/2014-03-12_GAO_Hanford.pdf

⁹ <http://www.king5.com/story/news/local/hanford/2014/09/17/hanford-whistleblower-shelly-doss/15750863/>