

**STATEMENT OF GREGORY H. FRIEDMAN
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**BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

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Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to appear today to testify on the Office of Inspector General's recent inquiry concerning Los Alamos National Laboratory.

INTRODUCTION

For 60 years, the University of California (University) has operated the Los Alamos National Laboratory (Los Alamos) for the Department of Energy (Department) and its predecessor agencies. Among its many important missions and functions, Los Alamos has critical national security responsibilities, including helping to ensure the safety, security, and reliability of the nation's nuclear weapons stockpile.

In recent years, Los Alamos has been the subject of intense scrutiny during a number of controversies regarding allegations of espionage, lax security, and related internal control failures. The Department and Los Alamos initiated actions intended to ensure that the Laboratory was carrying out its missions with a heightened emphasis on protecting national security interests. Realignment of Los Alamos' security function, or "S" Division, was one such action. On a broader scale, Congress and the President created the National Nuclear Security Administration (NNSA) as a semi-autonomous agency within the Department.

In 2001, Los Alamos undertook a nationwide search to recruit an experienced leader for the Office of Security Inquiries within the "S" Division. In addition to various security

responsibilities, the job announcement for this position provided that the person hired would conduct investigations into theft and property protection. Given the sensitive nature of much of the work at Los Alamos, imbuing this position with a sense of urgency for the protection of property – especially computers and other technology that may store classified and other national security information – was consistent with the Laboratory's stated goal to heighten national security awareness. The nationwide search culminated with the hiring of a new Security Inquiries Team Leader (Security Inquiries Leader) in January 2002.

In February 2002, my office issued a report entitled, “U.S. Department of Energy’s Purchase Card Programs—Lessons Learned.” In May 2002, I testified before this Subcommittee regarding the results of that effort. Specifically, we identified a number of concerns with respect to the Department’s management of purchasing activities. In recent months our focus has turned to Los Alamos in light of allegations about potential abuses at that facility.

On November 5, 2002, the NNSA Acting Administrator requested that the Office of Inspector General review allegations that management of the Laboratory was engaged in a deliberate cover up of illegal activity and security concerns. We interviewed over 60 Laboratory officials and other parties, and reviewed thousands of pages of pertinent records. One of our first steps was to interview two Laboratory security officials, Glenn Walp, the Security Inquiries Leader, and Steven Doran. Both men are former law enforcement officers, and had been hired by the Laboratory in 2002 to help address an acknowledged deficiency in Los Alamos’ handling of property loss and theft. Both men were vocal in their criticisms of Laboratory management’s handling of these issues.

Approximately one week after we interviewed the two security officials, the Laboratory terminated their employment. This raised the specter that the terminations could have been retaliatory. Consequently, we incorporated these actions into our inquiry.

SUMMARY OF INQUIRY FINDINGS

Our recently-issued report of inquiry disclosed a series of actions by Laboratory officials that obscured serious property and procurement management problems and weakened relevant internal controls. These actions created an atmosphere in which Los Alamos employees were discouraged from, or had reason to believe they were discouraged from, raising concerns to appropriate authorities. In short, management's actions resulted in delayed identification and resolution of the underlying property and procurement weaknesses, and related security concerns. Specifically, we found that Laboratory management:

- Failed to take appropriate or timely action with respect to a number of identified property control weaknesses. There was:
 - (1) inadequate or untimely analysis of, and inquiry into, property loss or theft and security issues;
 - (2) lack of personal accountability for property;
 - (3) a substantial degree of dysfunction in the Laboratory's communication and assignment of responsibilities for the handling of property loss and theft concerns;and
 - (4) inadequate controls over procurement and property systems.

We also found that Laboratory management:

- Had inadequate policies governing when and under what circumstances activities must be reported to law enforcement.
- Issued, then immediately rescinded without adequate explanation, a memorandum requiring corrective actions to address “disturbing negative trends regarding Laboratory management of Government property.” Another memorandum was later reissued in modified form, but a number of the corrective action mandates were never fully effectuated.

We found, as well, that the Laboratory:

- Published certain materials distributed to Laboratory employees, in advance of a 2002, Department cyber security review, containing such phrases as
 1. “Resist the temptation to ‘spill your guts’”;
 2. “Handwritten notes can be especially damaging....They are not easily disavowed”; and
 3. “Finger pointing will just make the program look bad.”

Our inquiry corroborated a number of the concerns expressed by the two terminated security officials. The Laboratory’s decision to terminate the employment of the two security officials during ongoing external reviews that were addressing some of the very same issues raised by these officials, was, in our judgment, an incomprehensible action on the part of the University of California. These events:

- Raised doubts, in our judgment, about Los Alamos' commitment to solving noted problems;
- Fostered a chilling effect on employees who may have been willing to speak out on matters of concern; and
- Were inconsistent with Laboratory and University of California obligations under its contract with the Department of Energy.

As you know, the University recently announced that the two security officials had been re-hired, albeit on a temporary basis, as a part of the Office of the President.

Our report of inquiry contained specific recommendations for corrective action. In particular, responsible Department officials must ensure that the University of California and the Laboratory's management is held accountable for implementing and executing corrective actions resulting from the current situation at the Laboratory.

DETAILS OF INQUIRY FINDINGS

A. Allegations of Cover-up/Questionable Management Actions

Laboratory officials took a number of actions that, in our judgment, obscured serious property management and security problems. These actions created an atmosphere in which Los Alamos employees were discouraged from, or had reason to believe they were discouraged from, raising concerns about property loss and theft, or other concerns, to the appropriate authorities.

In short, management's actions made successful identification and resolution of the underlying property, procurement, and security weaknesses problematic. The most overt action taken by Los Alamos was the firing of the two security officials. This action, taken amidst ongoing reviews of allegations of lax security controls, was clearly and predictably controversial. Moreover, the officials were fired soon after they spoke with the Office of Inspector General. It is impossible to imagine that this action would not have had a chilling effect on other employees who might have contemplated speaking out about problems at the Laboratory. In our judgment, the terminations undermined management's actions to address the core issue: identifying and correcting weaknesses in controls over national security assets.

In addition to the firings, our inquiry disclosed that Laboratory management:

- Issued, then immediately rescinded, a memorandum requiring corrective actions to address problems regarding the management of Government property.

- Published Laboratory documents that could be interpreted as discouraging Los Alamos employees from reporting on the extent or severity of control weaknesses.

Rescinded Memorandum

In an April 2002, memorandum, addressed to all Laboratory “Leaders,” the Laboratory’s Office of the Chief Financial Officer (CFO Office) cited the need to “call your attention to disturbing negative trends regarding Laboratory management of Government property and to engage your support in taking corrective action.” According to the CFO Office, the concerns were that the amount of property missing during the Fiscal Year 2001 inventory had nearly tripled from the previous year, to \$723,000; and, that substantial amounts of property, valued at \$533,000, had been reported lost or stolen during Fiscal Year 2001.

The CFO Office’s memorandum further stated that neither Los Alamos nor the Department could accept \$1.3 million (the approximate total of the two categories listed previously) in unaccounted property. The CFO Office noted that the issue would negatively impact the Laboratory’s rating in property management. Attached to this memorandum was organization-specific listings reflecting property losses.

To address these concerns, the CFO Office described four new quarterly tracking and trend reports that this office would be responsible for issuing. The memorandum requested that each Los Alamos division develop a corrective action plan to raise awareness of property accountability and safeguards. The memorandum also suggested the initiation of a root cause analysis and planned training, and recommended review of

instances of multiple losses or lack of accountability by the same individual. On December 18, 2002, we asked the CFO Office to provide us copies of each of these reports, including copies of each division's corrective action plan.

In a memorandum dated December 19, 2002, we were informed that the April 10, 2002, memorandum had actually been rescinded the day after it was distributed. We were told that Los Alamos management decided that it would be more appropriate to provide each division leader only the information relevant to his or her division and that it served no purpose and was insensitive to people's privacy to publish the entire list. Thus, an e-mail was sent asking division leaders to disregard the memo of the previous day. Although a version of this memorandum was subsequently reissued a number of the corrective action mandates were never fully effectuated.

This chain of events raised doubts as to management's commitment to address identified control weaknesses.

Laboratory Documents

During our inquiry, two other significant documents came to our attention that could be interpreted as discouraging Los Alamos employees from reporting on the extent or severity of control weaknesses.

We reviewed briefing materials for a training course to be attended by Los Alamos employees in anticipation of a November/December 2002 Department of Energy Inspection & Evaluation (I&E) review on Laboratory cyber security. The briefing

materials, which were prepared by the Laboratory's Office of Chief Information Officer (CIO Office), were titled, "Surviving the [I&E] Audit," and included the following suggestions:

- "Resist the temptation to 'spill your guts'."
- "Handwritten notes can be especially damaging....They are not easily disavowed."
- "Finger pointing will just make the program look bad."

When shown these materials, a senior Los Alamos management official said that he had not previously seen them and that they were "stupid." Subsequently, on December 16, 2002, a memorandum was sent to certain employees clarifying the purpose of these materials in light of their "potential for misinterpretation."

A second document was a Code of Ethical Conduct statement. The document was based on the Institute of Internal Auditors (IIA) Code of Ethics, but departed from the IIA code by requiring auditors not to use information in a manner that could be perceived as "...detrimental to the University of California, the Los Alamos National Laboratory, or the Audits and Assessments Office." While it may not have been the intent of the document, reporting erroneous payments or surfacing other internal control weaknesses – traditional responsibilities of internal auditors – could be perceived as "detrimental" to Los Alamos. Los Alamos auditors were also asked to "exhibit loyalty in all matters pertaining to the affairs of the University of California, the Los Alamos National Laboratory, and the Audits and Assessments Office...." The conduct statement created, in our opinion, the appearance of a lack of independence for Los Alamos auditors.

B. Security Officials' Terminations

We endeavored to evaluate the Laboratory's decision to terminate the employment of the two security officials consistent with the Department's standards for protecting contractor employees from retaliatory actions. Based on our evaluation, we believe it will be difficult for the University of California to sustain its burden under the prevailing standard for adjudicating these matters.

Specifically, under the Department's procedures, once an initial case of retaliatory termination is established, the burden shifts to the contractor entity to demonstrate, by clear and convincing evidence, that the contractor entity would have taken the same action without the contractor employee's disclosure or other protected activity.

In this regard, our inquiry disclosed that:

- The two security officials were vocal in their criticisms of the Laboratory's management of property loss and theft concerns.
- Laboratory management acknowledged that prior to the arrival of the Security Inquiries Leader, Laboratory efforts to inquire into these matters were inadequate.
- Recent external reviews, including this inquiry, corroborated a number of the fundamental concerns previously expressed by the two terminated security officials relating to property and management systems.

- As late as October 2002, the Security Inquiries Leader had received a favorable performance evaluation.

The timing of the terminations was, itself, suspect. A memorandum documenting the Laboratory's stated rationale for the terminations is dated the same day (November 20, 2002) as the Office of Inspector General's interview of one of the two security officials. We were advised by the Security Inquiries Leader, and Laboratory documentation confirmed, that he had informed his management, in advance, that he and his staff were to be interviewed by the Office of Inspector General inquiry team.

In the November 20, 2002, memorandum cited above, a senior Los Alamos official documented what he believed to be valid reasons for the terminations. We evaluated these reasons, and concluded that a substantial number of them do not withstand scrutiny.

C. Internal Control Weaknesses

In a March 26, 2002, memorandum to Los Alamos management, the Security Inquiries Leader expressed significant concern with the manner in which Los Alamos addressed property loss and potential theft. Our inquiry corroborated a number of those concerns. Specifically, we found:

- (1) inadequate or untimely analysis of, and inquiry into, property loss or theft and security issues;
- (2) lack of personal accountability for property;

- (3) a substantial degree of dysfunction in the Laboratory's communication and assignment of responsibilities for the handling of property loss and theft concerns; and
- (4) inadequate controls over procurement and property systems.

Property and Security Issues

We noted that property loss and theft issues, and related security considerations, were not subject to thorough and consistent analysis. For example, in 2001, a report documenting the loss of a security radio was inadequate. It did not provide information concerning what frequencies might have been compromised.

The Security Inquiries Leader expressed this and related concerns in his March 2002 memorandum, including those with respect to the entry into a law enforcement tracking system of Laboratory property theft reports. Although he noted that such reports were being provided to the Los Alamos Police Department and the FBI, the Security Inquiries Leader asserted that those agencies were not entering the property information into the National Crime Information Center records because the reports were of poor quality.

As noted by a counterintelligence official, the theft of Laboratory property can have national security implications. In this vein, with respect to previous Laboratory property reports he reviewed, the Security Inquiries Leader observed:

“The reports indicate that no questions were asked pertaining to the type of data that may have been on stolen computers, laptops, PDAs¹, and digital cameras. It is possible that they may have had sensitive or proprietary materials on those systems, but inquiry personnel failed to explore that potential; at least one can assume this view based on the data contained in the inquiry reports.”

Based on these concerns, we requested that Los Alamos explain the steps taken to account for lost computers and other sensitive equipment. We also inquired as to any efforts made to evaluate whether classified or other protected information had been compromised as a result. The Laboratory produced a draft memorandum, dated December 18, 2002, in which the Chief Information Office (CIO) concluded that none of the lost, stolen, or unlocated computers identified by Los Alamos contained classified information. The CIO’s memorandum also concluded that there were at least 258 computers lost, 44 computers stolen, and 61 computers unlocated for Fiscal Years 1999, 2000, 2001, and 2002². We did not validate these numbers, or the CIO’s conclusion concerning the non-compromise of classified information. In fact, a CIO official told us that there were inconsistencies between these numbers and previous reports provided by the CFO and the Office of Security Inquiries.

A CIO official acknowledged that the Laboratory’s processes for reporting lost, stolen, and unlocated computers are “fragmented.” He noted inconsistencies between computers reported lost and stolen to the Office of Security Inquiries and data available to property management officials. Another Laboratory official confirmed that these reporting

¹ “Personal Digital Assistants.”

² The memorandum identified an additional 75 computers requiring follow up and resolution status.

mechanisms are not integrated throughout the Laboratory, and both of these key officials asserted that they have recently recommended corrective action to ensure that appropriate systems are integrated.

The timing of the Laboratory's effort to reconcile these important questions is, in and of itself, troubling. It was not until the November-December 2002 timeframe that there was intensive effort in this regard.

Property Accountability

According to a Los Alamos official, Laboratory employees have not been routinely held liable or accountable for lost property under their control. This official explained that when an employee first takes custody of an item of property, the employee signs an "accountability" statement. However, Los Alamos management generally chose not to enforce the statements, according to this official, but rather chose to "write off" the missing property at the end of an inventory cycle. An accounts receivable official could not recall ever receiving any restitution from any Los Alamos employee for a lost or stolen item for which he or she was responsible. The Security Inquiries Leader made a similar point in his March 2002 memorandum.

Another issue we identified relates to Los Alamos' use of "drop points" for the delivery of new equipment. Under the drop point system, Laboratory property is not delivered, uniformly, to a central, secure location. At such a secure central location, the equipment can be tagged, inventoried, and consistently tracked. We were told that many of these Laboratory drop points are in open spaces with little or no security. A number of key

officials advised that there have been insufficient Laboratory efforts to ensure that equipment delivered to Laboratory drop points is safeguarded. We were also told that property would be left at these locations for inordinate amounts of time, without being checked by property administrators.

Communication and Responsibilities

Our inquiry disclosed a substantial degree of dysfunction in Los Alamos' communication and assignment of responsibilities and authorities for the handling of property loss and theft concerns. For example, Laboratory management sent mixed messages to the two former security officials with respect to the scope of their authorities and responsibilities. Security Inquiries officials were told that they were not "investigators." At the same time, our inquiry disclosed that one of the terminated security officials was directed by a senior Los Alamos official to travel off site, to another state to interview a private citizen, to obtain information concerning a matter (the alleged improper purchase of a Mustang automobile), which included the possibility that it was criminal in nature. This appeared inconsistent with previous direction, and other management communications to these officials, about the scope of their responsibilities and authorities.

Further, Laboratory management acknowledged that there were inadequate Laboratory policies that governed when and under what circumstances Laboratory activities must be reported to law enforcement. Laboratory officials had been drafting such a policy since the spring of 2002, but the policy remained in draft at the time of our inquiry.

Our inquiry also disclosed organizational inconsistency between the roles of the Office of Audits and Assessments and the Office of Security Inquiries. The Office of Audits and Assessments was tasked with the internal review of Laboratory "waste, fraud, and abuse" concerns, whereas the Office of Security Inquiries was responsible for reviewing alleged "theft." This left not only the potential for "overlap" in responsibilities, but "underlap," as one senior security official characterized this condition to our inquiry team.

Procurement and Property Systems

As we completed our inquiry fieldwork, the final report of the Laboratory's external review team was completed. That report noted a number of Laboratory "programmatic weaknesses" with respect to Los Alamos' controls over purchase cards, including:

- Failure to reconcile and approve monthly statements;
- Failure to resolve disputed transactions;
- Failure to properly account for controlled property;
- Purchase of restricted items in violation of Laboratory policies;
- Insufficient documentation of items purchased;
- Inadequate or ineffective sanctions for non-compliance;
- Insufficient training, especially for approvers;
- Insufficient program audit and review procedures;
- Failure to properly manage cardholder spending limits; and,
- Failure to safeguard card information.

The external review team recommended a number of corrective actions, and noted that they had not validated the Laboratory's implementation of recent corrective actions.

We also noted during our inquiry that NNSA had completed an assessment of the Laboratory's "Personal Property Management" and "Procurement Management," in December 2002, and rated the Laboratory as "excellent" in both categories. Although we

did not evaluate the process by which NNSA arrived at such a rating, we believe the process should be re-evaluated in light of events.

RECOMMENDATIONS

In our report, we made specific recommendations for corrective action. In particular, responsible Department officials must ensure that the University of California and the Laboratory's management are held accountable for implementing and executing corrective actions resulting from the situation at the Laboratory.

OTHER OIG REVIEWS

Beyond this special inquiry, Mr. Chairman, we have a number of recently completed reviews and ongoing efforts at the Laboratory. Our most recent report, issued on February 21, 2003, examines internal controls of firearms at Los Alamos. We concluded that weaknesses exist in the administration of the firearms inventory, which included over 1,600 guns. We found, for example, that 12 firearms received in 1999 were not entered into the Laboratory's inventory. Also, separate firearms inventories maintained by Los Alamos and the security subcontractor were inconsistent and had not been reconciled. In addition, all firearms were not processed through a central receiving point, resulting in delays in entering some firearms into the Los Alamos property management database. In fact, some firearms never made it into the database. Management asserted that the problems we encountered concerned receipt of firearms and not accountability of firearms. However, in our judgment, the failure of Los Alamos to provide an accurate firearms inventory; the lack of reconciliation of the Los Alamos inventory with the security force inventory; and the acknowledged problems in the process for receipt of firearms and their inclusion in the official Laboratory inventory raised additional doubt

about the property control system at Los Alamos. In response to our report, management indicated that corrective actions would be taken.

Other ongoing Office of Inspector General reviews and investigations, as well as matters under the purview of the Federal Bureau of Investigation, are continuing to address a number of relevant concerns. The OIG efforts include:

- A review of laboratory controls over laptop and desktop computers;
- A review of the allowability of costs claimed by the University of California under its contract to manage the Laboratory for the Department of Energy; and
- A number of criminal investigations regarding misuse of purchase authority.

The criminal investigations are being worked in coordination with the United States Attorney's Office in New Mexico. Due to the sensitive nature of ongoing investigations, we will be unable to provide specific information on the individual cases.

Mr. Chairman, as noted previously, our work at Los Alamos National Laboratory continues with the objective of addressing a number of concerns that have been raised regarding Laboratory operations.

This concludes my statement and I would be pleased to answer any questions.