



# COURTS ORDER SUNSHINE ON RANKING

## Appeals Court Rejects Lab

On November 30, the California State Court of Appeal rejected a **third** request by LLNL to set aside a lower court's decision ordering the Lab to give ranking data to employees. The deadline for an appeal to the State Supreme Court has already passed. Within a few days, the court will issue an injunction ordering LLNL to produce the data.

### Data Needed For Discrimination Case

In March 1991, SPSE requested names and ranks for computer scientists in Applications Development Department (ADD, Computations Directorate). We sought this data to use in an employee's grievance about sexual discrimination. California's Public Records Act makes most records kept by State and University agencies subject to public scrutiny. (*It is through use of this act that, in 1975, SPSE forced LLNL to make salary data available to employees.*)

The Laboratory declined to give the information. Their stated reason was the protection of employee privacy. We filed a suit. In face of the fact that **salary** data is a public record as under the law, the Lab's "privacy" arguments did not get far in court.

Sparse ranking data that was available showed statistical evidence of discrimination. (See, for example, SPSE Newsletter #2, May 1992.) The courts weighed the public interest of monitoring discrimination when they framed the orders to release the data to employees.

### Lab Turns Over Data, Refuses to Give More

Last June 22, the Superior Court ordered LLNL to turn over the ADD ranking data. LLNL appealed to the higher court who turned it down. First, because their appeal was defective. Second, after they refiled, because their appeal had no merit.

The Laboratory then turned over the ADD rankings for FY 1992. (See upper plots on page 3.) After giving the data, LLNL announced publicly that they would vigorously oppose other requests for ranking data. We tested their statement of intent to violate the law by asking that they supply all ranking data for FY's '92 and '93. They declined, once again claiming that the data was exempt from disclosure.

### Back to Court

We went back to the Superior Court and asked for a declaration that not only the ADD data but all ranking data is part of the public record. The court granted this on October 29. The Lab then filed their third appeal that was rejected on November 30. ♦

## The Real Issues (Editorial)

In the past few years, the managers who now control the Laboratory have made ranking into a major management activity. It profoundly affects the compensation and job security of every one of us. Yet, it is done largely under a cloak of secrecy.

In the past, performance appraisals were kept secret. Until SPSE exposed this (in 1973), most employees had never seen an appraisal and didn't even know that they existed. Salary information was also closely held. SPSE forced the Lab to release salaries by suits and legislative action. Now it is ranking information that they want to keep from the employees.

SPSE's position is that employees should have as much data as they need to evaluate their own situation and make informed decisions regarding their own careers. When we know how each employee is ranked and paid, we can judge for ourselves whether the system is treating us fairly. Data we **have** seen, strongly suggests it is not fair at least in compensating minorities and women. We believe that as more data becomes available, we will verify that too often, ranking is arbitrary and discriminatory toward employees and serves too well the self-interests of the managers who administer it.

Management is fighting hard to keep ranking data from the employees. A history teacher of mine once told me that, in politics, everyone has two reasons for everything they do. There is the good reason; this is the one they tell everyone. And then, there is the real reason. In this battle over ranking, management says they are concerned about employee privacy. But, their real reason is known to all of us: they want to avoid being made accountable for their actions.

In statements to the courts, LLNL said that if they must reveal the rankings, they may do away with the ranking system entirely. It will be a good riddance. ♦

## Editorial Update

Our September Newsletter (#3, 1992), mentioned that L-Division ignored the directive from a formal administrative review that several derogatory remarks be stricken from Dr. Ching Wang's 1991 performance appraisal. After our Newsletter circulated, the division asked Wang to sign a revised appraisal with the objectionable statements removed. The revision came one entire year after it was ordered, too late to affect either FY92 or FY93 salaries. And, it came, apparently, in response to our Newsletter, despite the fact that Dr. Wang previously complained about the failure to implement the administrative review decision. ♦

# President's Column R. E. Budwine **So Who Is Responsible?**

The response to the first two articles I wrote for the SPSE Newsletter was positive, gratifying, and surprising. Various members of our Lab have said things like, "Right-on", "That's telling it like it is", "These are the real problems we should be discussing and facing", etc. The surprising thing was that these comments came in part from some of the people I considered 'guilty' of creating the problems. The first few times it occurred I thought it was a gambit to try to avoid responsibility for the problems. But, after it occurred enough, I came to the conclusion that the 'guilty' really didn't believe that it was their fault. On reflection, neither do I.

The problems we nearly all observe, and SPSE tries to underscore, developed over a long period and are now systemic. No individuals create the problems, though I believe it is fair to say that some are keeping the problems alive, mostly because of self interest. I have heard the response to our criticisms, "Your rabble rousing and blaming management for our Lab's problems keeps us from being able to discuss openly these issues." It is not clear that what we need is "discussion" of our problems, more useless committees, etc. How then do we start making the changes we need?

## **Solving the Problems**

It is the responsibility of each of us to bring about change. If each of us ceases to tolerate the professionally poor and unfair practices we see on a regular basis, and objects strongly, either as individuals or collectively, the system will change. It will take some courage to object to and not take part in the nonsense, but if we make the effort change will occur.

## **The Final Responsibility**

Despite this collective responsibility, there is one desk at which "The Buck Stops Here": the Director's. The Director has the ultimate responsibility to make sure that the Lab's managers and program leaders cease the unprofessional and self serving behavior that they have learned by observing how to "get ahead." ♦

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## **Caution to LLNL Employees**

There have been several incidents reported to us in which Lab employees were called to meet with LLNL/DOE security officers to discuss accusations of wrong doing. In the cases reported to us, the employee's were "read their rights", then accused of vaguely described wrong-doings, and urged to discuss the matter without a representative present.

If the employee was reticent to have a discussion, then the questioners threatened (both directly and subtly) to arrest the employee on the spot and/or to turn the matter over the "DA" for prosecution. (*This*

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*is powerfully persuasive to a father or mother who can't risk incarceration because they must be home at evening to feed the kids. Never mind that ultimately there may be a large award from a false arrest suit.)* Questioners coaxed the employees by saying that if they were innocent, they could easily clear up misunderstandings and so they had no need for representation.

Certainly there are instances where Security must investigate suspicions of serious wrong-doing. However, the cases brought to SPSE's attention involved gross distortions of very trivial matters and false or ill-defined charges.

The accused were urged to sign statements, and to give detailed accounts that were subsequently used as the basis for further accusations and demands for more information. Representatives from the Staff Relations Division sometimes participated in the questioning.

We believe that, in those cases called to our attention, the actions of Security and Staff Relations were inappropriate and alarming. However we acknowledge that Security and Staff Relations are obliged to conduct investigations of alleged wrong-doing. Employees need to know how to respond.

If you are called to a meeting with Security or Staff Relations, find out in advance why they want to talk to you. They may be reluctant to give details in advance but they should tell you generally what it is about. If it involves suspicions of wrong-doing, take a representative with you to the very first meeting. If the topic involves possible criminal charges, you need an attorney. If it involves only violation of Laboratory policies, other representation may suffice. Don't be seduced by the claim that if you are innocent, you need no representation.

SPSE can supply the names of attorneys, who are experienced in dealing with LLNL, to assist you. ♦

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Signature	Date	
Bldg:	Room:	L-
LLNL ADDRESS		

## Ranking Data Show Male-Female Distributions

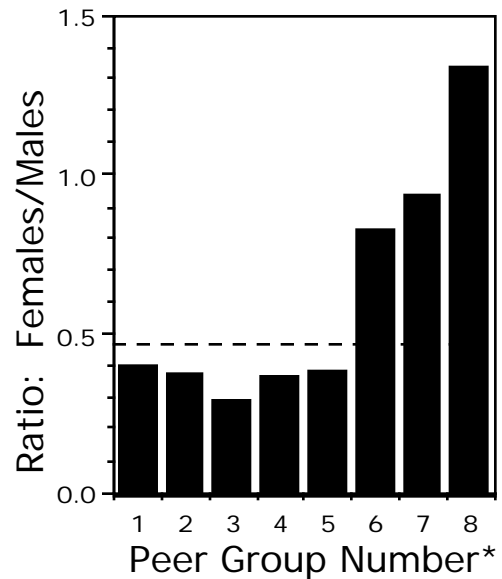
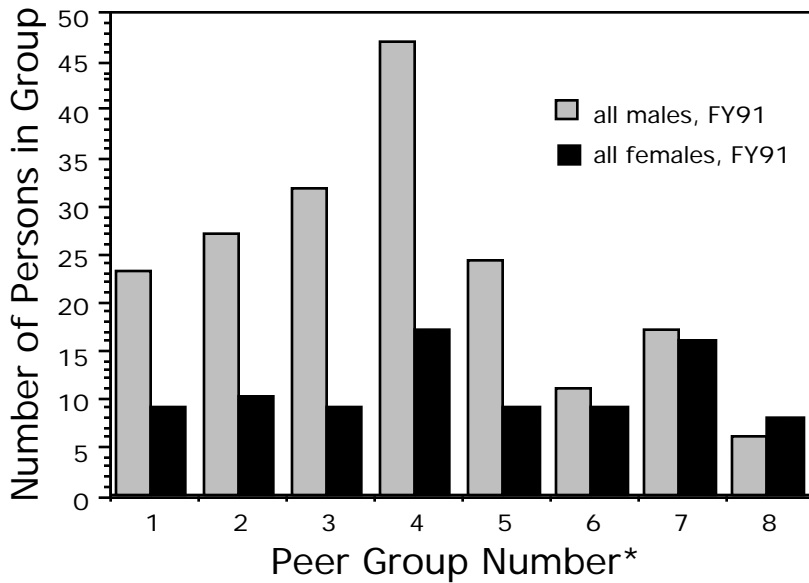
The May SPSE Newsletter (#2, 1992) showed distributions of males and females among the ranking groups in the ASD (division) of the Applications Development Department (ADD) in the Computations Directorate. The data were for fiscal years '89 and '90. An arbitrator cited them as evidence that an ADD employee was the victim of sexual discrimination.

SPSE represented the employee in the arbitration hearing. Prior to the hearing, we requested that the department-wide ranking data for FY 1991 be made available.\* The Laboratory denied this request.

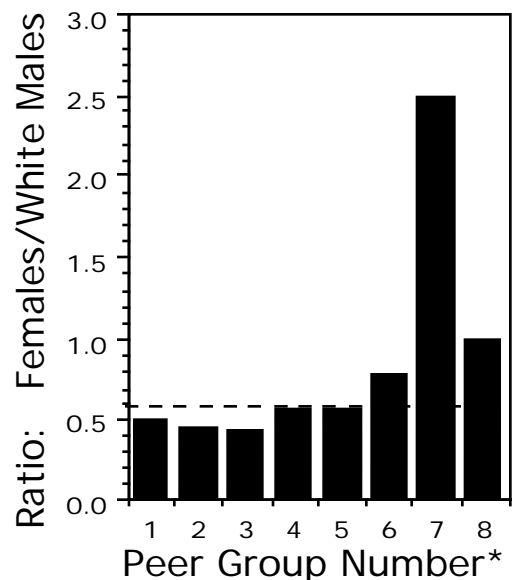
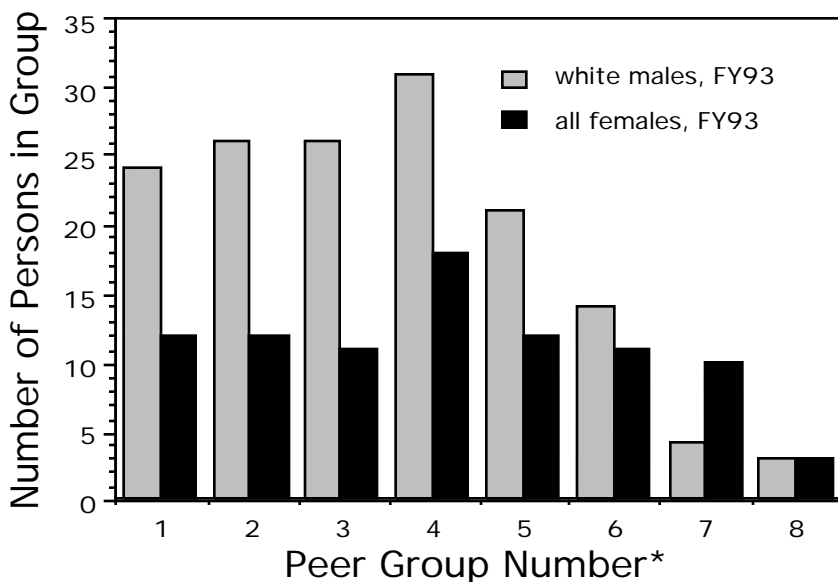
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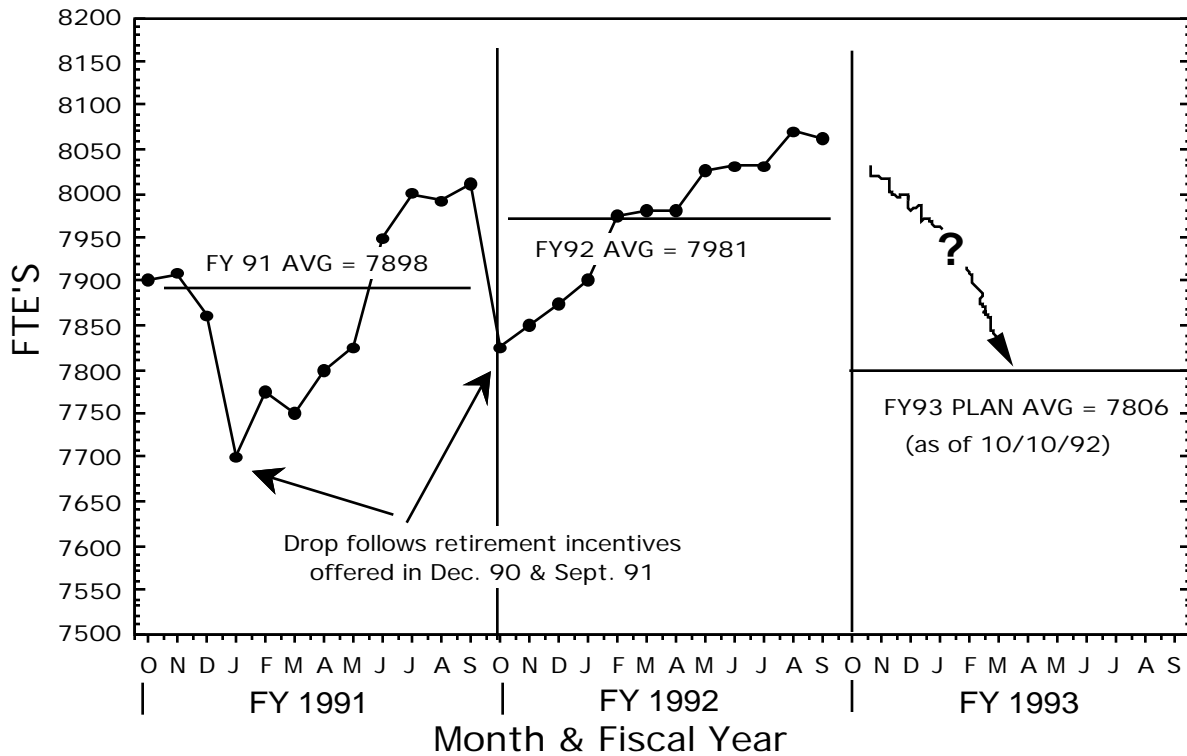
Too late for the hearing, the Superior Court ordered LLNL to turn the data over to us. The plots below show the distribution of males and females among the ranking groups in ADD for FY91 and white males and females for FY93.

\*In FY 91, ADD switched from division rankings to department rankings. The original department ranking had 9 groups. The lone occupant of group 9 was ordered moved to group 7 by an arbitrator who found that she was placed in group 9 to punish her for filing a discrimination grievance.



Ranking in ADD for FY 1991 (above left). Lower peer group numbers correspond to higher target salaries. The graph above right shows the ratio of the number of **all** males to all females in each ranking group. The dashed line shows the ratio of females to males in the total (ADD) population. We have obtained similar (but slightly different) data for FY 1993. The plots below show distributions of **white** males and all females among the ranking groups in ADD for FY93. There were nine ranking groups but no persons were in the bottom group which was reserved for "unsatisfactory performers."





The plot above shows the number of full time equivalent employees (FTE's) at LLNL for fiscal years 1991 and 1992 and the Lab's projections for fiscal year 1993. Reductions in force by voluntary retirement incentives are followed by vigorous hiring and the total population increases beyond its level prior to the reduction. This raises the questions: (1) what has been achieved by the retirement incentives and (2) is LLNL management acting responsibly to protect the work force from layoffs? The data are taken from a presentation given in October 1992 by LLNL Controller John Gilpin.

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