

But he's been around longer than that—serving as mayor, vice-mayor, and as a member of the city council of Richmond.

Prior to that, TOM's business background and experience gave him special insight about the problems and challenges faced by small business.

Obviously, that background and experience is similar to mine.

But that is not the only thing that endears TOM BLILEY to me.

I can truly say, "I knew him when."

He has been a friend for so many years that I'm not sure I even like to think about how long it's been.

As I look back on all the things he's done, I realized I first knew him when he was mayor of Richmond.

That was 30 years ago. Then he was elected to Congress in 1980.

I was elected just a couple of years later.

And I can assure you: One of the most rewarding parts of this job has been serving and working with TOM.

We've worked on issues ranging from those that impacted Virginia to those that impacted NATO.

For a couple of young men from Richmond, I'd say we've come a long way.

But TOM's greatest strength, and I hope one I share, is he never forgot where he came from.

Serving the people at home was his strong point, equaled only by being such a great Virginia gentleman.

I am honored that he is my friend.

#### INVESTIGATION AND TREATMENT OF WEN HO LEE

The SPEAKER pro tempore (Mr. MICA). Under the Speaker's announced policy of January 6, 1999, the gentlewoman from Hawaii (Mrs. MINK) is recognized for 60 minutes.

Mrs. MINK of Hawaii. Mr. Speaker, I take this time to express my deep concerns about the overall unfortunate circumstances that have revolved around Wen Ho Lee.

On March 6 of 1999, the New York Times reported that government investigators believed that China had accelerated its nuclear weapons program with the aid of stolen American secrets. This report, along with other reports that came subsequently, led to a frenzy of activity. In fact, 2 days after the March 6, 1999 New York Times report, Wen Ho Lee, who was identified, was then fired from the laboratory; and soon after that, he was charged with the various offenses.

In September of this year, September 26, 2000, the New York Times took the very exceptional opportunity to explain the backup of their reporting, going back to March 6, 1999. Although they really made no overt apologies for the conclusions that they drew in their March 6, 1999 article, it is interesting to note that they made various observations.

First, they said looking back, and I quote from this article of New York

Times Tuesday September 26: "But looking back, we also found some things that we wish we had done differently in the course of the coverage to give Dr. Lee the full benefit of the doubt. In those months, we could have pushed harder to uncover weaknesses in the FBI case against Dr. Lee. Our coverage would have been strengthened had we moved faster to assess the scientific, technical and investigative assumptions that led the FBI and the Department of Energy to connect Dr. Lee to what is still widely acknowledged to have been a major security breach."

The Times neither imagined the security breach, as they go on to say, nor did they initiate the case against Dr. Wen Ho Lee. But, however, it was the March 6 article that set the tone for the coverage against this individual in the ensuing months.

The New York Times editorial of September 26, 2000 goes on to say, "The article, however, had flaws that are more apparent now that the weaknesses of the FBI case against Dr. Lee have surfaced. It did not pay enough attention to the possibility that there had been a major intelligence loss in which the Los Alamos scientist was a minor player," and perhaps maybe even uninvolved.

"The Times should have moved more quickly", it said in this article, "to open a second line of reporting, particularly among scientists inside and outside the government."

This article is a very unique and interesting attempt on the part of the New York Times to respond to severe criticism that other journalists had leveled against the New York Times for its March 6, 1999 article.

But in any event, the ensuing events that evolved around Dr. Wen Ho Lee is what prompts me to come to the floor tonight to speak about this incident. It is very strange that, if there was such an egregious breach of national security presumably organized and conducted by Dr. Wen Ho Lee, that it took 9 months to obtain an indictment against him, during which time he was completely free.

At that time, 9 months later, they charged him with 59 separate felony offenses. Thirty-nine counts alleged that Dr. Lee violated the Atomic Energy Act because he mishandled material containing restricted data with the intent to injure the United States and with the intent to secure an advantage to a foreign Nation. Ten counts alleged that Dr. Lee unlawfully obtained defense information in violation of the law, ten counts of willfully retaining national defense information in violation of the law.

What safeguards did the government take to make sure that Dr. Wen Ho Lee did not flee or transfer the tapes to some individual during those 9 months? Nothing that I am aware of. He was certainly a security risk from the time

that he was fired from the Los Alamos laboratory until he was finally charged on December 10, 1999.

Now suddenly we read in the newspapers in September of the year 2000 that 58 charges leveled against Dr. Wen Ho Lee were dropped under a plea bargain involving the plea of guilty on one count only and a pledge to cooperate with the government to disclose why he did it and how he disposed of the tapes that he has pled guilty to having taken. It is very strange.

The reason I take this floor to raise this issue is not to discuss the innocence or guilt of this man. He has already pleaded guilty. But the one thing that has concerned the Asian American community tremendously is the way that he was treated after he was finally charged with these various 59 crimes and incarcerated.

Suddenly, after he was picked up, he became a huge national security risk. Yet, for 9 months, he was allowed to come and go as a free citizen. Only upon his indictment in December of 1999 did he become a security risk.

In his plea for bail, release on bail and other things that came up at that hearing, it was pointed out by the prosecutors that he constituted a real risk and that he might transfer the tapes to unauthorized individuals. The whole matter lay in a situation in which, as one reporter said, that, short of the charges of espionage and naming him a spy, that he was incarcerated under arraignment under very, very serious conditions.

It is that level of concern that the Asian community has raised many, many questions. They have met with the Attorney General to discuss it and other officials that will listen to him.

My reason for rising here tonight is that we believe that there was a serious mistake made by the government in the way that they dealt with Dr. Wen Ho Lee. There is absolutely no justification that he was allowed to be a free person for 9 months if, in fact, the government had suspicion for at least 3 or 4 years that something was awry, that the tapes had been missing and he was under surveillance.

In fact, they had gone to the Justice Department asking for permission to look at his computer and to make determinations as to whether something was done that violated the security restrictions of the laboratory, and the Justice Department denied the request of the investigators.

Yet, here on December 10, he was denied bail. Out of that denial came this extraordinary disclosure through the family and through his lawyers and through others who became acquainted with the nature of his confinement, that he was kept in a cell, completely enclosed, maybe 4 feet by 16 feet in dimension. The entrance to his cell was not the regular bars, but it was a door with a little window. He was kept in

there virtually, except for meals, the complete time that he was incarcerated, from December 10 until he was released on September 20.

The other egregious thing, besides being kept in such solitary confinement for this length of time, because he constituted a serious security risk to this Nation, he was kept in chains whenever he was allowed to go out to exercise, which was only 1 hour a day. He was required to be in chains. His ankles were chained. His wrists were chained. His wrists were chained. They were connected to his waist chains. He was expected to go out into the open air and exercise under those circumstances.

It is an absolutely inexplicable situation that they had leveled upon him. Many of the people who have looked at this situation, and, indeed, those who testified over on the Senate side indicated that this was probably done to him in an effort to try to force him to disclose information that led him to make the tapes and to disclose where these tapes were in fact placed. So it was all a matter of trying to intimidate this individual prior to going to trial, prior to any particular finding of specific guilt.

Probably most of the Asians were reluctant to speak up, including myself, during this whole tragic event, because we did not quite know exactly the extent to which this individual was actually guilty of the 59 charges.

Then out of the clear blue, we find that a judge has, not only condemned the Justice Department and the Attorney General for the mishandling of his incarceration, but by a plea bargain with the Justice Department, he is totally exonerated of 58 of the charges, pleads guilty to one, and he is a free person, no longer a security threat to the United States, and they still do not know where the tapes are as far as I know.

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This is an incredible situation that we find ourselves in, with one person being put under such severe personal jeopardy before trial, before an absolute finding of guilt, and to know that in the end he was allowed to be a free person.

So the questions have to be raised, I think. And many of the people from the Asian community are asking these questions: Was his apprehension in the first place triggered because he was an Asian? Many people are suggesting that others at the Los Alamos laboratory committed even more serious violations with respect to secret, classified documents, and with respect to the procedures that had been in place as to how individuals were supposed to deal with security items; yet these people were not investigated, were not put through the same extent of inquiry as Dr. Lee was. So we are troubled with his selective prosecution.

Many people are alleging that this was a racial profiling situation, and they are raising all sorts of questions with respect to why Dr. Lee and not all the other individuals. We know about some very, very difficult cases that are involving high-ranking officials, with extremely important information, and who took classified information, put that on tapes, and are still, for all that I know, not under any particular arrest warrants or incarcerated or charged for their conduct.

So the people are very, very concerned. They want to know why his bail was denied. Was there really an intent here to pressure this particular person to come forward with information? Was there a deliberate intent to make his detention so severe that he would be forced to cooperate?

The reason why this case really came to its final conclusion, with Wen Ho Lee being released, was that the judge had been told at the final bail hearing that came up in August that the information that the FBI had presented to the judge back in December was not all true. As a matter of fact, it came out in the testimony to the judge in August that Wen Ho Lee had been told by the FBI agents that he had flunked the polygraph test when in fact he had passed it. This was another incident of the government's deliberate attempt to try to force a confession from someone who was constantly saying that he had not breached the national security of the United States. What he had done was probably wrong and contrary to the rules, but certainly not anything that constituted a breach of national security.

Nowhere in the investigation was the FBI able to show in any context whatsoever that he had passed any information on to fellow scientists or to foreign scientists, or that in his travels to China he had breached the security requirements of his occupation. They charged him for failure to report contacts that he had made in his trips, which were all authorized trips that he made to China. He was accused of not having filed reports; yet in the August hearing, before the judge, it came out that he had indeed filed the reports and that all of those arguments that had been made in December were simply not true.

The judge had gone along in December with this harsh treatment of solitary confinement because he believed that there was here a defendant who was deliberately trying to obfuscate his actions, had failed to file the necessary reports that he was required to file as an employee of Los Alamos laboratory. And when all of this exploded in the face of the truth at the August hearing, even the judge made the statement in his final recommendation for release of Dr. Lee that he was astounded that this sort of situation could be tolerated, and he was abso-

lutely shocked at what had happened to this individual. So he ordered the release.

The release was appealed by the government. The other courts simply dismissed the appeal and shortly thereafter Dr. Lee was released a free man. The only requirement is that he not leave the country for a year, I believe, and that he cooperate in a debriefing type of contact with the Justice Department in an effort to try to find out where the tapes are located and what has happened to them.

So we have to look back on this situation and say, okay, the FBI agents erred in their anxiety to find this person guilty of egregious violations against the government and to show that this individual was a deliberate liar and trying to withhold information from the government. But what happens to the FBI agents who perpetrated this misstatement to the courts? I hate to say that these were specific deliberate lies. They claimed that they were simply mistakes. But what happens to these agents that misled the court and caused this grievous harm against this individual insofar as how he was treated? He was shackled as an animal. Even when he was allowed to go to see his lawyers, he was still shackled. It is an incredible, unbelievable story of inhumane treatment of an individual under these circumstances.

Mr. Speaker, I have letters that have been sent to the U.S. Attorney in New Mexico, Norman C. Bay, making an inquiry about the conditions of his confinement and the responses that were received. Many, many individuals wrote to the Justice Department: the American Association for the Advancement of Science sent a letter; the New York Academy of Science wrote to the Attorney General protesting the harsh treatment of Wen Ho Lee; the Human Rights Committee of Scientists; the Episcopal Church of the United States wrote in protest of his harsh treatment; the National Academy of Sciences; the National Academy of Engineering and the Institute of Medicine sent a joint letter on June 26 to the Attorney General protesting the severity of his confinement; and the Amnesty International on August 16 also sent a letter. On August 31, the National Academies protested that in all the letters they had written, they had failed to get any responses from the Justice Department.

Mr. Speaker, I will be submitting the letters that I have just mentioned for inclusion in the RECORD. I also will put in the RECORD letters that are dated way back in January of this year from the National Asian Pacific American Legal Consortium, writing to the Attorney General and expressing their concerns about his detention; as well as the Organization of Chinese Americans and their letters; the National

Asian Pacific American Bar Association, also writing to the Attorney General about his treatment; and the comments of Robert S. Vrooman, the former chief of counterintelligence at Los Alamos regarding specifically his being targeted for confinement.

Mr. Speaker, I note that my colleague from California is here with me, and I yield to him at this time.

Mr. GEORGE MILLER of California. Mr. Speaker, I want to thank the gentlewoman for yielding to me, and thank her very much for taking this time and this special order to raise the concerns that she has. I have been watching the special order, and I want to tell her how much I appreciate it, because I think that the treatment and the prosecution of Wen Ho Lee and the manner in which it was handled raises serious concerns for every American.

Once again we see that when the incredible power of the government comes down on a single individual, all too often that individual's rights are crushed under the full force. And in this case we saw almost a hysteria that ran through the government, through committees of Congress, within the Department of Energy and Justice and Defense, in a frenzy to try to prove something that they may, in fact, not have had the evidence to prove. And in doing so, they focused on this individual, Wen Ho Lee, and then proceeded over the next 9 months to treat him in a manner that no American would want to be treated or have a member of their family treated.

The gentlewoman has recited the litany of harsh treatments to this elderly man during his time in solitary confinement, when in fact at the same time the evidence was starting to suggest that maybe he was not guilty of all that he was charged. This is not to suggest that perhaps that Wen Ho Lee did not violate rules of protocol and perhaps even security rules. But the jump from that to that he was one of the most dangerous men in the United States; that he had transferred the crown jewels, we now find that what this was was a lot of prosecutorial hyperbole. They were trying to make their case. They were trying to push the public to focus in on this individual because they felt it would solve a problem.

We know that one of the major mistakes that law enforcement can make is to focus on a single individual too early in an investigation. So now we find out 9 months later that not only have they dropped all of the charges with respect to Wen Ho Lee, except for one out of 79 counts, but we are no further along in knowing what happened to this information and how it got into the hands of the person who walked into our embassy and dropped it on to a table. So in fact not only were his rights compromised, but in fact maybe the very investigation has been com-

promised because so much energy and effort was put on to the focus of Wen Ho Lee.

I just want to again thank the gentlewoman for taking this time. People should not look at this case as a case against a Chinese American or an Asian or a person who is a threat to the United States. They ought to think of this in terms of every American. We understand that this Congress has taken action against prosecutors who have exceeded their authority way beyond what can be justified, or the Internal Revenue Service. And what we really ought to have, and what I have asked for and written the President and spoken out on this floor for, is somehow we need a truly independent investigation.

I am afraid that investigation will have to come from outside of the government, because the government is so compromised in the manner in which the investigation was handled by the various agencies and by the committees of this Congress in their rush to judgment, in their frenzy and their hysteria over this issue. But I would hope that this administration would in fact appoint an outside panel of experts who can have that security clearance, who can determine what in fact happened here, because the damage runs to our civil liberties. The damage runs to Wen Ho Lee and his family, his reputation; and it also runs to the integrity of this body, to our agencies that participated in that. The American public needs to know what happened there.

Unfortunately, I think the damage also runs to the labs and to our ability to recruit. The gentlewoman is aware, as I am aware, of what has happened in the Asian community with scientists and others who wonder now if they go to work for these labs whether they will be profiled; whether they will be treated differently; are they suspect because of their travels, because of their family, because of their heritage, because of their culture?

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And when you see the treatment of this individual, you would be asking the same question of yourself if you wanted to determine. And yet, because of this action, we may be denying this country some of the very best scientists, mathematicians, engineers and others that are available in the world today who would love to come to work for the United States and in fact are not any of those suspected things.

So I think it has been a real cost to us, to the labs and to our resources available to work on the kinds of scientific endeavors that so many at the lab do on a day-to-day basis. So people ought to understand, this is not just about Wen Ho Lee. This is the ripples of this case, and how it has been handled go far beyond far beyond this individual and his treatment.

But we ought to make sure that we do not forget nor can an agency simply not answer for their actions. That is what has to be done. But I do not think that they can investigate themselves because in fact they were part of the frenzy that took place around the arrest and prosecution and detainment of Wen Ho Lee.

So we owe the gentlewoman a debt of gratitude for taking this time for putting these documents in the RECORD so that the broader public will have access to them. I want to thank the gentlewoman very much for doing so.

Mrs. MINK of Hawaii. Mr. Speaker, I thank the gentleman for giving a larger perspective on this. I came to the floor because so many Asians have expressed a dismay that a situation like this could happen in America and many of them expressed the belief that it could only happen to an Asian. That to me is a very damaging aspect to have this country, so great and so wonderful in terms of its definition of democracy, to have a segment of our community believe that this occurred to this one gentleman because he was Asian and that the outcry did not come until after he was more or less exonerated.

The outcry should have been there, as many of the organizations did, but it was sort of scuffled. Nobody really paid much attention to it. I agree absolutely that we have to call for an investigation, and it cannot be the one that the Attorney General has told the community that she would do. It is simply not adequate. It has to be taken to a different level and a situation where this whole matter can be reviewed.

But it is a terrible thing. The Asian community feels burdened with this suspicion, and the wreckage of this whole incident has sort of fallen on all Asians, not just the Chinese-Americans, but all Asians. And so, I truly believe that the Congress has to take some responsibility in this matter and look at it.

The Senate has investigated it, has called several hearings. And I applaud them for it. I hope that when we return here next year that we will take the time to make sure that this kind of treatment of a human being can never again occur to anyone under our judicial system. I plead with the Members of this House to look at this situation carefully and dispassionately. And if they do, I believe they will come to the same conclusion that the gentleman from California (Mr. GEORGE MILLER) and I have come to.

Mr. Speaker, on March 6, 1999 New York Times reported that Government investigators believes China had accelerated its nuclear weapons program with the aid of stolen American secrets.

Two days later, Wen Ho Lee was identified and fired.

[From the New York Times, Sept. 26, 2000]

THE TIMES AND WEN HO LEE

On March 6, 1999, The New York Times reported that Government investigators believed China had accelerated its nuclear weapons program with the aid of stolen American secrets. The article said the Federal Bureau of Investigation had focused its suspicions on a Chinese-American scientist at the Los Alamos National Laboratory. Two days later, the government announced that it had fired a Los Alamos scientist for "serious security violations." Officials identified the man as Wen Ho Lee.

Dr. Lee was indicted nine months later on charges that he had transferred huge amounts of restricted information to an easily accessible computer. Justice Department prosecutors persuaded a judge to hold him in solitary confinement without bail, saying his release would pose a grave threat to the nuclear balance.

This month the Justice Department settled for a guilty plea to a single count of mishandling secret information. The judge accused prosecutors of having misled him on the national security threat and having provided inaccurate testimony. Dr. Lee was released on the condition that he cooperate with the authorities to explain why he downloaded the weapons data and what he did with it.

The Times's coverage of this case, especially the articles published in the first few months, attracted criticism from competing journalists and media critics and from defenders of Dr. Lee, who contended that our reporting had stimulated a political frenzy amounting to a witch hunt. After Dr. Lee's release, the White House, too, blamed the pressure of coverage in the media, and specifically The Times, for having propelled an overzealous prosecution by the administration's own Justice Department.

As a rule, we prefer to let out reporting speak for itself. In this extraordinary case, the outcome of the prosecution and the accusations leveled at this newspaper may have left many readers with questions about our coverage. That confusion—and the stakes involved, a man's liberty and reputation—convince us that a public accounting is warranted.

In the days since the prosecution ended, the paper has looked back at the coverage. On the whole, we remain proud of work that brought into the open a major national security problem of which officials had been aware for months, even years. Our review found careful reporting that included extensive cross-checking and vetting of multiple sources, despite enormous obstacles of official secrecy and government efforts to identify The Times's sources. We found articles that accurately portrayed a debate behind the scenes on the extent and importance of Chinese espionage—a debate that now, a year and a half later, is still going on. We found clear, precise explanations of complex science.

But looking back, we also found some things we wish we had done differently in the course of the coverage to give Dr. Lee the full benefit of the doubt. In those months, we could have pushed harder to uncover weaknesses in the F.B.I. case against Dr. Lee. Our coverage would have been strengthened had we moved faster to assess the scientific, technical and investigative assumptions that led the F.B.I. and the Department of Energy to connect Dr. Lee to what is still widely acknowledged to have been a major security breach.

The Times neither imagined the security breach nor initiated the case against Wen Ho

Lee. By the time our March 6 article appeared, F.B.I. agents had been looking closely into Dr. Lee's activities for more than three years. A bipartisan congressional committee had already conducted closed hearings and written a secret report unanimously concluding that Chinese nuclear espionage had harmed American national security, and questioning the administration's vigilance. The White House had been briefed repeatedly on these issues, and the secretary of energy had begun prodding the F.B.I. Dr. Lee had already taken a lie detector test; F.B.I. investigators believed that it showed deception when he was asked whether he had leaked secrets.

The Times's stories—echoed and often oversimplified by politicians and other news organizations—touched off a fierce public debate. At a time when the Clinton administration was defending a policy of increased engagement with China, any suggestion that the White House had not moved swiftly against a major Chinese espionage operation was politically explosive.

But the investigative and political forces were converging on Dr. Lee long before The Times began looking into this story.

The assertion in our March 6 article that the Chinese made a surprising leap in the miniaturization of nuclear weapons remains unchallenged. That concern had previously been reported in The Wall Street Journal, but without the details provided by The Times in a painstaking narrative that showed how various agencies and the White House itself had responded to the reported security breach.

The prevailing view within the government is still that China made its gains with access to valuable information about American nuclear weaponry, although the extent to which this espionage helped China is disputed. And while the circle of suspicion has widened greatly, Los Alamos has not been ruled out as the source of the leak.

The article, however, had flaws that are more apparent now that the weaknesses of the F.B.I. case against Dr. Lee have surfaced. It did not pay enough attention to the possibility that there had been a major intelligence loss in which the Los Alamos scientist was a minor player, or completely uninvolved.

The Times should have moved more quickly to open a second line of reporting, particularly among scientists inside and outside the government. The paper did this in the early summer, and published a comprehensive article on Sept. 7, 1999. The article laid out even more extensively the evidence that Chinese espionage had secured the key design elements of an American warhead called the W-88 while showing at the same time that this secret material was available not only at Los Alamos but "to hundreds and perhaps thousands of individuals scattered throughout the nation's arms complex."

That article, which helped put the charges against Dr. Lee in a new perspective, appeared a full three months before the scientist was indicted.

Early on, our reporting turned up cautions that might have led us to that perspective sooner. For example, the March 6 article noted, deep in the text, that the Justice Department prosecutors did not think they had enough evidence against the Los Alamos scientist to justify a wiretap on his telephone. At the time, the Justice Department refused to discuss its decision, but the fact that the evidence available to the F.B.I. could not overcome the relatively permissive standards for a wiretap in a case of such potential

gravity should have been more prominent in the article and in our thinking.

Passages of some articles also posed a problem of tone. In place of a tone of journalistic detachment from our sources, we occasionally used language that adopted the sense of alarm that was contained in official reports that was being voiced to us by investigators, members of Congress and administration officials with knowledge of the case.

This happened even in an otherwise far-seeing article on June 14, 1999, that laid out—a half year before the indictment—the reasons the Justice Department might never be able to prove that Dr. Lee had spied for China. The article said Dr. Lee "may be responsible for the most damaging espionage of the post-cold war era." Though it accurately attributed this characterization to "officials and lawmakers, primarily Republicans," such remarks should have been, at a minimum, balanced with the more skeptical views of those who had doubts about the charges against Dr. Lee.

Nevertheless, far from stimulating a witch hunt, The Times had clearly shown before Dr. Lee was even charged that the case against him was circumstantial and therefore weak, and that there were numerous other potential sources for the design of the warhead.

There are articles we should have assigned but did not. We never prepared a full-scale profile of Dr. Lee, which might have humanized him and provided some balance.

Some other stories we wish we had assigned in those early months include a more thorough look at the political context of the Chinese weapons debate, in which Republicans were eager to score points against the White House on China; an examination of how Dr. Lee's handling of classified information compared with the usual practices in the laboratories; a closer look at Notra Trulock, the intelligence official at the Department of Energy who sounded some of the loudest alarms about Chinese espionage; and an exploration of the various suspects and leads that federal investigators passed up in favor of Dr. Lee.

In those instances where we fell short of our standards in our coverage of this story, the blame lies principally with those who directed the coverage, for not raising questions that occurred to us only later. Nothing in this experience undermines our faith in any of our reporters, who remained persistent and fair-minded in their newsgathering in the face of some fierce attacks.

An enormous amount remains unknown or disputed about the case of Dr. Lee and the larger issue of Chinese espionage, including why the scientist transferred classified computer code to an easily accessible computer and then tried to hide the fact (a development first reported in The Times), and how the government case evolved. Even the best investigative reporting is performed under deadline pressure, with the best assessment of information available at the time. We have dispatched a team of reporters, including the reporters who broke our first stories, to go back to the beginning of these controversies and do more reporting, drawing on sources and documents that were not previously available. Our coverage of this case is not over.

It took 9 months later to obtain an indictment against Wen Ho Lee. It charged him with 59 separate felony offenses; 39 counts allege that Dr. Lee violated the Atomic Energy Act because he purportedly mishandled material containing restricted data, with the intent to injure the United States, and with the intent to

secure an advantage to a foreign nation; ten counts allege that Dr. Lee unlawfully obtained defense information in violation of 18 U.S.C. & 793(c); and ten counts of willfully retaining national defense information in violation of 18 U.S.C. & 793(e).

What safeguards did the Government take to make sure Wen Ho Lee didn't flee or transfer the tapes?

Why wasn't he a security risk prior to December 10, 1999?

Why now in September 2000, 58 charges are dropped for a plea bargain involving only one plea of guilty and a pledge to cooperate.

Suddenly Wen Ho Lee is no longer a risk. Today Wen Ho Lee is a free man. The tapes are still missing.

I rise tonight to express my great concern that hysteria and cover-up were the real reasons for Wen Ho Lee's indictment.

The managers of our national nuclear labs had mismanaged the security of these institutions. Access to these secrets was not monitored and vast numbers of people could easily obtain access without signing in or out.

Wen Ho Lee was queried about this contacts in the People's Republic of China.

In 1993-94—Wen Ho Lee was under investigation—for knowingly assembling 19 collections of files, called tape archive (TAR) files, containing secret and confidential restricted data relating to atomic weapons research, design, construction, and testing.

The FBI had Wen Ho Lee under investigation for 3 years.

In 1997, the FBI asked for authority to search Wen Ho Lee's computer. The Attorney General Janet Reno denied this request as not justified based on the facts.

The issue is not the prosecution.

The issue is why was Wen Ho Lee singled out for this witch hunt.

After he was indicted, why was he treated as though he was already convicted?

Why was his request for bail denied?

Why was his detention so severe?

Was it designed to coerce his cooperation?

Why did the FBI lie to Wen Ho Lee "telling him" he had failed the polygraph test when in fact he had passed? A polygraph test was administered on December 23, 1998, by the Department of Energy in New Mexico. DOE said he unequivocally passed, FBI said failed. The FBI then did its own testing of Dr. Lee, and again claimed he failed, but didn't tell him that he failed. CBS News Correspondent Sharyl Attkisson for CBSNews.com.

#### WEN HO LEE'S PROBLEMATIC POLYGRAPH

Three Experts Gave The Nuclear Scientist Passing Scores

But The FBI Later Reversed The Findings  
CBS Investigation Fuels Argument That He Was A Scapegoat

(CBS) Wen Ho Lee either passed—or failed—his first spy-related polygraph, depending upon who was interpreting the results.

As CBS News Correspondent Sharyl Attkisson reports for CBSNews.com, the test was given December 23, 1998 by a Department of Energy (DOE) polygrapher in Albuquerque, N.M., where Wen Ho Lee worked as a top secret nuclear scientist. Because Lee, a Taiwanese-American, had recently been to Taiwan, had visited China in the past, and purportedly had access to America's top nuclear secrets, the FBI focused on him as the prime

suspect in the emerging case of alleged Chinese espionage.

The FBI still wasn't close to making an arrest or even beginning an interrogation, but the DOE's head of counterintelligence, Ed Curran, was reluctant to leave Lee in his highly sensitive job in the lab's X-Division, so he ordered the polygraph test. FBI agents were standing by during the DOE test, ready to interrogate Lee if his polygraph answers proved to be deceptive.

Lee was asked four espionage-related questions:

"Have you ever committed espionage against the United States?"

Lee's response: "No."

"Have you ever provided any classified weapons data to any unauthorized person?"

Lee's response: "No."

"Here you had any contact with anyone to commit espionage against the United States?"

Lee's response: "No."

"Have you ever had personal contact with anyone you know who has committed espionage against the United States?"

Lee's response: "No."

The polygrapher concluded that Lee was not deceptive. Two other polygraphers in the DOE's Albuquerque test center, including the manager, reviewed the charts and concurred: Lee wasn't lying.

The polygraph results were so convincing and unequivocal, that sources say the deputy director of the Los Alamos lab issued an apology to Lee, and work began to get him reinstated in the X-Division. Furthermore, sources confirm to CBS News that the local Albuquerque FBI office sent a memo to headquarters in Washington saying it appeared that Lee was not their spy.

But key decision-makers in Washington remained unconvinced.

Several weeks after the polygraph, the DOE decided to assign it the unusual designation of "incomplete." Officials in Washington also ordered a halt to Lee's reinstatement of the X-Division.

When FBI headquarters in Washington finally obtained the DOE polygraph results yet another interpretation was offered: that Lee had failed the polygraph.

The FBI then did its own testing of Lee, and again claimed that he failed. Yet sources say the FBI didn't interrogate Lee at this time, or even tell him he had failed the polygraph—an odd deviation from procedure for agents who are taught to immediately question anyone who is deceptive in a polygraph.

In early March 1999, the FBI did interrogate Lee. It was the day CBS News broke the story of a soon-to-be-released congressional report on alleged Chinese espionage at the labs, and the day before The New York Times printed an article that described Lee as a suspect, without using his name. One investigative source tells CBS News that after this particular day of questioning, the lead FBI agent verbalized that she thought Lee was not the right man.

But others still remained unconvinced.

So on March 7, 1999, the day after the New York Times article, the FBI ordered another interrogation of Lee, this time a "confrontational" style interview.

One special agent doing the questioning told Lee no fewer than 30 times that he had failed his polygraphs, and repeatedly demanded to know why. Here are some selected excerpts:

FBI special agent: "You're never going to pass a polygraph. And you're never going to have a clearance. And you're not going to have a job. And if you get arrested you're not

going to have a retirement . . . If I don't have something that I can tell Washington as to why you're failing those polygraphs, I can't do a thing."

Lee: "Well I don't understand."

FBI special agent: "I can't get you your job. I can't do anything for you, Wen Ho. I can't stop the newspapers from knocking on your door. I can't stop the newspapers from calling your son. I can't stop the people from polygraphing your wife. I can't stop somebody from coming and knocking on your door and putting handcuffs on you."

Lee: "I don't know how to handle this case, I'm an honest person and I'm telling you all the truth and you don't believe it. I, that's it."

FBI special agent: "Do you want to go down in history whether you're professing your innocence like the Rosenbergs to the day that they take you to the electric chair?"

Lee: "I believe eventually, and I think God, God will make it his judgement."

During this time period, Washington officials began leaking to the media that Lee had failed his polygraphs, and that he was "the one" who had given to China information on America's most advanced thermo-nuclear warhead, the W-88. A stunning charge that, in the end, investigators were unable to back up.

One question at hand is how could the exact same polygraph charts be legitimately interpreted as "passing" and also "failing?" CBS News spoke to Richard Keifer, the current chairman of the American Polygraph Association, who's a former FBI agent and used to run the FBI's polygraph program.

Keifer says, "There are never enough variables to cause one person to say (a polygraph subject is) deceptive, and one to say he's non-deceptive . . . there should never be that kind of discrepancy of the evaluation of the same chart."

As to how it happened in the Wen Ho Lee case, Keifer thinks, "then somebody is making an error."

We asked Keifer to look at Lee's polygraph scores. He said the scores are "crystal clear." In fact, Keifer says, in all his years as a polygrapher, he had never been able to score anyone so high on the non-deceptive scale. He was at a loss to find any explanation for how the FBI could deem the polygraph scores as "failing."

The FBI has not explained how or why it interpreted Lee's polygraph as deceptive. When asked for an interview, the FBI simply said it would be "bad" to talk about Lee's polygraph, and that the case will be handled in the courts. The prosecution has not turned over the charts and many other polygraph documents to Lee's defense team. And so far, the prosecution has withheld other key documents, including the actual charts from the DOE polygraph.

Since Lee was never charged with espionage (only computer security violations), the content of the polygraph may be unimportant to his case. But the fact that his scores apparently morphed from passing to failing fuels the argument of those who claim the government was looking for a scapegoat—someone to blame for the alleged theft of masses of American top secret nuclear weapons information by China—and that Lee conveniently filled that role.

Why did FBI Agent Robert A. Messermer lie? What penalty has he been given? Was his lie perjured testimony? Is he still working for the FBI? Was this a conspiracy within the FBI?

Why didn't the court give Wen Ho Lee the benefit of the doubt?

Why was he locked in a secure enclosed cell? Why was he required to wear ankle and wrist shackles when allowed out for his daily one hour exercise?

Whose idea of "exercise" includes the words "while shackled"? I am told that at the court house while meeting with his lawyers, even when escorted to the toilet, he was shackled.

We are told that the Justice Department approved this severe treatment—that the Department of Energy requested it—

Attorney General Reno testified on September 28 in the Senate that she was unaware that Wen Ho Lee was shackled and was not in receipt of any complaints. A petition dated January 4, 2000 was signed by 3,000 people and forwarded to the Attorney General on March 8, and again on June 8, 2000.

LOS ALAMOS, NM, March 8, 2000.

Re: Petition for Independent Polygraph Test for Dr. Wen Ho Lee and for Improved Conditions of Imprisonment for Dr. Lee

NORMAN C. BAY,

*Interim United States Attorney for the District of New Mexico, Albuquerque, NM.*

DEAR MR. BAY: Copies are enclosed of petition signatures of over 2000 people seeking your agreement to an independent, qualified polygraph test for Dr. Wen Ho Lee to confirm that the tapes at issue in the bail proceeding were destroyed and not copied.

It is unconscionable that your office has refused to agree to an independent polygraph, which was offered by Dr. Lee and his counsel. The federal Judge who presided at the bail hearing indicated the Court welcomes such a polygraph to address the alleged concern of your office that the tapes which Dr. Lee swore he destroyed were indeed destroyed and not copied. The Tenth Circuit Court of Appeals recently upheld the Judge's reasoning. Confirmation that the tapes do not exist would verify that concern over transfer of the tapes is not a roadblock to the pre-trial release of Dr. Lee. An independent polygraph on the status of the tapes presents a straightforward means to allay the government's alleged fear about Dr. Lee's release on reasonable bail pending trial. The right to reasonable bail is guaranteed by Amendment VIII of the United States Constitution to all American citizens, including Dr. Lee.

It is not acceptable for the United States Attorney's office to deny any American the opportunity of reasonable bail due to the possibility that the outcome of the independent polygraph would weaken the government's case. Every prosecutor's first duty is to achieve justice and fairness, not to convict at all cost.

The Petitioners also seek improved conditions for Dr. Lee, who continues to be shackled in prison awaiting trial to clear his name. The conditions under which Dr. Lee is imprisoned are shameful. No person should be subject to such arbitrary and harsh conditions, especially one who, like Dr. Lee, is presumed to be innocent.

Your immediate response to the request of the Petitioners is anticipated. All original petition signatures are available for inspection by you or your representative at my office, by appointment.

Sincerely,

PHYLLIS I. HEDGES.

FIGHT UNJUST TREATMENT OF DR. WEN HO LEE!

Dr. Wen Ho Lee continues to be shackled as a prisoner in a Santa Fe jail although his

trial is months away. Excessive, punitive restraints have been imposed on Dr. Lee while he waits for the opportunity to clear his name which was smeared by government leaks accusing him of being a spy. When the FBI, DOE, and United States Attorney found no evidence of spying by Dr. Lee they rationalized their botched investigation, laced with racism, by bringing criminal charges against Lee for placing classified information on non-classified computer tapes.

The U.S. Attorney swayed the Albuquerque judge to deny bail by conjuring fear that Lee might somehow spirit the destroyed tapes and himself abroad. The judge indicated Lee should be released pending trial and suggested the U.S. Attorney agree to a polygraph examination offered by Lee's attorneys to verify the tapes were destroyed. The U.S. Attorney insists that Lee must agree to a polygraph administered by the FBI as well as FBI interrogations before and after the polygraph.

You can do something to fight this injustice. Below is a petition to the U.S. Attorney for New Mexico to agree to an independent polygraph as well as more humane conditions for Dr. Wen Ho Lee during his incarceration.

Please clip, sign, and return the petition to me at P.O. Box 1288, Los Alamos, NM. I will send the petition to the U.S. Attorney for New Mexico, listing your name with many others who have signed. Or, call me at 662-7400, to obtain a copy of the petition. For further information see [www.wenholee.org](http://www.wenholee.org).

#### PETITION

Petitioners request that the United States Attorney for the District of New Mexico agree to an independent polygraph examination of Dr. Wen Ho Lee, to be administered by a reputable organization not associated with the defense or the prosecution in the proceeding by the United States against Dr. Lee, to confirm the status of the seven "missing" tapes at issue in that proceeding.

Pending resolution of Dr. Lee's pre-trial release, Petitioners request that the United States Attorney for New Mexico institute improved conditions for Dr. Lee during his confinement, including increased recreation and visiting opportunities.

(your name)

Another letter from Cecilia Chang signed by thousands of others were sent to the Attorney General in April 2000.

WENHOLEE.ORG,  
Fremont, CA, April 10, 2000.

Re: Review of Special Restrictions Imposed on Dr. Wen Ho Lee

HON. JANET RENO,  
U.S. Attorney General,

U.S. Department of Justice, Washington DC.

DEAR MS. RENO: The enclosed petition was signed on behalf of Dr. Wen Ho Lee by 1,288 of Dr. Lee's fellow American citizens, urging that you exercise your authority to release Dr. Lee from the harsh detention conditions imposed at your direction under 28 CFR Sec. 501.2. This petition, sponsored by WenHoLee.Org, also has been endorsed by organizations with combined membership of over 100,000, 106-faculty members from 64 colleges and universities, and many community leaders, scientists and elected officials.

Dr. Lee has spent the past 120 days shackled in jail in Santa Fe, New Mexico, awaiting trial to clear his name. The conditions under which Dr. Lee is imprisoned are shameful. Such arbitrary and harsh detention conditions are unjustified and should not be extended. There is no factual basis to infer any

threat of disclosure by Dr. Lee, and his treatment is not regular, particularly in contrast with the treatment of others for classified information lapses.

In national security cases the guide for implementing special detention restrictions under Sec. 501.2 is the prevention of disclosure of classified information. The restrictions must serve that goal.

Dr. Lee is charged with transferring classified information to non-classified tapes at his workplace, with the illegal intent to harm the United States or to secure an advantage to a foreign country. He is not charged with any espionage or spy activity and there exists no allegation that Dr. Lee transferred or ever attempted to transfer any sensitive information to any unauthorized recipient. The only "evidence" of the alleged criminal intent to harm the U.S. or assist another country is his transferring classified information to a non-classified system at his workplace.

Although there are several possible innocent explanations for such a transfer, your prosecutors chose to assume mal intent from Dr. Lee's transfer of work files that included some classified material. Their assumption is not well founded. Los Alamos National Laboratory has thrived as an exemplary scientific institution because of its university atmosphere, including its long history of tacitly disregarding security restrictions that impede efforts to achieve scientific and work-related goals.

It is imperative to seek accuracy in the national security justifications for causing Dr. Lee to suffer the demeaning and cruel conditions imposed on him. The original harsh detention conditions were imposed on the basis of conjecture rather than any reality of threats to national security. At the bail hearing for Dr. Lee, government witnesses and prosecutors engaged in preposterous rhetoric that distorted the nature of the classified information involved and its value to foreign entities. You have previously received letters sent by premiere scientific organizations, such as the American Physical Society, American Association for the Advancement of Science, Federation of American Scientists, New York Academy of Sciences, The Committee of Concerned Scientists, American Chemical Society, Overseas Chinese Physical Society, and others, protesting Dr. Lee's treatment and the voodoo science used to alarm the public. We ask that you consider these letters in arriving at your decision about Dr. Lee's detention.

Of particular note is the contrast of Dr. Lee's treatment with that of former CIA Director John Deutch. Handling of the Deutch and Lee cases reveals the irregular treatment of Dr. Lee. Mr. Deutch's security violations, which went uninvestigated for years, exposed the United States to far greater harm than the security lapses by Dr. Lee. Mr. Deutch made accessible at his home, current and top secret information significantly more important to national security than the information transferred by Dr. Lee, which was not top secret and in fact can be found in the open or developed by other countries such as China on their own. The actions of Mr. Deutch posed a clear and present threat to national security whereas Dr. Lee's actions did not.

Nevertheless the only consequence to Mr. Deutch was loss of a no longer required security clearance. Last year Dr. Lee lost his security clearance and with it the ability to continue his work at LANL to which he had dedicated the past 20 years. Then in March 1999 Dr. Lee lost his job and his retirement,

consequences unheard of for any security violation at the national laboratories. Whereas mishandling of classified information should have been an internal matter for DOE and LANL, on December 10, 1999, the United States Attorney brought federal criminal charges that threaten him with life in prison, made a media display of having him arrested at home, and worked relentlessly to deny bail and any conditions of release. Since December 10, 1999, under your authority, Dr. Lee has been subjected to inhumane conditions during his pre-trial imprisonment.

The conclusion is inescapable that this overblown federal case emerged from the false accusations that Dr. Lee was engaged in espionage. The FBI has publicly stated the ensuing investigation of Dr. Lee was based on racial profiling. The FBI used intimidation, threats of execution, and lying, to try to force a confession during their interrogation of Dr. Lee. It can only be inferred that Dr. Lee's cruel treatment reflects bias against Dr. Lee, which should not have any place in the prosecutorial duty to achieve justice and fairness.

Yours is a critical responsibility to stem the improper treatment of Dr. Lee, who is presumed to be innocent of criminal wrongdoing. Continuing the cruel conditions of his detention would afflict all American citizens by diminishing the rights and freedoms we cherish.

Sincerely,

WENHOLEE, ORG

(By: Cecilia Chang, Executive Director,  
Chair, Steering Committee Wen Ho Lee  
Defense Fund.)

FREE WEN HO LEE!

Petition Recipients: Janet Reno, U.S. Attorney General; Bill Richardson, U.S. Energy Secretary; Vice President Al Gore.

Petition Sponsored by: Wenholee.org, 3785 Armour Court, Fremont, CA 94536.

TO THE HONORABLE JANET RENO: We, the signers of this petition, urge you to take advantage of the opportunity afforded you under Title 28 of the Code of Federal Regulations to free Dr. Wen Ho Lee from his harsh and unjust confinement in the New Mexico jail.

Section 501.2 of Title 28 requires you to periodically reauthorize Dr. Lee's confinement. Under this law, you have the power to have Dr. Lee be confined to his home, with all necessary security precautions imposed at your discretion. Although Dr. Lee's movement will remain restricted under this arrangement, he will at least be at home in humane conditions.

If you do not free Dr. Lee from jail, then you must at least order that his conditions of confinement, which have been more fit for a mass murderer, be significantly improved. The use of shackles on Dr. Lee under any circumstances is ridiculous.

As we make these requests of you, we would like to remind you that the government authorities already have conceded that the targeting of Dr. Lee has been entirely racially motivated and that there is no evidence of espionage by Dr. Lee. Yet, the government authorities continue to persecute Dr. Lee, singling him out on the basis of his race. The authorities' behavior and action have angered not just Chinese Americans across the country—but all Americans who believe that no one should be treated on the basis of his or her race or ethnicity, and that discrimination, especially by the government, is simply not acceptable!

Furthermore, the discriminatory persecution of Dr. Lee not only shames the United

States of America and its citizens, it also impedes our nation's efforts to improve human rights conditions to the victims of government oppression everywhere else around the world.

Therefore, we, the people of America, ask you to do the right thing and free Dr. Lee!

The views expressed here are those of the petition sponsor, not of One Democracy.com

On February 29, 2000 the American Association for the Advancement of Science sent the Attorney General a letter protesting Wen Ho Lee's inhumane treatment in prison at the Sante Fe County Detention Center.

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, DIRECTORATE FOR SCIENCE AND POLICY PROGRAMS,

Washington, DC, February 29, 2000.

Hon. JANET RENO,

Attorney General, U.S. Department of Justice,  
Washington, DC.

DEAR MADAME ATTORNEY GENERAL: I write on behalf of the Committee on Scientific Freedom and Responsibility of the American Association for the Advancement of Science concerning the matter of the continued denial of bail and the conditions of pre-trial incarceration of Dr. Wen Ho Lee. The AAAS is the world's largest multi-disciplinary scientific organization. The Committee on Scientific Freedom and Responsibility is charged by the Association to, among other things, address issues related to the human rights of scientists.

Our purpose is to inquire into the reasons for the extraordinarily restrictive conditions to which Dr. Lee has been subjected. Our disquiet with the government's treatment of Dr. Lee does not extend to the issue of his guilt or innocence, which will be decided by our courts on the basis of the evidence. Our concern stems from the possibility that Dr. Lee is being maltreated and may have been the target of special scrutiny because of his ethnic background.

This case has had an adverse impact on many of our colleagues and could damage our national labs as a result of the hemorrhaging of skilled scientists through resignation or attrition, falling recruitment and a decline in the international collaboration that are so vital to the success of DoE programs. There is some evidence that such losses are already occurring.

Our concerns relate to the following:

We have been informed that the original conditions of detention were—and remain—harsh in the extreme. He is confined to his cell 23 hours each day and was, until recently, kept completely indoors. When moved about within the confines of the prison, his arms and legs are shackled. His weekly meetings with family members are curtailed and monitored and, early on, he was required to speak English. He has no access to TV and, at first, was denied newspapers. While we understand that these conditions are now slightly modified, we are concerned that continuing restrictions not only serve as intimidation, but may inhibit his ability to prepare his defense and place an enormous emotional and physical burden on him, his family and his attorneys. From our perspective, Dr. Lee's pretrial treatment appears to be exceedingly cruel. Court records and prosecution documents give the distinct impression that many measures were imposed simply because he has Chinese associates and speaks Chinese. AAAS believes very strongly that place of birth or ethnic background should never be used to impugn the loyalty of scientists.

The justification for continued incarceration is that Dr. Lee, if released, is likely to

pose a grave threat to our national security. In judging the merits of such a serious contention, we hope that you will consult with a few of the many informed independent weapons specialists and national security experts who no longer serve in government, and who therefore may provide an objective assessment of the risk. Should the Justice Department wish to seek such expert counsel, an appropriate source would be the National Academy of Sciences.

In sum, we believe it important that the scientific community be given some assurances on these issues. Otherwise, we worry that serious damage could be done to the U.S. scientific enterprise and to this nation's future prosperity and security if the government is perceived by scientists as treating Dr. Lee unfairly and relying on unfounded claims regarding threats to national security.

Sincerely,

IRVING A. LERCH,

Chair, AAAS Committee on  
Scientific Freedom and Responsibility.

On March 14, 2000 the New York Academy of Science wrote to the Attorney General protesting the harsh treatment of Wen Ho Lee.

MARCH 14, 2000.

DEAR ATTORNEY GENERAL RENO: I am writing on behalf of the Committee on Human Rights of Scientists of the New York Academy of Sciences. In this we are joining other prominent scientific organizations such as the American Physical Society, the American Association for the Advancement of Science, and the Committee of Concerned Scientists regarding the condition of detention and the denial of bail for Dr. Wen Ho Lee accused of mishandling classified information at the Los Alamos National Laboratories. At the outset we emphasize that we do not take a position on Dr. Lee's guilt or innocence which must be determined at trial.

For more than 20 years, this Committee has been deeply concerned about governmental treatment and repression of scientists throughout the world. Among the cases in which we have intervened were those of Professors Andrei Sakharov, Fang Li Zhe, Benjamin Levich, and recently Alexandr Nikitin, to name just a few. Often the scientists named in these cases were accused by their governments of violation of secrecy, treason, and other high crimes. Our Committee has always paid close attention to the conditions under which these and other individuals were held during their detention, as well as related matters such as denial of bail, access to counsel, and openness and fairness of trial.

It has been reported to us that the conditions of Dr. Lee's detention have been harsh. He has been shackled in prison, restricted to his cell in isolation, had his meetings with immediate family curtailed, and been restricted about outside information such as TV and newspapers. These conditions remind us of the abuses that occurred under Communist rule in the former Soviet Union and occur to this day in other totalitarian states such as in China, Iran, and others.

The impression given to the world by the Government's treatment of Dr. Lee is that he has already been found guilty of charges against him. Witness, for example, the statement repeated by CIA Director George Tenet that Lee's actions were taken "with intent to harm the United States." We earnestly call to your attention that Dr. Lee's treatment during his detention has had a seriously chilling effect on the scientific community, especially because of the suspicion

that his ethnic background has played some role in this treatment and in the unproven public allegations made about his possible motives for the acts of which he is accused.

In addition, reliable reports reach us that the recruiting and retention of top scientific staff at our major national laboratories, including weapon laboratories, have been damaged by this affair. We urge that you look into the treatment of Dr. Lee and see to it that the physical and psychological conditions of Dr. Lee's detention conform to the highest international standards for the humane treatment of people in detention awaiting trial. Continuation of the harsh treatment of Dr. Lee will expose us to ridicule when we criticize such treatment in other countries around the world.

The New York Academy of Sciences is an independent, non-profit, global membership organization committed to advancing science, technology, and society worldwide. Established in 1817, the Academy is the oldest scientific organization in New York and the third oldest in the nation. It is an international organization with nearly 40,000 members in more than 150 countries.

We respectfully await your response in this matter of importance to this Committee and to the international scientific community.

Sincerely,

JOSEPH L. BIRMAN,  
*Chairman of the Committee  
on Human Rights of Scientists.*

April 27, 2000 a Resolution passed by the Episcopal Church USA was sent to the Attorney General protesting the harsh treatment of Wen Ho Lee.

To: Executive Council, Episcopal Church, USA.

From: international and National Concerns Committee.

Date: April 27, 2000.

Subject: Incarceration of Dr. Wen Ho Lee (Resolution proposed by Ms. Carole Jan Lee, Member of Executive Council from San Francisco, California).

*Resolved*, That the Executive Council meeting in the Diocese of Washington, DC, April 27-30, 2000, calls for the humane treatment of Dr. Wen Ho Lee, a U.S. citizen, who has been under arrest without bail in solitary confinement with limited family visits, and that these conditions have created grave concern, particularly among the Asian American community, of being unduly harsh treatment along racial lines, a perception for which the Council has concern given the number of disturbing complex factors in this case, and be it Further

*Resolved*, That this case moves forward in a manner that assures that Dr. Lee receives due process, and be it Further

*Resolved*, That this resolution is not intended to speak of the veracity of the very serious charges that have been filed against Dr. Lee.

(Resolution passed, thirty-five members present; six abstentions.)

Note: Copies of this resolution will be sent to Attorney General Janet Reno, and to our Washington Office.

(Our Public Policy Network has a mailing list of over nine thousand names.)

On June 26, 2000 the National Academy of Sciences, National Academy of Engineering and Institute of Medicine wrote to the Attorney General protesting the severity of Wen Ho Lee's confinement.

JUNE 26, 2000.

Hon. JANET RENO,  
*Attorney General, Department of Justice, Washington, DC.*

DEAR MADAM ATTORNEY GENERAL: We write with regard to our original March 10 inquiry to you about the case of Dr. Wen Ho Lee (#99-1417) and to express our appreciation for the May 24 response that we received from Mr. John J. Dion.

The information that Mr. Dion provided about Dr. Lee's case was, of course, of interest to us. However, because Mr. Dion did not address many of the questions that we posed in our initial letter of inquiry, we are taking the liberty of requesting, once again, information on the conditions and circumstances under which Dr. Lee is being held. Surely, the answers we seek cannot in any way impinge upon the just prosecution of a pending case.

It is our understanding that Dr. Lee has been held in solitary confinement since his arrest on December 10, 1999, that he has been denied bail, and that he will not be brought to trial until November 6. We would like your personal assurances that his conditions of confinement have been in full accordance with all U.S. and international standards. We have inquired as to what and how much contact Dr. Lee is permitted to have with his family, defense counsel, and lawyers. Although Mr. Dion said in his letter that arrangements have been made to allow Dr. Lee's family to meet with him "for more than one hour per week," he did not say what the new arrangements for Dr. Lee allow nor did he report with whom he is now allowed to meet.

We would also like to know whether, as has been alleged by Dr. Lee's family, instruments of restraint are being applied to him. If so, what instruments are used, when and for how long are they applied, why, and under what circumstances?

With regard to the need for a fair and timely trial, we seek your personal assurances that Dr. Lee's rights not to be coerced into giving a confession and not to be held in a coercive environment are being fully respected. We would also like to know what access Dr. Lee's lawyers are being given to information needed to adequately prepare his defense.

You should know that the above questions are identical to those that our Academies regularly pose to foreign governments when we desire assurances that the rights of our imprisoned colleagues in other countries are being fully respected. Surely, we cannot expect less from our own government.

We are grateful for your attention and look forward to your reply.

Very truly yours,

BRUCE ALBERTS,  
*President, National Academy of Sciences.*  
WILLIAM WULF,  
*President, National Academy of Engineering.*  
KENNETH SHINE,  
*President, Institute of Medicine.*

Finally by mid-July 2000 his conditions of confinement were eased. By the last week in July he finally was allowed to exercise without ankle shackles. This, his friends conclude, came about because there was another bill hearing scheduled on August 16, 2000. Remember Judge Parker had asked that the confinement restrictions be eased. August 16, 2000 Amnesty International protested to the Justice Department that Wen Ho Lee's confinement was in violation of international law. AMNESTY INTERNATIONAL PROTESTS SOLITARY CONFINEMENT, SHACKLING OF DR. WEN HO LEE

WASHINGTON, DC, AUG. 16, 2000.—Amnesty International, the world's largest human

rights organization, has written to Attorney General Janet Reno to protest the conditions under which Dr. Wen Ho Lee has been held in pre-trial federal detention since December 1999.

In the Aug. 4 letter, released as Judge James A. Parker hears a renewed application for Dr. Lee's release on bail, Amnesty International expressed concern at reports that Dr. Lee has been held in particularly harsh conditions of solitary confinement, and has been confined to his cell for 23 hours each day. According to reports, Dr. Lee has also been shackled at the wrists, waist, and ankles while taking exercise once or twice a week in a federal enclosure. Amnesty International is insisting that the use of shackles be immediately discontinued.

These conditions are unnecessarily punitive and contravene international human rights standards, said Curt Goering, Senior Deputy Executive Director of Amnesty International USA. The use of shackles is extremely disturbing and is grossly inappropriate in the circumstances.

Rule 33 of the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners provides that restraints should be used only when strictly as a precaution against escape during transfer, on medical grounds on the direction of the medical officer or to prevent damage or injury. The rules also state that restraints should never be applied as punishment and that chains or irons shall not be used as restraints. The rules also provide that every prisoner (including pre-trial detainees) should have at least one hour of suitable exercise in the open air daily.

Amnesty International believes that the overall conditions under which Dr. Lee is detained contravene international standards, which require that all persons deprived of their liberty be treated humanely and with respect for their inherent dignity. Amnesty International is urging the Justice Department to urgently review Dr. Lee's conditions of confinement and ensure that he is being treated in accordance with international standards. Such steps should include provision for adequate exercise and out-of-cell time and reasonable contact with the outside world.

August 31, 2000 the National Academies that had previously written (3 letters) to the Attorney General again regarding her failure to respond to their earlier letters.

AUGUST 31, 2000.

An Open Letter to the U.S. Attorney General Hon. JANET RENO, Attorney General, U.S. Department of Justice, Washington, DC.

DEAR MADAM ATTORNEY GENERAL: We, the presidents of the National Academies, along with our Committee on Human Rights and many of our members, are distressed by several matters which have arisen regarding the case of Dr. Wen Ho Lee and his incarceration during the past eight months. Although we make no claim as to his innocence or guilt, he appears to be a victim of unjust treatment.

We are writing to you, as the chief law officer and legal counsel of our nation, to urge you to rectify any wrongs to which Dr. Lee has been subjected, and to ensure that he receives fair and just treatment from now on. We also urge that those responsible for any injustice that he has suffered be held accountable. Even more importantly, perhaps, we urge that safeguards be put in place to ensure that, in future, others do not suffer the same plight.

We write publicly because our private letters of March 10, April 14, and June 26 of this



year with regard to Dr. Lee's plight have been responded to only by a form letter signed by your Acting Chief of the Internal Security Section. (His letter was not a satisfactory response to the questions that we had posed, as we indicated in our follow-up letter of June 26.)

We should perhaps explain that, for more than a century, the National Academy of Sciences has provided independent, objective scientific advice to our nation. By extension of its original congressional charter, it established the National Academy of Engineering, the Institute of Medicine, and the National Research Council. Some 4,800 of our nation's most distinguished leaders in science, engineering, medicine, and related fields have been selected by their peers to be members of the Academies and the Institute.

We are concerned that inaccurate and detrimental testimony by government officials resulted in Dr. Lee needlessly spending eight months in prison under harsh and questionable conditions of confinement. Our assessment appears to have been confirmed by the recent ruling of Judge James Parker in granting bail to Dr. Lee.

The three institutions of which we are presidents have an active Committee on Human Rights. During the last 25 years this committee has intervened in the name of our institutions on behalf of hundreds of scientific colleagues, around the world, who are unjustly detained or imprisoned for non-violently expressing their opinions. The committee writes inquiries and appeals to offending governments and holds them accountable for their actions. Although Dr. Lee has not been detained for expressing his opinions, the handling of his case reflects poorly on the U.S. justice system. The concerns that we have expressed and the questions that we have posed in our letters are identical to those that our Committee on Human Rights regularly poses to foreign governments, some of which have had the courtesy to respond. Surely, we cannot expect less from our own government.

Very truly yours,

BRUCE ALBERTS,  
*President, National  
Academy of  
Sciences.*

WM. A. WULF,  
*President, National  
Academy of Engi-  
neering.*

KENNETH I. SHINE,  
*President, Institute of  
Medicine.*

TEXT OF THE FIRST LETTER FROM THE PRESIDENTS OF THE 3 NATIONAL ACADEMIES TO JANET RENO

MARCH 10, 2000.

Hon. JANET RENO,  
*Attorney General,  
U.S. Department of Justice, Washington, DC.*

DEAR MADAM ATTORNEY GENERAL: We write to inquire about the status of the case (#99-1417) of a physicist, former Los Alamos National Laboratory employee Wen Ho Lee. It is our understanding that Mr. Lee is charged with 59 felony counts under statutes 42 USC 2275, 2276 and 18 USC 793 (c&e). He is currently being held without bail in Albuquerque, New Mexico, pending trial.

The purpose of this letter is to inquire about several matters related to Mr. Lee's case, as well as to request your assurances that his rights are being fully respected.

In view of recent allegations in the press with regard to Mr. Lee's treatment, we would appreciate being informed as to the condi-

tions and circumstances under which Mr. Lee is being held. Are his conditions of confinement in accordance with all U.S. and international standards? We would also like to know whether, as has been alleged by Mr. Lee's family, instruments of restraint have been applied to him. If so, what instruments were used, when and for how long were they applied, why, and under what circumstances?

With regard to the need for a fair trial, we would value your assurances that Mr. Lee's rights not to be coerced into giving a confession and not to be held in a coercive environment are being fully respected. What and how much contact is Mr. Lee permitted to have with his family, defense counsel, and lawyers? We would also like to know what access Mr. Lee's lawyers are being given to information needed to adequately prepare his defense.

We very much appreciate your attention to our inquiry and look forward to receiving information that will help to assure us that all reasonable measures are being taken to protect Mr. Lee's rights, in full accordance with U.S. and international law.

Very truly yours,

BRUCE ALBERTS,  
*President, National  
Academy of  
Sciences.*

WILLIAM WULF,  
*President, National  
Academy of Engi-  
neering.*

KENNETH SHINE,  
*President, Institute of  
Medicine.*

January 30, 2000, the National Asian Pacific American Legal Consortium wrote to the Attorney General expressing concerns about overzealous prosecution and detention.

On April 13, 2000, the Organization of Chinese Americans wrote to Norman Bay, the U.S. Attorney based in Albuquerque, raising questions about his detention.

On August 18, 1999, the National Asian Pacific American Bar Association wrote to the Attorney General noting the fact that the FBI had not investigated the other prime suspects. It noted the comments of Robert S. Vrooman, former Chief of Counter-Intelligence at Los Alamos who said Wen Ho Lee was targeted because he was Chinese.

JANUARY 30, 2000.

Re: Dr. Wen Ho Lee

Hon. JANET RENO,  
*Attorney General, U.S. Department of Justice,  
Washington, DC.*

DEAR MADAM ATTORNEY GENERAL RENO: Per our meeting January 12, 2000, I am enclosing a memorandum discussing the Asian Pacific American community's concerns that we raised with you and Deputy Attorney General Eric Holder concerning the prosecution of Dr. Wen Ho Lee. We don't seek to argue about Dr. Lee's guilt or innocence, but instead to focus on his treatment. It appears to the Asian American community, indeed to many concerned about issues of civil liberties and due process, that some of the prosecution's decisions have been overzealous—perhaps out of embarrassment because of the many media reports about how the investigation was handled.

We are concerned that the intense media scrutiny and high political stakes involved in his case may be compromising Dr. Lee's due process rights and civil liberties as an American citizen and bringing the loyalties of the nation's Asian Pacific Americans under a cloud of suspicion. Our analysis

takes into careful consideration of U.S. District Judge James Parker's Memorandum Opinion and Order and the voluminous bail hearing transcripts.

I thank you for taking the time to meet with us, and for the sensitive manner in which you handled and continue to give attention to our concerns. I look forward to your reply.

Sincerely,

KAREN K. NARASAKI,  
*Executive Director.*  
The Honorable ERIC  
HOLDER,  
*Deputy Attorney Gen-  
eral.*  
YVONNE LEE,  
*U.S. Commission on  
Civil Rights.*  
DAPHNE KWOK,  
*Organization of Chi-  
nese Americans.*  
NANCY CHOY,  
*National Asian Pacific  
American Bar Asso-  
ciation.*  
Dr. JOHN YOUNG,  
*Committee of 100.*

#### MEMORANDUM

To: Attorney General Janet Reno.

From: Karen Narasaki, Executive Director, NAPALC; Aryani Ong, Staff Attorney.

Date: January 30, 2000.

Re: Dr. Wen Ho Lee's Pretrial Detention.

Currently, Dr. Lee is being held in prison pending trial, having been denied pretrial release. He has been charged with 59 separate counts involving 19 computer files—29 counts of removing and tampering with restricted data, 10 counts of receiving restricted data, 10 counts of gathering national defense information and 10 counts of retaining national defense information. We understand that he is being held in custody under solitary confinement. He cannot see his family except for four hours per month nor receive any mail. We've also heard reports that he is not being allowed to speak Chinese to his visitors.

I. DR. LEE HAS FACED HARSH TREATMENT THAT IS DISPROPORTIONATE TO THE EVIDENCE OF WRONGDOING

Many in the Asian American community believe that the prosecution has been overzealous in their treatment of Dr. Lee, given the evidence presented at the detention hearing and what has been reported in the news. They are convinced that federal investigators used racial profiling in the initial targeting of Dr. Lee. They also believe that the Department of Energy and others involved are acting so harshly due to embarrassment from the congressional attacks, the reported bungling of the initial investigation and the failure to find evidence of espionage after the investigation was leaked.

Many community leaders believe that prosecutors have been overstating the security risk to create a hostile public environment so that he will be tried based on the perception of espionage, despite the fact that there is insufficient evidence to even bring such a charge. He is being treated as though there is overwhelming evidence of espionage even though the detention hearing revealed no such evidence. Without such evidence, the community believes that pretrial detention in solitary confinement is not warranted. Solitary confinement seems to have no basis except to impose psychological stress on the defendant so that he will not be able to pursue the vigorous defense to which he is entitled.

## A. DENIAL OF PRE-TRIAL RELEASE

Where the statutory scheme 18 U.S.C. §3142 generally favors the defendant, Dr. Lee nonetheless was denied bail. While we respect the judge's decision, we are concerned that he was provided with characterizations of Dr. Lee as a Chinese spy that are not substantiated by the evidence and that influenced his decision not to consider alternative conditions for release. For many in the Asian community, it bears a potential resemblance to the Supreme Court's decision to uphold the internment of Japanese Americans because the threat to national security was overstated by government attorneys who destroyed evidence that undercut the argument. While we are certainly not charging the Department of Justice with such misconduct here, we do believe that *Korematsu v. U.S.*, 323 U.S. 214 (1944), *Hirabayashi v. U.S.*, 320 U.S. 81 (1943), and *Yasui v. U.S.*, 320 U.S. 115 (1943) are cases instructive of how much more careful we must be when national security threats are being claimed as a basis for unfair and harsh treatment.

Under §3142(b), the judge "shall order the pretrial release" of a defendant to "subject to the least restrictive further condition." According to Judge Parker, no alternative conditions would save against the "danger" posed by Dr. Lee's "ability to communicate with unauthorized persons while under house arrest."

We are concerned with the suggestive nature of this assertion because there is no evidence that shows that Dr. Lee transferred any classified information to an unauthorized third party nor ever attempted to commit such act. Moreover, the Government has not provided any direct evidence of Dr. Lee's intent to use classified information to injure the United States nor procure unfair advantage to a foreign nation. Yet, the charges brought against Dr. Lee make this assertion, and while espionage is not expressly among them, the specter of espionage is raised throughout the detention hearing and prominently figures into the judge's rationale for denying a pretrial release.

What the evidence does show is that Dr. Lee has been the target of an investigation since 1995 for the possible theft of W-88 data theft, which he has been cleared for over a year. In March 1999, he was placed under 24-hour secret surveillance for nine months, yet during that time, the FBI acquired no evidence showing that Dr. Lee attempted to transfer or transferred classified information to any unauthorized third party. Instead, they found six tapes in his office, and received an offer from Dr. Lee to take a polygraph test to determine the truthfulness of his statement to the FBI regarding the seven missing tapes. The Government rejected the offer, but used his inability to produce the missing tapes as the rationale for holding him without bail. This places Dr. Lee in the untenable position of producing tapes that he says has been destroyed or proving they no longer exist. How can he be expected to prove they no longer exist?

Furthermore, even though Dr. Lee is not charged with espionage, the Government strongly inferred the allegation during the detention hearings. We are concerned that Dr. Lee's contacts with Chinese scientists and government officials are depicted as bad acts in and of themselves when the evidence shows otherwise. Dr. Lee's trips to China were authorized by the Los Alamos National Laboratories and his scientific collaborations with the Chinese were encouraged by the Secretary of the Department of Energy.

The Government successfully argued that Dr. Lee is a national security risk based on

the fact that the seven portable tapes are missing and that Dr. Lee has the cognitive ability to potentially assist a third party in using the codes. Based on a single witness, they persuaded the Court to view Dr. Lee's actions in the most damaging light possible, using words such as "devious," "nefarious," and "secretive and deceptive."

Without doubt, we too find Dr. Lee's actions very grave. We do not condone any employee who breaches security rules, especially when sensitive defense information such as nuclear weapons designs is involved. However, we also are guided by the evidence presented and the presumption of innocence until proven guilty in our justice system.

Dr. Lee faces very serious criminal charges, but he has not had his day in court. Meanwhile, he is being held in custody as if he posed a threat of heinous violence to the community. We particularly are concerned that despite many alternatives that have been in practice by other courts, i.e., house arrest, electronic monitoring, supervision by a third-party custodian, visitation by court-approved persons and consent to unannounced searches, the Government chose the harshest alternative for a nonviolent offense.

The Court uses a four-part test to determine whether there are conditions of release that will reasonably assure a defendant's appearance and the safety of the community. We find that the evidence shows the following: (1) Dr. Lee was not charged with committing a violent act or dealing with drugs; (2) no direct evidence exists to prove that Dr. Lee had the intent to injure the United States or procure an unfair advantage to a foreign nation; (3) Dr. Lee has strong community ties and no past criminal record; and, (4) he has not acted in a manner to suggest that he poses a danger to society; there is no evidence that he attempted to transfer or transferred classified information to an unauthorized third party nor that he assisted any person with the use of the classified information. Yet, despite the evidence, Dr. Lee been denied one of the most sacred guarantees by our Constitution—his freedom.

Judge James Parker indicated that he would be willing to revisit the issue of pretrial release if Dr. Lee could satisfactorily account for the missing seven tapes. We encourage the Government to work with Dr. Lee's attorneys on Dr. Lee's offer to take a polygraph test as to the disposition of the tapes so that they can move forward on discussing alternative conditions of release.

## B. IMPOSITION OF THE HARSHEST RESTRICTIONS DURING DETAINMENT

Dr. Lee has been placed under solitary confinement and restricted from family visits except for four hours per month. While the prison warden may have the discretionary authority regarding at least visitation, we believe that the Government can weigh on the conditions imposed on Dr. Lee's confinement.

We are concerned about reports from the media and the detention hearing transcripts that the FBI have been employing psychological tactics to pressure Dr. Lee to "confess" to wrongdoings or to break down his will to go through a trial. The Asian American community does not understand the national interest in placing harsh restrictions on a defendant who has been proven guilty. In fact, Dr. Lee's treatment in jail only has strengthened the majority view of the Asian Pacific American community that the Government has selectively and unfairly investigated and prosecuted Dr. Lee.

Judge Parker urged the Government to consider loosening what he himself described

as severe restrictions imposed on Dr. Lee. We also urge the Government to carefully consider the offer by Dr. Lee's attorneys to have Dr. Lee undergo a polygraph test so that Court may reevaluate any changed circumstances that warrant his pretrial release.

## II. THE DEPARTMENT OF JUSTICE SHOULD BE PARTICULARLY CIRCUMSPECT GIVEN THE POLITICAL NATURE OF THE CIRCUMSTANCES SURROUNDING DR. LEE'S PROSECUTION

The Asian American community has been carefully monitoring the developments of Dr. Lee's situation because they are concerned that political forces may be playing an inappropriately significant role in the investigation and prosecution of Dr. Lee. The media, initially led by The New York Times recklessly portrayed Dr. Lee as a Chinese spy. The Cox House Committee Report, later criticized for serious inaccuracies by the Rudman Report and esteemed Stanford University researchers, took advantage of the opportunity to embarrass the Administration by fanning fears about Communist China.

Given Dr. Lee's ethnic background, the community was concerned that he was investigated on the basis of his ethnic background. Former FBI counterintelligence officers reporting to the media that they believed racial profiling occurred in Dr. Lee's case validated their concerns. Further reports that in fact the Chinese government could have gained the information from other sources and that Dr. Lee's laboratory probably could not have been the source for the design information have added to the community's alarm.

While the community does not condone Dr. Lee's egregious mishandling of classified information, they fear that Dr. Lee is vulnerable to being used as a scapegoat to take attention from the embarrassing wealth of security lapses that the Energy Department has allowed to occur. In its efforts to overcome the series of embarrassing disclosures and to look tough on security, the Department of Energy may not be acting fairly or providing prosecutors with full disclosure.

The Asian American community is concerned that Dr. Lee's due process rights may fall victim to political scapegoating and that negative repercussions for other Asian Americans working in science and technology may follow if a pattern of disregard for civil liberties is established in this case.

NATIONAL ASIAN PACIFIC  
AMERICAN BAR ASSOCIATION,  
Washington, DC, August 18, 1999.

Hon. JANET RENO,  
Attorney General, U.S. Department of Justice,  
Washington, DC.

DEAR MS. RENO: We are writing to express our deep concern about recent accounts that race may have played a significant factor in pursuing the investigation of Dr. Wen Ho Lee for alleged espionage. While we do not condone acts of espionage or any other illegal activity by any individual, we ask that you ensure that race is not now a factor as you make decisions regarding this and other investigations and prosecutions involving security violations at Los Alamos and other national laboratories.

According to Senators Fred Thompson and Joseph Lieberman in a statement issued on August 5, 1999, the Department of Energy and the Federal Bureau of Investigation had multiple suspects for leaks of nuclear warhead information and yet only two—Dr. Lee and his wife—were investigated. Because the DOE and FBI investigators failed to look into the other suspects "—that is, to assess

whether these others were not for some reason equally suspicious—meant that it was impossible to be sure that the Lees really did stand out as the prime suspects.” (Thompson/Lieberman Report p. 18.) This account is further buttressed by recent statements made by Robert S. Vrooman, former chief of Counter-Intelligence at the Los Alamos National Laboratory. Mr. Vrooman stated that Dr. Lee was targeted for investigation mainly because of his ethnicity, and that there is no evidence that Dr. Lee leaked secrets to China. Mr. Vrooman noted that at least 13 Caucasian scientists from Los Alamos “who went to the same [physics] institute and visited the same people” as Dr. Lee were left out of the investigation.

Furthermore, both the Thompson/Lieberman Statement and Mr. Vrooman noted that key technical information concerning certain weapons, whose acquisition by the Chinese government initiated the investigation of Mr. Lee, was available to numerous government and military entities that could have been the source of the leaked information.

While we recognize that Mr. Vrooman’s statements will be subject to debate, we believe that it is important that you verify that no “racial profiling” occurred in this investigation. Additionally, we would like to request a meeting with you to discuss these issues. In the meantime, we ask that as you continue your investigation of security leaks at our national laboratories, you do so with a heightened consideration for fairness.

Sincerely,

NANCY CHOY,  
*Executive Director,  
National Asian Pacific  
American Bar  
Association.*

DAPHNE KWOK,  
*Executive Director,  
Organization of Chinese  
Americans.*

JIN SOOK LEE,  
*Executive Director,  
Asian Pacific American  
Labor Alliance,  
AFL-CIO.*

JON MELEGRITO,  
*Executive Director,  
National Federation of  
Filipino American  
Associations.*

DEBASISH MISHRA,  
*Executive Director,  
India Abroad Center  
for Political Awareness.*

KAREN NARASAKI,  
*Executive Director,  
National Asian Pacific  
American Legal  
Consortium.*

ORGANIZATION OF  
CHINESE AMERICANS, INC.,  
*Washington, DC, April 13, 2000.*

Mr. NORMAN BAY,  
*U.S. Attorney, Albuquerque, NM.*

DEAR MR. BAY: Thank you very much for meeting with us last week. The Asian Pacific American community nationwide has been monitoring the Wen Ho Lee case for over a year. The community has been concerned with the public discourse and media stereotypes arising from the case that insinuate all Asian Pacific Americans as disloyal foreigners. With regard to Dr. Lee, the community is wondering whether he has been accorded his due process rights as an American citizen during the investigation and decision making to prosecute him.

Since Dr. Lee’s incarceration in December of 1999, the community has been very concerned about the fact that he has not been granted bail until his trial. One of the questions we have is what are the conditions, if any, must Dr. Lee meet in order for him to be released on bail?

As a follow up to our conversation, we wanted to ask specific questions about Dr. Lee’s incarceration.

We understand that Dr. Lee has been charged with mishandling classified data. A concern of the community is that since Dr. Lee has not been charged with espionage then why is he being treated as if he has been charged with espionage? As someone charged with a nonviolent act, the community believes Dr. Lee should be treated like those charged with other nonviolent “white collar” offenses.

We have heard the following:

Dr. Lee is in “solitary confinement.”

Dr. Lee is “shackled” all day.

Dr. Lee’s ankles and wrists are shackled when he is moved within the jail facility, even during his one hour of exercise, and unremoved during weekly meetings with his family.

No collect calls to any outside party are allowed except to his counsel.

Kept separate from other prisoners during one hour long exercise.

Dr. Lee is only allowed one hour outside of his jail cell for exercise per day, but not always outside under the sunlight.

Dr. Lee is not allowed to read newspapers, magazines, books.

Dr. Lee is not allowed to watch TV.

We would greatly appreciate your response to these points as soon as possible so that we may accurately respond to the inquiries from our community about Dr. Lee’s confinement. Thank you very much.

Sincerely,

DAPHNE KWOK,  
*Executive Director,  
Organization of Chinese  
Americans.*

NANCY CHOY,  
*Executive Director,  
National Asian Pacific  
American Bar  
Association.*

ARYANI ONG,  
*Staff Attorney, National  
Asian Pacific  
American, Legal  
Consortium.*

JIN SOOK LEE,  
*Executive Director,  
Asian Pacific American,  
Labor Alliance,  
AFL-CIO.*

KRISTINE MINAMI,  
*Washington, D.C.  
Representative, Japanese  
American Citizens  
League.*

#### DECLARATION OF ROBERT VROOMAN

I, Robert Vrooman, do hereby declare and state:

1. I have reviewed the government’s response to Wen Ho Lee’s Motion for Discovery of Materials Related to Selective Prosecution, including the attached Declaration of Special Agent Robert Messemer. As set out below, Agent Messemer’s declaration contains numerous false statements. Based on my experiences with Agent Messemer and the information I have received from other FBI agents, I believe that the regularly distorts information.

2. I did not tell Agent Messemer that Lee probably assisted the Chinese by helping fix

Chinese hydrocodes during his travel in 1986 and 1988. His allegation that I did so is false. Our April 28, 1999 meeting focused on [approx, one line deleted] and Agent Messemer’s theory that there was something inappropriate going on [words deleted]. I attended that interview solely as a favor to John Browne, the director of Los Alamos National Laboratory. When it was over, I told Browne that I considered the interview strange, because it had nothing to do with the Lee case. I later learned from officials at the CIA that Agent Messemer was falsely informing CIA officials that I had been critical [word(s) deleted]. At the time, Agent Messemer was attempting to shift blame to the CIA for possible fallout [words deleted]. I sought to obtain a copy of Agency Messemer’s memoranda of my interview and to have it corrected. See *Attachment one*. The FBI refused to provide me a copy of this memorandum, which I expect contains false information.

3. Agent Messemer’s statement that the individuals selected for investigation was chosen because they fit “matrix” based on access to W-88 information and travel to the PRC is false. Dozens of individuals who share those characteristics were not chosen for investigation. As I explained in my prior declaration, it is my firm belief that the actual reason Dr. Lee was selected for investigation was because he made a call to another person who was under investigation in spite of the fact that he assisted the FBI in this case. It is my opinion that the failure to look at the rest of the population is because Lee is ethnic Chinese.

4. Mr. Moore’s contention that the Chinese target ethnically Chinese individuals to the exclusion of others, therefore making it rational to focus investigations on such individuals was not borne out by our experience at Los Alamos, which was the critical context for this investigation. It was our experience that Chinese intelligence officials contacted everyone from the laboratories with a nuclear weapons background who visited China for information, regardless of their ethnicity. I am unaware of any empirical data that would support any inference that an American citizen born in Taiwan would be more likely than any other American citizen [deletion].

5. Of the twelve people ultimately chosen for the short list on which the investigation focused, some had no access at all to W-88 information, and one did not have a security clearance, but this individuals is ethnically Chinese. I do not believe this was a coincidence. Further, this ethnically Chinese individual did not fall within the “matrix” which Agent Messemer claims was used by the DOE and FBI. In addition, although there were other names on the HI list, Mr. Trulock made clear that Dr. Lee was his primary suspect.

6. Agent Messemer deliberately mischaracterizes the nature of my comments to him regarding my concerns about Dr. Lee’s travel to the PRC. I did consider it unusual that Dr. Lee had not reported any contact by Chinese agents when I debriefed him following his return from the PRC. I did not believe then and I do not believe now that Dr. Lee engaged in espionage, and I made no such intimation to Agent Messemer. Dr. Lee and his wife Sylvia were both cooperating with FBI investigations, and I considered them loyal Americans. Nonetheless, I considered Dr. Lee naive, and therefore a potential security risk. It was to keep Dr. Lee out of harm’s way, not because I had any fear that he might knowingly engage in improper conduct, that I recommended against further

unescorted trips out of the country for Dr. Lee.

7. My concerns about the real motivation behind the investigation were exacerbated when I received a classified intelligence briefing from Dr. Thomas Cook, an intelligence analysis at LANL, in September 1999. This briefing put to rest any concerns that I may have had that Dr. Lee helped the Chinese in any substantial manner.

8. In my capacity as a counterintelligence investigator at LANL, I was brief on the existence of an investigation code-named "Buffalo Slaughter" some time in the late 1980s involving a non-Chinese individual working at DOE laboratory who transferred classified information to a foreign country. That individual was granted full immunity in return for agreeing to a full debriefing on the information that he passed. [Approx. six lines deleted].

9. The statements contained in my Declaration dated June 22, 2000 are true and correct and I so attest.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed August 10, 2000, at Gallatin Gateway, Montana.

[signed]

ROBERT VROOMAN.

[Attachment one]

SEPTEMBER 17, 1999.

ROBERT S. VROOMAN,

P.O. Box 348, Gallatin Gateway, MT.

DAVID V. KITCHEN,

Special Agent in Charge, FBI 415 Silver SW, Albuquerque, NM.

DEAR MR. KITCHEN: I would like to have a copy of the 302 prepared by S.A. Robert Messemer as a result of his interview with me on April 28, 1999. Several members of the CIA's IG office have read me portions [of] Messemer's report, and it is clear to me that SA Messemer attributed his opinions to me. During the interview, I told SA Messemer that I did not know [deletion] well enough to have an opinion [deletion]. He then provided me with the details and asked me to speculate on the implications. I find this interview technique objectionable.

On the other hand, SA Messemer did provide me with a lot of details regarding Dr. Lee that I did not know. This helped to solidify my opinions on the case and to have the confidence to go public. I learned during the meeting with SA Messemer that Dr. Lee [Approx. one line deleted]. SA Messemer was particularly helpful to us when he provided us a copy of Mr. Bruno's April 15, 1997 memorandum to Notra Trulock thus allowing us to defend our decision to keep Dr. Lee in his job. For this I am grateful to SA Messemer, but I still object to his using me to promote his opinions.

I am planning to write a book on my experiences and would like to have the 302 as soon as possible.

Sincerely yours,

ROBERT S. VROOMAN.

U.S. DEPARTMENT OF JUSTICE,

CRIMINAL DIVISION,

Washington, DC, March 29, 2000.

Mr. PHYLLIS HEDGES,

P.O. Box 1288, Los Alamos, NM.

DEAR MR. HEDGES: This is in response to your letter to the Department of Justice concerning the prosecution of Wen Ho Lee. Although I am not able to comment in detail about a pending case, I hope you will find the following information useful.

This prosecution is based solely on the facts and the law, Dr. Lee's Chinese heritage and ancestry played no role whatsoever in

the decision to prosecute him. Like you, I am very disturbed by news accounts suggesting that Dr. Lee has been singled out for investigation and prosecution because of his ethnicity. Let me assure you that this is not the way the Department of Justice or the Criminal Division operates. To render a decision on a potential prosecution on the basis of race or ethnicity, even in part, would violate the Department's ethical canons, as well as my own personal beliefs.

As you may know, Dr. Lee was ordered to be detained pending trial by United States Magistrate Judge Svet and, thereafter, by United States District Judge Parker, who heard extensive testimony and legal argument. On February 29, 2000, a three-judge panel of the United States Court of Appeals for the Tenth Circuit unanimously affirmed Judge Parker's decision.

With regard to the conditions of Dr. Lee's incarceration, I am advised that the limitations on visits by his family are the same as those for other similarly-situated prisoners at the facility where Dr. Lee is being held. We have, however, been able to accommodate the Lee family recently by arranging for a Mandarin language interpreter to be present for several meetings so that Dr. Lee's family can speak with him in his native language. We will continue to make the interpreter available as often as possible. Furthermore, we have arranged with the prison facility to allow Dr. Lee's family to meet with Dr. Lee for more than one hour per week.

Thank you for taking the time to write to express your views.

Sincerely,

JOHN J. DION,

Acting Chief, Internal Security Section.

U.S. DEPARTMENT OF JUSTICE,

CRIMINAL DIVISION,

Washington, DC, April 21, 2000.

Mr. PHYLLIS HEDGES,

P.O. Box 1288, Los Alamos, NM.

DEAR MR. HEDGES: This is in response to your letter to the Department of Justice concerning the prosecution of Wen Ho Lee. Although I am not able to comment in detail about a pending case, I hope you will find the following information useful.

This prosecution is based solely on the facts and the law. Dr. Lee's Chinese heritage and ancestry played no role whatsoever in the decision to prosecute him. Like you, I am very disturbed by news accounts suggesting that Dr. Lee has been singled out for investigation and prosecution because of his ethnicity. Let me assure you that this is not the way the Department of Justice or the Criminal Division operates. To render a decision on a potential prosecution on the basis of race or ethnicity, even in part, would violate the Department's ethical canons, as well as my own personal beliefs.

As you may know, Dr. Lee was ordered to be detained pending trial by United States Magistrate Judge Svet and, thereafter, by United States District Judge Parker, who heard extensive testimony and legal argument. On February 29, 2000, a three-judge panel of the United States Court of Appeals for the Tenth Circuit unanimously affirmed Judge Parker's decision.

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present for several meetings so that Dr. Lee's family can speak with him in his native language. We will continue to make the interpreter available as often as possible. Furthermore, we have arranged with the prison facility to allow Dr. Lee's family to meet with Dr. Lee for more than one hour per week.

Thank you for taking the time to write to express your views.

Sincerely,

JOHN J. DION,

Acting Chief, Internal Security Section.

At the request of the members of its Social Concerns Committee, the Congregation of the Unitarian Church of Los Alamos met in a Congressional Meeting on Friday, August 4, 2000 and, after a more than two-hour debate, passed the following resolution concerning the pretrial treatment of Dr. Wen Ho Lee. The resolution was passed by an affirmative vote of 97% of those voting.

RICHARD K. COOPER,

President, Unitarian Church of Los Alamos.

RESOLUTION IN SUPPORT OF CIVIL RIGHTS FOR

DR. WEN HO LEE

August 4, 2000

WHEREAS, Dr. Wen Ho Lee, an American citizen, was arrested in December 1999 and charged in a 59-count indictment with transferring nuclear weapons data to an unsecured computer and portable storage systems in violation of federal laws;

WHEREAS, Dr. Lee is not charged with espionage;

WHEREAS, as documented in the transcript of the FBI interrogation, FBI agents lied to Dr. Lee about the results of a polygraph test which he passed, and threatened his life and his family in an effort to force Dr. Lee to confess to espionage;

WHEREAS, while awaiting trial set for November, 2000, and presumed innocent, Dr. Lee has been denied bail, jailed in solitary confinement, and subjected to harsh and cruel conditions which include the following:

Dr. Lee is in chains, shackled hands and feet whenever he is taken from his solitary cell; he is chained during his one hour per week visit with immediate family so that he must shuffle and awkwardly lean to activate the intercom with manacled hands in order to speak through glass (however, during a mid-July visit his handcuffs were removed) while two FBI agents monitor and censor each word; Dr. Lee remains in ankle chains when working with his lawyers behind triple locked doors in a windowless room in a secured facility;

Dr. Lee is not allowed any exercise, fresh air, or showers on weekends; the one hour of exercise weekdays he spends alone, and until recently in shackles, and he must forego any exercise or fresh air on days he meets his attorneys to prepare for trial; Dr. Lee's telephone calls are extremely limited, censored and transcribed; he is allowed no television and limited reading material; his mail is delayed by months;

AND WHEREAS, in protest of the treatment of Dr. Wen Ho Lee, is far more severe than needed to assure security, numerous organizations and individuals have adopted resolutions or written in protest to Attorney General Janet Reno and other government officials;

NOW, THEREFORE, it is resolved that the Unitarian Church of Los Alamos, New Mexico, while taking no position on the guilt or innocence of Dr. Lee with respect to the charges against him, concurs in the protest of the conditions of detention of Dr. Wen Ho Lee as cruel and overly harsh and is alarmed

by the denial of Dr. Lee's civil liberties and rights to due process;

FURTHER, the Unitarian Church of Los Alamos, New Mexico, calls upon the government of the United States of America immediately to institute humane treatment of Dr. Lee and to seek from the Court pre-trial release of Dr. Lee under conditions that respect his human dignity;

And it is FURTHER RESOLVED that this Resolution shall be printed in publications of the Unitarian Church of Los Alamos, distributed to other appropriate Unitarian Universalist Association offices and congregations, and shall be delivered to U.S. Attorney General Janet Reno and to the congressional delegation from the State of New Mexico.

By September 7, 1999, the New York Times wrote a long article on Chinese espionage and noted that secret information regarding nuclear design was available not only at Los Alamos but "to hundreds and perhaps thousands of individuals scattered throughout the nation."

Citing a CIA official, the New York Times stated that this Wen Ho Lee case was going to be as "bad as the Rosenbergs."

All of this hysteria, I believe was deliberately programmed as a cover-up of the lack of security at the labs.

Wen Ho Lee being Taiwanese was an easy target.

Creating a climate of suspicion upon all Chinese is the terrible wreckage heaped by the storm on these loyal Americans.

If all that the New York Times alleged were true, why wasn't Wen Ho Lee charged with espionage?

The answer is obvious. There was never any evidence of espionage.

This case began in 1995 when a U.S. agent in Asia was approached by a Chinese defector with a 74-page document which purported to be a blueprint for a nuclear weapons program. It was 7 years old.

U.S. experts concluded it came from Los Alamos. Energy Department intelligence chief Notra Turlock took over the investigation. By May 1996 he had identified 12 suspects. Newsweek, September 25, 2000.

By late 1998 the FBI became convinced Lee was probably not their target. Newsweek.—By 1999 the political climate however changed and people were hot after finding a spy.

Newsweek states in its article of September 25, 2000, that Energy Secretary Bill Richardson called FBI Director Freeh and urged they accelerate Wen Ho Lee's investigation.

Wen Ho Lee had engaged in a pattern of deceit.

Dr. Robert A. Messemer, an FBI agent, admitted on August 17, 2000, at a December 1999 bail hearing for Wen Ho Lee, that he had misstated the testimony of a co-worker, Kuok-Mee Ling, suggesting that Wen Ho Lee had misled him in getting permission to use his computer. In fact, there was no deception.

Dr. Messemer also testified in August 2000 that he failed to tell the Judge in December 1999, that Dr. Lee had disclosed contracts with Chinese scientists in his 1986 trip to China.

Dr. Messemer had failed to tell the court in December 1999, that Wen Ho Lee had told the FBI in March 5, 1999, that he received various correspondence from Chinese scientists.

Nor did Dr. Messemer tell the court that the letters the FBI found in Dr. Lee's home did not

prove he had sent them seeking a job. The letters were written to Australia, France, Singapore, and Switzerland.

Initially the felony charge against Wen Ho Lee was based on intent to harm the U.S. and to aid a foreign power.

Later, the prosecutor's case was based on showing Lee's motive was to impress prospective employers rather than to help China's nuclear program. Washington Post, September 24, 2000.

Mr. Richard Krajcik, Deputy Director of the Los Alamos top-secret X Division, testified on August 17, 2000, and conceded the information that Wen Ho Lee downloaded was not classified secret at the time he took it. AP New Mexico, August 18, 2000. He said it had not been reviewed for classification.

Judge James A. Parker in the final court hearing in which Wen Ho Lee was released of all 59 charges except one, said the government action against Wen Ho Lee had embarrassed the entire nation. Judge Parker said that the government had led him astray. Judge Parker apologized to Dr. Lee for the unfair manner in which he was held.

The question that lies unanswered with Wen Ho Lee's release is whether he in fact downloaded the "crown jewels" of our nation's nuclear weapons program so sensitive that it could change the global strategic balance if obtained by a foreign adversary.

INTO THE SUNSHINE

(By Michael Isikoff)

Every Saturday morning Sylvia Lee and her children would pass through the metal detector and take their seats by the glass partition in the bleak room where maximum-security prisoners meet visitors. A door would open and Wen Ho Lee, diminutive and soft-spoken at 60, would shuffle in flanked by two FBI agents. Lee's legs were shackled, his hands manacled and the handcuffs chained to his waist. "It was just so horrible," his daughter, Alberta, says now. "They were treating him like an animal." The Lee family time began—an hour of stilted togetherness with the FBI taking notes on every word. Seeing her father in chains, and knowing he was being held in complete isolation, frequently reduced Alberta to tears. Reading was one of his only escapes, and every week she brought him something new. His favorite was the novel by Gabriel García Márquez: "One Hundred Years of Solitude."

Wen Ho Lee's term of solitude ended last week in the collapse of the most highly publicized espionage case since the arrest of Aldrich Ames—a negotiated guilty plea on one count of mishandling classified information. The plea bargain stripped any remaining credibility from the hopelessly botched federal investigation of alleged Chinese spying at the Los Alamos National Laboratory, and it humiliated the FBI. It also infuriated U.S. district Judge James A. Parker, who said he had been "misled" into treating Wen Ho Lee as a dangerous spy. Calling Lee's imprisonment "draconian" and "unfair" Parker excoriated "top decision makers" at the Department of Justice and the Energy Department who, according to Parker, had "embarrassed our nation." Lee and his lawyers claimed he had been targeted for investigation because he is Chinese, and critics charged that the FBI and the Energy Department had engaged in a new form of racial profiling. The Clinton administration, it seemed, had a bad case of cold-war paranoia.

The recriminations have only just begun. Stung by the judge's criticism and by a rebuke from Bill Clinton, Attorney General Janet Reno is likely to order an internal inquiry into what went wrong—a probe that could prove distinctly uncomfortable to Reno herself, FBI Director Louis Freeh and other senior officials. But even as they acknowledged a badly flawed case, senior law-enforcement officials insisted they were right to go after Lee in the first place. They say his actions raise troubling questions that are still unanswered.

As late as last Monday, Newsweek has learned, Reno and other top Justice officials nearly torpedoed the deal after Lee admitted for the first time that he made copies of the computer tapes containing nuclear secrets he downloaded from Los Alamos's classified computers. Lee insisted he had destroyed all the copies along with seven original tapes the FBI never recovered and that he never compromised U.S. security. But his new admission triggered a series of tense discussions among top national-security officials. "People were really angry and upset," said one source. For a time Reno and other top officials were strongly leaning toward taking the troubled case to trial anyway.

In the end, Justice officials modified the deal with Lee. They gave themselves greater latitude to bring new charges against the scientist if they catch him lying during the intense debriefings he must now undergo. "When the full story comes out," said one unrepentant law-enforcement official, "people are going to see that he's not the poor little innocent he's being made out to be."

Maybe so, but suspicions are not what federal prosecutions are supposed to be about. What drove the Lee case was legitimate national-security concerns—warped by politics. The case began in 1995 when a U.S. agent in Asia was approached by a Chinese "walk-in" defector with a sensational intelligence coup—a 74-page document that purported to be the blueprint for modernizing China's nuclear-weapons program. Although it was seven years old, the document included numerous pieces of information, and some key phrases, that suggested a massive security leak at Los Alamos. It also included a design virtually identical to the W88, a state-of-the-art thermonuclear warhead built for U.S. missile subs. While skeptics suggested the document may have been a plant by Chinese intelligence, some U.S. experts were convinced that much of the information had indeed been stolen from Los Alamos. One of them was Energy Department counter-intelligence chief Notra Turlock, who took over the W88 probe, code-named Kindred Spirit. By May 1996 his team of spy-hunters, working with the FBI, had identified 12 suspects—with Wen Ho Lee at the top of the list.

Born in Taiwan and educated at Texas A&M, where he got his doctorate in mechanical engineering, Lee joined the staff at Los Alamos in 1978. He worked in the X Division, which designs U.S. bombs and warheads, as a midlevel scientist specializing in the computer simulation of shock waves generated by nuclear blasts. Crucially, he was on the team that designed the trigger for the W88 warhead. Still, there was no hard evidence that Lee had engaged in any form of espionage. By late 1998 the FBI's Albuquerque, N.M., field office became convinced that Lee was probably not their target and noted that hundreds of other people, including outside contractors, needed to be examined.

By then the political climate had changed. Turlock had testified in secret before a congressional committee investigating technology transfers to China headed by GOP

Rep. Chris Cox. Republicans had already pummeled the Clinton White House over Asian campaign contributions, and top administration officials feared a new China scandal. In December 1998, Newsweek has learned, Energy Secretary Bill Richardson called FBI Director Freeh and urged him to accelerate the Lee investigation.

In March 1999 The New York Times ran a front-page story pointing to an unnamed "computer scientist" at Los Alamos as a key figure in a probe of Chinese espionage. The next day the FBI interrogated Lee and tried to extract a confession. Waving the newspaper story, agents warned Lee he faced the loss of his job and pension and that he was "failing" lie-detector tests—a statement that was at least somewhat misleading. "I tell the truth," Lee insisted. "Do you know who the Rosenbergs are?" an agent asked. "You know what happened to them? They electrocuted them, Wen Ho." No lawyer was present.

Ironically, neither the FBI nor the Energy Department was aware at that point that Wen Ho Lee had been secretly downloading massive amounts of X Division weapons data for years. To do it, Lee asked to use the computer of a colleague outside the X Division. Then he typed CL=U (classified equals unclassified) on the restricted files, allowing access from the other computer. Starting in 1993 Lee downloaded 806 megabytes of classified information—about 400,000 pages.

But damning as the evidence looked to national-security officials in Washington, the case against Lee turned out to be filled with holes, and prosecutors began to take hits left and right. At a bail hearing in August, FBI agent Robert Messemer admitted that he had earlier given false testimony, portraying Lee as more devious than the scientist actually was when he asked to use his colleague's computer. Messemer called his testimony "an honest mistake." Other government scientists stated that many of the nuclear secrets Lee downloaded were publicly available—and many had a relatively low classification: "protect as restricted data," or PARD.

In late August a meeting was convened at the Justice Department command center to review where matters stood. "The case was falling apart," said one official. Chief prosecutor George Stamboulidis was convinced he could still win at trial. But national-security officials feared that Judge Parker would allow defense lawyers to introduce some of the secret documents that Lee had downloaded. "We would have had to parade these documents in front of the jury and the world," said Stamboulidis. Even FBI Director Freeh—who had aggressively pushed the case to begin with—was now arguing that the government should take a plea.

Senior law-enforcement officials say the biggest mistake may have been the harsh conditions under which Lee was held—the solitary cell, the leg irons, the 24-hour watch. Top Justice officials now say they had some concerns about this from the beginning but didn't convey them strongly enough to the original prosecution team. "If there was a failure, the higher-ups at Justice weren't really forceful enough in speaking up," said one official. "That's a legitimate criticism." When Stamboulidis came in to take over the case in June, he eased the treatment of Lee and ordered the leg irons taken off. But by then it was too late. The image of Lee, a gentle scientist being mistreated by the government, had made its way into the public mind. As a symbol of overzealous prosecution, it could well stay there for some time to come.

#### FBI AGENT RECANTS TESTIMONY AGAINST LOS ALAMOS SCIENTIST LEE

(August 18, 2000; Albuquerque, New Mexico)

An FBI agent has recanted testimony that was key to a judge's decision to deny bail last December to a fired nuclear weapons scientist accused of downloading restricted files.

The testimony last year from Agent Robert Messemer had portrayed Wen Ho Lee as guileful when the jailed Los Alamos lab physicist supposedly told a colleague he wanted to use that scientist's computer to print a resume.

At a bail review hearing Thursday, Messemer acknowledge that Lee had told the other scientist he wished to download files.

"My testimony was incorrect," Messemer told U.S. District Judge James Parker.

The judge had cited Lee's "deeply troubling" deceptions in denying him bail in December.

The FBI agent said Thursday he did not intentionally attempt to mislead the judge and said he did not believe it was a serious error.

The hearing, the defense's third effort to get Lee released on bail, was scheduled to continue Friday with more questioning of Messemer.

Lee, 60, is charged with 59 counts involving downloading files from Los Alamos National Laboratory to unsecured computers and tape. The Taiwan-born American citizen could face life in prison if convicted at trial, scheduled to begin Nov. 6.

During Messemer's testimony Thursday, the FBI agent also acknowledged Lee disclosed contacts with scientists from the People's Republic of China in a report to the lab about a 1986 conference he attended.

Messemer insisted, however, that under questioning by authorities Lee did not disclose the full scope of those contacts.

Messemer testified last year Lee initially told authorities only about a Christmas card he had gotten from one Chinese scientist. He acknowledged that Parker could have inferred from that testimony Lee was lying.

He also said he wanted to correct a "minor point" in which he said Lee sent letters seeking an overseas job. Messemer said Thursday the FBI had no evidence one way or the other whether the letters were sent.

Los Alamos scientist Richard Krajcik, deputy director of a top-secret nuclear weapons division at the lab, testified that he stood by earlier statements about the seriousness of the downloaded documents.

"It represents the crown jewels of nuclear design assessment capability of the United States," Krajcik said.

Krajcik conceded the information was not classified as secret when Lee allegedly took it, but said only scientists with security clearances could access it.

At the time, the information had not been reviewed for classification. The information has since been classified as confidential restricted data and secret restricted data, but not top secret.

Defense attorney John Cline read descriptions of classification levels, which define top-secret information as vital to national security and whose dissemination would cause "exceptionally great damage." Secret information does not reveal critical features.

Ms. PELOSI. Mr. Speaker, I want to thank Congresswoman MINK for organizing this important Special Order and commend Congressman UNDERWOOD, Chair of the Congressional Asian Pacific American Caucus, and the other Members of the Caucus for their leadership and hard work to focus attention on these important civil rights issues.

The treatment of Dr. Wen Ho Lee remains a cause for concern. Asian-Americans, members of racial and ethnic minority groups, civil libertarians, and other Americans have correctly questioned his treatment and continue to question the underlying racial stereotyping and racial profiling that plagued this case. Why did this happen? What were the objective and neutral criteria used to bring these charges? Why was he held in solitary confinement, unable to exercise, prohibited from speaking Chinese to his family, and subjected to extraordinary conditions of confinement?

The implications of this case go well beyond the Chinese and Asian-American community. It concerns other minority communities, racial profiling in law enforcement, and stereotyping all across the country. America's law enforcement agencies and the FBI should not be targeting individuals based solely on their race or ethnicity. Several years ago, after the bombing at the Oklahoma City Federal Building, too many people were quick to blame foreigners and Arab terrorists. That tragedy reminded us of the important lesson of not jumping to conclusions. Evidently, that lesson has been forgotten.

Rep. ROBERT UNDERWOOD, Chair of the Congressional Asian Pacific American Caucus, has written to President Clinton to urge the establishment of an independent, bipartisan commission to investigate the handling of the case of Dr. Wen Ho Lee. This important step would help reveal the truth and help depoliticize the issue. A formal Commission of national stature to review these issues would be an important step forward. This independent Commission should have subpoena power. I would like to see the release of documents that the defense would have used during discovery in order to determine whether there were appropriate criteria used to target Dr. Wen Ho Lee. The Organization of Chinese Americans [OCA] has also called for an independent inquiry into how this case was investigated and prosecuted by Federal agencies.

It is important to remind government officials, law enforcement agencies, and the media that our nation's underlying guarantee of equal and fair treatment before the law applies to all Americans, including Chinese and Asian Pacific Americans. Many think Dr. Lee's case was influenced by biased media coverage, political partisanship, attempts to scapegoat someone for the Department of Energy's lax security procedures. Bail hearing testimony by government investigators admitting erroneous statements about Dr. Lee's actions are particularly troubling. As a nation, we can and must do better.

I look forward to the establishment of an independent Commission and the results of the Commission's fact finding mission. Regardless of these findings, we must keep in mind the lessons of the Oklahoma bombing and recognize that racial profiling and stereotyping are unfair and may violate our civil rights. We must work to ensure that the principles of innocent until proven guilty and due process are more than mere rhetoric. We must ensure they remain core American values protecting all Americans.

In closing, I want to thank Congresswoman MINK for organizing this Special Order and highlighting these important issues.

Ms. WATERS. Mr. Speaker, I rise today to express my concerns about the unjust treatment and confinement of Dr. Wen Ho Lee, a former Los Alamos scientist.

Dr. Wen Ho Lee was arrested by the FBI on December 10, 1999, when a grand jury issued a 59-count indictment charging him with stealing nuclear secrets from a classified Los Alamos computer. U.S. District Judge James Parker denied bail for Dr. Lee, citing seven missing computer tapes of nuclear secrets and the possibility that his release could harm U.S. national security. Dr. Lee was held in solitary confinement for the following nine months and shackled whenever he was outside of his cell.

Dr. Lee's confinement was clearly unnecessary. He had not been convicted of any crime and was considered innocent under the law throughout his confinement. On August 17, 2000, FBI agent Robert Messemer admitted that he gave false testimony against Dr. Lee at his bail hearing the previous December. Furthermore, on September 10, 2000, the Department of Justice announced that Dr. Lee would go free after pleading guilty to just one of the original 59 felony counts against him. All other counts against him were dropped. When the Executive Branch agreed to release him without any conditions, it became apparent that it had never been necessary to confine him.

We will never know the reasons why the Federal Government confined Dr. Lee and treated him so harshly. The plea agreement reached by Dr. Lee and the Department of Justice shields the Executive Branch from disclosing information that might have provided an explanation.

Dr. Lee's unjust confinement and the cruelty of the conditions under which he was confined are a disgrace to the FBI, the Department of Justice and the entire nation. No American citizen should ever be unnecessarily confined by the U.S. Government. I am deeply sorry about the unjust treatment Dr. Lee received, and I urge my colleagues to work diligently to ensure that no other citizen will ever be forced to endure this type of treatment.

#### GENERAL LEAVE

Mrs. MINK of Hawaii. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on my special order tonight.

The SPEAKER pro tempore (Mr. MICA). Is there objection to the request of the gentlewoman from Hawaii?

There was no objection.

#### SOCIAL SECURITY SOLVENCY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, the gentleman from Michigan (Mr. SMITH) is recognized for 60 minutes.

Mr. SMITH of Michigan. Mr. Speaker, to whoever might be looking at this session, this is going to be sort of a briefing on Social Security.

Social Security has come to the forefront of one of the very important issues in this Presidential debate, certainly with every senior, certainly also with every worker in this country as

they now pay more into the Social Security tax than they do in the income tax, and certainly for our kids, our grandkids, those kids that are not born yet, is Social Security going to be there for them.

Let me start with my first chart. I would like to thank Senator ROD GRAMS from Minnesota. He has introduced legislation to keep Social Security solvent, as I have. I have been chairing the bipartisan Social Security Task Force of the Committee on the Budget and, so, we have been working on Social Security for the last 5 years trying to get public attention to the fact that Social Security is insolvent and eventually there is going to be less money coming in than is required for benefits and the challenge facing this country if we are going to make a commitment not to reduce benefits, and we should do that, not to increase taxes even further on workers in this country, and we should do that.

When Franklin Delano Roosevelt created the Social Security program over 6 decades ago, he wanted it to feature a private sector component to build retirement income. Social Security was supposed to be one leg of a three-legged stool to support retirees. It was supposed to go hand-in-hand with personal savings and private pension plans.

In fact, it is interesting, looking up and researching in the archives in 1935, the Senate on two occasions voted that private personal investments should be an option to the Government handling the system. When it finally went to the conference committee between the House and the Senate, it turned around strictly to a Government-run program, a pay-as-you-go program where current workers pay in their taxes and immediately it goes out to current retirees.

This is Barry Pump, an intern that is going to be helping me, from Iowa. So our intern program is an excellent opportunity for juniors in high school. So, Barry, thank you very much.

The system really is now stretched to its limits. Seventy-eight million baby boomers begin retiring in 2008. That means they go out of the, if you will, paying in mode, paying their Social Security taxes, to the taking out mode. And these baby boomers are at the high end of the income scale, so they pay a much higher tax since our tax now is 12.4 percent on the first \$76,000. Social Security expending exceeds tax revenues in 2015, and so the problem is where do we start getting the extra money starting in 2015.

The bottom blip is Social Security trust funds go broke in 2037, although the crisis could arrive much sooner. And the crisis is trying to come up with that money. The danger historically as we look at what has happened through history, politicians in Washington and the President, for example, in 1997 and again in 1983, when money was short to pay out benefits, legisla-

tion was passed to reduce benefits and increase taxes. And that is why it is so very important that we deal with this problem now, we do not delay, we do not put it off. The longer we put off this problem, the more drastic the changes are going to have to be. So I think it is very important that we deal with this very important program as soon as we can.

Some have said, well, these are just people's estimates of the future. Not so. Insolvency is an absolute. Insolvency is certain. We know how many people there are and we know when they are going to retire. We count the people. We know what their ages are. We know what their earning is, how much they are paying in. We know that people will live longer in retirement.

When Social Security started in 1935, the average age of death was 62 years. For this pay-as-you-go program, that meant most people paid in all their lives but never took anything out. It worked very well. But now the life span of individuals has been increasing substantially. We know how much these individuals will pay in, how much they will take out. The payroll taxes will not cover benefits starting in 2015. And the shortfalls will add up to \$120 trillion between 2015 and 2075.

So, in tomorrow's dollars, in those inflated dollars, it is going to take \$120 trillion more than the tax revenue coming in from the Social Security tax to pay benefits.

I suspect most of us do not know how much really a trillion dollars is. I certainly do not. But you can compare it maybe with our annual budget, which now is approximately \$1.8 trillion annual budget. It is a huge challenge. And that is why it has been so easy for this Chamber and the Senate and the President not to take action on it. It is too easy to demagogue. And with this Chamber running for election every 2 years, it is easy to put it off. We cannot do that any more. It is not fair to our kids. It is not fair to our grand kids. Our pay-as-you-go retirement system will not meet the challenge of demographic change.

This is an example of workers per Social Security beneficiary. Back in 1940, there were 38 workers in this country paying in their Social Security tax for every one retiree. Now there are three workers paying in their increased Social Security tax for every one retiree. And by 2025 there is going to be two workers paying in their Social Security tax for every one retiree.

This was developed because of demographic changes. One is the falling birth rate after the baby boomers after World War II. So the number of workers has not increased at the rate it was in the past. And secondly, the life span is tremendously increased. So if you reach retirement age, 65, then on average you are going to live another 18 to 20 years. So life span is going up, the