

**Governor Bill Richardson and the Wen Ho Lee Case: Time for Reflection,
Acknowledgement and Apology to the Chinese American Community**

by

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Summary

“Working with nuclear secrets stolen from an American government laboratory”, James Risen and Jeff Gerth wrote in a front-page article in the New York Times on Saturday, March 6, 1999, “China has made a leap in the development of nuclear weapons: the miniaturization of its bomb, according to administration officials.” This news article reported the prime suspect responsible for this “theft”¹ was a Chinese American computer scientist working at the Los Alamos National Laboratory (Los Alamos) in New Mexico, home of the nuclear bomb. What allegedly had been stolen was design information for the United States’ most advanced thermonuclear miniaturized warhead, the W-88.

Two days later, on Monday, March 8, 1999, Energy Secretary Bill Richardson ordered the immediate firing of Dr. Wen Ho Lee, who was working as a nuclear scientist in the top-secret X Division at Los Alamos. Secretary Richardson’s public disclosure of this firing to the New York Times and other news organizations automatically linked Dr. Lee’s name to nuclear espionage at the national lab, discussed in the March 6, 1999 New York Times article. Three months earlier on December 31, 1998, through its article *House Panel Says Chinese Obtained US Arms Secrets*, the New York Times had already triggered what would become intense media coverage and political suspicions about China’s theft of military nuclear technology from the Energy Department’s national labs and the reliance on Chinese Americans as spies for China.² To reassure the public that the Energy Department was handling security issues at Los Alamos, Secretary Richardson declared in a March 8 TV interview³: “We dismissed an employee who was not following proper security procedures at the lab... who is under suspicion for security breaches.” Neither then or any subsequent time thereafter did Secretary Richardson ever produce any specific evidence that Dr. Lee had passed or intended to pass nuclear secrets to China.

¹ At the height of the Wen Ho Lee controversy, there was disagreement over how China acquired the know-how to develop and test its miniaturized bomb on September 25, 1992. A Los Alamos national lab investigative team concluded in 1995 that China stole nuclear secrets through espionage. Other experts counter that through their own prowess and publicly-available knowledge about American achievements in nuclear weapons, Chinese scientists were able to develop their own miniaturized bomb. See *Spies v. Sweat: The Debate Over China’s Nuclear Advance*, William Broad, New York Times, September 7, 1999.

² *House Panel Says Chinese Obtained US Arms Secrets*, Jeff Gerth and Eric Schmitt, New York Times, December 31, 1998.

³ *CBS 60 Minutes* interview, national broadcast aired on August 1, 1999. See also *Chinese-American scientist fired at weapons lab amid spy probe*, H. Josef Hebert, Associated Press, March 9, 1999.

In a CBS 60 Minutes interview aired on August 1, 1999, Secretary Richardson defended his firing of Dr. Lee, asserting that he had not scapegoated this Chinese American scientist and was doing everything “to protect (Dr. Lee’s) legal status, his reputation as much as (the Energy Department) can.” CBS 60 Minutes interviewer Mike Wallace countered: “Oh, Mr. Secretary, you’ve tried to protect his reputation? You’ve ruined the man’s life.” Prior to the March 8, 1999 firing of Dr. Lee, the Energy Department and FBI had conducted a three-year investigation, code-named “Kindred Spirit,” of his activities and travels for possible acts of espionage and treason. This investigation completely ignored other suspects and focused solely on Dr. Lee at Los Alamos.⁴ The investigation uncovered no evidence that Dr. Lee had ever shared or passed any classified military nuclear information to the Chinese.

In anticipation of partisan attacks by federal lawmakers after the March 6, 1999 New York Times article about a Chinese American spy and security lapses at Los Alamos and other national labs⁵, Secretary Richardson moved unilaterally and swiftly to terminate Dr. Lee. This decision began a devastating ordeal for Dr. Lee that would include intense media scrutiny of him and his family, additional investigation by over 40 FBI agents conducting 1,000 interviews in America and abroad,⁶ federal indictment on 59 counts of mishandling classified information (none of which involved charges of espionage) and 278 days of incarceration in solitary confinement for allegedly compromising the “crown jewels” of the nation’s nuclear weapons program and posing a grave threat to national security. Secretary Richardson fully participated in the decision to indict Dr. Lee⁷, as well as personally approving and extending the harsh conditions of Dr. Lee’s imprisonment.⁸

The federal case to keep Dr. Lee in solitary confinement before his trial began to unravel when it became apparent that the prosecution had overstated its case, giving the appearance at a minimum that his pre-trial detention was a tactical step to pressure him into confessing about acts of espionage which he had not committed, including his allegedly “talking to the Chinese” about the W-88 nuclear warhead. At pre-trial bail hearings, Steven Younger, director of the nuclear weapons program at Los Alamos National Laboratory, testified that the data in Wen Ho Lee’s possession, “could...change the global strategic balance” and “enable the possessor to design the only objects that could result in the military defeat of American’s conventional forces”,⁹ which were later

⁴ *US Will Broaden Investigation of China Nuclear Secrets Case*, James Risen and David Johnston, New York Time, September 23, 1999. After Dr. Lee was fired on March 8, 1999, Attorney General Janet Reno and FBI Director Louis Freeh ordered FBI agents to broaden their investigation into evidence of Chinese nuclear espionage, moving far beyond the narrowly-focused, three-year investigation of Dr. Lee at Los Alamos. Other federal officials stated that this broadening of the investigation beyond Los Alamos was tacit acknowledgment that the initial 3-year investigation was mishandled.

⁵ *Ibid* and *China’s nuclear spying is long patter*, Rebecca Carr, Austin America-Stateman, April 28, 1999.

⁶ *US Is Said to Have Known of China Spy Link in 1995*, James Risen and Jeff Gerth, New York Times, June 27, 1999; *The Prosecution Unravels: The Case of Wen Ho Lee*, Matthew Purdy with James Sterngold, New York Times, February 5, 2001.

⁷ *Decision Nears on the Fate of Ex-Los Alamos Scientist*, New York Times, James Risen and David Johnston, December 8, 1999.

⁸ Senate Judiciary Committee, Continuation of Oversight of the Wen Ho Lee Case, Page 252.

⁹ *A Convenient Spy*, Dan Stober and Ian Hoffman, p. 256

repudiated as “unbridled exaggeration” that “[incited] apprehension, even paranoia.”¹⁰ Because the prosecution convinced the judge that “there [was] no condition or combination of conditions of pretrial release that [would] reasonably assure the appearance of Dr. Lee as required and the safety of any other person, the community, and the nation”, Wen Ho Lee was held in solitary confinement for 278 days pending his trial. As the head of the Department of Energy, Bill Richardson provided not only the initial authorization to the Attorney General to implement such harsh, draconian measures but also the written approval to continue such onerous conditions five months into Dr. Lee’s incarceration.

The notion that the case could even be judged fairly was undermined by how the initial espionage investigation of Wen Ho Lee was conducted. The initial report generated by the Department of Energy in May 1996 moved from “[a] broad identification of potential suspects to a virtual indictment of the Lees”¹¹, causing the FBI to focus their efforts on his activities without exploring other suspects. Even before Dr. Lee was indicted on December 10, 1999, a federal panel consisting of officials from the Energy Department, the national weapon labs, CIA, and State Department found that design information on the W-88 had been distributed widely beyond Los Alamos, which included numerous locations including the Defense Department, the military services, other federal agencies and contractors¹², which further weakened the notion that Wen Ho Lee as the only possible source of the security breach. Furthermore, statements from individuals such as Robert Vrooman, counterintelligence chief of Los Alamos National Laboratory, suggest that Dr. Lee’s ethnic background was a “major factor” in making him the top suspect in the Chinese spy case.¹³

The federal case against Dr. Lee ended on September 13, 2000 in a plea bargain agreement. At the plea sentencing, Judge James Parker rebuked federal officials responsible for the handling of the case against Dr. Lee: “It is only the top decision makers in the Executive Branch, especially the Department of Justice and the Department of Energy....who have caused embarrassment by the way this case began and was handled.” The day after the plea agreement, President Clinton stated that he was “quite troubled” by the government’s actions in this case: “I always had reservations about the claims that were being made denying him bail....it’s very difficult to reconcile the two positions that one day he’s a terrible risk to the national security and the next day they’re making a plea agreement for an offense far more modest than what had been alleged.”¹⁴

¹⁰ Declaration of Walter Goad in U.S. v. Wen Ho Lee, May 17, 2000, <http://www.fas.org/irp/ops/ci/goad.html>

¹¹ Final Report of the Attorney General’s Review Team on the Handling of the Los Alamos National Laboratory (“The Bellows Report”), May 2000, <http://www.usdoj.gov/ag/readingroom/bellows.htm>, Chapter 7

¹² *News Analysis: Back to Square One*, David Johnston, New York Times, September 12, 2000. See also Joint Statement of US Senators Fred Thompson and Joe Lieberman, Senate Governmental Affairs Committee, in *Handling of the Espionage Investigation into the Compromise of Design Information on the W-88 Warhead*, August 5, 1999 and President’s Foreign Intelligence Advisory Board in *Science at Its Best, Security at its Worst*, June 1999 (unclassified version).

¹³ *Official Asserts Spy Case Suspect Was a Bias Victim*, New York Times, William Broad, August 18, 1999

¹⁴ *Clinton Criticizes Officials’ Actions Against Scientist*, David Johnston, New York Times, September 15, 2000.

Notwithstanding Judge Parker's apology and President Clinton's reflections about the case, Secretary Bill Richardson stood by the answers he gave when first interviewed about the case¹⁵ and more recently defended his actions taken to protect the nation's security¹⁶.

In reviewing this case, Chinese Americans and other Americans find Governor Richardson culpable in his failure to acknowledge violating Dr. Wen Ho Lee's due process rights, exacerbating suspicion towards Chinese-Americans as disloyal citizens of the United States, refusing to recognize his central role in participating in decisions to indict and subject Dr. Lee to harsh incarceration conditions, reinforcing the notion that ethnic profiling of Chinese Americans is an acceptable practice, and continuing to insist that he acted properly in this case.¹⁷ Our points in these five major areas will be further elaborated in the rest of this paper.

Furthermore, until Governor Richardson reflects, acknowledges and apologizes to the Chinese American community for his conduct in the Wen Ho Lee case, his confirmation to be the Commerce Secretary should be opposed by all Americans who believe that federal government officials should be persons of excellent character, competence, and sound judgment beyond reproach.

1. Richardson has yet to acknowledge that he violated Dr. Wen Ho Lee's due process rights.

As Energy Secretary, Richardson led a department responsible for the management of the nation's energy policies and nuclear safety, including oversight of the national weapons laboratories. The Los Alamos National Laboratory is managed and operated through a contract with the University of California (UC) so Los Alamos scientists are accorded the same rights and privileges of a UC employee. According to UC employment regulations, all Los Alamos employees must first receive written notice of any intention to terminate and be given at least 5 calendar days to respond.¹⁸

In fall 1998, Secretary Richardson had knowledge and was very concerned that the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic China (the Cox Committee) would issue a report critical about lax security at the national weapons labs and China's theft of nuclear secrets from the labs, enabling that country to design, develop and successfully test strategic nuclear weapons sooner than would otherwise have been possible.¹⁹ It appears that in late 1998, Secretary Richardson wanted to take proactive steps to counter the yet-to-be-publicly-released findings of the Cox Committee report. Not satisfied with the results of the three-year (1996-1998) "Kindred Spirit" Energy Department investigation that uncovered no

¹⁵ 60 Minutes clip, aired on September 17, 2000.

¹⁶ http://www.democracynow.org/2007/12/14/i_wish_id_been_stronger_richardson

¹⁷ http://www.democracynow.org/2007/12/14/i_wish_id_been_stronger_richardson

¹⁸ Our initial letter suggested 8 days, according to UC Personnel Policy for Staff Members.

(<http://humanresources.ucr.edu/?content=PoliciesAndContracts/PPSM62Pro.html>)

¹⁹ *Tracking Suspicions About China's Atom Spying*, Jeff Gerth and Tim Wiener, New York Times, May 23, 1999.

evidence that Dr. Lee had passed or intended to pass nuclear secrets to China, Secretary Richardson wanted the FBI to interview Dr. Lee again in late 1998/early 1999. According to FBI Agent Craig Schmidt, who participated in the “Kindred Spirit” investigation, Secretary Richardson wanted Dr. Lee to be interrogated while also expecting the FBI to “resolve [the] investigation in the next 30 days or 60 days” so that the scientist could be fired.²⁰ Furthermore, Craig claims in his deposition that Secretary Richardson “had a big need to show they were correcting all the problems, and if that meant immediately firing [Dr. Lee], regardless of whatever the FBI was doing, they were going to do it as soon as possible.”²¹

Complying with Secretary Richardson’s request, the FBI conducted a series of intensive interrogations of Dr. Lee starting in January 1999. FBI officials knew that they did not have enough information to arrest Dr. Lee, but hoped their questioning would lead to a “break” in their quest to identify him as the source of W-88 information benefiting China’s development of its miniaturized nuclear weapon.²² The last questioning of Dr. Lee occurred on March 7, 1999, in which he is threatened with the electric chair. According to a declassified FBI transcript, one interrogator stated to Dr. Lee: “Do you know who the Rosenbergs are? The Rosenbergs are the only people who have never cooperated with the Federal Government in an espionage case. You know what happened to them? They electrocuted them, Wen Ho.”²³

Contemporaneously the New York Times published its explosive article, *China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say*, on Saturday, March 6, 1999. Over that weekend, Republican congressional leaders lashed out at the Clinton Administration for lax security at Los Alamos and promised to hold hearings on the Los Alamos espionage investigation. By Monday morning, March 8, 1999, Secretary Richardson pledged to cooperate in any Senate hearing and then later in the day, got briefed by the FBI about its questioning of Dr. Lee and failure to uncover any espionage by him. In spite of these interrogation results that affirmed the findings of the three-year “Kindred Spirit” investigation of Dr. Lee, Secretary Richardson still went ahead and told managers at Los Alamos that WHL should be fired and then within hours, a letter of dismissal was sent to Dr. Lee.²⁴

Out of political expediency to minimize the fallout from the New York Times article, on March 8, 1999, Secretary Richardson publicly identified Dr. Lee by name and announced his termination to the New York Times and other news organizations, forever linking him as a spy for China. In doing so, Secretary Richardson violated UC regulations and prematurely terminated Dr. Lee’s employment without granting him due process rights

²⁰ Senate Judiciary Committee, Continuation of Oversight of the Wen Ho Lee Case, Deposition of Supervisory Special Agent, Craig Schmidt, page 100.

²¹ Senate Judiciary Committee, Continuation of Oversight of the Wen Ho Lee Case, Deposition of Supervisory Special Agent, Craig Schmidt, page 100.

²² *U.S. Fires Nuclear Scientist Suspected of Spying for China*, James Risen, New York Times, March 9, 1999.

²³ *A Convenient Spy*, Ian Hoffman and Dan Stober, p. 197-198

²⁴ *Chinese American scientist fired at weapons lab amid spy probe*, H. Josef Hebert, Associated Press, March 9, 1999.

and access to the UC employee grievance procedures to respond and contest his termination.²⁵ Further, this public announcement of a personnel matter was a violation of Dr. Lee's privacy rights.²⁶

2. Richardson fails to acknowledge his role in exacerbating suspicion towards Chinese-Americans as disloyal citizens of the U.S. and the impact of these suspicions on the lives of Chinese Americans

During the Wen Ho Lee case, Secretary Richardson asserted that he would not allow racial discrimination at the nuclear labs but noted an atmosphere of distrust.²⁷ What he failed to recognize then and now is the harmful impact of his actions – the firing of Dr. Lee without due process and linking him to Chinese espionage without any evidence - on the entire Chinese community, especially on its scientists and engineers. Many community members lived in fear because of the innuendoes and escalation of anti-Chinese sentiments, often feeling personally tainted by the spy allegations against Dr. Lee.

Before the case became public knowledge, suspicions about Chinese theft of military nuclear secrets had been festering for several years. In 1996, a Chinese rocket carrying a Loral Space and Communications-Hughes Electronics Corporation satellite exploded soon after takeoff. The two companies took part in an independent review of the failure, and reported to the Chinese what went wrong.²⁸ Suspicion grew that this exchange with the Chinese may have gone beyond the sharing of information that the companies had been permitted, giving the Chinese crucial assistance and knowledge about encryption technology in improving the guidance systems of their rockets²⁹ since the technology needed to put a commercial satellite in orbit is similar to that what guides a long-range nuclear missile to its target. Furthermore, questions were raised about whether the Clinton administration's decision in summer 1996 to approve satellite launches on China-based rockets had been influenced by campaign contributions from Chinese military intelligence to the Democratic Party³⁰. These suspicions and questions would lead to the convening of the Cox Committee in 1998 and its investigation of alleged Chinese theft of military nuclear secrets.

²⁵ In testimony before the House Committee on Armed Services, on June 24, 1994, former US Senator Warren Rudman, chair of the President's Foreign Intelligence Advisory Board, presented findings on broad-ranging, long-standing security lapses and dysfunction at the Energy Department. With regard to the relationship between federal contractor University of California and the Energy Department, Senator Rudman stated: "Now, the University of California at Livermore and at Los Alamos is the contractor, but they will tell you and have told us that the respond to direction they get from people who are paying the bills, i.e. Department of Energy."

²⁶ Dr. Lee's privacy lawsuit against the federal government was settled on June 5, 2006 in the sum of \$1.645 million, with \$895,000 paid by the federal government and \$750,000 by five news organizations - New York Times, Los Angeles Times, Associated Press, Washington Post and ABC.

²⁷ *Chinese Intellectuals in U.S. Say Spying Case Unfairly Casts Doubt on Their Loyalties*, Fox Butterfield and Joseph Kahn, New York Times, May 16, 1999.

²⁸ *Companies Are Investigated for Aid to China on Rockets*, Jeff Gerth with Raymond Bonner, New York Times, April 4, 1998.

²⁹ *White House Plays Down Device's Loss in China In '96*, New York Times, June 25, 1998.

³⁰ *How Chinese Won Rights to Launch Satellites for U.S.*, New York Times, May 17, 1998.

In acting hastily to fire Dr. Lee so publicly on March 8, 1999, Secretary Richardson exacerbated the cloud of suspicion on the loyalty of all Chinese Americans to the U.S. The declassified version of the Cox Committee report alleges that the People's Republic of China (PRC) "employs various approaches to co-opt U.S. scientists to obtain classified information. These approaches include: appealing to common ethnic heritage; arranging visits to ancestral homes and relatives; paying for trips and travel in the PRC; flattering the guest's knowledge and intelligence; holding elaborate banquets to honor guests; and doggedly peppering U.S. scientists with technical questions by experts, sometimes after a banquet at which substantial amounts of alcohol have been consumed."³¹ This racial profiling of Chinese American scientists was at the heart of the three-year investigation of espionage that narrowly focused on Dr. Lee. Intelligence and other enforcement officials have long believed that cultural and ethnic bonds have rendered Chinese Americans vulnerable to recruitment by China's intelligence agencies.³² By linking Dr. Lee's name to the March 6, 1999 New York Times article, Secretary Richardson helped reinforce the mistaken-notion that because of their ethnicity, Chinese-American scientists were acting as spies for the PRC or were prone to pressure from the Communist government in Beijing.³³

During the case, suspicion about Chinese espionage and anti-Chinese sentiments intensified. Federal legislators reported their offices receiving anti-Chinese calls and Chinese Americans in their district keeping a low profile for fear of retribution.³⁴ Chinese newspapers were full of letters about increased hostility towards Chinese-Americans.³⁵ Frustration and anger among Chinese Americans about damaged careers were prevalent.³⁶ Many Chinese-Americans at the Lawrence Livermore Laboratory felt less at ease working there.³⁷ Due in part to the fallout from the Wen Ho Lee case and the release of the de-classified version of the Cox Committee report in May 1999, a dramatic drop off of Asian American accepting jobs at the national labs was reported in the year 2000.³⁸

3. Richardson has not acknowledged his culpability in participating in the decision to indict Dr. Wen Ho Lee, as well as his role in approving and extending the harsh solitary confinement of Dr. Lee.

³¹ U.S. National Security and Military/Commercial Concerns with the People's Republic of China, PRC Acquisition of Technology, Select Committee United States House of Representatives.

³² *China's Spy Web*, Michael Dorgan, Knight Ridder News Service, March 10, 1999.

³³ *Chinese Intellectuals in U.S. Say Spying Case Unfairly Casts Doubt on Their Loyalties*, Fox Butterfield and Joseph Kahn, New York Times, May 16, 1999; *China Prefers the Sand to Moles; Experts Say Beijing Mines Open Sources, Digging Out Secrets Grain by Grain*, Vernon Loeb and Walter Pincus, Washington Post, December 12, 1999.

³⁴ *Lawmakers warn against stereotyping Asian Americans*, Jim Abrams, Associated Press, May 27, 1999.

³⁵ *Colorado Chinese Workers Affected by Espionage Suspicion, Embassy Bombing*, Lou Gonzales. The Gazette (Colorado Springs), June 22, 1999; *Chinese Fear Backlash on Spy Report*, William Foreman, Associated Press, May 26, 1999.

³⁶ *Coalition Fears an Asian Bias in Nuclear Case*, James Sterngold, New York Times, December 12, 1999.

³⁷ *At U.S. Labs, a Residue of Anger: Asian American Scientists Feel Spy Case Stereotyping Affects Their Futures Too*, Vernon Loeb, Washington Post, December 24, 1999.

³⁸ *Fallout in Arms Research: A special report.; Amid Race Profiling Claims, Asian Americans Avoid Labs*, New York Times, July 16, 2000.

On December 10, 1999, Dr. Wen Ho Lee was indicted not for espionage but on 59 counts of mishandling classified information, 39 of which carried the possibility of a life sentence. The violations included 20 counts of the unlawful possession of classified data, as well as 39 counts of transferring restricted data from a classified secure network to an open one with the “intent to injure the United States” and “with the intent to secure an advantage to a foreign nation”³⁹. Because of testimony (which later proved to represent “unbridled exaggeration”⁴⁰) given by FBI and lab officials about the threat that Dr. Lee posed to national security, he was imprisoned in solitary confinement for 278 days before pleading to one count of mishandling classified information and then released for time served.

Richardson had a direct involvement in making the decision to indict Dr. Lee on the 59 counts, which in retrospect constituted blatant overreaching and differential treatment.⁴¹ In early December 1999, the New York Times reported that Energy Secretary Richardson, FBI Director Louis Freeh, Attorney General Janet Reno and National Security Advisor Sandy Berger met to decide whether to proceed with the indictment of Dr. Lee.⁴² In many other instances of security violations, administrative action rather than criminal prosecution was pursued.⁴³ By allowing Dr. Lee’s name to be floated into the press and making decisions that appeared to be based more on political expediency in the face of partisan attacks, Richardson should acknowledge that he could have taken a more balanced, measured approach in handling Dr. Lee’s case.

When asked about his handling of the Wen Ho Lee case during the December 2007 Iowa Democratic primary debate, Governor Richardson stated: “I do feel that he (Dr. Lee) was incarcerated in solitary confinement—this was wrong. I tried to change it, but I didn’t work hard enough.”⁴⁴ These recent comments by Governor Richardson do not accurately reflect what actions he took to put and keep Dr. Lee in solitary confinement. Governor Richardson has yet to own up to his role as Energy Secretary in this instance.

The Special Administration Measures (SAM) under which Dr. Lee was incarcerated mandates solitary confinement for all but one hour a week and for prisoners to be in handcuffs, waist chains, and leg irons whenever such designated prisoners are outside

³⁹ United States. Vs. Wen Ho Lee Indictment, http://www.fas.org/irp/ops/ci/docs/lee_indict.html

⁴⁰ Declaration of Walter Goad in U.S. v. Wen Ho Lee, May 17, 2000, <http://www.fas.org/irp/ops/ci/goad.html>

⁴¹ *The Los Alamos Secrets Case: the Response*, David Stout, New York Times, December 11, 1999. The Central Intelligence Agency suspended the security clearance of its former director, John Deutch, in August 1999 after concluding that as director he had improperly handled classified information on a computer in his home during the 18 months he headed the agency before resigning in December 1996. Although there was no evidence that he intended to do anything traitorous, an investigation found Mr. Deutch had left secrets vulnerable to access by third-parties.

⁴² *Decision Nears on the Fate of Ex-Los Alamos Scientist*, James Risén and David Johnston, December 8, 1999.

⁴³ Motion for Discovery of Materials Related to Selective Prosecution, http://www.fas.org/irp/ops/ci/selective_prosecution.html

⁴⁴ Richardson Admits Errors in the Wen Ho Lee Case Contradicting Earlier Stance http://www.democracynow.org/2007/12/14/i_wish_id_been_stronger_richardson

their cells within the detention facility.⁴⁵ Title 28 of the Code of Federal Regulations, section 501.2, provides the Attorney General the authority to implement such special measures “upon written certification... by the head of a member agency of the United States intelligence community that the unauthorized disclosure of classified information would pose a threat to the national security and that there is a danger that the inmate will disclose such information.” On December 27, 1999, Secretary Richardson sent a certification letter stating: “In my judgment, such a certification is warranted to enable the Department of Justice to take whatever steps are reasonably available to it to preclude Mr. Lee” from divulging the extremely sensitive nuclear weapons data.⁴⁶

On May 4, 2000 when Dr. Lee had already been kept in solitary confinement for five months, Secretary Richardson sent another re-certification letter to the Attorney General stating: “I understand that this certification will assist you in continuing special administrative measures during the period of Dr. Lee’s pretrial confinement.” In addition, he compared the conditions of Dr. Lee’s confinement as no more restrictive than those of others in the detention facility and “was satisfied that his civil rights are being adequately protected.” There is no doubt that Secretary Richardson played a central role in keeping Dr. Lee in solitary confinement for 278 days. Contrary to what he has asserted, he did nothing to change the harsh conditions that Dr. Lee had to endure in solitary confinement.

4. Richardson has not acknowledged that his actions at the time reinforced the notion that the ethnic profiling of Asian Americans is an acceptable practice.

During the three-year investigation into Dr. Lee’s activities, as well as the interrogation of this Chinese American scientist right before Secretary Richardson fired him, the Energy Department involved the FBI to conduct the investigation and interrogate Dr. Lee. FBI agents have justified the practice of racial profiling in counterintelligence operations to prevent Chinese espionage. A former FBI analyst for Chinese intelligence, Paul Moore, has stated that the People’s Republic of China (PRC) targets “people of Chinese American ancestry to the exclusion of people from other groups.”⁴⁷ When asked by Representative Robert T. Matsui whether that means that the FBI conducts racial profiling Chinese-Americans, Moore’s response was: “What’s the option?”

However, according to Robert Vrooman, former head of counterintelligence at Los Alamos, it was not “rational to focus investigations” solely on ethnic Chinese individuals.⁴⁸ Mr. Vrooman points out that Chinese intelligence officials “contacted everyone from the laboratories with a nuclear weapons background who visited China for information, regardless of their ethnicity.” Mr. Vrooman cites at least 15 additional people whose trips to China were paid for by the Chinese, the CIA, the Air Force or

⁴⁵ Report on Oversight of the Wen Ho Lee Case, December 20, 2001, http://www.fas.org/irp/congress/2001_rpt/whl.html

⁴⁶ Report on Oversight of the Wen Ho Lee Case, December 20, 2001, http://www.fas.org/irp/congress/2001_rpt/whl.html

⁴⁷ *Espionage Stir Alienating Foreign Scientists in U.S.; Critics of Distrust Fear a Brain Drain*, Vernon Loeb, November 25, 1999.

⁴⁸ Declaration of Robert Vrooman, June 22, 2000, <http://www.fas.org/irp/ops/ci/vrooman.html>

privately but were left uninvestigated by the Energy Department or FBI.⁴⁹ In the case of the alleged nuclear theft, it made more logical sense to focus on all possible suspects with access to the sensitive information, which included people outside the national labs.

Despite his belief that possible suspects should not be chosen based on ethnicity, Vrooman asserts that “racial profiling was a crucial component in the FBI's identifying Dr. Lee as a suspect.” Furthermore, as the FBI discussed possible motivations for Wen Ho Lee to spy for China, “it came down to his ethnicity.”⁵⁰ In addition, it was his opinion that the Energy Department officials involved in the initial inquiry about Dr. Wen Ho Lee also “had a subtle bias that the perpetrator had to be ethnic Chinese.”⁵¹

Secretary Richardson tried to claim that he would “not tolerate even hints” of ethnic profiling,⁵² yet the sworn declarations provided by not only Bob Vrooman but also Charles Washington, a former Department of Energy intelligence officer, suggest otherwise. Charles Washington declares that Dr. Lee had been “improperly targeted...due to [his] race and national origin.” In addition, Washington believes that “if Dr. Lee had not been initially targeted based on his race (Taiwanese-Chinese), with the resulting wide press disclosures that he had purportedly [words deleted] and the politicizing of the situation, he may very well have been treated administratively like others who had allegedly mishandled classified information.”⁵³

Secretary Richardson steadfastly denied that Wen Ho Lee was targeted based on his ethnicity.⁵⁴ His involvement in Dr. Lee's indictment and incarceration, however, demonstrated that he allowed others to use ethnic profiling as a justifiable and acceptable practice. Notwithstanding his claim that he did not engage in or tolerate racial profiling, the Energy Department's and FBI's narrowing the three-year investigation of Chinese espionage to the Los Alamos lab and Wen Ho Lee, at the exclusion of investigating other individuals inside and outside Los Alamos, constituted racial profiling for all intent and purposes.

5. Despite Judge Parker's rebuke, Richardson continues to stand by his decisions.

In his statement releasing Dr. Lee from jail, Judge James Parker apologized to Dr. Lee for the “unfair manner” in which he was denied bail and held in custody. In addition, the judge aimed his criticism directly at those responsible: “It is only the top decision makers in the Executive Branch, especially the Department of Justice and the Department of Energy...who have caused embarrassment by the way this case began and was

⁴⁹ *Spies vs. Sweat: The Debate Over China's Nuclear Advance*, William Broad, New York Times, September 7, 1999.

⁵⁰ Senate Judiciary Committee, Continuation of Oversight of the Wen Ho Lee Case, Statement of Robert Vrooman, former Counterintelligence Officer, Department of Energy, page 49.

⁵¹ Senate Judiciary Committee, Continuation of Oversight of the Wen Ho Lee Case, Statement of Robert Vrooman, former Counterintelligence Officer, Department of Energy, page 49

⁵² *Energy Secretary Announces Safeguards Against Profiling*, The Washington Times, October 10, 2000

⁵³ Declaration of Charles E. Washington, <http://www.fas.org/irp/ops/ci/washington.html>, August 11, 2000

⁵⁴ Richardson: Profiling in Department, Associated Press, October 9, 2000

handled...they did not embarrass me alone. They have embarrassed our entire nation and each of us who is a citizen of it.”

In the December 2007 Iowa Democratic party debate, Governor Richardson stated forcefully: “I’ll stand behind my record as Energy Secretary. And there are some cases in the Wen Ho Lee, where I wish I had been stronger, but I don’t apologize for trying to protect our nuclear secrets, and we should have done a lot more.”⁵⁵ Chinese Americans and other Americans concerned about fairness and justice are both perplexed and disturbed by this recent statement by Governor Richardson. After an exhaustive, three-year investigation of Dr. Lee and then an additional 9-month investigation of this Chinese American scientist between the time he was fired from Los Alamos and his federal indictment, the Energy Department under Secretary Richardson and FBI could not uncover any evidence that Dr. Lee had spied for China or passed any nuclear secrets to that country. Dr. Lee did not talk to the Chinese about American nuclear secrets. Yet, by publicly announcing the firing of Dr. Lee two days after the March 6, 1999 New York Times article about a Chinese-American spy in Los Alamos, Secretary Richardson inextricably linked Dr. Lee to Chinese espionage without any justification. Further, Secretary Richardson insisted on national television in his 60 Minute interview that he knew Dr. Lee talked to the Chinese, but offered no evidence whatsoever that informed this knowledge or what specific secrets Dr. Lee may have passed to the Chinese.

When the case against Dr. Lee came to a conclusion, the White House blamed the pressure of coverage in the media, and specifically the New York Times, for having propelled an overzealous prosecution by the administration’s own Justice Department.⁵⁶ Upon reflection, the New York Times “found some things [it] wished [it] had done differently in the course of the coverage to give Dr. Lee the full benefit of the doubt,” including “[pushing] harder to uncover weaknesses in the FBI case against Dr. Lee.”⁵⁷ Regrettably Governor Richardson, then and now, has not gone through the same reflection. Even when he acknowledged that it was wrong to have subjected Dr. Lee to solitary confinement, Governor Richardson misrepresented that he tried to change the condition under which Dr. Lee was incarcerated.

Governor Richardson has remained largely defiant about his actions in the Wen Ho Lee case. In a September 2005 interview by Amy Goodman,⁵⁸ Governor Richardson commented:

AMY GOODMAN: ...when the judge freed Wen Ho Lee, he said he had been egregiously misled by government officials about what Wen Ho Lee was responsible for. And he was irate. He was enraged, the judge, I mean.

⁵⁵ Amy Goodman’s interview with Bill Richardson, Richardson Admits Errors in Wen Ho Lee Case, http://www.democracynow.org/2007/1/14/i_wish_id_been_stronger_richardson)

⁵⁶ *The Times and Wen Ho Lee*, the Editors, New York Times, September 26, 2000.

⁵⁷ Ibid.

⁵⁸ Amy Goodman’s interview with Bill Richardson, Richardson Admits Errors in Wen Ho Lee Case, http://www.democracynow.org/2007/1/14/i_wish_id_been_stronger_richardson)

GOV. BILL RICHARDSON: Well, that's his opinion. I believe that we acted properly in safeguarding our nuclear secrets. He was convicted on several counts. There were some mistakes in that case. It involved the entire federal government, and I stand behind everything that I did.

Governor Richardson either has poor memory or seeks to perpetuate the myth that Dr. Lee's actions posed a dangerous threat to our national security. Of the 59 counts in the federal indictment, 58 were dropped, including all of those that carried a penalty of a life sentence. Dr. Lee pled guilty to one count of mishandling classified information, with no probation, fine or additional time to be served beyond the 278 days in solitary confinement.

We believe that Governor Richardson has not engaged sufficiently in reflection about his handling of the Wen Ho Lee case. Governor Richardson has yet to concede any wrongdoing and apologize to Chinese Americans whose loyalty and integrity were seriously damaged by his decisions and actions as Energy Secretary. He should admit that, in the face of intense, partisan congressional and national media scrutiny, he wrongfully rushed to judgment in linking Dr. Lee with Chinese espionage, thereby provocatively heightening suspicions about the loyalty of Chinese Americans. Until Governor Richardson issues an apology to the Chinese American community about his handling of the Wen Ho Lee case and its impact on Chinese Americans, we believe his confirmation to a high-level federal post should be opposed by all Americans who believe that government officials should be persons of excellent character, competence, and sound judgment beyond reproach.