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China: Suspected Acquisition of U.S. Nuclear Weapon Secrets

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Summary

This CRS Report discusses China's suspected acquisition of U.S. nuclear weapon secrets, including that on the W88, the newest U.S. nuclear warhead, since the late 1970s. This current controversy, began in early 1999, raises policy issues about whether U.S. security is further threatened by the PRC's suspected use of U.S. nuclear weapon secrets in its development of nuclear forces, as well as whether the Administration's response to the security problems is effective or mishandled and whether it fairly used or abused its investigative and prosecuting authority.

The Clinton Administration acknowledged that improved security was needed at the weapon labs but says that it has taken actions in response to indications in 1995 that China may have obtained U.S. nuclear weapon secrets. Critics in Congress and elsewhere argued that the Administration was slow to respond to security concerns, mishandled the too narrow investigation, downplayed information potentially unfavorable to China and the labs, and failed to notify Congress fully.

On April 7, 1999, President Clinton assessed the situation, saying that partly "because of our engagement, China has, at best, only marginally increased its deployed nuclear threat in the last 15 years" and that the strategic balance with China "remains overwhelmingly in our favor." On April 21, 1999, Director of Central Intelligence (DCI) George Tenet, reported the Intelligence Community's damage assessment. It confirmed that "China obtained by espionage classified U.S. nuclear weapons information that probably accelerated its program to develop future nuclear weapons." It also revealed that China obtained information on "several" U.S. nuclear reentry vehicles, including the Trident II submarine-launched missile that delivers the W88 nuclear warhead as well as "a variety of" design concepts and weaponization features, including those of the neutron bomb.

On May 25, 1999, the Cox Committee raised serious questions about nuclear weapon security by reporting that China has stolen classified information on the W88 and six other U.S. nuclear warheads. On June 15, 1999, the President's Foreign Intelligence Advisory Board (PFIAB) reported that the Department of Energy is a "dysfunctional bureaucracy" and called for a semi-autonomous or independent agency to oversee nuclear weapons. In September 1999, Congress passed the FY2000 Defense Authorization Act to create a National Nuclear Security Administration (NNSA) within DOE on March 1, 2000.

The FBI investigated former Los Alamos scientist Wen Ho Lee, whose case was a result of, but unrelated to, the probe of PRC espionage. In December 1999, the Justice Department indicted Lee for mishandling nuclear weapons information, but not for espionage. Lee was jailed without bail, until a plea agreement on September 13, 2000, when Lee pleaded guilty to one felony count of mishandling nuclear information. Meanwhile, in April 1999, the FBI expanded its investigation on the PRC (originally called "Kindred Spirit" and now called "Fall-out"), beyond the Los Alamos lab. In 2000, the unsolved investigation shifted significantly to missile secrets and to the Pentagon and its facilities and contractors.

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China: Suspected Acquisition of U.S. Nuclear Weapon Secrets

Challenges to U.S. Security

Congressional Concern and Policy Issues

In early 1999, serious congressional concerns about security over nuclear weapon data at the U.S. nuclear weapon laboratories (Lawrence Livermore, Los Alamos, and Sandia) were heightened after public reports said that the People's Republic of China (PRC) may have acquired the design of the W88 nuclear warhead in the 1980s. This is the third reported case involving the PRC's suspected compromise of U.S. nuclear weapon secrets.

In April 1999, President Clinton stated that the PRC has fewer than two dozen long-range nuclear weapons, compared to 6,000 in the U.S. arsenal. Nevertheless, some are concerned that China is developing a new DF-31 solid-fuel, mobile intercontinental ballistic missile (ICBM), with a range of about 5,000 miles, for deployment perhaps after 2000, reportedly with a smaller warhead (700 kg; 1,500 lb.) than the current DF-5A ICBMs. In addition, there are reportedly programs to develop a next-generation JL-2 submarine-launched ballistic missile (SLBM) and a longer-range DF-41 ICBM.¹

This controversy raises policy issues about whether U.S. security is further threatened by the PRC's suspected use of U.S. nuclear weapon secrets in its development of smaller nuclear warheads and new ICBMs, as well as whether the Administration's response to the security problems is effective or mishandled and whether it fairly used or abused its investigative and prosecuting authority. The controversy has also raised questions about the roles of the media and Congress.

Reported Cases of Security Compromises

Suspicious about PRC attempts to acquire secrets from U.S. nuclear weapon labs are longstanding, including congressional concerns discussed below. A 1994 book on PRC intelligence cited the head of counterintelligence at the Federal Bureau of Intelligence (FBI) in Los Angeles as saying that the PRC had tried to recruit people at Los Alamos and Lawrence Livermore labs.² In the three public cases that occurred

¹ See CRS Report 97-391, *China: Ballistic and Cruise Missiles*, by Shirley A. Kan; and CRS Report 97-1022, *Chinese Nuclear Testing and Warhead Development*, by Jonathan Medalia.

² Eftimiades, Nicholas. *Chinese Intelligence Operations* (Annapolis: Naval Institute Press, (continued...))

in the late 1970s to 1980s, China may have conducted clandestine operations at the labs or benefitted from voluntary disclosures or lapses in security. In these cases, the reported suspects were U.S. scientists working at the labs who were born in Taiwan. A fourth case, reported by the media in April 1999, suggests that China sought more neutron bomb data in 1995. However, it is uncertain whether this reported incident involves any of the Department of Energy (DOE) labs.

“Tiger Trap”. In the first public case, the press reported in 1990 that China had stolen data on the neutron bomb from the Lawrence Livermore lab sometime in the late 1970s to early 1980s, and the FBI began an investigation on this case perhaps in 1986. This case, code-named Tiger Trap, reportedly has remained open.³ The PRC allegedly used U.S. secrets about the W70 neutron warhead to make an experimental neutron bomb that was tested in 1988 and also passed the information to Pakistan. The U.S. scientist involved was fired after being investigated for two years, but, because of insufficient evidence, was never charged with a crime.⁴ In late 2000, the suspect’s name was reported to be Gwo Bao Min.⁵ Saying he was unaware of the investigation, the suspect in the third case reportedly made a call to this person.

“Royal Tourist”. The second case came to light when a U.S. scientist, Peter H. Lee, admitted on December 8, 1997, in a plea bargain that, during a trip to China in January 1985, he gave PRC nuclear scientists classified information about his work at Los Alamos on using lasers to simulate thermonuclear explosions and problems in U.S. simulations of nuclear weapon testing. He also admitted failure to disclose his lectures in China in May 1997 on his work on sensitive satellite radar imaging to track submarines at TRW, Inc. (developed at Lawrence Livermore lab). Lee disclosed the information on anti-submarine warfare at the Institute of Applied Physics and Computational Mathematics (IAPCM), a PRC nuclear weapon facility. Lee was not charged with espionage, in part because the information on the laser device was declassified by Energy Secretary Hazel O’Leary in 1993 and the Navy did not want open discussion of the sensitive radar technology. Lee’s attorney, James Henderson, said that Lee is not a spy but did make mistakes. He reportedly explained that he was trying to help PRC scientists and boost his own reputation in China. After a seven-year investigation by the FBI that began in 1990 (code-named “Royal Tourist”), Lee was sentenced in March 1998 to one year at a halfway house. This case was briefed to National Security Advisor Sandy Berger by DOE intelligence officials in July 1997 and included in a classified counterintelligence report completed in November 1998

² (...continued)
1994), p. 6.

³ Pincus, Walter and Vernon Loeb, “Other Spy Probes Run More Quietly Than Lee’s,” *Washington Post*, November 6, 2000.

⁴ *San Jose Mercury-News* and *New York Times*, November 22, 1990; *Wall Street Journal*, January 7, 1999; *Washington Post*, February 17, 1999; CRS Report 96-767, *Chinese Proliferation of Weapons of Mass Destruction: Background and Analysis*, September 13, 1996, by Shirley A. Kan.

⁵ Gertz, Bill, “China Whistleblower Says FBI Harassment was Payback,” *Washington Times*, November 14, 2000.

that was sent to the White House.⁶ At hearings in 2000, Senator Specter criticized the prosecution of this case.

“Kindred Spirit”/“Fall Out”. The third case is the subject of the current and most serious controversy about leaks of nuclear weapon secrets to China. The case became public as a result of a comprehensive investigation into technology transfers to China conducted in 1998 by the bipartisan House Select Committee on U.S. National Security and Military/Commercial Concerns with China (popularly known as the “Cox Committee”). The press first reported in January 1999 that U.S. intelligence discovered in 1995 that secrets about the W88, the most advanced miniature nuclear warhead (deployed on the Trident II SLBM), may have leaked from Los Alamos to China between 1984 and 1988. U.S. intelligence reportedly was given a secret PRC document from 1988 containing designs similar to that of the W88. The discovery prompted an FBI investigation (code-named “Kindred Spirit”) that began in September 1995.⁷

Suspicious that China may have W88 data also led analysts to reexamine a series of nuclear explosions detonated by China prior to its announcement of a moratorium on nuclear testing (in July 1996) and new willingness to sign the Comprehensive Test Ban Treaty (CTBT) (in September 1996). After China became the last of the five declared nuclear weapon states to begin a moratorium, there were some suspicions that China took the step, not just because of arms control, but because it had reached its goals in nuclear weapon modernization or achieved the capability to simulate nuclear explosions. Some speculated that China received test data from Russia or France.⁸

Separate from the W88 case, however, the investigation resulted in the criminal investigation and indictment in 1999 of Los Alamos scientist Wen Ho Lee⁹ for mishandling defense information and questions about whether Taiwan was involved.

⁶ *Reuters*, December 9, 1997 and March 26, 1998; *Washington Post*, December 12, 1997; testimony of FBI Director Louis Freeh before the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999; Walter Pincus and Vernon Loeb, “For Chinese Scientists, a Subtle System of Espionage,” *Washington Post*, May 9, 1999; Jeff Gerth and James Risen, “Reports Show Scientist Gave U.S. Radar Secrets to Chinese,” *New York Times*, May 10, 1999.

⁷ Gerth, James and Eric Schmitt, “Bipartisan Report Finds Theft of Nuclear Technology That Hurt National Security,” *New York Times*, December 31, 1998; Carla Anne Robbins, “China Got Secret Data On U.S. Warhead,” *Wall Street Journal*, January 7, 1999; Walter Pincus, “U.S. Cracking Down On Chinese Designs On Nuclear Data” and “Spy Suspect Fired At Los Alamos Lab,” *Washington Post*, February 17 and March 9, 1999; James Risen and Jeff Gerth, “China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say,” *New York Times*, March 6, 1999; testimony of FBI Director Louis Freeh before the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999.

⁸ Lim, Benjamin Kang, “China Nuclear Halt May Stem From Deal,” *Reuters*, July 30, 1996; Robert Karniol, “Nuclear Blast Heralds A Chinese Moratorium,” *Jane’s Defense Weekly*, August 7, 1996.

⁹ Risen, James, “U.S. Fires Nuclear Scientist Suspected of Spying for China,” *New York Times*, March 9, 1999, quoting Secretary of Energy Bill Richardson.

Meanwhile, apparently reassessing “Kindred Spirit” and finding it to have been too narrowly focused on one lab (Los Alamos) and one suspect (Lee), the FBI, in April 1999, reportedly started an expanded investigation (code-named “Fall-out”). In October 2000, it was reported that the investigation had shifted significantly to examine the Pentagon and its facilities and contractors, after intelligence agencies concluded that PRC espionage acquired more classified U.S. missile technology, including that on the heat shield, than nuclear weapon secrets.¹⁰

Continued in 1990s. In a fourth case that was reported in April 1999, there are allegations that PRC espionage directed at U.S. nuclear weapon designs continued into the 1990s. U.S. intelligence reportedly learned in early 1996 from one of its spies that China sought in 1995 to acquire more U.S. information on the neutron bomb design that it obtained sometime in the late 1970s to 1980s from Livermore. Some speculate that China may have been seeking more data, because its 1988 test of a neutron bomb was not successful. Intelligence concerns reportedly led to: a criminal investigation by the FBI and a report from the FBI to DOE on March 27, 1996; a briefing in April 1996 for Sandy Berger (then Deputy National Security Advisor) on concerns about PRC acquisition of neutron bomb and W88 data; and an analysis of the neutron bomb case completed at DOE in July 1996 (that raised the possible involvement of Wen Ho Lee, the suspect in the W88 case). However, the U.S. government reportedly has no evidence that China has been able to improve its neutron bomb nor that any of the nuclear weapon labs was involved in this case.¹¹

Damage Assessments

There are concerns that China’s suspected acquisition of the W88 data could have increased the threat to the United States by helping China’s modernization of its nuclear-armed ballistic missile force, which reportedly has included efforts to develop a miniaturized nuclear warhead and more reliable and mobile missiles, possibly with multiple independently targetable reentry vehicles (MIRVs). China is believed to have deployed over 100 nuclear warheads on its ballistic missiles, with more warheads in storage and a stockpile of fissile material.¹² Of those missiles, there are reportedly about 20 DF-5A strategic, long-range (13,000 km.; 8,000+ mi.) ICBMs that could reach all of the United States. China is developing a new DF-31 solid-fuel, mobile ICBM, with a range of about 5,000 miles, for deployment perhaps after 2000, reportedly with a smaller warhead (700 kg; 1,500 lb.) than the DF-5A ICBMs. In addition, there are reportedly programs to develop a next-generation JL-2 SLBM and a longer-range DF-41 ICBM.¹³

¹⁰ Pincus, Walter and Vernon Loeb, “China Spy Probe Shifts to Missiles,” *Washington Post*, October 19, 2000; “Pentagon to Add 450 Experts to Protect Defense Secrets,” October 27, 2000.

¹¹ Gerth, Jeff and James Risen, “Intelligence Report Points to Second China Nuclear Leak,” *New York Times*, April 8, 1999.

¹² Secretary of Defense, *Proliferation: Threat and Response*, November 1997.

¹³ See CRS Report 97-391, *China: Ballistic and Cruise Missiles*, by Shirley A. Kan; and (continued...)

President on U.S. Superiority

On April 7, 1999, President Clinton presented a public assessment that in the U.S.-China strategic balance, U.S. nuclear forces still maintain decisive superiority over China's relatively limited strategic nuclear forces. He declared,

Now, we have known since the early 1980s that China has nuclear armed missiles capable of reaching the United States. Our defense posture has and will continue to take account of that reality. In part, because of our engagement, China has, at best, only marginally increased its deployed nuclear threat in the last 15 years. By signing the Comprehensive Test Ban Treaty, China has accepted constraints on its ability to modernize its arsenal at a time when the nuclear balance remains overwhelmingly in our favor. China has fewer than two dozen long-range nuclear weapons today; we have over 6,000.¹⁴

Intelligence Community's Damage Assessment

At the end of 1998, the House Select Committee on China chaired by Congressman Cox approved a report that urged, among other recommendations, that "the appropriate Executive departments and agencies should conduct a comprehensive damage assessment of the strategic implications of the security breaches that have taken place" by China at the nuclear weapon labs.¹⁵ The Intelligence Community assessed the difficult question of how much PRC nuclear weapon designs might have benefitted if China obtained the W88 data. On this question, National Security Advisor Berger acknowledged soon after the news reports that, "there's no question they benefitted from this."¹⁶

DCI George Tenet further announced on March 15, 1999, that after an interagency team completes a damage assessment by the end of March, an independent panel led by retired Admiral David Jeremiah will review the findings. The damage assessment of the Intelligence Community was completed by the end of March, and the independent panel reviewed that assessment and made recommendations for changes by early April. Some say that an independent review was needed to give the assessment greater credibility against any charges of politicization intended to protect the policy of engagement toward China and other policies. Some reports suggested that NSC official Gary Samore (in August 1997, as the White house was preparing for President Clinton's first summit with the PRC) had requested an alternative assessment from the CIA that downplayed DOE's

¹³ (...continued)

CRS Report 97-1022, *Chinese Nuclear Testing and Warhead Development*, by Jonathan Medalia.

¹⁴ President William Jefferson Clinton, speech sponsored by the U.S. Institute for Peace at the Mayflower Hotel, Washington, D.C., April 7, 1999.

¹⁵ National Security Council's response (unclassified version) to the House Select Committee's recommendations, February 1, 1999.

¹⁶ Sandy Berger's interview on NBC's "Meet the Press," March 14, 1999.

conclusion that successful PRC espionage was primarily responsible for the leaks at Los Alamos.¹⁷

The DCI briefed the final assessment to the appropriate congressional committees and the White House on April 21, 1999. Robert Walpole, the National Intelligence Officer for Strategic and Nuclear Programs, led the damage assessment, which was prepared by the CIA, DOE, Department of Defense, the Defense Intelligence Agency, the National Security Agency, the State Department's Bureau of Intelligence and Research, the FBI, the National Counterintelligence Center, and nuclear weapon experts from Los Alamos, Livermore, and Sandia labs.¹⁸ After being briefed on the Intelligence Community's damage assessment on April 21, 1999, President Clinton said that he has further asked the National Counterintelligence Policy Board to assess potential vulnerabilities at nuclear weapon institutions other than the national labs.¹⁹

According to the unclassified key findings released by the DCI, the Intelligence Community's damage assessment, with concurrence by the independent panel, confirmed that "China obtained by espionage classified U.S. nuclear weapons information that probably accelerated its program to develop future nuclear weapons." That successful PRC espionage effort, which dates back to at least the late 1970s, benefitted PRC nuclear weapon design program by allowing China to "focus successfully down critical paths and avoid less promising approaches to nuclear weapon designs." Furthermore, the assessment found that China obtained "basic design information on several modern U.S. nuclear reentry vehicles, including the Trident II" that delivers the W88 warhead as well as "a variety of U.S. weapon design concepts and weaponization features, including those of the neutron bomb." The information on U.S. nuclear weapons has made an "important contribution" to PRC efforts to maintain a second strike capability and develop future nuclear weapon designs. However, it is uncertain whether China obtained documentation or blueprints, and China also benefitted from information obtained from a wide variety of sources, including open sources (unclassified information) and China's own efforts. The assessment also states that the PRC has not demonstrated any "apparent modernization" of the deployed strategic force or any new nuclear weapons deployment. (China has not conducted nuclear tests since July 1996.) The assessment also confirmed that China has the "technical capability" to develop a MIRV system for the currently deployed ICBM, but has not done so. Nonetheless, U.S. intelligence reported that "U.S. information acquired by the Chinese could help them develop a MIRV for a future mobile missile."

On the continuing need for effective counterintelligence and intelligence, the assessment confirms that, even today, the PRC is using "aggressive collection efforts"

¹⁷ Risen, James and James Gerth, "China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say," *New York Times*, March 6, 1999.

¹⁸ CIA, "The Intelligence Community Damage Assessment On the Implications of China's Acquisition of U.S. Nuclear Weapons Information On the Development of Future Chinese Weapons," (unclassified release), April 21, 1999.

¹⁹ Statement by the President, April 21, 1999.

directed at U.S. nuclear weapon secrets in order to fill significant gaps in China's programs. Adding further to questions about possible politicization and erosion of expertise in the Intelligence Community, the independent review panel warned that the Intelligence Community has "too little depth." The panel also added that multiple countries "have gained access to classified U.S. information on a variety of subjects for decades, through espionage, leaks, or other venues," and such losses are "much more significant" in today's context of diminished U.S. research efforts intended to ensure a "protective edge" over those countries using U.S. information.

Cox Committee's Report

Findings. According to its declassified report released in May 1999,²⁰ the Cox Committee reported that, since the late 1970s and "almost certainly" continuing today, the PRC has pursued intelligence collection that includes not only espionage, but also review of unclassified publications and interaction with U.S. scientists at the DOE's national laboratories, including Los Alamos, Lawrence Livermore, Oak Ridge, and Sandia. The PRC has "stolen" classified information on the most advanced U.S. thermonuclear weapons, giving the PRC design information on thermonuclear weapons "on a par with our own." The information includes classified information on seven warheads, including "every currently deployed thermonuclear warhead in the U.S. ballistic missile arsenal;" on the neutron bomb; and on "a number of" reentry vehicles of U.S. missiles. The PRC acquired information on seven U.S. nuclear warheads, including the W88, the most advanced, miniature U.S. nuclear warhead deployed on the Trident D-5 submarine-launched ballistic missile (SLBM):

W88: deployed on the Trident D-5 submarine-launched ballistic missile (SLBM)
 W87: deployed on the Peacekeeper intercontinental ballistic missile (ICBM)
 W78: deployed on the Minuteman III ICBM
 W76: deployed on the Trident C-4 SLBM
 W70: previously deployed on the Lance short-range ballistic missile (SRBM)
 W62: deployed on the Minuteman III ICBM
 W56: previously deployed on the Minuteman II ICBM.

The committee focused on potential implications for U.S. national security, judging "that the PRC will exploit elements of the U.S. design information on the PRC's next generation of thermonuclear weapons." The PRC successfully tested smaller thermonuclear warheads in 1992 to 1996²¹ (prior to its July 1996 announcement of a nuclear testing moratorium and its September 1996 signing of the Comprehensive Test Ban Treaty (CTBT)). The committee reported that information lost from the DOE labs accelerated PRC nuclear weapon modernization and "helped the PRC in its efforts to fabricate and successfully test its next generation of nuclear

²⁰ Select Committee, U.S. House of Representatives, H.Rept. 105-851, *U.S. National Security and Military/Commercial Concerns with the People's Republic of China*, (classified report issued on January 3, 1999; declassified version issued on May 25, 1999); See also: CRS Report RL30220, *China's Technology Acquisitions: Cox Committee's Report — Findings, Issues, and Recommendations*, June 8, 1999, by Shirley A. Kan.

²¹ For information, see CRS Report 97-1022, *Chinese Nuclear Testing and Warhead Development*, by Jonathan Medalia.

weapons designs. These warheads give the PRC small, modern thermonuclear warheads roughly equivalent to current U.S. warhead yields.” The PRC “could begin serial production” of such weapons during the next decade in connection with the development of its next generation of solid-fuel mobile ICBMs, including the DF-31 that “may be tested in 1999” and “could be deployed as soon as 2002.” Although the PRC currently deploys nuclear-armed ICBMs, “with stolen U.S. technology, the PRC has leaped, in a handful of years, from 1950s-era strategic nuclear capabilities to the more modern thermonuclear weapons designs.” Regarding whether the PRC’s nuclear program continues to require testing, the committee judged that if the PRC successfully steals U.S. nuclear test codes, computer models, and data, and uses them with the U.S. HPCs already imported, the PRC “could diminish its need for further nuclear testing to evaluate weapons and proposed design changes.”

As for the strategic balance, the report noted that “the United States retains an overwhelming qualitative and quantitative advantage in deployed strategic nuclear forces” over the PRC’s up to two dozen CSS-4 ICBMs. Nonetheless, the report stated that “in a crisis in which the United States confronts the PRC’s conventional and nuclear forces at the regional level, a modernized PRC strategic nuclear ballistic missile force would pose a credible direct threat against the United States.”

On the question of whether having smaller nuclear warheads would facilitate PRC development of multiple independently targetable reentry vehicles (MIRVs) for its nuclear missile force, the committee reported that it had “no information on whether the PRC currently intends to develop and deploy” MIRVs.

A complicating factor is that, as the committee revealed, the CIA obtained, in 1995 someplace outside of the PRC, a secret PRC document containing “design information” on the W88 and “technical information” on another five U.S. thermonuclear warheads from a “walk-in” directed by PRC intelligence. The “walk-in” volunteered various materials to the CIA and to Taiwan, according to Representative Cox.²² There are questions about the credibility and motivation of the “walk-in” who provided documents showing PRC possession of U.S. nuclear weapon secrets. As the Cox report noted, “there is speculation as to the PRC’s motives for advertising to the United States the state of its nuclear weapons development.” PRC intelligence could have sought to raise the credibility of the “walk-in;” increase the credibility of China’s nuclear arsenal as a deterrent to U.S. intervention in a regional crisis; trigger a disruptive “spy hunt” in the United States; or raise suspicions of PRC students working in the United States to bring them back to China.²³ Also, China could have made a major blunder or had another unknown objective. In addition, a rival of the PRC could have planted the documents in Taiwan,²⁴ or the “walk-in” could have sold them in self-interest. In any case, as the Cox report said, PRC nuclear tests conducted from 1992 to 1996 had already raised suspicions in U.S. intelligence

²² Pincus, Walter, “Prescriptions for Keeping Secrets,” *Washington Post*, May 27, 1999.

²³ Loeb, Vernon and Walter Pincus, “Planted Document Sows Seeds of Doubt,” *Washington Post*, May 28, 1999.

²⁴ Weiner, Tim, “Nuclear Thriller With Ending As Yet Unwritten,” *New York Times*, May 25, 1999.

that China had stolen U.S. nuclear weapon information, and the information provided by the “walk-in” in 1995 “definitely confirmed” those suspicions.

Prather Report. A report by a nuclear physicist Gordon Prather, released by Jack Kemp on July 8, 1999, questioned the Cox Report’s findings about PRC espionage, but criticized the Clinton Administration (particularly former Energy Secretary Hazel O’Leary) for its policies. Prather cited three policies as responsible for security problems at the labs: support for the CTBT; a “reckless policy” of unprecedented “openness” that declassified much nuclear weapon information, so that spying is unnecessary; and engaging the PRC nuclear weapon establishment with the DOE’s lab-to-lab exchanges.²⁵

China Confirmed Its Neutron Bomb. On July 15, 1999, the PRC government issued a response denying the Cox Committee’s charges that China stole U.S. secrets. In the report was a short paragraph acknowledging that China has the neutron bomb. The statement said China mastered “in succession the neutron bomb technology and nuclear weapon miniaturization technology.” In addition, “since China has already possessed atom bomb and H-bomb technologies, it is quite logical and natural for it to master the neutron bomb technology through its own efforts over a reasonable period of time.”²⁶

PFIAB (Rudman) Report

For a parallel review, on March 18, 1999, President Clinton appointed former Senator Warren Rudman, head of the President’s Foreign Intelligence Advisory Board (PFIAB), to undertake a review of how the government has handled security challenges at the labs over the last 20 years. The PFIAB’s special investigative panel, with four members, reviewed over 700 documents and interviewed over 100 witnesses — who apparently had concerns about reprisals and asked that they not be named. On June 15, 1999, the PFIAB issued an unprecedented unclassified report, with findings and recommendations for both the Executive and Legislative branches.²⁷ These findings and recommendations are summarized below.

Findings.

- ! Twenty years after the creation of DOE, most of its security problems “still exist today.”

²⁵ Prather, James Gordon, “A Technical Reassessment of the Conclusions and Implications of the Cox Committee’s Report,” July 8, 1999. See also: Jack Kemp’s press release, July 8, 1999, and Robert D. Novak, “Republican China-Bashing,” *Washington Post*, July 12, 1999. For copies of report, contact Jack Kemp’s office or Home Page of Polyconomics, Inc.

²⁶ PRC, Information Office of the State Council, “Facts Speak Louder Than Words and Lies Will Collapse by Themselves — Further Refutation of the Cox Report,” July 15, 1999.

²⁷ President’s Foreign Intelligence Advisory Board, Special Investigative Panel, *Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy*, unclassified, June 1999.

- ! The national weapons labs “have been and will continue to be a major target of foreign intelligence services, friendly as well as hostile.”
- ! “Organizational disarray, managerial neglect, and a culture of arrogance — both at DOE headquarters and the labs themselves — conspired to create an espionage scandal waiting to happen.”
- ! “Increasingly nimble, discreet, and transparent in their spying methods, the Chinese services have become very proficient in the art of seemingly innocuous elicitations of information. This modus operandi has proved very effective against unwitting and ill-prepared DOE personnel.”
- ! “Both Congressional and Executive Branch leaders have resorted to simplification and hyperbole in the past few months. The panel found neither the dramatic damage assessments nor the categorical reassurances of the Department’s advocates to be wholly substantiated.”
- ! “We concur with and encourage many of Secretary Richardson’s recent initiatives to address the security problems. . . .”
- ! Energy Secretary Richardson “overstated the case when he asserts, as he did several weeks ago, that ‘Americans can be reassured: our nation’s nuclear secrets are, today, safe and secure’.”
- ! Both intelligence officials at DOE and the Cox Committee “made substantial and constructive contributions to understanding and resolving security problems at DOE. . . . we concur on balance with the damage assessment of the espionage losses conducted by the Director of Central Intelligence. We also concur with the findings of the independent review of that assessment by Admiral David Jeremiah and his panel.”
- ! “On one end of the spectrum is the view that the Chinese have acquired very little classified information and can do little with it. On the other end is the view that the Chinese have nearly duplicated the W88 warhead. . . . None of these extreme views holds water. . . . The most accurate assessment . . . is presented in the April 1999 Intelligence Community Damage Assessment.”
- ! “Despite widely publicized assertions of wholesale losses of nuclear weapons technology from specific laboratories to particular nations, the factual record in the majority of cases regarding the DOE weapons laboratories supports plausible inferences — but not irrefutable proof — about the source and scope of espionage and the channels through which recipient nations received information.”
- ! “Particularly egregious have been the failures to enforce cyber-security measures. . . .”
- ! “Never before has the panel found an agency with the bureaucratic insolence to dispute, delay, and resist implementation of a Presidential directive on security, as DOE’s bureaucracy tried to do” to PDD-61 in February 1998.
- ! DOE is “incapable of reforming itself — bureaucratically and culturally — in a lasting way, even under an activist Secretary.”

Recommendations.

- ! “Reorganization is clearly warranted.” Two alternative solutions for a new Agency for Nuclear Stewardship (ANS) to be established by statute:
 1. A new semi-autonomous agency with DOE (similar to the National Security Agency (NSA), Defense Advanced Research Projects Agency (DARPA) or the National Oceanographic and Atmospheric Administration (NOAA)) reporting directly to the Secretary of Energy.
 2. An independent agency (similar to the National Aeronautics and Space Administration (NASA)) reporting directly to the President.
- ! “The labs should never be subordinated to the Department of Defense.”
- ! “DOE cannot be fixed with a single legislative act. . . Congress and the executive branch . . . should be prepared to monitor the progress of the Department’s reforms for years to come.”
- ! “The Foreign Visitors’ and Assignments Program has been and should continue to be a valuable contribution to the scientific and technological progress of the nation.”
- ! “Abolish the Office of Energy Intelligence.”
- ! “Congress should abolish its current oversight system for national weapons labs” with about 15 competing committees. The report recommends a new Joint Committee for Congressional Oversight of ANS/Labs.

Stanford Critique

In December 1999, four scholars at Stanford University’s Center for International Security and Cooperation issued their critique of the Cox Committee’s unclassified report.²⁸ In the section on nuclear weapons, W. K. H. Panofsky found that the Cox Committee’s report “makes largely unsupported allegations about theft of nuclear weapons information, but the impact of losses is either greatly overstated or not stated at all.” Further, the author wrote that “there is no way to judge the extent, should China field a new generation of thermonuclear weapons, of the benefit derived from publicly available knowledge, indigenous design efforts, and clandestinely obtained information.” Panofsky also doubted the Cox Committee’s assertion that stolen U.S. nuclear secrets give the PRC design information on thermonuclear weapons on par with our own.

The Senate Intelligence Committee’s staff director, Nicholas Rostow, (formerly the deputy staff director of and counsel to the Cox Committee) issued a response to the critique by the group at Stanford.²⁹ He maintained that the Cox Committee report

²⁸ Johnston, Alastair Iain, W. K. H. Panofsky, Marco Di Capua, and Lewis R. Franklin, (edited by M. M. May), “The Cox Committee Report: An Assessment,” December 1999.

²⁹ Rostow, Nicholas, “The ‘Panofsky’ Critique and the Cox Committee Report: 50 Factual (continued...) ”

“is valuable” and “factually accurate.” He explained that “the important findings of the Select Committee are almost all based on classified information.” He assessed the critique as “an attempt to foster debate and to reiterate the authors’ views on U.S. relations with the People’s Republic of China.”

Congressional Action

Congress has voiced long-standing concerns about security at the nuclear weapon labs. Some attention focused on the foreign visitor program, which was reportedly not the primary concern in the public cases involving alleged leaks by U.S. scientists to China. In 1988, Senator John Glenn, chairman of the Senate Governmental Affairs Committee, held a hearing, and the General Accounting Office (GAO) presented a report on the extent to which foreign nationals work at the nuclear weapon labs and the effectiveness of security checks there. Senator Glenn also said that back in October 1979, his committee began to examine access by foreign visitors to mistakenly declassified documents at the public library at the Los Alamos lab.³⁰

More recently, the House National Security Committee requested in May 1996 that the GAO again study controls over foreign visitors at the labs.³¹ In October 1998, Congressman Hunter held a hearing on DOE’s foreign visitor program.³²

The National Defense Authorization Act for FY 1997 (P.L. 104-201) prohibited DOE from using funds for cooperative activities with China related to nuclear weapons or nuclear weapons technology, including stockpile stewardship, safety, and use control. (Stockpile stewardship relates to the evaluation of nuclear weapons without testing.) The National Defense Authorization Act for FY 1998 (P.L. 105-85) banned the DOE’s use of funds for activities with China in cooperative stockpile stewardship, and similar legislation for FY 1999 (P.L. 105-261) made the ban permanent.

Investigations

Prompted by reports that missile technology was transferred to China in connection with satellite exports, the Senate Intelligence Committee, in 1998,

²⁹ (...continued)

Errors in the Four Essays,” December 1999.

³⁰ Senate Governmental Affairs Committee hearing, “Security Weaknesses at the Nuclear Weapons Laboratories,” October 11, 1988; *Nuclear Nonproliferation: Major Weaknesses in Foreign Visitor Controls at Weapons Laboratories* (GAO/RCED-89-31), October 1988.

³¹ GAO/RCED-97-229, *DOE Needs To Improve Controls Over Foreign Visitors to Weapons Laboratories*, September 1997.

³² Hearing of the House National Security Subcommittee on Military Procurement, “Department of Energy’s Foreign Visitor Program,” October 6, 1998.

carried out an investigation and issued its unclassified report on May 7, 1999.³³ On March 25, 1999, Senator Shelby, the committee's chair, announced that it voted unanimously to begin an investigation into whether China obtained U.S. nuclear weapon secrets and how the Administration dealt with espionage at the labs.³⁴ On January 27, 2000, the committee's staff director, Nicholas Rostow, said that the committee will independently confirm that the DOE has improved security at the labs.³⁵

In the House, the Cox Committee, in the last half of 1998, examined broader technology transfers to China, including possible leaks of missile and nuclear weapon-related know-how. The bipartisan committee unanimously approved a classified report, with 38 recommendations, on December 30, 1998 and, after working with the Clinton Administration, issued a declassified version on May 25, 1999. (See section on Damage Assessment below.)

The Senate Governmental Affairs Committee conducted 13 hours of closed hearings to review the investigatory steps of the Departments of Energy and Justice, and the FBI. It issued a bipartisan report on August 5, 1999, under the names of both Chairman Fred Thompson and Ranking Minority Member Joseph Lieberman. The committee did not take a position on whether the W88 or other nuclear weapons were compromised, but concluded that the federal government's handling of the investigation since 1995 consisted of "investigatory missteps, institutional and personal miscommunications, and ... legal and policy misunderstandings and mistakes at all levels of government." The Senators said that "the DOE, FBI, and DOJ must all share the blame for our government's poor performance in handling this matter."³⁶

On October 26, 1999, Senator Specter, under the jurisdiction of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, held the first hearing in his investigation into the Justice Department's handling of the PRC nuclear espionage investigation, satellite exports, campaign finance, Waco, and other issues. (See also Hearings below.) Senator Specter criticized the Department's prosecution of Peter H. Lee in 1997, which resulted in a plea bargain. Defenders have argued that the information involved has been declassified, and the defendant is not a spy and

³³ Senate Select Committee on Intelligence, "Report On Impacts To U.S. National Security Of Advanced Satellite Technology Exports to the People's Republic of China (PRC), and Report on the PRC's Efforts to Influence U.S. Policy," May 1999.

³⁴ "Senate Intelligence Committee Votes Unanimously to Begin Formal Investigation into Chinese Espionage at Nuclear Research Labs," news release, March 25, 1999.

³⁵ "Senate Panel Wants Independent Energy Dept. Security Check," *CQ Weekly*, January 29, 2000.

³⁶ Senate Governmental Affairs Committee, "Department of Energy, FBI, and Department of Justice Handling of the Espionage Investigation into the Compromise of Design Information on the W88 Warhead," August 5, 1999; Walter Pincus, "China Spy Probe Bungled, Panel Finds," *Washington Post*, August 6, 1999.

did not pass nuclear weapon secrets.³⁷ On March 8, 2000, Senator Specter issued a report critical of the investigation of Wen Ho Lee.³⁸

Hearings

Congressional open and closed hearings in the 106th Congress on the question of suspected PRC acquisition of U.S. nuclear weapon secrets, first reported by news media in January 1999, included these held by the following panels:

Senate Armed Services, and Energy and Natural Resources, March 16, 1999;
House Appropriations Subcom. on Commerce, Justice, State, and Judiciary, March 17, 1999;
Senate Select Intelligence, March 17, 1999;
Senate Armed Services, March 25, 1999;
Senate Armed Services, April 12, 1999;
Senate Energy and Natural Resources (closed), April 14, 1999;
House Armed Services Subcom. on Military Procurement, April 15, 1999;
House Commerce Subcom. on Oversight and Investigations, April 20, 1999;
Senate Energy and Natural Resources, April 28, 1999;
Senate Intelligence (closed), April 29, 1999;
Senate Energy and Natural Resources, May 5, 1999;
Senate Judiciary, May 5, 1999;
House Commerce, May 5, 1999;
Senate Energy and Natural Resources, May 12, 1999;
Senate Intelligence (closed), May 12, 1999;
Senate Intelligence (closed), May 19, 1999;
Senate Energy and Natural Resources, May 20, 1999;
Senate Energy (closed), May 20, 1999;
Senate Government Affairs (closed), May 20, 1999;
House Science, May 20, 1999;
House International Relations Subcom. on Asia and Pacific, May 26, 1999;
Senate Governmental Affairs Subcom. on International Security, Proliferation, and Federal Services, May 26, 1999;
House Intelligence (closed), June 8, 1999;
Senate Judiciary (closed), June 8, 1999;³⁹
Senate Governmental Affairs (closed), June 9, 1999;
Senate Intelligence, June 9, 1999;
Senate Governmental Affairs, June 10, 1999;

³⁷ Vernon Loeb, "Justice Accused of Laxity in Spy Case," *Washington Post*, October 27, 1999; "Questions About Another Chinese Spy Case," *Washington Post*, April 4, 2000; Bill Gertz, "Specter Berates Justice's Spy Case Handling," *Washington Times*, April 6, 2000; John Solomon, "U.S. Gave Spy A Plea Bargain Prior to Damage Report," *Philadelphia Inquirer*, May 21, 2000.

³⁸ Senator Arlen Specter, "Report on the Investigation of Espionage Allegations Against Dr. Wen Ho Lee," March 8, 2000.

³⁹ On December 21, 1999, the Senate Judiciary Committee released an unclassified transcript of its closed hearing with Attorney General Janet Reno on June 8, 1999.

Senate Banking, Housing, and Urban Affairs, June 10, 1999;
 Senate Armed Services, Energy, Governmental Affairs, and Intelligence, June 22, 1999;
 House Commerce, June 22, 1999;
 Senate Armed Services, June 23, 1999;
 House Armed Services, June 24, 1999;
 House Government Reform, June 24, 1999;
 House Science, June 29, 1999;
 Senate Intelligence (closed), June 30, 1999;
 House Commerce, July 13, 1999;
 House Armed Services, July 14, 1999;
 Senate Energy and Natural Resources, July 16, 1999;
 House Commerce, July 20, 1999;
 Congressional Asian Pacific American Caucus (briefing), on October 5, 1999;
 Senate Governmental Affairs and Energy, October 19, 1999;
 House Armed Services Subcom. on Military Procurement, October 20, 1999;
 Senate Judiciary Subcom. on Administrative Oversight and the Courts, October 26, 1999;
 House Commerce Subcom. on Oversight and Investigations, October 26, 1999;
 House Armed Services Subcom. on Military Procurement, November 10, 1999;
 Senate Judiciary Subcom. on Administrative Oversight and the Courts (closed), December 16, 1999;
 Senate Judiciary Subcom. on Administrative Oversight and the Courts, March 29, 2000;
 Senate Judiciary Subcom. on Administrative Oversight and the Courts, April 5, 2000;
 Senate Judiciary Subcom. on Administrative Oversight and the Courts, April 12, 2000;
 Senate Judiciary and Select Intelligence, September 26, 2000;
 Senate Intelligence (closed), September 26, 2000;
 Senate Judiciary Subcom. on Administration Oversight and the Courts, September 27, 2000;
 Senate Judiciary Subcom. on Administration Oversight and the Courts, October 3, 2000.

Major Legislation

Moratorium on Foreign Visits. Some Members expressed concerns about foreign visitors to the national labs, but the Administration has said that foreign visitors have not compromised U.S. nuclear weapon secrets. Representative Ryun introduced H.R. 1348 on March 25, 1999, to prohibit foreign nationals who are on the DOE's Sensitive Countries List⁴⁰ from visiting the nuclear weapon labs, unless the Secretary of Energy notifies Congress ten days before waiving the prohibition. Senator Shelby introduced similar legislation (S. 887) on April 27, 1999.

⁴⁰ DOE, "Sensitive Countries List," May 1999. Because of reasons of national security, terrorism, or nuclear proliferation, the following are included: Algeria, Armenia, Azerbaijan, Belarus, PRC, Cuba, Georgia, India, Iran, Iraq, Israel, Kazakhstan, Kyrgyzstan, Libya, Moldova, North Korea, Pakistan, Russia, Sudan, Syria, Taiwan, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

On May 27, 1999, the Senate agreed by voice vote to Senator Lott's amendment to the National Defense Authorization Act for FY 2000 (S. 1059). The amendment sought to improve the monitoring of satellite exports and strengthen safeguards, security, and counterintelligence at DOE facilities.⁴¹ On June 9, 1999, Representative Cox introduced an amendment⁴² to the House's version (H.R. 1401). The amendment consisted of 27 sections, with 25 sections requiring reports or other actions, or amending the law; a section simply providing a short title; and a section providing a definition of "national laboratory." The sections or subsections of the Cox amendment addressed fully or partially 21 of the 38 recommendations of the Cox Committee. The House agreed to the Cox amendment by 428-0 on that day and passed H.R. 1401 on June 10, 1999. Meanwhile, Representative Ryun's amendment (to impose a two-year moratorium on foreign visitors from sensitive countries to the national labs) failed by 159-266 on June 9, 1999. Section 3146 of the FY 2000 National Defense Authorization Act (P.L. 106-65), enacted on October 5, 1999, requires background checks on foreign visitors and imposes a moratorium on visits to the national labs by foreign nationals of countries on the Sensitive Countries List, until DOE's Director of Counterintelligence, the Director of the FBI, and the DCI issue certifications about security measures for the foreign visitors program. The Secretary of Energy, though, may waive the ban on a case-by-case basis. Secretary Richardson said on December 2, 1999, that he will begin to issue such waivers for foreign scientists, in order to "restore the proper balance between security and science."⁴³

New National Nuclear Security Administration (NNSA). In May 1999, Senators Kyl, Murkowski, and Domenici drafted an amendment to the Defense Authorization bill (S. 1059) to create a new agency within DOE, but Senate leaders removed the language on May 27 after Secretary Richardson threatened to recommend a Presidential veto.⁴⁴ The Administration, represented by Richardson, opposed the Senators' proposal, saying it would undermine his authority and create a new "fiefdom."⁴⁵ A critic of the proposal wrote that "DOE is indeed a dysfunctional bureaucracy, but the labs are not better. Making the labs more autonomous is the wrong way to go."⁴⁶ Other opponents have said that the labs need to retain openness in order to advance scientific research that is important to national security.

On the other side, the President's Foreign Intelligence Advisory Board (PFIAB), chaired by former Senate Warren Rudman, recommended, on June 15, 1999, a new Agency for Nuclear Stewardship (ANS) and argued that semi-autonomous or independent "organizations like NASA [National Aeronautics and Space

⁴¹ For language of amendment, see *Congressional Record*, May 26, 1999, p. S6073-6074.

⁴² *Congressional Record*, June 8, 1999, p. H3862-3866.

⁴³ Pincus, Walter, "Energy Chief to Allow Foreign Scientists to Visit Labs," *Washington Post*, December 3, 1999.

⁴⁴ *Congressional Quarterly*, June 19, 1999, p. 1475-76.

⁴⁵ *Congressional Quarterly*, June 26, 1999, p. 1559-60.

⁴⁶ Eldredge, Maureen (director of the Alliance for Nuclear Accountability, a watchdog group on DOE), "Don't Trust Our Nuclear Labs," *Washington Post*, June 28, 1999.

Administration] and DARPA [Defense Advanced Research Projects Agency] have advanced scientific and technological progress while maintaining a respectable record of security.”⁴⁷ Secretary Richardson agreed with the PFIAB that DOE’s organizational structure requires serious change but expressed “strong reservations” about the recommendation for a semi-independent or independent agency.⁴⁸

On June 7, 1999, Representative Thornberry introduced H.R. 2032 to establish a Nuclear Security Administration in the Department of Energy. Some Members also looked at introducing language to reorganize DOE in the Senate Intelligence Authorization bill for FY 2000 (S. 1009).

On July 7, 1999, however, Secretary Richardson agreed to the proposal to set up a new ANS, as long as it would be a semi-autonomous agency within DOE, under his control, and not a fully autonomous agency.⁴⁹ By a vote of 96-1, the Senate on July 21, 1999, approved an amendment (S.Amdt. 1258, Kyl) to the Senate-passed FY 2000 Intelligence Authorization Act (H.R. 1555) to create the ANS. Richardson praised the bill, saying it was “a good start” in codifying reforms at DOE.⁵⁰ The ANS would be a separately organized agency within the DOE, under the direction of the Energy Secretary, to be headed by the Under Secretary for Nuclear Stewardship who shall also serve as director of the ANS. Democratic Senators Bingaman and Levin sought changes to the amendment, including explicit authority for the Energy Secretary to continue to use the field offices⁵¹ and to control counterintelligence and security operations. The House’s options included agreeing to the Senate’s plan or opting for another option, including leaving the organization of DOE unchanged, creating an independent agency outside of DOE, and changing the contractual arrangements for running the labs (under the University of California (UC), for example). Some have asserted that UC, whose contract has not been subject to competitive bidding since 1943, provides “marginal” oversight of and “political protection” for some DOE labs.⁵² (UC operates the Lawrence Livermore and Los Alamos labs, while Lockheed Martin Corporation runs Sandia.)

⁴⁷ President’s Foreign Intelligence Advisory Board, Special Investigative Panel, *Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy*, unclassified, June 1999. Also called the Rudman Report.

⁴⁸ DOE, “Statement by Secretary of Energy Richardson on the President’s Foreign Intelligence Advisory Board Report,” June 15, 1999.

⁴⁹ Pincus, Walter, “Richardson Accepts Nuclear Agency Plan,” *Washington Post*, July 8, 1999.

⁵⁰ DOE, news release, “Statement of Secretary of Energy Bill Richardson on the Senate Bill to Reorganize the Department of Energy,” July 21, 1999.

⁵¹ The Rudman Report called for streamlining DOE’s system of 11 field offices, with 6,000 employees, in addition to 5,000 at headquarters, that resulted in a “convoluted and bloated management structure.”

⁵² Trujillo, Manuel and Chuck Montano (Los Alamos employees), “Compromised: The Los Alamos Lab,” letter to the editor, *Washington Post*, July 7, 1999. UC runs Los Alamos and Lawrence Livermore. Lockheed Martin Corp. runs Sandia.

Then, the House Armed Services Committee argued that it has jurisdiction over nuclear weapons and that the FY 2000 National Defense Authorization Act (S. 1059; P.L. 106-65) ought to legislate organizational changes at DOE.⁵³ Conferees adopted H. Rept. 106-301 on August 6, 1999, that would create a National Nuclear Security Administration (NNSA) within DOE effective March 1, 2000. However, the Administration and some Democrats on the Senate Armed Services Committee objected to what they argued would undermine the Energy Secretary's authority. Senator Levin said that "the final product on DOE reorganization appears to go beyond creation of a new, separately organized entity within DOE, which I support." He said that the Energy Secretary would have direct control over the administrator of NNSA, but not its employees. Representative Thornberry contended that the secretary would have no restraints on his authority over the new administrator.⁵⁴

Richardson initially wanted to recommend that President Clinton veto the bill, as its provision on DOE reorganization differed from the Senate-passed intelligence authorization act he supported in July 1999. Richardson objected to the conference report because, he says, it would undermine his authority; blur the lines of responsibility in security, counterintelligence, environment, safety and health; and direct budgetary proposals be made directly to Congress.⁵⁵ In addition to some Democrats in Congress, 46 state attorneys general also urged a Presidential veto.⁵⁶

After the House and Senate passed S. 1059 in September 1999, Richardson announced on September 26, 1999, that he would not oppose the bill. He said, "I believe we can interpret the provisions so there are clear lines of responsibility and the secretary is in charge and we protect our national security."⁵⁷

Concerns about Compliance with the Law. Upon signing the FY 2000 National Defense Authorization Act into law (P.L. 106-65) on October 5, 1999, President Clinton raised concerns in Congress when he criticized the DOE reorganization (Title 32) as "the most troubling" part of the act and said that legislative action to "remedy the deficiencies" will help in the process of nominating the new Under Secretary for Nuclear Security who will head the NNSA. "Until

⁵³ Also see: CRS Report RL30569, *Department of Energy: Status of Legislated Security and Counterintelligence Measures*, by Jonathan Medalia; CRS Issue Brief IB10036, *Restructuring DOE and its Laboratories: Issues in the 106th Congress*, by William Boesman.

⁵⁴ McCutcheon, Chuck and Pat Towell, "Defense Bill Negotiators Fail to Placate Administration on Nuclear Security Proposal," *Congressional Quarterly Weekly*, August 7, 1999.

⁵⁵ Pincus, Walter, "Richardson May Urge Veto of Nuclear Agency," *Washington Post*, August 7, 1999; "Richardson Likely to Urge Authorization Bill Veto Over DOE Language," *Inside the Pentagon*, August 12, 1999.

⁵⁶ Pincus, Walter and Vernon Loeb, "Veto Urged for Energy Revamp," *Washington Post*, September 9, 1999.

⁵⁷ "Energy to Clinton: Sign Defense Bill," *Associated Press*, September 27, 1999; "Richardson Relents," *CQ Weekly*, October 2, 1999.

further notice,” the President directed the Secretary of Energy to act as the Under Secretary for Nuclear Security and to direct all personnel of the NNSA.⁵⁸

At a Senate Armed Services Committee hearing two days later, Senator Domenici charged that the Administration was trying to circumvent the new law.⁵⁹ Representative Spence, chairman of the House Armed Services Committee, wrote to the President that his order would undermine congressional intent.⁶⁰ On October 19, 1999, the Senate Government Affairs, and Energy and Natural Resources Committees held a joint hearing to warn Secretary Richardson against failure to implement the law to establish the NNSA. Richardson assured Members that he will comply with the law but urged Congress to use the Intelligence Authorization Act (H.R. 1555) to correct what he saw as deficiencies in the Defense Authorization Act. Some Members said it was premature to allege noncompliance, since the effective date is March 1, 2000. In November 1999, the House and Senate passed H.R. 1555 without provisions on security at the DOE labs.

A CRS legal memorandum for Representative Thornberry (that has been made public) agreed that President Clinton’s statement and directions raise legal and constitutional issues on the question of the Administration’s compliance with the law creating the NNSA.⁶¹

On January 7, 2000, Secretary Richardson submitted DOE’s plan for implementation of legislation to establish the NNSA on March 1, 2000 and named a committee to search for the first Under Secretary for Nuclear Security who is to serve as the head of NNSA.⁶²

However, Richardson’s plan raised questions about the semi-autonomous status of the NNSA, calling for some DOE officials to “serve concurrently” in some functions, including nuclear security and counter-intelligence. He cited reasons such as “program continuity,” “shortness of time for implementation,” and the “scheduled change in executive branch administration next January.” Field managers at some field operations will also “serve concurrently in dual positions.”

Indeed, a special panel of the House Armed Services Committee, with Representatives Thornberry, Tauscher, Hunter, Graham, Ryun, Gibbons, Sisisky, and

⁵⁸ White House, “Statement by the President,” October 5, 1999.

⁵⁹ Towell, Pat, “Nuclear Agency Eruption,” *CQ Weekly*, October 9, 1999.

⁶⁰ Pincus, Walter, “DOE Plan Riles Senate GOP,” *Washington Post*, October 19, 1999.

⁶¹ CRS Memorandum, “Assessment of Legal Issues Raised by the President’s Directions to the Secretary of Energy With Respect to the Implementation of the National Nuclear Security Administration Act in His Signing Statement of October 5, 1999,” November 1, 1999, by Morton Rosenberg. The congressional office has released the memo.

⁶² DOE, “Implementation Plan: National Nuclear Security Administration,” January 1, 2000; “Energy Department Proceeds with Implementation of National Nuclear Security Administration,” news release, January 7, 2000.

Spratt, reviewed DOE's implementation plan and cited some "serious flaws."⁶³ While the panel was encouraged by DOE's recent actions, it criticized the plan for "dual-hatting" DOE and NNSA officials; continuing the confused and inadequate lines of authority (e.g., with no changes in the field office structure); emphasizing DOE authority; lacking improvements to NNSA programming and budgeting; lacking specificity and comprehensiveness; and reflecting little outside consultation. The panel's report concluded that the implementation plan, if carried out, would "violate key provisions of the law." However, Representative Spratt offered his dissenting views. While he agreed that the implementation plan fell short of the legal requirements, he objected that the panel's report was too conclusive and lacked a critical review of the law that created NNSA and whether it is workable.

Other Action. In other action, Members of Congress have expressed concern about possible racial profiling used in the investigation of Wen Ho Lee and ramifications of this case on Americans of Asian Pacific heritage. The House, on November 2, 1999, passed H.Con.Res. 124, introduced by Representative Wu to express the sense of Congress that the Attorney General, Secretary of Energy, and the Commissioner of the Equal Employment Opportunity Commission should enforce security at the labs and investigate allegations of discrimination. On August 5, 1999, Senator Feinstein introduced S.Con.Res. 53, condemning prejudice against individuals of Asian and Pacific Island ancestry, which the Senate passed on July 27, 2000. (See also Racial Profiling and Selective Prosecution below.)

The Senate, led by Republican Members, voted (51-48) to reject the Comprehensive Test Ban Treaty (CTBT) on October 13, 1999, because of reservations about the implications for U.S. national security. Some supporters of the CTBT argued that the treaty may be one way to impede the PRC's nuclear weapon modernization, even if it acquired U.S. secrets, because Beijing needs to test, while blueprints and computer codes are not enough. Democratic Senator Byron Dorgan and Republican Senator Arlen Specter wrote in September 1999 that "most Americans have heard that China may have obtained secret information about U.S. nuclear weapon designs. What they haven't heard is that China may not be able to do much with that information — if the U.S. Senate does the right thing."⁶⁴

Administration's Actions

Response to Security Concerns

The Clinton Administration has acknowledged that improvements to security measures have been required at the nuclear weapon labs and said that it took a number of corrective actions in response to indications in 1995 that China may have

⁶³ House Armed Services Committee, Special Panel on Department of Energy Reorganization, "Department of Energy National Nuclear Security Administration Implementation Plan: An Assessment," February 11, 2000.

⁶⁴ Dorgan, Byron and Arlen Specter, "U.S. Wants, Needs Nuclear Test Ban Pact," *USA Today*, September 13, 1999.

obtained secrets about the W88 in the 1980s. Officials have said that, by mid-1996, DOE had reported to the FBI, National Security Council (NSC), and Intelligence Committees in Congress that there were serious concerns about China. Prompted by information from DOE and the CIA, the FBI had begun an investigation in September 1995. On April 7, 1997, the FBI completed an assessment of “great vulnerability” due to inadequate counterintelligence at the labs and reported those findings and 16 recommendations to DOE as well as the Senate Intelligence Committee.⁶⁵

Former Energy Secretary Federico Pena has defended DOE policies during his tenure from March 1997 to June 1998, saying that the department took a number of actions to strengthen security, including briefing the FBI, CIA, the Departments of Justice and Defense, and the NSC. In July 1997, DOE officials briefed the White House on its review of two decades of PRC efforts to acquire U.S. nuclear weapon secrets. A special working group of the National Counterintelligence Policy Board recommended ways to tighten lab security in September 1997, and, in February 1998, the White House issued Presidential Decision Directive (PDD-61)⁶⁶ to strengthen counterintelligence at the labs. In October 1997, FBI Director Louis Freeh and Director of Central Intelligence (DCI) George Tenet briefed Pena. In March 1998, Freeh and Tenet briefed lab directors on weaknesses in counterintelligence efforts. DOE established an Office of Counterintelligence, headed by a former FBI counterintelligence official, Edward Curran, on April 1, 1998. Curran, on July 1, 1998, submitted a report to the Secretary of Energy, with 46 recommendations for strengthening counterintelligence in response to PDD-61. The Secretary had 30 days to respond to the National Security Advisor, but Richardson did not become Secretary until September 1998. He issued an action plan on November 13, 1998.⁶⁷

Energy Secretary Richardson testified on March 16, 1999, that after he took over DOE in September 1998, he ordered some corrective measures. He said those steps included a requirement for employees with access to classified information to take polygraphs, making DOE the only agency besides the CIA to have the requirement; the hiring of counterintelligence professionals at the nuclear weapon labs; repeated doubling of DOE’s counterintelligence budget (\$7.6 million in FY 1998, \$15.6 million in FY 1999, and a request for \$31.2 million in FY 2000); and a requirement for background checks on foreign visitors to the labs. Richardson also

⁶⁵ Testimony of FBI Director Louis Freeh before the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999.

⁶⁶ For an unclassified summary of PDD-61, see Appendix to the President’s Foreign Intelligence Advisory Board’s June 1999 report, *Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy*.

⁶⁷ Pena, Federico, “Alert At The Energy Department,” *Washington Post*, March 16, 1999; Richardson, Bill (Secretary of Energy), “Guarding Our Nuclear Security,” *Washington Post*, March 15, 1999; Energy Secretary Bill Richardson, testimony on March 16, 1999; Gary Samore (NSC), briefing at Carnegie Endowment, March 17, 1999; Senate Armed Services Committee Hearing, April 12, 1999.

reported that DOE has implemented about 80 percent of the measures directed by PDD-61 and was to have achieved full implementation by the end of March 1999.⁶⁸

When he was fired from Los Alamos on March 8, 1999, the government's only suspect was identified publicly as Dr. Wen Ho Lee. Secretary Richardson said he fired Lee, because the W88 case became public and Lee allegedly failed a polygraph test in February 1999.⁶⁹ Richardson also alleged that Lee failed to notify officials about certain contacts with people in the PRC, to properly safeguard classified material, and to cooperate on security matters. (DOE now considers Lee to be retired and pays him a pension.⁷⁰)

However, Richardson fired Lee *before* agents checked his computers at work later in March 1999 and discovered that he had downloaded sensitive files to an unclassified computer at Los Alamos, alleged crimes separate from the W88 espionage case. FBI Director Louis Freeh said on March 17, 1999, that this case "is an active investigation. We've not made charges against anybody, so nobody should be accused of anything." The Cox Committee's unclassified report released in May 1999 was careful not to name any suspects.

On March 17, 1999, appearing before the Senate Intelligence Committee, Secretary Richardson announced seven initiatives to strengthen counterintelligence at the Department of Energy, in addition to PDD-61. Those steps are to:

- ! improve security of cyber-information systems, including electronic mail;
- ! improve security of documents containing weapon design data;
- ! review the foreign visitors' program (to be led by former DCI John Deutch);
- ! direct the deputy secretary and undersecretary to monitor the program to strengthen counterintelligence;
- ! review all investigative files in the Office of Counterintelligence;
- ! report annually to Congress on the counterintelligence and foreign visitors' programs;
- ! begin an internal review to examine allegations that a top official blocked notification to Congress.⁷¹

Furthermore, on April 2, 1999, Secretary Richardson ordered the nuclear weapon labs to suspend scientific work on computers that contain nuclear weapon secrets. This step was taken to prevent the possibility that sensitive data would be copied from secure computers and sent electronically through unclassified computers. Richardson acknowledged potential problems, saying that "our computer security has

⁶⁸ Joint Hearing, Senate Armed Services and Energy Committees, March 16, 1999.

⁶⁹ Risen, James, "U.S. Fires Nuclear Scientist Suspected of Spying for China," *New York Times*, March 9, 1999; Pincus, Walter, "Spy Suspect Fired At Los Alamos Lab," *Washington Post*, March 9, 1999.

⁷⁰ "Lee Agrees to Answer Additional Questions," *Washington Post*, November 19, 2000.

⁷¹ Department of Energy release, March 17, 1999.

been lax, and I want to strengthen it, and the only way to do that is to stand down.” The suspension was ordered in part because Lee was an expert in the computer systems, and an internal review showed that security measures at Los Alamos and Livermore labs were “marginal,” while Sandia received a “satisfactory” rating.⁷² In September 1999, Richardson reported that Los Alamos improved its security and received a “satisfactory” rating, while Livermore and Sandia got “marginal” ratings.⁷³

On May 11, 1999, Energy Secretary Richardson announced further reforms of DOE to increase control over the nuclear weapon labs, including the appointment of a “security czar” who will report directly to the Secretary. One month later, Richardson named retired Air Force General Eugene Habiger, former Commander in Chief of the U.S. Strategic Command, as the Director of a new Office of Security and Emergency Operations.⁷⁴ Richardson also planned to consolidate security funds in DOE under one \$800 million budget and an additional \$50 million over two years to improve computer-related security. Also, there would be greater controls over floppy disk drives that could transfer files out of the classified computer systems, and DOE would require electronic “banners” on government computers warning users that they computers are subject to monitoring.⁷⁵ DOE originally requested \$2 million for computer security, but increased the request to \$35 million after the PRC espionage case came to light. However, Congress in September 1999 did not approve the additional request in a conference committee on energy appropriations, and an unnamed Member said the committee wants to see management reform before approving a large funding increase.⁷⁶ In December 1999, Habiger complained that Congress did not provide all the funds he needs to improve security at the labs, but Representative Cox countered that Habiger has not provided Congress with a detailed plan for how the additional millions would be used.⁷⁷

The first official to lose his job as a result of the Los Alamos controversy was Victor Reis, the Assistant Energy Secretary in charge of defense programs since 1993, who resigned on June 25, 1999.⁷⁸ Testifying before the House Armed Services Committee on July 14, 1999, Reis acknowledged that he has “some responsibility”

⁷² Risen, James, “Energy Department Halts Computer Work at Three Nuclear Weapon Labs,” *New York Times*, April 7, 1999.

⁷³ DOE, news release, “Energy Secretary Richardson Releases Results of Independent Security Reviews at National Labs,” September 20, 1999.

⁷⁴ DOE, news release, “Richardson Selects Security ‘Czar,’” June 16, 1999.

⁷⁵ Risen, James, “Energy Secretary Announces Program to Strengthen Lab Security,” *New York Times*, May 12, 1999.

⁷⁶ Pincus, Walter and Vernon Loeb, “DOE Loses \$35 Million for Cyber Security,” *Washington Post*, September 29, 1999.

⁷⁷ Suro, Roberto, “Energy’s Security Initiative Lacks Fuel,” *Washington Post*, December 2, 1999.

⁷⁸ Pincus, Walter, “Nuclear Officials’ Future Uncertain,” *Washington Post*, June 25, 1999.

for the security problems and he “could have pressed harder” to strengthen security, but asserted that many other officials at DOE and FBI share the blame.⁷⁹

In July 1999, DOE instituted a new policy that requires DOE employees with security clearances to report any “close and continuing contacts” with foreigners from the sensitive countries on DOE’s list.⁸⁰ Also in July, Richardson issued revised procedures to more closely monitor visits and assignments of foreign nationals to DOE’s facilities, as part of implementing PDD-61. Lab directors no longer have authority to grant waivers of DOE security requirements, and only the Secretary may approve waivers. Richardson also derided discrimination against Americans of Asian Pacific heritage, saying that the new order only affects foreign citizens, not Americans.⁸¹

On August 12, 1999, Richardson announced the results of an internal DOE inquiry by the inspector general and ordered that three individuals be disciplined. (See Law Enforcement vs. Security below.)

In October 1999, Richardson decided to narrow the scope of controversial polygraph tests, originally considered for over 5,000 lab employees, so that about 1,000 people working in the most sensitive areas, primarily at the three nuclear weapon laboratories, will be tested. They include nuclear weapon designers, security and counterintelligence officials, employees at nuclear weapon production plants, and political appointees at DOE headquarters.⁸² In December 1999, Richardson narrowed the number to about 800 employees who will have to take the lie-detector test.⁸³

On December 10, 1999, as directed by Attorney General Reno, the Justice Department arrested and indicted Lee for mishandling classified information – but not for passing secrets to any foreign government. (See Indictment of Wen Ho Lee below.)

On January 7, 2000, Secretary Richardson presented his plan to establish the new NNSA. (See section on new NNSA above.)

Richardson, on January 19, 2000, received the report and recommendations from the Task Force Against Racial Profiling that he had established in June 1999. (See Racial Profiling and Selective Prosecution below.)

⁷⁹ Pincus, Walter, “Plenty of Blame to Go Around on Spying, DOE’s Ex-Arms Chief Says,” *Washington Post*, July 15, 1999.

⁸⁰ Pincus, Walter and Vernon Loeb, “Isn’t It Romantic: Security Rules Exempt One-Night Stands,” *Washington Post*, September 2, 1999.

⁸¹ DOE, news release, “Richardson Toughens Requirements for Unclassified Foreign Visits and Assignments,” July 14, 1999.

⁸² Pincus, Walter, “Richardson Cuts Lab Lie Tests Sharply,” *Washington Post*, October 16, 1999.

⁸³ DOE, “DOE Polygraph Implementation Plan Announced,” press release, December 13, 1999.

On January 25, 2000, Secretary Richardson said that security and counter-intelligence have been dramatically improved, including training for 700 computer systems administrators in cyber-security. DOE security czar, Eugene Habiger, said that it is now almost impossible for lab employees to transfer nuclear secrets from classified to unclassified computer systems.⁸⁴ With the tightening of security, however, there are concerns that a worsened scientific environment at the labs has hurt their mission.⁸⁵

As of March 1, 2000, the NNSA began operations. Secretary Richardson directed that about 2,000 DOE employees be realigned to be employees of NNSA.⁸⁶

On May 3, 2000, President Clinton nominated U.S. Air Force General John A. Gordon, Deputy Director of Central Intelligence since November 1997, to be the first Under Secretary for Nuclear Security and administrator of NNSA, a decision announced by Secretary Richardson on March 2, 2000.⁸⁷ The Senate confirmed (97-0) the nomination on June 14, 2000. Richardson swore in Gordon on June 28, 2000.

Issues about the Response

Timeliness and Responsiveness. Critics have argued that the Clinton Administration was slow to respond to concerns about China and the labs and that DOE officials have resisted reforms for years. They have said that in November 1996, Charles Curtis (Undersecretary and then Deputy Secretary of Energy from February 1994 to April 1997), ordered new security measures (called the Curtis Plan)⁸⁸, but these steps — including requiring background checks again for all foreign visitors — were not carried out by the labs nor followed up by DOE officials. They have also voiced concerns about related developments reported in the press, specifically that in April 1997, the FBI recommended changes at the labs, including reinstating background checks on foreign visitors, but the DOE did not implement improvements in counterintelligence until after Bill Richardson became Secretary of Energy (in August 1998). In the spring of 1997, DOE had selected the suspect to head a program to update the computer programming used in the stockpile stewardship program that evaluates the performance of nuclear weapons without testing, and he hired a PRC citizen to assist him.⁸⁹ Moreover, some critics have questioned why the President did not issue PDD-61 until February 1998, although the suspicions that

⁸⁴ Loeb, Vernon, "Energy Chief Touts Security Upgrades at Nuclear Labs," *Washington Post*, January 26, 2000.

⁸⁵ Loeb, Vernon, "From Coast to Coast, Fallout From a Probe at California Lab, Tightened Security Too Much for Some," *Washington Post*, December 21, 1999.

⁸⁶ Secretary of Energy Richardson, "Memorandum for All Department Employees," March 1, 2000.

⁸⁷ DOE, "General John A. Gordon Selected to Head National Nuclear Security Administration," March 2, 2000.

⁸⁸ Hearing of the Senate Armed Services Committee, April 12, 1999.

⁸⁹ Risen, James, "Suspect Scientist Led Key Los Alamos Program," *New York Times*, March 24, 1999.

China obtained W88 data arose in 1995 and the FBI made recommendations to tighten counterintelligence measures in April 1997.⁹⁰

The President's Foreign Intelligence Advisory Board (PFIAB), led by former Senator Rudman, reported in June 1999 that "the speed and sweep of the [Clinton] Administration's ongoing response does not absolve it of its responsibility in years past," and "there is some evidence to raise questions about whether its actions came later than they should have." The PFIAB also noted that "the track record of previous administrations' responses to DOE's problems is mixed."⁹¹

The PFIAB noted that PDD-61 was issued on February 11, 1998, and after Secretary Richardson was sworn in on August 18, he submitted the action plan to the NSC on November 13. However, the DOE's completed implementation plan was delivered to Secretary Richardson on February 3, 1999 and issued to the labs on March 4. The board said that "we find unacceptable the more than four months that elapsed before DOE advised the National Security Advisor on the actions taken and specific remedies developed to implement the Presidential directive, particularly one so crucial." PFIAB further declared that "the fact that the Secretary's implementation plan was not issued to the labs until more than a year after the PDD was issued tells us **DOE is still unconvinced of Presidential authority** [PFIAB's emphasis]."

On July 2, 1999, House Commerce Committee chairman Tom Bliley and Rep. Fred Upton, chairman of the Oversight and Investigations Subcommittee, issued a joint statement one day after receiving a classified briefing on DOE's May 1999 inspection of security measures at Lawrence Livermore. They said that the briefing had been "delayed repeatedly by Secretary Richardson without any legitimate basis." They stated that the inspection found "serious deficiencies" in the areas of computer security, foreign visitor controls and clearances, and protection of nuclear materials. They also questioned why DOE managers failed to detect deficiencies on their own.⁹²

Law Enforcement vs. Security. There are additional concerns that the Administration did not act promptly enough or investigated aggressively enough to protect national security, because the prime suspect identified by DOE and the FBI in the W88 case, though not charged with any crime, remained employed at Los Alamos until March 8, 1999. The PFIAB's report stated in June 1999 that "there does not exist today a systematic process to ensure that the competing interests of law enforcement and national security are appropriately balanced."

⁹⁰ Risen, James and Jeff Gerth, "China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say," *New York Times*, March 6, 1999; David E. Sanger, "Clinton Aides Admit Lapses On Espionage by Chinese," *New York Times*, March 7, 1999; Jeff Gerth, "Nuclear Lapses Known in '96, Aides Now Say," *New York Times*, March 17, 1999; Vernon Loeb and Juliet Eilperin, "GOP Attacks' Impact on China Ties Concerns White House," *Washington Post*, March 17, 1999.

⁹¹ President's Foreign Intelligence Advisory Board (PFIAB), Special Investigative Panel, *Science at its Best, Security at its Worst: A Report on Security Problems at the U.S. Department of Energy*, unclassified, June 1999.

⁹² "Bliley, Upton React to Briefing on Livermore Security Inspection," press release, July 2, 1999.

Although criminal investigations usually require leaving the suspects in place to obtain evidence and assess damage, the suspect was only required to take polygraph tests in December 1998 (conducted by DOE) and in February 1999 (given by the FBI). DOE did not remove him from access to highly classified information in the X Division until December 1998⁹³ and did not dismiss until March 8, 1999⁹⁴, even though the Director of the FBI had informed DOE officials in a meeting on August 12, 1997, that there was not sufficient evidence to warrant keeping the investigation a secret and that denying the suspect continued access to sensitive information may be more important than the FBI's stalled case.⁹⁵ In congressional testimony on March 16, 1999, Energy Secretary Richardson confirmed that the FBI began its investigation in 1995, and he asserted that DOE and the FBI have worked "extremely cooperatively." Yet, Secretary Richardson acknowledged concerns when he decided to begin an investigation at DOE to determine how the prime suspect retained his access to classified information and his job.⁹⁶

On August 12, 1999, Richardson announced the results of the internal DOE inquiry by the Inspector General into the espionage investigation. Richardson declared, "there was a total breakdown in the system and there's plenty of blame to go around."⁹⁷ He said that "the espionage suspect should have had his job assignment changed to limit his access to classified information much sooner than it was, and cooperation with the FBI should have been stronger." He also announced that of the 19 DOE officials identified by the Inspector General as bearing some responsibility for counterintelligence and security, three employees would be disciplined. News reports identified those three individuals as Sig Hecker, former director of Los Alamos from 1986 to 1997 still employed as a scientist; Robert Vrooman, former head of counterintelligence at Los Alamos serving as a consultant; and Terry Craig, a former counterintelligence team leader working at a different part of the lab. In addition, former secretary Federico Pena, former deputy secretary Elizabeth Moler, and former deputy secretary Victor Reis reportedly would have been subject to disciplinary action if still employed by DOE.⁹⁸

Wiretaps and Computer Monitoring. There are also questions about why the FBI did not conduct electronic surveillance of the suspect or search his office and

⁹³ Cox Committee's unclassified report, May 1999, Vol. 1, p. 90.

⁹⁴ Pincus, Walter, "Spy Suspect Fired At Los Alamos Lab," *Washington Post*, March 9, 1999.

⁹⁵ Risen, James and Jeff Gerth, "China Stole Nuclear Secrets from Los Alamos, U.S. Officials Say," *New York Times*, March 6, 1999; Testimony of Louis Freeh, Director of the FBI, before the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999.

⁹⁶ Risen, James, "U.S. Inquires Why Suspect At Atom Lab Kept Access," *New York Times*, April 23, 1999.

⁹⁷ DOE press release, "Richardson Announces Results of Inquiries Related to Espionage Investigation," August 12, 1999.

⁹⁸ Loeb, Vernon, "Discipline Urged Against Los Alamos Employees," *Washington Post*, August 13, 1999.

home computers earlier. FBI agents began to question him on March 5, 1999⁹⁹ and, after he was fired, searched his office, including government computers, in March and his home in April 1999.¹⁰⁰ Some question the Department of Justice's role in not supporting the FBI's requests to electronically monitor him through wiretaps. The FBI said that the Justice Department's Office of Intelligence Policy Review (OIPR) denied the FBI's applications for electronic surveillance, or wiretaps, of the suspect in August 1997 and in December 1998, because there was insufficient evidence that the suspected espionage activity was current. Because the OIPR did not approve the applications, they did not reach the court established under the authority of the Foreign Intelligence Surveillance Act (FISA).

On May 24, 1999, Reno said that the Justice Department has not authorized intrusions in the lives of American citizens "when, as in this case, the standards of the Constitution and the Foreign Intelligence Surveillance Act (FISA) have not been met." She further explained that "although I was not apprised of the details of the case at the time the decision was made, I have reviewed the decision of the OIPR and fully support it." Also, contrary to some reports, the 1997 request for FISA coverage "did not contain a request to search any computer."¹⁰¹ At a closed hearing of the Senate Judiciary Committee on June 8, 1999, Attorney General Janet Reno explained that "the FISA application was legally insufficient to establish probable cause."¹⁰² Among the reasons, she said the request focused on the Lees, while "the elimination of other logical suspects, having the same access and opportunity, did not occur."

The PFIAB said that "the Department of Justice may be applying the FISA in a manner that is too restrictive, particularly in light of the evolution of a very sophisticated counterintelligence threat and the ongoing revolution in information systems." The board also questioned "why the FBI's FISA request did not include a request to monitor or search the subject's workplace computer systems."

However, there are competing concerns about protection of civil liberties. As the *Washington Post* stated, "the Lee case, for example, has been cited as evidence of the need to relax civil liberties protections to make surveillance easier in national security cases. This is a dreadful idea." The *Post* also cautioned that Dr. Lee "is entitled to a presumption of innocence that he has not typically received in public discussions of the matter."¹⁰³

Some are concerned that the lack of monitoring over the prime suspect's computer use may have grave consequences for securing secrets of U.S. nuclear

⁹⁹ Risen, James, "U.S. Fires Nuclear Scientist Suspected of Spying for China," *New York Times*, March 9, 1999.

¹⁰⁰ Vernon Loeb and Walter Pincus, "FBI Searches Home Of Scientist Suspected Of Spying For China," *Washington Post*, April 11, 1999.

¹⁰¹ Department of Justice, "Statement by Attorney General Janet Reno on the Los Alamos Laboratory Matter," May 24, 1999.

¹⁰² On December 21, 1999, the Judiciary Committee released an unclassified transcript of the hearing.

¹⁰³ "The Espionage Scandal," *Washington Post*, August 19, 1999.

weapons. Additional reports have revealed that Secretary Richardson shut down the lab computers on April 2, 1999, because investigators discovered after Lee was fired and after obtaining permission to check his computer in March 1999 that he had carried out a possibly significant compromise of computer security affecting nuclear weapons. The FBI discovered that he had transferred enormous volumes of files containing millions of lines of highly secret computer codes on nuclear weapon designs (called “legacy codes”) from a classified computer to an unclassified computer at Los Alamos. Moreover, someone who improperly used a password may have subsequently accessed the files in the unclassified computer.¹⁰⁴ Lee also tried to delete some of the classified files.¹⁰⁵ The FBI says that it was not able to obtain a search warrant to search the computer at Los Alamos earlier, because the labs did not place “banners” warning employees that the computers were outside the protection of privacy rights and subject to government monitoring. However, in May 1999, a report said that Lee, in 1995, had indeed signed a routine waiver giving Los Alamos the right to audit his computer use.¹⁰⁶

Speaking publicly for the first time in his own defense, Dr. Wen Ho Lee said in a television interview on August 1, 1999, that he is innocent of wrongdoing, he did not disclose nuclear secrets to China or any unauthorized person, and he transferred the files on weapon data to an unclassified computer to protect the information, which is “common practice” at the labs. Lee also said that he has been made a “scapegoat” in the investigation even though he devoted “the best time of my life to this country,” because he was the only Asian American working in the X Division, the group in charge of weapon design at Los Alamos.¹⁰⁷ Others have reportedly described the transfer of computer files between classified and unclassified computers at the labs to have been common practice, particularly after the computer network at Los Alamos split into two networks in December 1994.¹⁰⁸

On August 5, 1999, Senators Thompson and Lieberman of the Governmental Affairs Committee reported on a bipartisan basis how DOE, FBI, and DOJ may have mishandled the investigation, particularly in communications among them.¹⁰⁹

¹⁰⁴ Risen, James and Jeff Gerth, “U.S. Says Suspect Put Data on Bombs in Unsecure Files,” *New York Times*, April 28, 1999.

¹⁰⁵ Loeb, Vernon and Walter Pincus, “Los Alamos Security Breach Confirmed,” *Washington Post*, April 29, 1999; James Risen and Jeff Gerth, “China Spy Suspect Reportedly Tried to Hide Evidence,” *New York Times*, April 30, 1999.

¹⁰⁶ Risen, James, “Energy Secretary Announces Program to Strengthen Lab Security,” *New York Times*, May 12, 1999.

¹⁰⁷ CBS, “60 Minutes,” August 1, 1999; Robert Pear, “Suspect in Atom Secrets Case Publicly Denies Aiding China,” *New York Times*, August 2, 1999.

¹⁰⁸ Carey, Pete, “Intricate System Adds Complexity to Spying Probe; Inner Workings of Weapons Lab May Slow Search for Evidence,” *San Jose Mercury News*, June 10, 1999.

¹⁰⁹ Senate Governmental Affairs Committee, “Department of Energy, FBI, and Department of Justice Handling of the Espionage Investigation into the Compromise of Design Information on the W88 Warhead,” August 5, 1999; Walter Pincus, “China Spy Probe Bungled, Panel Finds,” *Washington Post*, August 6, 1999.

In announcing the results of an inquiry by DOE's Inspector General, Richardson confirmed on August 12, 1999, that Lee had signed a computer privacy waiver in April 1995, but a counterintelligence official failed to adequately search lab records and missed the waiver. Thus, the FBI did not know about the waiver until May 1999. Richardson recommended disciplinary action against the official.¹¹⁰

On March 8, 2000, Senator Specter, as part of his investigation under the jurisdiction of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, issued a report critical of the investigations of Wen Ho Lee. The report criticized the FBI's and DOE's investigations as "inept." It also criticized the Department of Justice and Attorney General Janet Reno for not forwarding the FBI's request for a warrant to the FISA court, despite "ample, if not overwhelming, information to justify the warrant."¹¹¹ However, Senator Charles Grassley, chairman of the subcommittee, criticized the FBI for not telling Congress through most of 1999 that the bureau had found that Lee was not the prime suspect in the espionage case at Los Alamos. Senator Grassley said that he, along with Senators Specter and Torricelli, had asked the General Accounting Office to examine whether a senior FBI official (believed to be Neil Gallagher, head of the National Security Division) had withheld documents from Congress in 1999. (The FBI then asked that the investigation be suspended after Wen Ho Lee's indictment.) Senator Grassley sent a letter to Senator Specter that disputed his report, saying that the evidence against Lee was weak.¹¹²

Scope of Investigation. Reports have said that the investigation in the W88 espionage case (originally code-named "Kindred Spirit") prematurely narrowed in on one lab (Los Alamos) and one suspect (Wen Ho Lee). In June 1999, the PFIAB's report criticized the Administration's investigation as focusing too narrowly "on only one warhead, the W-88, only one category of potential sources — bomb designers at the national labs — and on only a four-year window of opportunity." The investigation, it said, "should have been pursued in a more comprehensive manner."¹¹³ The FBI reportedly had one or two agents to the case in 1996, increased the number of agents to three or four in 1997, and assigned 40 agents by mid-1999.¹¹⁴

Acknowledging concerns about how the W88 case was handled, Attorney General Reno said on May 6, 1999, that the Justice Department would establish a panel of FBI agents and federal prosecutors to conduct an internal review of the

¹¹⁰ DOE, news release, "Richardson Announces Results of Inquiries Related to Espionage Investigation," August 12, 1999.

¹¹¹ Senator Arlen Specter, "Report on the Investigation of Espionage Allegations Against Dr. Wen Ho Lee," March 8, 2000.

¹¹² Loeb, Vernon, "GAO Probing Senior FBI Official," *Washington Post*, March 9, 2000.

¹¹³ PFIAB.

¹¹⁴ Risen James and Jeff Gerth, "U.S. Is Said To Have Known Of China Spy Link in 1995," *New York Times*, June 27, 1999.

investigation of Wen Ho Lee.¹¹⁵ Then, on September 23, 1999, Attorney General Janet Reno and FBI Director Louis Freeh announced that the government had expanded its investigation to conduct a more thorough examination of evidence and possible alternative sources of information, including military facilities and defense contractors.¹¹⁶ The FBI reportedly began this expanded espionage investigation in April 1999 and gave it the code-name “Fall-out.”¹¹⁷

However, a report said that as early as January 1999, two months before Wen Ho Lee’s arrest, the FBI had doubted that he was the source of the PRC’s information on the W88 nuclear warhead. The FBI’s field office in Albuquerque, NM, wrote a memo to headquarters on January 22, 1999, questioning whether Lee was the prime suspect in the W88 case (code-named “Kindred Spirit”), in part because he passed the December 1998 polygraph test. An earlier memo, written on November 19, 1998, from the Albuquerque office to headquarters had stated that investigators would look into 10 other people who had been named as potential suspects in DOE’s administrative probe. Senator Arlen Specter, however, at whose hearing the documents emerged, dismissed those doubts about Lee being the prime suspect, saying that FBI agents were “thrown off” course by the 1998 polygraph.¹¹⁸

By November 1999, the FBI reportedly had acquired new evidence that the PRC acquired information about U.S. nuclear weapons from a facility that assembles those weapons. The evidence apparently stemmed from errors in the PRC intelligence document said to contain a description of the W88 warhead. The errors were then traced to one of the “integrators” of the weapons, possibly including Sandia National Lab, Lockheed Martin Corporation (which runs Sandia), and the Navy.¹¹⁹

On May 16, 2000, Attorney General Janet Reno reportedly was briefed on the classified, four-volume report of the Justice Department’s internal review of its handling of the original investigation. The review is said to have found that the FBI mishandled the espionage probe, in part because of internal turf wars, by not acting sooner, not committing enough resources sooner, and prematurely focusing on Wen Ho Lee as the only prime suspect. The report is said to state that the government could have discovered Lee’s downloading of computer files years earlier, since he had

¹¹⁵ Walsh, Edward, “Reno Sets Review of ‘Process’ on China Spying Concerns,” *Washington Post*, May 7, 1999.

¹¹⁶ Risen, James and David Johnston, “U.S. Will Broaden Investigation of China Nuclear Secrets Case,” *New York Times*, September 23, 1999.

¹¹⁷ Loeb, Vernon, “Spy Probe Raised Doubts,” *Washington Post*, March 7, 2000.

¹¹⁸ Loeb, Vernon, “Spy Probe Raised Doubts,” *Washington Post*, March 7, 2000.

¹¹⁹ Loeb, Vernon and Walter Pincus, “FBI Widens Chinese Espionage Probe,” *Washington Post*, November 19, 1999.

signed a privacy waiver and a court order was not required.¹²⁰ FBI agents have acknowledged multiple mistakes in the investigation of Wen Ho Lee.¹²¹

In October 2000, it was reported that the investigation had shifted significantly to examine the Pentagon and its facilities and contractors, after intelligence agencies concluded that PRC espionage acquired more classified U.S. missile technology, including that on the heat shield, than nuclear weapon secrets. Difficulties in translating 13,000 pages of secret PRC documents resulted in this delayed finding. The Pentagon then decided to hire 450 counter-intelligence experts.¹²²

Indictment of Wen Ho Lee. Former Los Alamos scientist Wen Ho Lee's criminal case is a result of, but unrelated to, the government's investigation of whether the PRC obtained W88 secrets by espionage (the original probe called "Kindred Spirit" and the expanded investigation called "Fall-out"). By November 1999, the Justice Department reportedly was not planning to charge Lee with espionage, because there was no evidence that he passed nuclear weapon secrets to the PRC.¹²³ On December 4, 1999, the top law-enforcement, security, and DOE officials held a meeting at the White House on whether to indict the prime suspect. Attorney General Janet Reno, National Security Advisor Sandy Berger, Energy Secretary Bill Richardson, FBI Director Louis Freeh, DCI George Tenet, and U.S. Attorney John Kelly attended.¹²⁴

By December 1999, the FBI completed the specific investigation that focused on Lee's transfers of computer files, which were discovered *after* he was fired in March 1999 and FBI agents searched his home in April 1999. The case was presented to a federal grand jury in Albuquerque, N.M. On December 10, 1999, as directed by Attorney General Reno, the Justice Department arrested and indicted Lee for allegedly "mishandling classified information" – but not for passing secrets to any foreign government(s).¹²⁵ Lee was charged with violations of the Atomic Energy Act, including unlawful acquisition and removal of Restricted Data,¹²⁶ that carry a

¹²⁰ Vise, David A. and Vernon Loeb, "Justice Study Faults FBI in Spy Case," *Washington Post*, May 19, 2000.

¹²¹ Cohen P. Laurie and David S. Cloud, "How Federal Agents Bungled the Spy Case Against Lee," *Wall Street Journal*, December 8, 2000.

¹²² Pincus, Walter and Vernon Loeb, "China Spy Probe Shifts to Missiles," *Washington Post*, October 19, 2000; "Pentagon to Add 450 Experts to Protect Defense Secrets," October 27, 2000.

¹²³ Pincus, Walter, "U.S. Near Decision on Indicting Lee in Los Alamos Case," *Washington Post*, November 5, 1999.

¹²⁴ Risen, James and David Johnston, "Decision Nears on the Fate of Ex-Los Alamos Scientist," *New York Times*, December 8, 1999.

¹²⁵ Department of Justice, U.S. Attorney John J. Kelly, District of New Mexico, news release, "Wen Ho Lee Indicted for Violating the Atomic Energy Act of 1954 and for Unlawful Gathering and Retention of National Defense Information," December 10, 1999.

¹²⁶ Restricted Data means data concerning: 1) the design, manufacture, or utilization of atomic (continued...)

maximum penalty of life imprisonment.¹²⁷ The charges included the “intent to injure the United States” or “to secure an advantage to any foreign nation.” Furthermore, Lee was charged with violations of the Federal Espionage Act, including unlawful gathering and retention of national defense information, that carry a maximum penalty of imprisonment for ten years.¹²⁸

Specifically, the 59-count indictment alleged that Lee knowingly downloaded and removed from Los Alamos extensive “classified files” relating to the design, manufacture, and testing of nuclear weapons. The investigation, which included holding over 1,000 interviews and searching more than 1,000,000 computer files, found that Lee transferred classified files to 10 portable computer tapes and that seven of the tapes were unaccounted for. The government charges that Lee, in 1993 and 1994, transferred Restricted Data on nuclear weapon research, design, construction, and testing from the classified computer system to an unsecure computer at Los Alamos, and then later downloaded the files to nine tapes. As recently as 1997, Lee allegedly downloaded current nuclear weapon design codes and other data directly to a 10th tape. These simulation codes are used to compare computer calculations with actual nuclear test data.

Four hours before the indictment, Lee’s lawyer faxed a letter to the U.S. Attorney, saying that Lee wanted to take another polygraph and to provide “credible and verifiable” information to show that “at no time did he mishandle those tapes in question and to confirm that he did not provide those tapes to any third party.”¹²⁹

At a hearing in Albuquerque, N.M., on December 13, 1999, Wen Ho Lee pleaded not guilty to the charges. Without elaboration, his defense attorneys maintained that the seven tapes had been destroyed and that there is no evidence that Lee has the tapes or has disclosed or attempted to disclose the tapes. Lee was ordered to be held in jail without bail, until his trial, despite his attorneys’ offer to post \$100,000 bond and place Lee on electronic surveillance at his home.¹³⁰ Lee was then held in solitary confinement, placed in shackles for a significant time period, and denied outdoor exercise. Lee’s trial was set to begin on November 6, 2000.

Meanwhile, on December 20, 1999, Wen Ho Lee and his wife filed a lawsuit against the Departments of Energy and Justice and the FBI for alleged violations of the Privacy Act of 1974. The Lees charge that, since at least early 1999, the government has made numerous intentional, unauthorized disclosures about them,

¹²⁶ (...continued)

weapons; 2) production of special nuclear material; or 3) the use of special nuclear material in the production of energy.

¹²⁷ 42 USCS § 2275 and § 2276.

¹²⁸ 18 USCS § 793 (c) and § 793(e).

¹²⁹ Loeb, Vernon, “Physicist is Indicted in Nuclear Spy Probe,” *Washington Post*, December 11, 1999.

¹³⁰ Berthelsen, Christian, “Nuclear-Weapons Scientist Pleads Not Guilty; Held Without Bail,” *New York Times*, December 14, 1999.

causing them to be unfairly and inaccurately portrayed in the media as PRC spies.¹³¹ After being freed under a plea agreement in September 2000, Lee's lawyers indicated that he intends to continue the civil lawsuit.¹³²

In April 2000, Lee's attorney revealed that, in 1999, only *after* Lee was fired, the government re-assigned a higher security classification to the computer files containing nuclear secrets that Lee is charged with downloading. At the time that Lee downloaded the files, they were not classified information, but considered "protect as restricted data (PARD)," a category of security assigned to voluminous and changing scientific data, not a security classification of Secret or Confidential, as the indictment charged. Both sides are said to agree that the government had changed this classification after the downloading, as shown in the prosecution's evidence. While Lee's defense attorney argued that the indictment was "deceptive," the Justice Department maintained that Lee took the "crown jewels" of U.S. nuclear weapon secrets. Lee's lawyers also found that PARD's security ranking was five on a scale of nine, the highest being secret restricted data.¹³³

There is another theory, that if Wen Ho Lee provided U.S. nuclear weapon information to a third-party, it was not to the PRC, but to Taiwan, where he was born.¹³⁴ In 1998, after having allegedly downloaded files to portable computer tapes in 1993, 1994, and 1997, Lee reportedly worked in Taiwan as a consultant to the Chung Shan Institute of Science and Technology, which conducts military research and development. During a visit to Taiwan in December 1998, Lee is said to have dialed up the main computer at Los Alamos and used his password to access the classified nuclear files he had downloaded. Lee's trips to Taiwan were approved at Los Alamos.¹³⁵ Lee's defense team requested, in May 2000, that the prosecution name the foreign nation(s) that Lee allegedly sought to help, saying that it was unfair of the government not to name the countries in charging Lee.¹³⁶ The federal judge in New Mexico then ordered the prosecution to disclose the foreign nation(s) by July 5, 2000.¹³⁷ On that date, the U.S. Attorney filed a document that named eight foreign governments that Lee may have sought to help in downloading the nuclear data. Those places named are: the PRC, Taiwan, Australia, France, Germany, Hong Kong,

¹³¹ "Family of Dr. Wen Ho Lee Announces Filing of Privacy Act Lawsuit Against the Department of Justice, the FBI, and the Department of Energy," news release, December 20, 1999.

¹³² Loeb, Vernon, "Lee Will Pursue Suit for Breach of Privacy," *Washington Post*, September 15, 2000.

¹³³ Broad, William J., "Files in Question in Los Alamos Case Were Reclassified," *New York Times*, April 15, 2000.

¹³⁴ Taiwan has been included on the DOE's list of sensitive countries.

¹³⁵ Pincus, Walter, "Lee's Links to Taiwan Scrutinized," *Washington Post*, Dec. 31, 1999.

¹³⁶ Benke, Richard, "Defense Challenges Government's Refusal to Name Foreign Country," *Associated Press*, May 30, 2000.

¹³⁷ Pincus, Walter and Vernon Loeb, "U.S. Told to Name Nations That Lee Would Have Aided," *Washington Post*, June 27, 2000.

Singapore, and Switzerland, places (except for the PRC) where Lee had expressed an interest in applying for work in 1993, when he feared losing his job at Los Alamos.¹³⁸

Another issue for the Administration and the prosecution was how much of the classified information to release as evidence. Secretary Richardson was responsible for part of the decision, based on recommendations from his new security czar.¹³⁹ On August 1, 2000, U.S. District Judge James Parker ruled in favor of Lee's defense, requiring that the government publicly explain to a jury the nuclear secrets Lee allegedly downloaded, including any flaws in the tapes (which would not help any possible recipients of the information).¹⁴⁰

In August 2000, a dramatic turn of public events began, favoring Lee's defense and his release. At a hearing to secure release for Lee on August 16-18, 2000, a top nuclear weapons expert, John Richter, countered the prosecution's case, testifying that 99 percent of the information that Lee downloaded were publicly available. Also according to Richter, even if a foreign government obtained the information, there would be no "deleterious effect" on U.S. national security, because other governments cannot build the sophisticated U.S. nuclear warheads based on computer simulation codes downloaded by Lee. Richter testified that the "crown jewels" of U.S. nuclear weapons secrets are not the simulation codes that Lee downloaded, but the data from over 1,000 nuclear tests. Richter also conceded to wanting Lee acquitted and that a foreign power could use the codes to help design nuclear weapons, although not a complete design. At the same hearing, Lee's defense attorneys also argued that FBI Special Agent Robert Messemer gave false testimony about Lee's alleged deception at the first hearing on his bail in December 1999. Messemer admitted that he gave inaccurate testimony, an "honest mistake," and that Lee did not lie to a colleague (Kuok-Mee Ling) about writing a "resume," but Messemer said that the error was not meant to mislead the court.¹⁴¹

The hearing produced a major victory for Lee's defense on August 24, 2000, when U.S. District Judge James Parker reversed his decision from eight months earlier and ruled that Lee may be released on bail to be kept under strict supervision at home. Judge Parker's ruled that the government's argument to keep Lee in jail "no longer has the requisite clarity and persuasive character."¹⁴² Family, neighbors, and friends planned a reception for Lee but had to repeatedly postpone it.

¹³⁸ Loeb, Vernon and Walter Pincus, "Lee May Have Shared Copied Data with 8 Nations, U.S. Says," *Washington Post*, July 7, 2000.

¹³⁹ Risen, James, "Security of Los Alamos Data Could Delay Trial U.S. Says," *New York Times*, August 7, 1999.

¹⁴⁰ Pincus, Walter, "U.S. Judge Rules for Lee On Nuclear Data Issue," *Washington Post*, August 3, 2000.

¹⁴¹ Loeb, Vernon, "Nuclear Weapons Expert Urges Bail for Lee," *Washington Post*, August 17, 2000; Vernon Loeb and Walter Pincus, "Judge: Lee Can Be Freed on Bail," *Washington Post*, August 25, 2000.

¹⁴² Loeb, Vernon and Walter Pincus, "Judge: Lee Can Be Freed on Bail," *Washington Post*, August 25, 2000; Order of U.S. District Judge, August 24, 2000.

After a hearing on August 29, 2000, on the conditions of Lee's release, the judge ruled that Lee can be released on \$1 million bail and with tight restrictions at home, with a three-day stay for the prosecution to search his house, consult with the Justice Department, and prepare for a possible appeal. The restraints would include electronic monitoring of Lee, surveillance of his phone calls and mail, and restrictions on visitors, including his daughter and son. However, the government argued, unsuccessfully, that restrictions should also cover Lee's communications with his wife, Sylvia.¹⁴³ Lee's family and friends had offered over \$2 million in assets for bail.

In an opinion, dated August 31, 2000, Judge Parker discussed at length new revelations in the case that warranted his granting of release on bail after over eight months. He said, "while the nature of the offenses is still serious and of grave concern, new light has been cast on the circumstances under which Dr. Lee took the information, making them seem somewhat less troubling than they appeared to be in December." He noted, among many points, that top weapons designers testified that the information Lee downloaded is less sensitive than previously described; that FBI Agent Robert Messemer "testified falsely or inaccurately" in December 1999 about Lee; that the government has an alternative, less sinister, theory that Lee sought to enhance prospects for employment abroad; that the government never presented direct evidence that Lee intended to harm the United States; that family, friends, and colleagues supported Lee's character; and that what the government had described as the "crown jewels" of the U.S. nuclear weapons program "no longer is so clearly deserving of that label."¹⁴⁴

Meanwhile, several groups of scientists wrote to express concerns about what they considered unfair treatment of Lee. For example, on August 31, 2000, the National Academy of Sciences, National Academy of Engineering, and the Institute of Medicine wrote to Attorney General Janet Reno expressing concerns that Lee "appears to be a victim of unjust treatment" and "the handling of his case reflects poorly on the U.S. justice system."¹⁴⁵

Then, very shortly before Lee's scheduled release on bail on September 1, 2000, the 10th U.S. Circuit Court of Appeals ordered a temporary stay of Lee's release, pending a hearing. Soon after, the U.S. Attorney filed a formal request, saying that Lee's release would pose "an unprecedented risk of danger to national security."¹⁴⁶

Lee's Plea Agreement. Then, on September 10, 2000, the prosecution and defense revealed that they had negotiated a plea agreement, under which Lee would

¹⁴³ Vernon Loeb and Walter Pincus, "Lee Could be Freed on Bail Friday," *Washington Post*, August 30, 2000.

¹⁴⁴ Walter Pincus and Vernon Loeb, "Judge Questions Nuclear Case," *Washington Post*, September 6, 2000; U.S. District Judge James Parker, Memorandum Opinion, August 31, 2000.

¹⁴⁵ National Academy of Sciences, National Academy of Engineering, and Institute of Medicine, open letter to the U.S. Attorney General, August 31, 2000.

¹⁴⁶ Vernon Loeb, "At Last Minute, U.S. Court Bars Lee's Release on Bail," *Washington Post*, September 2, 2000.

plead guilty to one felony count of unlawful retention of national defense information, help the government to verify that he destroyed the seven tapes (as he has maintained), and the government would drop the other 58 counts and free Lee (with sentence to the nine months he served in jail). U.S. Attorney General Janet Reno and FBI Director Louis Freeh reportedly approved the plea agreement, which had been negotiated over the previous several weeks.¹⁴⁷ At times citing the Judge's rulings, Lee's defense, some reporters, and critics said that the prosecution's case had crumbled and represented a gross injustice that threatened the rights of all Americans because of politics. However, the prosecution and Clinton Administration officials argued that Lee's downloading of files was unlawful and finding out what happened to the computer tapes was more important than proceeding to trial.

After three days of delays, the prosecution and defense reached final agreement on the plea. On September 13, 2000, Wen Ho Lee pleaded guilty to unauthorized possession of defense information (downloading files to tapes using an unsecure computer). The judge sentenced Lee to 278 days in jail (the nine months Lee already served) and freed him. Lee agreed to answer questions for 10 days over three weeks starting on September 26, 2000. The government may prosecute Lee, have him take a polygraph test, and nullify the plea agreement if the government believes Lee is lying. Both sides agreed to withdraw pending motions, including that of the defense on selective prosecution. In a dramatic conclusion to the case, Judge Parker noted "the fact that [he] lost valuable rights as a citizen" and apologized to Lee for the "unfair manner [he was] held in custody." Parker said that he found it "most perplexing" that the government now "suddenly agreed" to Lee's release, despite its earlier warnings of risks to national security. The judge blamed the executive branch, particularly top officials of the Departments of Energy and Justice, saying they "have embarrassed our entire nation and each of us who is a citizen of it."¹⁴⁸ As a result of the Judge's remarks, Attorney General Reno launched two internal reviews of the prosecution of Lee.¹⁴⁹

In response, U.S. Attorney Norman Bay argued that "this is a case about a man who mishandled huge amounts of nuclear data and got caught doing it." He added that justice is served because Lee must "tell us what he did with the tapes ... something he refused to do for approximately the past 18 months."¹⁵⁰ Attorney General Reno said that "this is an agreement that is in the best interest of our national

¹⁴⁷ Bob Drogin, "Scientist to Accept Plea Deal; Likely to Be Freed Today," *Los Angeles Times*, September 11, 2000; James Sterngold, "U.S. to Reduce Case Against Scientist to a Single Charge," *New York Times*, September 11, 2000.

¹⁴⁸ Richard Benke, "Wen Ho Lee Set Free After Pleading Guilty to One Count," *AP*, September 13, 2000; Vernon Loeb, "Physicist Lee Freed, With Apology," *Washington Post*, September 14, 2000.

¹⁴⁹ Vise, David A. and Ellen Nakashima, "Two Internal Reviews Launched in Lee Case," *Washington Post*, September 23, 2000.

¹⁵⁰ Marcus Kabel, "Wen Ho Lee Freed Amid Apologies from Judge," *Reuters*, September 13, 2000.

security in that it gives us our best chance to find out what happened to the tapes.”¹⁵¹ FBI Director Louis Freeh stated that it was four weeks before the plea agreement – even before the last bail hearings – that the plea bargaining began and that “determining what happened to the tapes has always been paramount to prosecution.”¹⁵² However, President Clinton criticized the pre-trial detention of Lee, saying “I always had reservations about the claims that were being made denying him bail.”¹⁵³ (See also Role of the White House.)

Later, it was revealed that the delay in the plea agreement resulted from Lee’s disclosure on September 11, 2000 that he had made copies of some or all of the tapes and revisions to the agreement to cover information about the copies.¹⁵⁴

As part of his plea agreement, Lee, now considered by DOE to be retired (not fired), agreed to answer questions for up to 10 days about what happened to the tapes. The questioning began on October 17, 2000.¹⁵⁵ On November 7, Lee agreed to 13 more hours of questioning over two days, beginning on December 11, 2000.¹⁵⁶ Meanwhile, in late November and early December 2000, FBI agents searched a public landfill in New Mexico, trying to find the tapes that Lee says he threw away in January 1999 but reportedly did not find any of them.¹⁵⁷

Sylvia Lee, Deutch Case, and Other Issues. A number of other issues complicated the case on Wen Ho Lee. One issue was the relationship between the FBI and the suspect and his wife, Sylvia Lee. Contrary to earlier reports that a trip the Lees took to China in the 1985 was suspicious because Mrs. Lee, a secretary, was the one invited to speak, it now appears that she had been informing on PRC visitors for the FBI from 1985 to 1991 and that Los Alamos encouraged her to attend the conference.¹⁵⁸ In addition, it has been reported that Wen Ho Lee cooperated with the FBI and passed a polygraph in 1982. Lee helped the FBI after he had made an intercepted call to another scientist at Lawrence Livermore lab who was under

¹⁵¹ Department of Justice, “Statement of Attorney General Janet Reno on Today’s Guilty Plea by Wen Ho Lee,” September 13, 2000.

¹⁵² FBI, “Statement by FBI Director Louis J. Freeh Concerning Wen Ho Lee Case,” September 13, 2000.

¹⁵³ White House, Remarks by the President on Patients’ Bill of Rights Upon Departure, September 14, 2000.

¹⁵⁴ Pincus, Walter and Vernon Loeb, “U.S. is Probing Lee’s Multiple Copying of Data,” *Washington Post*, September 20, 2000.

¹⁵⁵ Pincus, Walter, “FBI Agents Begin Interrogation of Scientist Lee,” *Washington Post*, October 18, 2000.

¹⁵⁶ “Lee Agrees to Answer Additional Questions,” *Washington Post*, November 19, 2000.

¹⁵⁷ Loeb, Vernon and Walter Pincus, “FBI Seeks Computer Tapes in Lee Case,” *Washington Post*, November 29, 2000; Walter Pincus, “Lee: Tapes Went in Trash,” *Washington Post*, December 1, 2000; “For Government, Wen Ho Lee Mystery Deepens,” *Washington Post*, December 15, 2000.

¹⁵⁸ Pincus, Walter, “FBI Aided By Los Alamos Scientist’s Wife,” *Washington Post*, April 26, 1999.

suspicion of espionage. The press reported in July 2000 that Sylvia Lee informed on visiting PRC scientists for the CIA in the 1980s, and Wen Ho Lee also met with the CIA officer who worked with his wife before the Lees visited the PRC in 1986.¹⁵⁹

Another issue for Lee's case is the government's decision not to prosecute former DCI John Deutch. There is a debate about whether Deutch's case is analogous to Lee's, with some saying that the treatment of Lee is unfair and there is a double-standard, and others arguing that the two people had different intentions. The CIA investigated Deutch (DCI in 1995-1996) for repeatedly mishandling classified information and moving many classified intelligence files to his unsecured personal computers in his house, computers used to access the Internet and thus vulnerable to attacks. The files reportedly include 17,000 pages of documents, including top secret materials and files about presidentially-approved covert action. Further, the CIA is said to have reported that Deutch may have tampered with evidence allegedly showing his improper handling of classified files, including, on December 20, 1996, trying to delete over 1,000 classified files stored on one of four portable memory cards. Additional reports disclose that the CIA's inspector general's classified report concluded that top CIA officials impeded the agency's investigation of Deutch, possibly to allow the time limit on appointing an independent counsel to lapse, and that DCI George Tenet has set up a special panel to examine those findings.

The CIA's investigation of Deutch began in December 1996, when he was leaving office. The CIA did not notify the Justice Department until early 1998. The Senate Intelligence Committee was notified of the case in June 1998. The Justice Department decided in April 1999 not to prosecute, apparently without any FBI investigation and before the CIA inspector general issued its report. After the inspector general's report was completed in July 1999, the current DCI, in August 1999, suspended Deutch's security clearance indefinitely. According to the CIA's announcement, the inspector general concluded that while no evidence was found that national security information was lost, "the potential for damage to U.S. security existed." The Senate Intelligence Committee received a copy of the inspector general's report in late August 1999.¹⁶⁰

On February 18, 2000, the CIA's inspector general released an unclassified report of its investigation into Deutch's case.¹⁶¹ The report found, among other findings, that Deutch had processed classified information on unsecure computers that were connected to the Internet and thus were "vulnerable to attacks by unauthorized

¹⁵⁹ Stober, Dan, "Wen Ho Lee's Wife Worked for CIA," *San Jose Mercury News*, July 23, 2000.

¹⁶⁰ Klaidman, Daniel, "Was the Spymaster Too Sloppy," *Newsweek*, April 19, 1999; Steven Lee Myers, "Former Chief of CIA Is Stripped of Right to Classified Information," *New York Times*, August 21, 1999; "Double Trouble," *Newsweek*, November 8, 1999; James Risen, "C.I.A. Inquiry of Its Ex-Director Was Stalled at Top, Report Says," *New York Times*, February 1, 2000; Senate Intelligence Committee, "Senate Select Committee on Intelligence Chairman and Vice Chairman Comment on Deutch Allegations," news release, February 1, 2000.

¹⁶¹ CIA Inspector General, "Report of Investigation: Improper Handling of Classified Information by John M. Deutch (1998-0028-IG)," February 18, 2000.

persons.” Moreover the information concerned covert action, Top Secret communications intelligence, and the National Reconnaissance Program budget. The report concluded that despite Deutch’s knowledge of prohibitions against processing classified information on unclassified computers, he “processed a large volume of highly classified information on these unclassified computers, taking no steps to restrict unauthorized access to the information and thereby placing national security information at risk.” The report also criticized “anomalies” in the way senior CIA officials responded to the problem.

Reportedly concerned about appearances of unfairness in comparisons between the cases involving Wen Ho Lee and John Deutch, Attorney General Janet Reno announced on February 24, 2000, that her department would review Deutch’s case.¹⁶² Then, by May 2000, the Justice Department and the FBI began a criminal investigation of whether Deutch had mishandled classified information – in a reversal of Reno’s 1999 decision not to prosecute.¹⁶³ By August 2000, the former prosecutor whom Reno asked to review the case, Paul Coffey, reportedly decided to recommend that the Justice Department prosecute Deutch, and Reno is to make the final decision.¹⁶⁴ By September 2000, the Senate Intelligence Committee met in closed session with DCI Tenet on Deutch’s case, and Coffey reportedly may recommend a charge of misdemeanor against Deutch for taking classified information home without authorization.¹⁶⁵

The resignation of Notra Trulock, DOE’s primary whistleblower, in August 1999 may also complicate the investigation. As the *Washington Post* wrote, “Mr. Trulock may well have stated the overall problem in terms more dramatic than the evidence clearly supported. And his single-mindedness with respect to Los Alamos and Mr. Lee in particular — which is alleged by some detractors to have been related to Mr. Lee’s ethnicity — also may have closed off significant investigative leads.”¹⁶⁶ Trulock blames the FBI for mishandling and delaying the W88 case.¹⁶⁷

¹⁶² Loeb, Vernon and David A. Vise, “Reno Reviews CIA Probe of Ex-Director,” *Washington Post*, February 25, 2000; Walter Pincus and Vernon Loeb, “U.S. Inconsistent When Secrets are Loose,” *Washington Post*, March 18, 2000.

¹⁶³ Risen, James, “Criminal Investigation Follows Review of Agency’s Internal Handling of Deutch,” *New York Times*, May 6, 2000.

¹⁶⁴ David A. Vise and Vernon Loeb, “Reno Weighs Whether to Prosecute Former CIA Chief,” *Washington Post*, August 26, 2000; Jerry Seper, “Document-Misuse Charges Sought Against Ex-CIA Boss,” *Washington Times*, August 29, 2000.

¹⁶⁵ Robert L. Jackson, “Ex-CIA Director May Face Misdemeanor for Breach,” *Los Angeles Times*, September 14, 2000.

¹⁶⁶ “Mr. Trulock’s Resignation,” *Washington Post*, August 27, 1999.

¹⁶⁷ CBS, “60 Minutes,” December 17, 2000.

Further complicating the case is the debate over relative importance of the PRC's own modernization efforts as opposed to foreign technology acquisitions. Some say that the investigation overstated the importance of PRC espionage.¹⁶⁸

On Lee's transfers of files to an unclassified computer at the lab that was discovered after he was fired, Administration officials reportedly said that none of the legacy codes that Lee had transferred to an unclassified computer appeared to have been accessed by unauthorized people. Some say that lab employees may want to transfer codes to unclassified computers with a better editing program.¹⁶⁹

Further reports say that on numerous times in 1994, someone at the University of California at Los Angeles (UCLA) used Wen Ho Lee's password to access Los Alamos' computer system via the Internet. Lee's daughter, Alberta, who was majoring in mathematics at UCLA, has testified that she accessed the more powerful computer systems at Los Alamos and also at the Massachusetts Institute of Technology to play a computer game called "Dungeons and Dragons." Prosecutors have questioned this.¹⁷⁰

Lee's case is further complicated by the FBI's reportedly aggressive tactics in his interrogation on March 7, 1999, the day before he was fired from Los Alamos, which was before the government discovered his downloading of files to tapes. According to the transcript, FBI agents falsely told Lee that he had failed a polygraph given by DOE in December 1998, when Lee had actually scored highly for honesty. The agents also threatened Lee with arrest and execution for espionage. Lee maintained his innocence throughout the interrogation. Some say the FBI was unfair and biased in misleading Lee, but others say the tactic is accepted practice in law-enforcement in trying to elicit confessions. At a hearing in late December 1999, the prosecution conceded that Lee did pass the DOE's polygraph but said that he failed the polygraph given by the FBI in February 1999.¹⁷¹ Moreover, according to a report, the FBI changed the results of Lee's DOE polygraph, which showed a high degree of truthfulness. Weeks after Lee had passed that test, DOE changed the finding to "incomplete" instead, and the FBI later said that Lee failed the test.¹⁷²

Another report said that Lee initially did not comprehend the severity of the government's investigation of him and that he was wholly naive and unprepared for the FBI's intensified interrogation, which actually began on March 5, 1999. Robert Vrooman, then head of counterintelligence at Los Alamos, listened in another room. He said that he and the agents came away convinced Lee was not a spy. However,

¹⁶⁸ Broad, William J., "Spies Versus Sweat: The Debate Over China's Nuclear Advance," *New York Times*, September 7, 1999.

¹⁶⁹ Loeb, Vernon, "Spy Suspect Cooperated with FBI in '82," *Washington Post*, May 2, 1999.

¹⁷⁰ Pincus, Walter, "U.S. Probes Remote Accessing of Los Alamos Computer," *Washington Post*, January 24, 2000.

¹⁷¹ Loeb, Vernon and Walter Pincus, "FBI Misled Wen Ho Lee Into Believing He Failed Polygraphy," *Washington Post*, January 8, 2000.

¹⁷² CBS Evening News, "Wen Ho Lee's Polygraph Results Questioned," February 5, 2000.

someone at the FBI then ordered two agents, Carol Covert and John Podenko, to conduct the “hostile interview” of Lee on March 7, 1999, telling him falsely that he had failed a polygraph, warned him of “electrocution” and never seeing his children again, and demanded that he sign a confession of “espionage” with a potential death penalty, all without the counsel of a lawyer. According to Vrooman, Covert was “distraught” after that aggressive interview, because she did not believe Lee was guilty, took three months sick leave, and transferred out of the Sante Fe office.¹⁷³

Racial Profiling and Selective Prosecution. There are concerns that, in rightfully protecting national security, racial profiling and selective prosecution have been used in law-enforcement and that Lee, as an American entitled to a presumption of innocence, may have been unfairly targeted as the prime suspect in a narrow investigation and in media reports because of his Chinese ethnicity (although he was born in Taiwan).¹⁷⁴ Aside from the implications of these issues for Lee’s case, these issues raise questions about the effectiveness of the government’s approach in countering PRC espionage in general and in investigating the W88 case in particular.

In his public statement on “60 Minutes” on August 1, 1999, Lee said he believes he has been made a scapegoat by investigators, because he was the only Asian American working on nuclear weapon designs in the sensitive X Division at Los Alamos in the last 18 years. Ed Curran, head of counterintelligence at DOE, is quoted in the same show as expressing concern that “since Wen Ho Lee has not been proven guilty of anything and thus must be presumed innocent, the surfacing of his name has been devastating to his family and to his life.”

The National Asian Pacific American Legal Consortium wrote a letter to Secretary Richardson on August 5, 1999, denouncing his accusation that Lee used the “race card” and expressing concerns about racial profiling. On August 10, 1999, the Committee of 100, an organization comprised of prominent Americans of Chinese descent, sent a letter to Attorney General Reno and Secretary of Energy Richardson expressing concerns about “selective investigation” based on Lee’s ethnicity. The letter said, “Dr. Lee and the nation deserve a case made on the merits of a thorough and professional investigation, not a racist witchhunt.” The Coalition of Asian Pacific American Federal Employee Organizations (CAPAFEO) presented a position paper to President Clinton on September 30, 1999, which urged the Administration “to take strong and effective measures to protect the rights and civil liberties of Americans of Asian descent by vigorously enforcing our nation’s laws which prohibit discrimination based on race of national origin.” The group wrote that “while law enforcement and counter-intelligence agencies must be ever vigilant, in their zeal, they must also be careful to safeguard the civil and employment rights of all Americans.”¹⁷⁵

¹⁷³ Bob Drogin, “How FBI’s Flawed Case Against Lee Unraveled,” *Los Angeles Times*, September 13, 2000.

¹⁷⁴ Loeb, Vernon, “Spy Probe Worries Chinese Americans,” *Washington Post*, August 14, 1999.

¹⁷⁵ Coalition of Asian Pacific American Federal Employee Organizations (CAPAFEO), “Los Alamos Position Paper,” sent to President Clinton on September 30, 1999 and presented to the Congressional Asian Pacific Caucus on October 5, 1999.

In August 1999, Robert Vrooman, former head of counterintelligence at Los Alamos, publicly said that Wen Ho Lee was targeted because he is an American of Chinese descent and that the case against “was built on thin air.” Vrooman issued his comments after Secretary Richardson recommended disciplinary action against him and two other former Los Alamos officials for alleged mishandling of the counterintelligence investigation. Vrooman said that “Lee’s ethnicity was a major factor” in targeting him, while “a lot of Caucasians” were not investigated. Vrooman also said that a detailed description of the W88 warhead was distributed to 548 recipients throughout the government, military, and defense companies, so the information could have leaked from many sources.¹⁷⁶ Two others who were involved in the investigation, Charles Washington and Michael Soukup, also said that Lee was singled out as a suspect because of his ethnicity, not because of evidence.¹⁷⁷

A news report said that Notra Trulock, who led the investigation until the summer of 1996, had compiled a list of 70 people at Los Alamos who visited China and then narrowed the list to 12 people. He said he gave the list to the FBI, which then eliminated the other 11 suspects, leaving Wen Ho Lee as the prime suspect. The initial list of 70 people included those with no access to classified or weapons information and who traveled to China on non-work related trips. One Caucasian scientist, however, who was a specialist in the same field as Lee (hydrodynamics), worked on classified information, and went to China on a professional trip, was not among the 12. Further, Robert Vrooman said that there were 15 people who conducted nuclear weapons research and visited China, but were not on the list of 12 suspects.¹⁷⁸

However, Notra Trulock, who headed the counterintelligence investigation at DOE, has insisted that “race was never a factor.”¹⁷⁹ The DOE investigator who focused on Lee, Daniel Bruno, said on November 1, 2000, that Lee was the prime suspect because of his behavior, not because of his ethnicity.¹⁸⁰

Senators Thompson and Lieberman, whose Governmental Affairs Committee reviewed the investigation, wrote on August 26, 1999, that “the evidence we have seen and heard provides no basis for the claim that the initial DOE-FBI inquiry focused upon the Lees because of their race. Only much later in the process, once Mr. Lee had already been identified as the chief suspect, did the investigation consider the Lees’ ethnicity — and then only because, according to FBI counterintelligence

¹⁷⁶ Loeb, Vernon, “Ex-Official: Bomb Lab Case Lacks Evidence,” *Washington Post*, August 17, 1999; William J. Broad, “Official Asserts Spy Case Suspect Was a Bias Victim,” *New York Times*, August 18, 1999.

¹⁷⁷ Loeb, Vernon and Walter Pincus, “Espionage Whistleblower Resigns,” *Washington Post*, August 24, 1999.

¹⁷⁸ James Sterngold, “U.S. to Reduce Case Against Scientist to a Single Charge,” *New York Times*, September 11, 2000.

¹⁷⁹ Broad, William J., “Official Denies Spy Suspect Was Victim of Bias,” *New York Times*, August 19, 1999.

¹⁸⁰ Loeb, Vernon, “Prober: Lee’s Ethnicity Wasn’t Factor,” *Washington Post*, November 2, 2000.

experts, Beijing's intelligence actively tries to recruit Chinese American scientists working in sensitive U.S. facilities."¹⁸¹ One of these experts, Paul Moore, who headed the FBI's counterintelligence efforts against China from 1978 to 1998, has written publicly that "Chinese Americans are subjected to oppressive ethnic intelligence profiling" by China and that "China's espionage methodology, not a particular spy, is the main threat." He has explained the PRC's unconventional espionage by saying that "China doesn't so much try to steal secrets as to try to induce foreign visitors to give them away by manipulating them into certain situations."¹⁸²

Others argue that even if the PRC targets ethnically Chinese people, the government should not target Americans of Chinese heritage as a group, nor would such efforts be effective to counter PRC espionage. The policy director of Chinese for Affirmative Action and an associate professor of law at Howard University wrote that Lee's case "has raised disturbing allegations that the government uses a racial profile when investigating espionage" and argued that "law enforcement based on racial profiling is also ineffective."¹⁸³ Former Ambassador to China James Lilley wrote that "the fact that China tries to recruit spies doesn't mean that Chinese-Americans as a group should be suspect."¹⁸⁴ In his statement in support of Wen Ho Lee's motion for discovery of materials related to selective prosecution, Charles Washington, a former Acting Director of Counterintelligence at DOE, declared that he is not aware of any "empirical data that would support a claim that Chinese-Americans are more likely to commit espionage than other Americans."¹⁸⁵

Members of Congress have expressed concern about possible racial profiling used in the investigation of Wen Ho Lee and ramifications of this case on Americans of Asian Pacific heritage. In May 1999, Representative Wu introduced H.Con.Res. 124 to express the sense of Congress relating to recent allegations of espionage and illegal campaign financing that have brought into question the loyalty and probity of Americans of Asian ancestry. Among other provisions, the resolution calls upon the Attorney General, Secretary of Energy, and the Commissioner of the Equal Employment Opportunity Commission to vigorously enforce the security of America's national laboratories and investigate all allegations of discrimination in public or private workplaces. The House passed H.Con.Res. 124 with the bipartisan support of 75 cosponsors, on November 2, 1999. Moreover, on August 5, 1999, Senator Feinstein introduced S.Con.Res. 53 to condemn prejudice against individuals of Asian and Pacific Island ancestry in the United States. The Senate passed the resolution on

¹⁸¹ Thompson, Fred and Joseph Lieberman, "On the Chinese Espionage Investigation," (letter to the editor), *Washington Post*, August 26, 1999.

¹⁸² Moore, Paul D., "How China Plays the Ethnic Card," *Los Angeles Times*, June 24, 1999; "Spies of a Different Stripe," *Washington Post*, May 31, 1999; "China's Subtle Spying," *New York Times*, September 2, 1999.

¹⁸³ Theodore Hsien Wang and Frank H. Wu, "Singled Out, Based on Race," *Washington Post*, August 30, 2000.

¹⁸⁴ James Lilley (former ambassador to China and former CIA officer), "Undoing the Damage of the Wen Ho Lee Case," *New York Times*, September 12, 2000.

¹⁸⁵ Declaration of Charles E. Washington, August 11, 2000.

July 27, 2000. The Congressional Asian Pacific Caucus held a briefing on October 5, 1999, at which Secretary Richardson and others spoke. Chairman Robert Underwood said in his opening statement that “suspicions about a Chinese American connection to espionage have formed without evidence and with potential damage to innocent individuals.”¹⁸⁶

Energy Secretary Richardson has declared that “while U.S. national security is a top priority at the labs, I am also concerned that Asian Pacific Americans as a group are finding their loyalty and patriotism questioned in the wake of recent espionage allegations. This behavior is unacceptable and I will not tolerate it.”¹⁸⁷ In June 1999, Richardson established a Task Force Against Racial Profiling, and he received its report and recommendations on January 19, 2000.¹⁸⁸ The task force included 19 government employees, contractors, and U.S. Civil Rights Commissioner Yvonne Lee. In their visits to various DOE sites, they found that “an atmosphere of distrust and suspicion was common.” Such a hostile work environment for Americans of Asian heritage resulted from the media exploitation of the espionage and related allegations, and from managers and co-workers questioning the loyalty and patriotism of some employees based on race. The task force made a number of recommendations for using leadership, building trust, improving communication, and making assessments.

Since 1999, the Equal Employment Opportunity Commission (EEOC) has investigated whether the Livermore and Los Alamos labs have discriminated against Americans of Asian Pacific heritage.¹⁸⁹

In August 2000, supporting their selective prosecution motion filed in June 2000, Lee’s defense attorneys had statements from two former senior DOE counter-intelligence officials, Robert Vrooman and Charles Washington, contending that Lee has been a victim of racial profiling and selective prosecution, including in the probe led by Notra Trulock. Finding relevance to Lee’s contention that he has been singled out for investigation and prosecution because of his race, Judge James Parker, on August 25, 2000, ordered the government to hand over documents, sought by the defense, to him by September 15, 2000, for his review and decision as to whether they should be given to the defense attorneys.¹⁹⁰ However, on September 13, 2000, when

¹⁸⁶ Congressional Asian Pacific Caucus, briefing on the Federal Investigations at the Department of Energy National Laboratories, October 5, 1999.

¹⁸⁷ DOE news release, “Richardson Toughens Requirements For Unclassified Foreign Visits and Assignments,” July 14, 1999.

¹⁸⁸ DOE, Task Force Against Racial Profiling, “Final Report,” January 2000; “Richardson Releases Task Force Against Racial Profiling Report and Announces 8 Immediate Actions,” news release, January 19, 2000.

¹⁸⁹ “U.S. Nuke Lab Probed Over Possible Discrimination,” *Reuters*, August 1, 2000.

¹⁹⁰ James Sterngold, “Judge Orders U.S. to Turn Over Data in Secrets Inquiry,” *New York Times*, August 30, 2000; Vernon Loeb, “Affidavits Cite Race in Probe of Lee,” *Washington Post*, September 1, 2000; Order of U.S. District Judge James Parker, August 25, 2000; Declaration of Robert Vrooman, August 10, 2000; Declaration of Charles E. Washington, (continued...)

the government and Wen Ho Lee reached a plea agreement, they also agreed to withdraw pending motions. Responding to charges of selective prosecution after Lee's release, U.S. Attorney Norman Bay, who is an American of Asian heritage, said that "Mr. Lee was not prosecuted because of his race, he was prosecuted because of what he did. He compiled his own personal library of nuclear secrets ... This is a case about a man who mishandled huge amounts of nuclear data and got caught doing it."¹⁹¹

Notification to Congress. The chair and ranking Democrat of the House Intelligence Committee, Rep. Goss and Dicks, have been quoted as saying that they were not sufficiently informed of the problems at the labs and the information that was provided was "underplayed."¹⁹² In addition, the Cox Committee's bipartisan report, approved in December 1998, urged Congress to insist on notification by the Administration, citing "the fact that the heads of Executive departments and agencies of the Intelligence Community failed adequately to comply with congressional notification requirements of the National Security Act." The Clinton Administration responded that it has fulfilled its responsibilities to keep appropriate committees informed.¹⁹³

Representative Hunter, chairman of the House National Security Subcommittee on Military Procurement, has stated that Elizabeth Moler, then Deputy Secretary of Energy, failed to testify about the W88 case in an October 6, 1998 hearing that included a closed session.¹⁹⁴ On April 15, 1999, Representative Hunter held a hearing to examine whether Moler (now a lawyer outside government) failed to provide accurate and complete testimony in the closed session of the October 1998 hearing and whether she instructed Notra Trulock, Acting Deputy Director of DOE's Office of Intelligence, to withhold critical information, including the W88 case, from Congress. Trulock testified that Moler edited his written testimony to remove references to "successful espionage" at the U.S. labs, even though the information was cleared by the CIA for notification to Congress, and thus did not provide the subcommittee with a full picture of the threat against the United States. Moler stated that she did not provide certain information, because the questions were directed at Trulock and he failed to fully disclose information; the subject of the hearing was on the foreign visitors' program (which was not involved in the espionage cases); some

¹⁹⁰ (...continued)
August 11, 2000.

¹⁹¹ Marcus Kabel, "Wen Ho Lee Freed Amid Apologies from Judge," *Reuters*, September 13, 2000.

¹⁹² Risen, James and Jeff Gerth, "China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say," *New York Times*, March 6, 1999; David Sanger, "'No Question,' U.S. Says, Leak Helped China," *New York Times*, March 15, 1999.

¹⁹³ NSC's unclassified response to the recommendations, February 1, 1999.

¹⁹⁴ Loeb, Vernon and Juliet Eilperin, "GOP Attacks' Impact on China Ties Concerns White House," *Washington Post*, March 17, 1999; Bill Gertz, "Senators Briefed Privately on Spy Case," *Washington Times*, March 17, 1999.

information was highly classified; and damaging information about PRC espionage would “unfairly impugn” important DOE exchange programs.¹⁹⁵

Furthermore, Trulock told the Senate Armed Services Committee on April 12, 1999, that his concerns were “ignored,” “minimized,” and sometimes “ridiculed” especially by lab officials and that senior DOE officials “refused to authorize intelligence” for several months before he could brief then Secretary Pena in July 1997. Trulock also charged that Moler denied him approval to respond to Congressman Goss’ July 1998 request to brief the House Intelligence Committee on the W88 case. According to Trulock, DOE officials, including Moler, stated concerns about negative impacts on the credibility of the labs and lab-to-lab programs with China and Russia. In response to Senator Levin’s statement that the FBI did brief the Intelligence Committees 19 times from 1996 to 1999 on alleged espionage at the labs, Trulock stated that DOE briefed the Senate Intelligence Committee in July 1996 and the House Intelligence Committee in August 1996, but did not participate in the other 17 briefings. After 1996, Trulock said, he did not return to brief Congress until his testimony to the House Select Committee on China in September 1998.¹⁹⁶

As pointed out by Senator Levin, the Administration has said that it provided numerous briefings to the Intelligence Committees about the cases involving China and the labs. Moler has denied that she prevented Trulock from briefing Representative Goss and that she took allegations of PRC espionage at DOE seriously. On the question of whether the Administration was trying to prevent the W88 case from interfering with the policy of engagement with China, Trulock acknowledged that Gary Samore, an NSC official in charge of nonproliferation policy, did encourage DOE to proceed with “counterintelligence efforts in order to protect sensitive information at the laboratories.”¹⁹⁷

The House Government Reform Committee held a hearing on June 24, 1999, on its concerns about firings, demotions, and harassment of “whistle-blowers,” officials at the Energy and Defense Departments who expressed concerns to Congress about security problems. On July 2, 1999, Chairman Dan Burton wrote a letter to Defense Secretary Cohen criticizing an alleged gag order at the Defense Threat Reduction Agency (DTRA) against employees speaking to committee staff.¹⁹⁸

Energy Secretary Richardson recognized the allegation that Moler sought to deny information to Congress, when he announced an internal inquiry as one of seven initiatives announced on March 17, 1999. In August 1999, Richardson announced the

¹⁹⁵ Hearing of the House Armed Services Subcommittee on Military Procurement, “Counterintelligence Problems at Department of Energy Labs,” April 15, 1999.

¹⁹⁶ Hearing of the Senate Armed Services Committee, “Alleged Chinese Espionage at Department of Energy Laboratories,” April 12, 1999; James Risen, “White House Said to Ignore Evidence of China’s Spying,” *New York Times*, April 13, 1999; Hearing of the House Armed Services Subcommittee on Military Procurement, April 15, 1999.

¹⁹⁷ Hearing of the Senate Armed Services Committee, April 12, 1999.

¹⁹⁸ Hudson, Audrey, “Congressman Asks Cohen to Lift Gag Order,” *Washington Times*, July 8, 1999.

results of the internal probe by DOE's Inspector General, which investigated the question of obstructing briefings to former Secretary Pena and Congress. However, the report failed to "establish with any certainty that any Departmental official, knowingly or intentionally, improperly delayed, prohibited, or interfered with briefings to Mr. Pena or to the congressional intelligence committees."¹⁹⁹ Notra Trulock, who led the investigation at DOE, criticized the Inspector General's report as "a whitewash" and resigned as acting deputy director of intelligence to work at TRW Inc., a defense contractor. He expressed frustration that he had been removed from further involvement in the espionage investigation, called "Kindred Spirit," and that the internal DOE report failed to support his assertions of political interference.²⁰⁰

On March 8, 2000, Senator Specter, as part of his investigation under the jurisdiction of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, issued a report critical of the investigations of Wen Ho Lee. The report criticized the FBI's and DOE's investigations as "inept." It also criticized the Department of Justice and Attorney General Janet Reno for not forwarding the FBI's request for a warrant to the FISA court, despite "ample, if not overwhelming, information to justify the warrant."²⁰¹ However, Senator Charles Grassley, chairman of the subcommittee, criticized the FBI for not telling Congress through most of 1999 that the Bureau had found that Lee was not the prime suspect in the espionage case at Los Alamos. Senator Grassley said that he, along with Senators Specter and Torricelli, had asked the General Accounting Office to examine whether a senior FBI official (believed to be Neil Gallagher, head of the National Security Division) had withheld documents from Congress in 1999. (The FBI then asked that the investigation be suspended after Wen Ho Lee's indictment.) Senator Grassley sent a letter to Senator Specter that disputed his report, saying that the evidence against Lee was weak.²⁰²

Role of the White House. Some raise questions about how seriously National Security Advisor Sandy Berger took concerns about PRC espionage at the labs and when he informed President Clinton about the W88 case as well as the neutron bomb case. Some Members called for Berger to resign over the suspected compromise to national security. There are reportedly discrepancies between various accounts of when the President was briefed by the NSC about the alleged espionage cases and whether the President knew about suspected continued PRC espionage into the 1990s. The President said on March 19, 1999, that "to the best of my knowledge, no one has said anything to me about any espionage which occurred by the Chinese

¹⁹⁹ DOE, news release, "Richardson Announces Results of Inquiries Related to Espionage Investigation," August 12, 1999.

²⁰⁰ Loeb, Vernon and Walter Pincus, "Espionage Whistleblower Resigns," *Washington Post*, August 24, 1999; James Risen, "Official Who Led Inquiry Into China's Reputed Theft of Nuclear Secrets Quits," *New York Times*, August 24, 1999.

²⁰¹ Senator Arlen Specter, "Report on the Investigation of Espionage Allegations Against Dr. Wen Ho Lee," March 8, 2000.

²⁰² Loeb, Vernon, "GAO Probing Senior FBI Official," *Washington Post*, March 9, 2000.

against the labs, during my presidency.”²⁰³ After the *New York Times* reported on April 8, 1999, that China sought additional neutron bomb data in 1995, however, President Clinton explained his earlier statement as a response to a question specifically about alleged PRC espionage at the labs, which were apparently not linked to the neutron bomb case.²⁰⁴

In 1998, Berger reportedly told the Cox Committee that President Clinton was informed early that year. In May 1999, Berger said that he briefed the President in July 1997, after DOE briefed the NSC.²⁰⁵ The press reports that intelligence and DOE officials briefed Berger as early as April 1996 on the W88 and the neutron bomb cases. Berger says that, in 1996, the reports to him were “preliminary” and that “the FBI hadn’t even begun its investigation” and there was no suspect. Berger further explained that after a second briefing in 1997 that was “far more extensive” and suggested that “there was a potentially greater problem with respect to Chinese acquisition of sensitive information,” he did brief the President. Berger also explained that the President did not raise the issue of PRC espionage at the October 1997 summit with PRC President Jiang Zemin because of the need to protect the secrecy of an ongoing investigation.²⁰⁶ Yet, FBI Director Freeh testified in March 1999 that the FBI began its case (concerning the W88 data) in September 1995 and that, in August 1997, he told DOE officials that the stalled case was not as important as the protection of information.²⁰⁷

The PFIAB said in June 1999 that “although the current National Security Advisor was briefed on counterintelligence concerns by DOE officials in April of 1996, we are not convinced that the briefing provided a sufficient basis to require initiation of a broad Presidential directive at that time. We are convinced, however, that the July 1997 briefing, which we are persuaded was much more comprehensive, was sufficient to warrant aggressive White House action.”

Also, the PFIAB revealed that the White House knew about PRC espionage at the nuclear weapon labs earlier than 1996. In discussing the track record of the Clinton Administration, the report noted briefly that, in 1995, after DOE officials met with the FBI on suspected PRC espionage of U.S. nuclear weapon data, an analysis group was formed at DOE to review the PRC nuclear weapon program, and senior DOE, CIA, and White House officials discussed options. The PFIAB also noted in its chronology that, in July 1995, senior DOE officials discussed possibility that

²⁰³ Eric Schmitt, “Clinton Says He Is Unaware Of Nuclear Spying During His Presidency,” *New York Times*, March 20, 1999.

²⁰⁴ Clinton, William Jefferson, remarks at joint press conference with Chinese Premier Zhu Rongji, Washington, D.C., April 8, 1999.

²⁰⁵ Cox Committee’s report, Volume I, p. 95.

²⁰⁶ Risen, James and Jeff Gerth, “China Stole Nuclear Secrets From Los Alamos, U.S. Officials Say,” *New York Times*, March 6, 1999; Sandy Berger’s interview on NBC’s “Meet the Press,” March 14, 1999; Jeff Gerth and James Risen, “Intelligence Report Points to Second China Nuclear Leak,” *New York Times*, April 8, 1999.

²⁰⁷ Hearing of the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999.

“China may have classified U.S. nuclear design information with CIA, FBI, and White House senior officials in several meetings.” Former White House Chief of Staff Leon Panetta reportedly said that he was informed by then Energy Secretary Hazel O’Leary in July 1995. Afterwards, Panetta reportedly requested then DCI John Deutch to work with the NSC on the matter. Deutch briefed then National Security Advisor Anthony Lake in November 1995. The senior officials reportedly did not brief President Clinton in 1995.²⁰⁸ Sandy Berger was the Deputy National Security Advisor at that time.

Right before the indictment of Wen Ho Lee, on December 4, 1999, top law-enforcement, security, and DOE officials held a meeting at the White House on whether to indict. Attorney General Janet Reno, National Security Advisor Sandy Berger, Energy Secretary Bill Richardson, FBI Director Louis Freeh, DCI George Tenet, and U.S. Attorney John Kelly attended.²⁰⁹

Then, after Wen Ho Lee was freed after 9 months under a plea bargain in September 2000, President Clinton expressed criticisms of the pre-trial detention of Lee, saying:

I always had reservations about the claims that were being made denying him bail. And let me say – I think I speak for everyone in the White House – we took those claims on good faith by the people in the government that were making them, and a couple days after they made the claim that this man could not possibly be let out of jail on bail because he would be such a danger – of flight, or such a danger to America’s security – all of a sudden they reach a plea agreement which will, if anything, make his alleged defense look modest compared to the claims that were made against him. So the whole thing was quite troubling to me, and I think it’s very difficult to reconcile the two positions, that one day he’s a terrible risk to national security, and the next day they’re making a plea agreement for an offense far more modest than what had been alleged.²¹⁰

Export Controls. Some critics have linked the controversy over lab security with the Administration’s export control policy toward China. They cited the export of high-performance computers to China.²¹¹ The Department of Commerce reported to Congress in January 1999 that 191 such computers were exported to China in 1998, for which three end-use checks were conducted.²¹² There were also concerns,

²⁰⁸ Risen James and Jeff Gerth, “U.S. Is Said To Have Known of China Spy Link in 1995,” *New York Times*, June 27, 1999.

²⁰⁹ Risen, James and David Johnston, “Decision Nears on the Fate of Ex-Los Alamos Scientist,” *New York Times*, December 8, 1999.

²¹⁰ White House, Remarks by the President on Patients’ Bill of Rights Upon Departure, September 14, 2000.

²¹¹ Laris, Michael, “China Exploits U.S. Computer Advances,” *Washington Post*, March 9, 1999.

²¹² Department of Commerce, “Commerce Report: Growing Demand For U.S. High (continued...) ”

investigated by Congress in 1998, that exports of U.S. satellites have resulted in transfers of missile technology to China.²¹³ Some argued that the Administration's export control policies have allowed dual-use exports "of great strategic value" to China that have resulted in greater damage to U.S. national security than the leaks of nuclear weapon data.²¹⁴ President Clinton, nonetheless, said that his Administration has been determined to prevent diversions of sensitive technology to China and has placed controls on exports to China that are "tougher than those applied to any other major exporting country in the world."²¹⁵

Nuclear Cooperation with China. Some question whether it was appropriate for the Administration to have expanded nuclear ties with China, including exchanges between the two nuclear weapon establishments, while it had suspicions about security compromises. At the 1997 U.S.-China summit, President Clinton promised to issue certifications (signed in January 1998) to implement the 1985 nuclear cooperation agreement; during congressional review, the Administration did not discuss problems at the labs.²¹⁶ At the 1998 summit in Beijing, DOE signed a governmental agreement on peaceful nuclear cooperation, including exchanges at the labs.²¹⁷ The Administration argues that lab-to-lab exchanges were not the cause of the alleged security problems.

Criticisms of Partisanship

Still others urge policy-makers to move beyond partisan debates to urgently upgrade U.S. security at the labs, assess the potential damage from China's reported compromise of U.S. secrets, and take corrective action. They also caution against partisan attacks in this case that might damage broader and long-term U.S.-China relations that are in U.S. interests, such as efforts on trade and weapon nonproliferation. They point out that, as FBI Director Freeh confirmed, "great vulnerability" to intelligence compromises of security at the nuclear weapon labs has been identified since 1988, ten years prior to PDD-61. Freeh said, "unfortunately, this situation has been well documented for over ten years." Those concerns about

²¹² (...continued)

Performance Computers," press release, January 8, 1999.

²¹³ See CRS Report 98-485, *China: Possible Missile Technology Transfers From U.S. Satellite Export Policy — Background and Chronology*, by Shirley A. Kan.

²¹⁴ Wisconsin Project on Nuclear Arms Control, "U.S. Exports to China, 1988-1998: Fueling Proliferation," April 1999.

²¹⁵ President William Jefferson Clinton, speech to the U.S. Institute of Peace, at the Mayflower Hotel, Washington, D.C., April 7, 1999.

²¹⁶ CRS Issue Brief IB92056, *Chinese Proliferation of Weapons of Mass Destruction: Current Policy Issues*, by Shirley A. Kan.

²¹⁷ Agreement between the Department of Energy of the United States of America and the State Development Planning Commission of the People's Republic of China on Cooperation Concerning Peaceful Uses of Nuclear Technologies, June 29, 1998.

counterintelligence at DOE included a hearing held by Senator John Glenn in 1988 and studies by the FBI, CIA, and GAO since then.²¹⁸

Implications for U.S. Policy

Counterintelligence²¹⁹

The Los Alamos incident led to several reassessments. As discussed above, the Intelligence Community undertook an assessment of potential damage to national security from possible leads of nuclear weapons secrets. DCI George Tenet asked a group of outside experts headed by retired Admiral David Jeremiah, former Vice Chairman of the Joint Chiefs of Staff, to review the in-house effort and they concurred in its judgments.

Efforts to formalize the government's counterintelligence efforts have been underway since the aftermath of the arrest of Aldrich Ames, the CIA official convicted of espionage. A Presidential directive was signed in May 1994 placing the policy and coordinating machinery of counterintelligence in the hands of the NSC and created a National Counterintelligence Policy Board composed of representatives of the principal law enforcement and intelligence agencies, reporting to the National Security Advisor. The Board was subsequently given a statutory charter in the FY1995 Intelligence Authorization Act (P.L. 103-359).

A major goal in establishing the Counterintelligence Policy Board was coordination of CIA and FBI efforts with a focus on counterintelligence at intelligence agencies; concerns about Energy Department laboratories were not public discussed in 1994. It is generally agreed that coordination among law enforcement and intelligence agencies has improved significantly in recent years. As a result, however, of concerns dating from at least 1995 that China may have acquired sensitive information from Los Alamos, PDD-61 was issued in February 1998, mandating a stronger counterintelligence program within DOE laboratories. According to Energy Secretary Richardson, writing in March 1999, steps taken in response to PDD-61 included new counterintelligence professionals based at the laboratories, a doubling of the budget for counterintelligence, a new screening and approval process for foreign scientists seeking access to the laboratories, and more extensive security reviews—including the use of polygraphs—for scientists working in sensitive programs.²²⁰

The controversy has led to consideration of intelligence-related legislation.²²¹

²¹⁸ Testimony of FBI Director Louis Freeh before the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary, March 17, 1999.

²¹⁹ Prepared by Richard A. Best, Jr., Specialist in National Defense.

²²⁰ Bill Richardson, "Guarding Our Nuclear Security," *Washington Post*, March 15, 1999.

²²¹ See CRS Issue Brief IB10012, *Intelligence Issues for Congress*, by Richard Best.

Nuclear Nonproliferation and Lab Exchanges

In addition to questions about PRC weapon designs, there are implications for U.S. policy posed by China possibly passing U.S. nuclear weapon secrets to other countries. As discussed above, in the late 1970s to 1980s, the PRC reportedly acquired U.S. data on the neutron bomb from Livermore and passed it to Pakistan. The United States and other countries have been concerned about PRC nuclear proliferation, especially in Pakistan and Iran.²²² Advanced U.S. warheads have features of value to would-be nuclear weapon states. These features might permit a nation to develop more efficient warheads, in which case it could build more bombs with its supply of uranium or plutonium. They might solve engineering problems or suggest production shortcuts. If China passed U.S. nuclear weapon information to another country, it could develop and deploy a more potent nuclear force faster.

The CIA's damage assessment, that was briefed to Congress and the Administration on April 21, 1999, cited a greater concern for nuclear proliferation. It acknowledged that China could pass U.S. nuclear weapon secrets to other countries, although it is not known whether China has done so. The assessment cautioned that, now that the PRC has more modern U.S. nuclear weapon information, it "might be less concerned about sharing [its] older technology."²²³

India or another country concerned about the advancement of PRC nuclear weapons might pursue further development of nuclear weapons and the missiles to deliver them in response to reports that China may have acquired designs for the W88. Citing security concerns about China, India conducted several nuclear tests in May 1998 and has not signed the CTBT.

Citing concerns about nuclear proliferation, Members looked at curtailing the U.S.-China lab-to-lab program that the Clinton Administration initiated in July 1994 and formalized in a June 1998 official agreement. Leading a delegation to the Los Alamos National Lab, Senator Shelby, Chairman of the Intelligence Committee, is quoted as saying on April 12, 1999, that a "tourniquet" needs to be placed on the "hemorrhaging" of bomb secrets to foreign countries.²²⁴ If there are security gaps at the labs stemming from foreign exchanges, Congress may want to ensure that adequate counterintelligence measures are in place. (See Legislation above.)

The Intelligence Community's April 1999 damage assessment states concerns, highlighted by some, about PRC "technical advances" based on contact with scientists from the United States and other countries, among a variety of sources of information. (Other countries may include Russia.) The review panel's note on the

²²² See CRS Issue Brief IB92056, *Chinese Proliferation of Weapons of Mass Destruction: Current Policy Issues*, by Shirley A. Kan.

²²³ CIA, "The Intelligence Community Damage Assessment On the Implications of China's Acquisition of U.S. Nuclear Weapons Information On the Development of Future Chinese Weapons," (unclassified release), April 21, 1999.

²²⁴ Brooke, James, "Senator Tells Nuclear Bomb Labs To End Foreign Scientists' Visits," *New York Times*, April 13, 1999.

damage assessment also warned of the dangers of exchanges between U.S. and PRC or Russian nuclear weapon specialists, urging that a separate net assessment be done on such formal and informal contacts. Yet, the panel also noted that “the value of these contacts to the U.S., including to address issues of concern — safety, command and control, and proliferation — should not be lost in our concern about protecting secrets.”

Another report on PRC espionage included warnings about exchanges at the labs. According the CIA and FBI’s 1999 unclassified report, “PRC scientists, through mutually beneficial scientific exchange programs, gather [science and technology] information through U.S. national laboratories.”²²⁵

China’s nuclear weapon facilities include the China Academy of Engineering Physics (CAEP), also known as the Ninth Academy, at Mianyang, Sichuan province; Institute of Applied Physics and Computational Mathematics (IAPCM), in Beijing; High Power Laser Laboratory, in Shanghai; and Northwest Institute of Nuclear Technology (NINT), near Xian.²²⁶ China’s nuclear weapon installations have been in transition since a reorganization of the defense industrial sector in the spring of 1998 that included the civilianization of the Commission of Science, Technology, and Industry for National Defense (COSTIND) solely under the State Council. PRC nuclear weapon facilities may now be partly or fully subordinate to the Chinese military’s new General Equipment Department set up in April 1998 to centralize and improve control over research and development, production, and deployment of weapons.

Placing restrictions on the foreign visitor program, however, may have implications for U.S. policy on arms control and nonproliferation. The Administration argues that foreign exchanges have not compromised U.S. security and have not involved weapon secrets. Moreover, contacts with foreign nuclear scientists allow U.S. nuclear weapon labs to learn about the secretive nuclear weapon establishment in China – especially as it is undergoing changes. In October 1998, John Browne, Director of Los Alamos, testified that “access to classified information by foreign nationals is not allowed” in DOE’s foreign visitor program.²²⁷ The Administration says that engagement of PRC and other scientists fosters support for arms control and nonproliferation objectives as well as advances U.S. interests in making sure that foreign nuclear powers have sufficient control over nuclear materials so that they are

²²⁵ CIA and FBI, “Report to Congress on Chinese Espionage Activities Against the United States,” December 1999, released March 8, 2000.

²²⁶ Department of Commerce, “Entity List, Entities of Proliferation Concern Listed in Supplement No. 4 to Part 744 of the Export Administration Regulations,” updated November 19, 1998; Defense Intelligence Agency, Defense Intelligence Reference Document DI-1921-60A-98, “China’s International Defense-Industrial Organizations,” June 1998; Conference at the Monterey Institute of International Studies, November 1997.

²²⁷ 105th Congress, Hearing of the House National Security Subcommittee on Military Procurement, “Department of Energy’s Foreign Visitor Program,” October 6, 1998.

not leaked to rogue states.²²⁸ The former Director of Los Alamos argues that “any contact with China’s nuclear weapons establishment needed to be clearly focused to avoid aiding their weapons program. Hence, the Department of Energy authorized only small, restricted interactions on nuclear materials protection and verification technologies for arms control treaties. These activities were and still are clearly in our national security interest.”²²⁹ Testifying before the Cox Committee in October 1998, C. Paul Robinson, director of Sandia, stated that “the lab-to-lab program with China has been beneficial in several ways. It provides the United States with perhaps its only window on the Chinese nuclear weapons program. . . . Moreover, the program has helped promote the establishment of an arms control program in China.”²³⁰

U.S.-China Relations

The disclosures about suspected PRC espionage at the U.S. labs have further complicated the Administration’s policy of engagement with China. Vice President Gore said on March 9, 1999, that “having a relationship with [the Chinese] within which we can try to affect their behavior and improve human rights, eliminate unfair trade practices, and bring about the kinds of changes that will lead to further democratization in China, these things are in our interest.”²³¹ On March 11, 1999, President Clinton first defended his policy against charges of laxity in dealing with China and asserted that engagement “has paid dividends” for U.S. interests in weapon nonproliferation, Korea, and the Asian financial crisis. He also argued against an “isolated no-contact” relationship with Beijing.²³² In a major speech on China policy on the eve of PRC Premier Zhu Rongji’s visit, President Clinton again explained that seeking to resolve differences with China cannot be achieved “by confronting China or trying to contain her,” but through a “policy of principled, purposeful engagement with China’s leaders and China’s people.”²³³

Some critics have charged that the W88 case shows that engagement has not adequately protected U.S. national interests, and a more confrontational policy — some call containment — should be pursued. They have said that the credibility of the White House on China policy has been further eroded and that engagement has

²²⁸ Prindle, Nancy, “The U.S.-China Lab-to-Lab Technical Exchange Program,” *Nonproliferation Review*, Spring-Summer 1998; Wen L. Hsu, “The Impact of Government Restructuring on Chinese Nuclear Arms Control and Nonproliferation Policymaking,” *Nonproliferation Review*, Fall 1999.

²²⁹ Hecker, Siegfried S., “Between Science and Security,” *Washington Post*, March 21, 1999.

²³⁰ Statement of C. Paul Robinson, U.S. House of Representatives Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China, October 14, 1998.

²³¹ Harris, John F. and Walter Pincus, “Gore Defends U.S. Stance On China, Security Issues,” *Washington Post*, March 10, 1999.

²³² President William Jefferson Clinton, remarks at the signing ceremony and summit closing in Guatemala, March 11, 1999.

²³³ President William Jefferson Clinton, speech sponsored by the U.S. Institute of Peace, April 7, 1999.

brought more harm than benefits to U.S. interests. Senator Helms wrote on July 8, 1999, that the Cox Report presented “damning disclosures on the Clinton Administration’s ‘engagement’ policy toward Beijing” and urged a “fundamental reassessment” of U.S. policy toward China.²³⁴

Still other critics have pointed out that PRC espionage and the Chinese military has and will continue to challenge U.S. interests and the question is not whether the United States needs to remain engaged with China — as the President has said, but how that long-standing policy of engagement is carried out by the Clinton Administration. According to them, engagement — but with a tougher approach — is still the most appropriate policy at this time. For example, James Lilley, former ambassador and CIA station chief in China, argued, PRC spying and American spying will continue, but exposing PRC espionage “should not derail our relationship with China.”²³⁵

Concerns over PRC nuclear espionage have spurred even some supporters of engagement to criticize the Clinton White House’s pursuit of what it calls a “constructive strategic partnership” with China.²³⁶ Henry Kissinger, credited in part with the opening to China, wrote that “a sustainable Sino-American relationship requires something beyond presidential invocations of ‘engagement’ that imply that contact between the two societies will automatically remove all latent tensions, or of a ‘strategic partnership’ whose content is never defined.”²³⁷

Besides the immediate concerns about lab-to-lab exchanges, this W88 case also has ramifications for other aspects of the relationship with China. In March 1999, Representatives Gilman and Rohrabacher wrote letters to Defense Secretary William Cohen questioning exchanges with the People’s Liberation Army (PLA).²³⁸ The Pentagon pursues military-to-military ties with the PLA as a means to deter PRC provocations, increase mutual understanding, and expand relations with important leaders in China. Some observers are also concerned that a worsened political atmosphere could affect trade relations, including assessments about China’s entry into the World Trade Organization.

²³⁴ Helms, Jesse, “‘Engagement’ With China Doesn’t Work. Now What?” *Wall Street Journal*, July 8, 1999.

²³⁵ Lilley, James R., “Blame Clinton, Not China For The Lapse At Los Alamos,” *Wall Street Journal*, March 17, 1999.

²³⁶ Notably, the Secretary of Defense’s November 1998 East Asia Strategy Report does not use the term.

²³⁷ Kissinger, Henry, “Single-Issue Diplomacy Won’t Work,” *Washington Post*, April 27, 1999.

²³⁸ Representative Rohrabacher, letter to Secretary Cohen, March 18, 1999; Bill Gertz, “General Postpones China Trip,” *Washington Times*, March 22, 1999.