



## **Transcript: September 16 “Trade Secrets and Economic Espionage” Seminar**

HOLLY CHANG: Thank you, thank you for joining us today. My name is Holly Chang and I am the Acting Executive Director of the Committee of 100. If everyone could please make sure that your phones are off, we would greatly appreciate it. We’re really honored today to have with us two very courageous people, Ms. Sherry Chen and Professor Xiaoxing Xi, who will share their stories with us later today. We would like to commend them for their bravery to continue to speak out on these issues in D.C. today. We’re also very grateful to have with us two Committee of 100 members to share their expertise and experiences: Brian Sun, a renowned legal expert who has been involved in many, many cases, including that of Dr. Wen Ho Lee, and also Henry Tang, who co-founded the Committee of 100 25 years ago. We’re also joined by Peter Zeidenberg, Partner at Arent Fox, who represents Ms. Chen and Dr. Xi. We are also very honored to have here Congresswoman Grace Meng, U.S. Representative for New York’s 6<sup>th</sup> district. If Congresswoman Meng would like to make some remarks, we would welcome her to come up and speak at this time.

CONGRESSWOMAN GRACE MENG: Thank you Holly and thank you to the Committee. It’s a wonderful privilege to be with you all today. I just want to thank all of you for putting together this very important event. We have votes later and it’s a very unpredictable first day, so thank you for bearing with us. I really just wanted to be here to commend all of you for your efforts thus far. This is something that has affected and will continue to Chinese Americans and Asian Americans around the entire country. I too want to commend Sherry Chen and Dr. Xi for your amazing courage, for what you have been through. It’s important that our community, and not just our community, but Americans across the country come together to stand for what’s right. I’ve been working with fellow Congress members, Congress members Ted Lieu, Judy Chu, and Mike Honda, and also many members of the Congressional Asian Pacific American Caucus to make sure that the U.S., DOJ, and FBI properly investigate whether national origin or racial profiling was part of these initial charges. I know that many of you had a press conference yesterday, and I want to thank you for highlighting this important issue. Part of the letter that we jointly sent to Attorney General Loretta Lynch requested an investigation into whether race and national origin factored into cases like the Sherry Chen’s case. In this letter we jointly condemned any practice of targeting any American for arrest based on race, particularly with racial profiling Chinese Americans for espionage-related activities. Federal officials must be careful by exercising proper due diligence and limiting accusations based on unfounded suspicions. The government needs to be held accountable to be fair and must respect the civil rights of all Asians and all Americans regardless of rights. We must balance the need for national security with the protection of the constitutional rights of our citizens. These investigations can turn the worlds of the accused upside down, and come at huge financial and reputational costs, even if the charges are later dropped. I once again want to commend the Committee of 100, Henry and all of you, for your tremendous work in so many years. What you have accomplished

and what you're still fighting for affects all of us, and creates a very important narrative and helps us take a very important stance as Asian Americans. Thank you for being here today.

HOLLY CHANG: Thank you Congresswoman Meng. We just saw our Mission Video for the Committee of 100. In a minute, I'm going to bring up Mr. Brian Sun, who will give some more historical and geopolitical context on what we're experiencing now. Brian flew in all the way from LA so we're very grateful, Henry Tang came down from New York, and we have several other members in the audience: Jeremy Wu, who is our D.C. co-chair, as well as Michael Lin, who has been involved in Chinese Americans affairs for many, many years. Today is not the first seminar that we have organized. This is actually part of a series of seminars focused on enhancing awareness and understanding of the U.S. laws governing economic espionage and trade secrets, particularly among Asian American and Chinese American professionals, government employees, and contractors, especially those in the STEM fields. These complement our efforts at C-100 over the past 25 years to promote the full inclusion of Chinese Americans in the U.S. In May, C-100 supported a Congressional inquiry led by Congressman Ted Lieu, Congresswoman Judy Chu, and Congresswoman Grace Meng to Attorney General Loretta Lynch expressing concern about racial profiling. On September 4, we led a coalition of seven national Asian American groups to call on Attorney General Lynch to examine the growing number of criminal prosecutions towards Chinese Americans and Asian Americans. We're very happy to have you here today. Today is a very special day with all of our special speakers. Please join me now to welcome Brian Sun to the stage.

BRIAN SUN: Thank you Holly. First, I want to thank everyone for coming. As Holly says, we at the Committee of 100, along with some of our sister organizations like NAPABA and others, are committed towards really trying to make this more of an educational-awareness type thing. There are some who will say we're partisan about it, and let's face it – we are, but we're going by way of education try to give you a sense of the issues here, how they recur and repeat themselves. I've been doing this for a little while now, and Peter Zeidenberg who represents Sherry and Dr. Xi, I welcomed him to the club, because it's a relatively small club of lawyers who have been trying to deal with these cases around the country for some years now. And as we will talk about in both the panel and the presentation I'm about to give, this is where history repeats itself and there are things that we can and should do to address the situation.

The topic for today's discussion is, as we called it, "Trade Secrets and Economic Espionage: Legal Risks in Advancing Technology between the U.S. and China." All that's a fancy way of saying: the U.S. and China in the real world today are of course, you could argue, in a political, military, and economic competition for leadership in the world. There's a difference in the political systems, there's great differences in the cultures, and certainly the economic rivalry which has developed over my generation, the last generation, has been astounding and is creating all kinds of issues. Here we are on the eve of the state visit by President Xi Jinping to Washington in about a week and a half or so, where this issue is going to come right to the forefront. So the topic is timely, and some of the issues that Sherry and Dr. Xi will talk about are also timely. What I want to do, because this is a two-hour presentation condensed down to 40 minutes, and even though I'm a trial lawyer by trade, you can only talk so fast. So I'm going to try to hit the highlights and move right along.

I'm going to talk about the historical context in which all these cases come up, because we as Chinese Americans cannot escape the fact that there is historical context to what is going on here today, so I'll talk a little bit about that. We'll talk about what I call the geopolitical situation between the U.S. and China, but it is, as I said that, one crosses economic, military, political national security phobias – the whole kit and caboodle. We're going to talk a little about the current legal environment and why these cases are coming up. I'm going to probably skip over pretty fast all the legal statutes and mumbo-jumbo that underlie these prosecutions, but I'm going to give you a sense of where the Department of Justice and where the U.S. government is coming from when they go file criminal prosecutions against Chinese Americans in these cases. I'll give you some examples, we'll talk about some of the more recent cases, and then I'll say the good and the bad, because I'm going to talk about, there are a number of prosecutions where a number of Chinese Americans have been found guilty after trials, where the government hasn't messed up, where in fact people have committed violations of U.S. law. It's against this context that we do still find racial profiling and government overreaching, and that we still, even though there are prosecutions that are justified, the government still is guilty in many respects in many cases of not doing their homework, overreaching, rushing to judgement, and we're going to talk about that as well tonight. And then I'm going to try to offer some takeaway guidance, because as I said most of what we try to do in our C-100 seminars is try to say, look Chinese scientists or people who you are know who are your relatives are Chinese American scientists working in various technology sectors, you got to get the message home to them that these things could happen to you and it could happen to you because of the most inane coincidence, stupidity on somebody's part because they download something onto a flash drive they shouldn't – they may not have the venal purpose in mind that the government suggests in these cases – but things like that, foolishness that commonly is born out of nativity or ignorance is getting turned into criminal cases.

Let's talk about the Chinese in America and put this in context. For over 160 years, we've been here, but we have encountered all kinds of institutional biases and racism that many other ethnic minorities have experienced. In the context of today's political world, we're really under the microscope because of the growth of China. The focus here tonight is on the trade secrets and the technology transfers, and I'm going to give you a little history about how we got here. The reason why C-100 is heavily involved in this, it's one of our top priorities as part of our mission to improve the image of Chinese Americans. C-100 was born out of the Tiananmen Square incident, and Henry can talk a little about that. Yo-Yo Ma, I.M. Pei, Henry, and a couple others formed the C-100 for the idea that we want to do something to not foster negative images of Chinese Americans, and this stuff is killing us, it's killing us. So let's talk about the historical racism and the bias against Chinese Americans. Most of you know this, but it's good to put this in context. When we came to the U.S. in the late 19<sup>th</sup> and 19<sup>th</sup> century, people forget what kind of discrimination Chinese Americans experienced. We couldn't own land. The Congress passed acts preventing Chinese from immigrating to the U.S. The immigration law of the U.S. has been built on cases filed by Chinese Americans in the courts seeking the very basic rights that were given to even the European immigrants. We couldn't own property. In the more modern era, we had the McCarthy era, what I call the post-World War II Communist Cold War era. Chinese Americans were under surveillance by the FBI. All images fostered in the media, television, movies, of Chinese Americans being a menace to the national security and well-being of this country. This wasn't ancient history, this wasn't a generation ago, it continues to this day. The

latest spate of this stuff, and I'm going trace the technology transfer spate of prosecutions to the campaign finance scandals in the late 1990's.

For those of you who remember, in the late 1990's there was a series of Congressional hearings and DOJ investigations and prosecutions of Chinese Americans relating to campaign finance donations made by sources that were attributed to the Chinese government, or Chinese nationals, or non-U.S. citizen donors with the idea that maybe the Chinese were trying to influence our political process, subvert it in some way, in order to gain some economic or business advantage. This particular clip is from some Buddhist nuns who had to testify in front of a Congressional hearing. There's a guy named Johnny Chung there with the Clintons, who's a big donor to the DNC. All these people were my clients. The young guy in the bottom there with the hair, that's me much younger and much better looking than I am now. This was when it all started folks. Scrutiny about the motives of China and our political system. Then it morphed into articles about how Chinese were trying to get our technology through the political process. This is a *New York Times* article that helped to start it, that talked about the Loral Space & Communications efforts to make big donations to the Clintons so they could get satellite licensing rights to sell satellite technology to Chinese companies who had military connections in China with the People's Liberation Army. This is what started it all in 1997. And *The New York Times* article started a broader debate about how to balance America's security concerns and commercial competition in the hottest of all the emerging markets, namely China. And why do I say it started it? Because that series of articles by *The New York Times* then spawned something that many of you know as the Cox Report. Let me ask – how many people have heard of the Cox Committee Report? Okay, a good number of you. The younger folks, I bet not. The Cox Committee Report was a select committee run by Chris Cox, later chairman of the SEC, California Congressman, smart guy actually, whose House Subcommittee investigated these allegations of technology transfers by the Clinton administration – this is all partisan now – seeking to see if the Clinton administration was basically giving away our technology to the evil Chinese. The Cox Report did this huge investigation, it's another half an hour for me to discuss their findings, but the upshot of what they were saying is: Chinese intelligence and the Chinese military industrial complex were using a thousand Chinese front companies and thousands of Chinese Americans to go and pilfer our technology and go and spy on the U.S., and to steal all our technological secrets and treasures. I'm paraphrasing, but that's essentially the upshot of this report.

This report led to some people then suggesting that the Chinese were trying to steal important stuff like our nuclear weapons secrets. And so, the Cox Committee led the FBI, because they were being pressured by Congress to crack down on these unlawful transfers and the spying by the Chinese to steal our technology, this led to the Wen Ho Lee case. The Wen Ho Lee case deserves another half an hour, for those of you remember, he was a Los Alamos physicist, Taiwanese-born, had only been to the mainland China twice in his life, and both times he had to be dragged there by his wife because his wife wanted to go. He was suspected of handing over nuclear weapon secrets to China. I can't give you all the particulars other than to tell you some tidbits, like at his bail hearing – for those who are interested in such things, like me and Peter – the U.S. attorney said to the judge, “your security, your wife's security, your daughter's security, and that of 270 million Americans' security will be endangered if you let this man out on bail.” This was going to come back to haunt the government, but that's what they told him. This was a judge ready to let him out on home arrest, home detention, but that statement cinched it – what

judge is going to let anybody out on bail when the U.S. attorney tells you the security of everybody in the country is going to [be compromised]. The other arguments were, “Agents are going to extract him in the middle of the night and we’ll never see him again, and we’ll never what he did with all these weapon secrets.” This is the kind of, excuse the language, \$hit we have to deal with in these kinds of cases.

Let me go to the decision to charge this guy – this is one of my favorite ones. This is a *New York Times* article, this is a week or two before they indict Wen Ho Lee. He’s on 24-hour-a-day, seven-days-a-week surveillance for nine months. We had gone in, his lawyers had gone in, and told the government, “If you indict this guy, this is what we’re going to do: A, B, C, and D in how to dismantle your case.” Peter, we gave them a roadmap to what the defense was going to be. Then Mike Wallace of *60 Minutes* got in and did an interview with Wen Ho. I got to tell you something, Peter will appreciate this – no criminal defense lawyer in their right mind puts their target defendant on *60 Minutes* with Mike Wallace. You have to be insane to do that pre-indictment, but we did. That shows you how unusual this case was. I’ll leap ahead: when Wen Ho Lee got a jail, two people sent him flowers at his house: the Committee of 100 and Mike Wallace from *60 Minutes*, because Wallace saw through the bull\$hit. The bottom line is the decision to charge this guy was not made by the U.S. Department of Justice – it was made at the White House. Janet Reno, Sandy Berger, Bill Richardson, Louis Freeh, George Tenet; top guys in the administration. You know how I found out about Wen Ho’s indictment? From an NBC News reporter. The indictment’s under seal, a 59-count indictment, and the NBC reporter had it in his hands and was reading to me the counts. The indictment was still under seal, he hadn’t been arraigned yet. This is the kind of stuff you deal with in these cases. The leaks in that case were awful.

Let me fast-forward. Some great lawyers did some great work. The government’s case started collapsing and he ends up cutting a deal, basically failure to report – like checking out a library book and not returning it on time. Whatever the factual basis was, there was no time, immediate release, no pre-sentence report – he’s free. Judge Parker, the same judge who had been told that 270 million Americans would be endangered if he let this guy out on bail, this is what he said. Let me tell you something, and I tell this to everybody, the most amazing moments in my life are watching my kids get born in the hospital delivery room. Those of you who are parents, you’ve done that, you know what I’m talking about. From the lawyers’ standpoint, the legal equivalent was being in the courtroom that day and listen to Judge Parker make these comments. You could have heard, as they say proverbially, a pin drop. And you knew something was up, because his wife had come in with all her friends and was sitting in the jury box waiting for him to deliver his speech. You knew something was up. So this is what he says. He apologized, and in my lifetime, I don’t think I’m going to have too many federal judges in a criminal case apologizing to a defendant who’s been accused of some of the most nefarious things you could have. Peter, who you’ll see in a few minutes, you don’t see a judge apologize. And what does he tell you? “Dr. Lee, I tell you with great sadness that I feel I was led astray by the executive branch. I am sad for you and your family because of the way in which you were kept in custody while you were presumed under law to be innocent of the charges the executive branch brought against you. It is only the top decision-makers in the executive branch who have caused embarrassment, but they did not embarrass me alone. They have embarrassed our entire nation, and each of us who is a citizen of it. Now as I indicated, I have no authority to speak on behalf of the executive branch,

but as a member of the judiciary, the third branch of the government, I sincerely apologize to you Dr. Lee for the unfair manner in which you were held in custody by the executive branch.” You couldn’t have written a script for Hollywood any better.

The story doesn’t end there, because when I’m going with Wen Ho and the family members, and I said to them “should we let the government off the hook?” because the leaks had killed him in this case. So he let us go forward with a lawsuit against the government for leaking information about him unlawfully and we were able to get him a nice settlement, and so he’s been able to move on with his life. Let me go onto where we are today, 15 years later. By the way, it was 15 years ago to this day, I believe, that Wen Ho Lee got out of jail. It was September 16.

Let me talk about this geopolitical situation, but I want to just put something in context. I’ve talked about the Chinese American immigrant experience, but in the technology world and in terms of intellectual property, China is a major factor. In the pharmaceutical industry, the space industry, the electronics industry, you name it – Chinese Americans are right there, and they are among the most brilliant researchers, leaders in their field. It’s interesting to note that there are 4 million Chinese Americans, 25% of Asian Americans, mostly in 10 major states, a lot of them are first generation and highly educated. Students from China in the last 20-30 years as China opened up, where was the preferred venue for them to come study and get their master’s and PhDs? The U.S. And where do most of them end up staying? Most of them end up staying in the U.S. Most of them or many of them have become U.S. citizens, loyal American citizens. And this is where we find ourselves today, because following Wen Ho Lee – there’s a lot of stats here, if you want the PowerPoints, we can email them to you – we got a lot of smart people. I don’t want to do the stereotype thing because I’m a lawyer and was lousy at math and science, but we got a lot smart Chinese Americans in the scientific fields. I’m not one of them.

But here we are today, here’s what the media, here’s what the government is saying about China: “Foreign spies are stealing our secrets and they’re cyberhacking,” and all that stuff. Some of you might remember that DOJ went so far as to charge several members of the People’s Liberation Army a year or two ago with hacking into our computers to try to steal stuff. Back in the day, we used to call that “spying,” but now they charge you for that. But here they are. There’s a lot media coverage about Chinese intelligence services as well as private companies and other entities “frequently seeking to exploit Chinese citizens or persons with family ties to China, to use their insider-access to corporate networks to steal trade secrets.” So there you have it, this sums up what we’re dealing with: an attitude that the Chinese are systematically – this is not an isolated thing, this is orchestrated, thoughtful, pre-meditated efforts to steal U.S. proprietary technology. Cyberspying is the big one. And so, the government – and in fairness to the government, they target China, Iran, Russia as some of the biggest targets of trying to steal U.S. technology. You have Congress all over this too. Again, developing or perpetuating the notion that the Chinese intelligence services are basically doing everything they can to recruit, subvert, and obtain this technology, oftentimes through academia or through research exchanges. Because anybody who does R&D knows that oftentimes you collaborate, you write papers, you deal with people in other countries who do the same thing – that’s part of what you do. And now the government is saying, even the exchange of information between academics in the name of science can be economic espionage.

So where are we at in the current legal environment? Everybody sort of has an idea of what espionage means – spying and all that. But in the context of U.S. criminal laws, we’re basically talking about almost a state-sponsored industrial or economic espionage. Many people know that in China many of the biggest companies are state-owned enterprises, SOEs, where the government has an influence in the running of those companies. So automatically they say, this is Chinese government-sponsored espionage if a Chinese company is looking to develop and research a particular technology. There are some who believe that China is a great country at copying but they’re not so good at innovation. Well that’s changing; they’re now predicting within the next generation, it’s going to be flipped around – China will be the innovator, we’ll be trying to catch up. Under the U.S. legal system, we have all kinds of different ways in which you can be screwed up in litigation, which is why I have lots of work – I’m a litigator. Criminal prosecutions, regulatory proceedings, civil lawsuits. And what are the repercussions? As Sherry and Dr. Xi know, painful: reputational damage, disruption to your life, the costs of doing this, disruption, embarrassment, and humiliation with your coworkers. If you’re a green card holder and you’re convicted of a felony, you’re subject to deportation. You could be here in the U.S. for 25 years, and they can still deport you. And they’ve got all kinds of tools. They’ve got the espionage laws; the economic espionage laws; they have export control and licensing laws, where you need to get licensees to export technology and if you don’t get the proper licensing, they can come after you for that; and then computer crime laws where you’re going and accessing somebody’s database, taking something proprietary with you, and they can prosecute you for that. So there’s a whole spate of these laws which, like I said, that’s a whole separate thing and I don’t want to go into the legal mumbo-jumbo, other than tell to you there are stiff, stiff criminal sanctions for being prosecuted and convicted for any of these statutory violations.

Economic espionage is worth talking about briefly because under Section 1831, you can be prosecuted with economic espionage for the benefit of a foreign government. So that has added a component to the China cases. Most people know what a trade secret is, but believe it or not the lawyers can turn it into a real, real mess as to what a trade secret is and a lot of companies don’t really protect their trade secrets very well. This is where the government often doesn’t do its homework. Sometimes I don’t think the government knows a trade secret from a hole in the wall. They really don’t get it, as some of our panelists may talk about.

Export control laws, as I told you, there are different regulatory schemes that govern the export of technology to countries that we sanction or have sanctions against or prohibit. To transfer tech you need to get a licenses and exemptions and all this, and if you don’t do it right and dot your i’s and cross your t’s, you can be prosecuted. There’s a whole administrative and regulatory scheme there where you can be prosecuted.

The Computer Fraud and Abuse Act has been more recently invoked by the government for those who access databases and take stuff. In this modern world, everything is electronically stored, so that’s a big one. And they’re stiff penalties.

Let me go to some of the recent cases. I apologize for condensing all of this, but I just want to give you a sense of flavor and context before we get into our panel discussion. We’ll start with this premise, everyone: not every case involves a violation of due process. There are Chinese Americans out there who are violating the law. As Henry will tell you, when Wen Ho Lee came

along, a lot of Chinese Americans' reactions' were "this guy must be a spy, he's been disloyal, crush the guy." There is a lot of that dynamic and, in fact, the DOJ would say in response, I would imagine Attorney General Lynch or a DOJ prosecutor would say, in response to this suggestion that there's been a lack of due process or a rush to judgement, "that in fact in the vast number of cases, we don't screw up." I think we could debate that, but the truth of the matter is, there are a number of instances documented – instances of Chinese Americans who have been convicted of engaging in some kind of malfeasances that some of those national security reports and some of the media has suggested have taken place. But if you take a closer look at a lot of those cases, you could still see elements of over-reaching. The kind of companies that are involved in these prosecutions, are basically the top companies in America. I hesitate to say this, but most of these clients up here are my clients. I'm a partner at one of the largest law firms in the United States. We represent most of these people, so I'm on both sides of this myself.

I'm going to give you a quick rundown on a few cases. Here's an example of a guy who didn't get proper licensing on exporting thermal imaging equipment to China, which can have both a civil – civilian - and a military application, therefore requiring licensing. He got a 46-month jail sentence. There was a case in San Francisco that I'll talk about in a minute. There was a case in Indiana where some scientists from Eli Lilly were accused of stealing \$55 million in cancer drug research-related information, I'm going to talk about that case in a second. And then there's the NYU case, where two years ago, on the eve of the Xi Jinping-Obama summit in Palm Springs, Preet Bharara, the U.S. attorney in New York and Wall Street cop, brought this case where he basically charged these NYU research scientists with being bribed to give proprietary information about MRI technology to the "evil Chinese." He called them, "foxes in the hen house." I'll talk about each of these cases briefly. In fact, I'll talk about the NYU case now. The case against two of the researchers has essentially been dropped. The third researcher, the lead defendant, pled to a misdemeanor and just got a probation sentence last Friday in New York. This is a classic case of overcharging by the government. I could go into that for a half an hour too, but I'm going to talk about the Lilly case in a second because that one is worth talking about here.

Here are some other examples. This is trade secret stuff involving paints. Here's one that involved a Motorola employee. So people are getting jail terms for these cases. The du Pont case in San Francisco: Walter Liew, he just got sentenced to 15 years in that case after a trial and he's represented by some very good lawyers. And then this case, and I have to tell you: I've been practicing law for 36 years, I'm older than I look. The nature of what I do is, because I'm a litigator I do a lot of criminal work. So I can't lie at wake at night losing sleep over cases, I just can't function. But this is what I lose sleep over. This is a former Boeing engineer Greg Chung, who got 15 years. He was a pack rat, he kept a lot of stuff. He was a smart guy. They said he was giving stuff to China so they could bomb the space shuttle – China isn't building a space shuttle, by the way. He came to me and I referred him to another lawyer. They went to trial, lost, and the judge sentenced him to 15 years. He's in bad health, he will more likely than not die in jail. We tried to step in to handle his appeal, but we couldn't help him. I lose sleep at night over his case.

Here's another guy. This one's semi-humorous, to the extent that there's any humor in these cases. He's a former NASA guy, I believe, he's got a PhD from a Virginia school. Or he worked for some institute of aerospace, but he had a connection with NASA. He gets arrested at an

airport, they take him off the plane, they accuse him of stealing stuff, and a certain local Congressman describes him as a huge security risk, and their basic thing was that he had no work opportunities, so he was going to steal stuff and go back to China and work, one-way ticket. So they arrested him. The original indictment said he was lying about what he was carrying out of the country. Prosecutors basically gave him a reduced charge and a misdemeanor – no time. You know what they found on his laptop? Pornography. That’s what he was bringing back to China. We want to export that? That’s a different issue, I can’t go there. But they said it was misuse of NASA equipment, because it was a laptop he got from NASA. But that’s what he did. And he went back to China – no time, no jail.

Now Sherry is here to tell her story with Peter. But I want to talk about some of the more recent cases involving government arrogance and overreaching. This is Sherry Chen’s case, who, as you know, is a Weather Service hydrologist, a PhD, very, very good in her field. Just like Wen Ho Lee used to do stuff where he would simulate nuclear weapons explosions so they wouldn’t have to blow up half of Nevada to test the effects of a nuclear bomb, Sherry was in the business of trying to create forecast models of dam breaches and all that kind of stuff to save lives. She will tell you about her case, so I don’t want to preempt it here other than to say that her story is indicative of the kinds of ones that we have to be vigilant about. They’re the reasons why we write the letters to the Attorney General.

One I want to point out to you is a case I was involved in. I can’t talk too much about the behind-the-scenes stuff, but I can talk to you about what’s public. At the bail hearing involving those two Eli Lilly scientists, Chinese Americans, U.S. citizens, had lived in the U.S. a long time, their kids were going to school there in Indianapolis. Cao Guoqing and Dr. Shuyu Li were both former Eli Lilly scientists. Dr. Cao had been recruited to go work for a Chinese pharmaceutical company and it was alleged that they were taking cancer drug research data from Eli Lilly and giving it to the Chinese government. At the bail hearing for Dr. Cao and Dr. Li – I know this is bad print, so I’ll read it to you – the prosecutor is talking to the judge as to why these two defendants should be held without bail, pretrial detention is what we call it, and what does she say? “Your honor, if you look at 3142 (g) (1), the first factor that Congress has instructed the court to consider when considering the issue of release from detention is the nature and circumstances of the crime. If the superseding indictment in this case could be wrapped up into one word, the word would be ‘traitor.’” Ok, we are talking about cancer drug research folks. So she got these guys detained without bail because of that histrionic representation to the judge. This last graph here is the order grading the government’s request to dismiss the indictment that was filed about a year later. Not a lot of reasons offered, the government just dismissed the case. And Peter will appreciate this: it was right before certain motions were going to be filed directed at the government’s misconduct in the case. I can’t go much into detail on it, but I have permission from other lawyers to talk about it. But this one was a bad one. Very reminiscent of the Wen Ho Lee case.

And then there’s Professor Xi’s case – Temple University professor, head of the Physics Department, one of the leading innovators in his field. He was subjected to a similar kind of experience as Dr. Chen, Dr. Cao, and Dr. Li. There’s a human element to it that I can’t even begin to communicate to you, that I think only they can communicate to you, how the embarrassment, the humiliation, the frustration, the anger of just, you know, your life’s work

going up in smoke in front of you, that these cases bring. That's why I said I've done a lot of these programs, but I haven't had too many opportunities to share these kinds of things with people who've actually gone through them and we have Dr. Xi here who will tell you, impart to you, some of his thoughts about all of this.

There's one I put up here towards the end because this is one that happened about a couple months ago. A Tianjin University professor was stopped at LAX on his way to a meeting or a conference, and he's part of six Tianjin University professors who were indicted for economic espionage and trade secrets. He just made bail recently. I can't predict the ultimate result, but I have looked at the technology and this is another case that's got a problem. That's all I'm going to say about it. I say it only because this is a segue to my last point, which is, you know we're starting to indict Chinese professors in academia and it's not long before it's going to be the other way around.

This is the case of Xue Feng. Some of you may know of this gentleman, who was jailed in 2007 by the Chinese, claiming he was stealing state secrets. The bottom line is, he was only released earlier this year and this was only after the Chinese government rejected pleas by all kinds of organizations. A personal plea from President Obama fell on deaf ears. He was released, and I forget what the length of his sentence was, but he got out after seven and a half years, which is basically when he was finally eligible for parole. This was a tough one too, but this was a Chinese American working in China, who got caught by the Chinese. And mark my words, it's going to happen more and more again to Americans working in China and doing stuff with Chinese companies.

So I'm going to end on lessons learned. Look, there's a thing called the "Thousand Talents Program" – does anybody know what that is? The Thousand Talents Program is a government-sponsored program in China designed to try to attract and recruit, some would say lure, talented Chinese scientists who are working abroad, typically in the U.S., to come back to China. In fact, Dr. Cao from Indiana at Eli Lilly was one of those guys. It's pretty tempting stuff, you get a \$250,000 bonus to come back and work in Shanghai, and they'll give you 20 times the resources and researchers and people to help you do your work that you're good at. It's pretty attractive stuff. There's nothing illegal about it, but this is what we're dealing with here in terms of when you're working in these STEM fields here, you're going to be subject to those kinds of blandishments. A lot of the cases that have been brought by the government recently have focused on Chinese scientists who have been approached by Chinese companies, whether they're state-owned or not, to come back to China and work and bring with them their know-how.

Takeaway guidance is: you got to start understanding what these laws require. You've got to understand when you sign a non-disclosure agreement or when you're leaving a company or moving employment, that you understand what the regulations and rules are, regarding what you can with respect to the intellectual property of your present employer. You need to be sensitive to what kinds of things you load onto your laptops, your smart phones; what you put in emails and texts; what you share with a colleague or a fellow academic or fellow researcher at another company. You've got to be mindful of this, because in this digital age, they're looking for things that you put on your devices.

There are efforts by Chinese services to try to get this technology so you have to be careful about who you're meeting with in China. I hate to say it, but the world is such that now that particularly that when you go to China, that just because you think you're dealing with someone from the Chinese Academy of Sciences doesn't mean there isn't an MSS person, a Ministry of State Security person, behind them. Going to a lawyer, I hate to self-promote for the lawyers, but if you've got a question or problem, go talk to a lawyer before you do something stupid or sign some employment contract or whatever. These are the sort of things we're sort of telling people – look you can take steps to avoid stepping on the land mines, and educational awareness is one of them. Because we know what the risks are of what happens if you lose. The case in NYU that I mentioned a moment ago about the MRI technology – the big fight was, Professor Zhu, the lead defendant, is basically a green card holder. He's been in the country for like 18 years. His kids were born here. He doesn't want to go back to China. If he had pled guilty to a felony, he would've been deported. So, basically, his lawyers told the government, "We're not going to do it. We're going to fight you. If we can find a compromise, we'll find a compromise," and we did. But the point is, there's a lot at stake here, and the damage, as Sherry and Dr. Xi will talk about, it goes beyond just employment damage.

I've had to cut my talk down to, I don't know if I'm within my 40 minutes or not, but I'm happy to entertain questions. I think that I've attempted to try to give you a flavor of what these cases are about and what you deal with. Again, the message is: not everybody is a victim of racial profiling and due process and rush to judgment, but I'll say this much, there are far too many cases of Chinese Americans who are, far higher proportionally to the average criminal cases. The government is pulling the trigger too fast in these cases and what I've found in most instances, where they don't do their homework, is in the science. In the Wen Ho Lee case, my colleague John Cline sat down with Wen Ho Lee and learned nuclear weapons physics. And he beat the socks out of the government and persuaded Judge Parker that the government had trumped the whole thing up, and showed him all the stuff that they said, "the crown jewels of our nuclear weapons secrets," you could find on the internet, publicly-accessible websites. That's how they got the government to give him the deal that they did. In the Indiana case, same thing. It started out as economic espionage, then they cut it back to mail fraud, then they finally dropped the case. That's how we were beating these folks back, because they didn't do their homework on the science. I know we've got to move.

HOLLY CHANG: I now would like to go ahead and invite Henry Tang, Sherry Chen, Xiaoxing Xi, and Peter Zeidenberg to the table. Thank you.

BRIAN SUN: Why don't I do this – I'll make some very quick introductions and then I'll ask Peter if you can introduce your clients. The first one I'll introduce is Henry Tang. His bio is in front of you. He's one of the original founders of the Committee of 100. I have a funny anecdote about my earlier comment about how Chinese Americans when they first heard about Wen Ho Lee were mostly thinking, "Ok this guy must be a bad dude." Henry had approached me about membership in the Committee of 100, and I said "Well, maybe we ought to wait until after this case is over before I become a member, because maybe people might think that I would bring some baggage with me." The ending turned out well and I joined the Committee. Henry is really one of the leaders of our community and was one of the few courageous people who stepped up when a lot of others went into hiding in the community when that case first came up. Let me

introduce Peter Zeidenberg, who's a partner at Arent Fox here in Washington, D.C. He is a former federal prosecutor, he also worked on the Scooter Libby prosecution team. I had not come across Peter until these cases, but I welcomed him to the club. And it's a small club, of lawyers who have been battling the government in these cases. And I'm really jealous of him because he's two for two. And so Peter Zeidenberg is here with us and we're really happy to have him here, and I'd like to ask Peter for you to introduce our two other panelists.

PETER ZEIDENBERG: Thanks Brian. It's my privilege to introduce my two clients: Sherry Chen, who's on my left, who has worked for seven years as a hydrologist at NOAA in the state of Ohio, predicting river flooding in the Ohio River Valley. To her left, is Professor Xi, who until very recently was, and soon will be again, the Chair of the Physics Department at Temple University. We'll be talking about some of the lessons learned that were relevant based on what Brian brought up, but there were a lot of parallels between the cases Brian mentioned and the cases here and including the fact – Brian, you mentioned it, the information on Wen Ho Lee's secrets were available on the internet. One of the key factors in Sherry's case – in Sherry's case they were all exercised because she accessed something called the National Inventory of Dams, which of course I had never heard of until I met her, but this information which they were so exercised about was just like that, all available publicly on a variety of different public internet sites, which I guarantee the government had no idea until we told them. So, your point is well taken, that they jumped the gun and made mountains out of mole hills.

BRIAN SUN: Well let me first start, this is more meant to be sort of a round table discussion. I really want to give Sherry and Dr. Xi an opportunity to say whatever they really feel like. But the first thing I wanted to mention, this an interesting topic for some of us who get involved in these things, is the community's role in this. These cases are giving us a bad image – Chinese Americans – there's an argument to be made that community organizations should be more vocal and committed and active in this area, and so I guess I would ask you Henry, first of all, to start off, your commentary and your perspective on what's going on in these cases and how community organizations have reacted to this and whether they could or should do more? And if so, how?

HENRY TANG: Thank you very much and you know about the history of the Committee of 100 as the result of being a part of what we do so I won't talk too much about our Committee. What we like to say is, it's just a group of ordinary Chinese Americans who have achieved extraordinary things in their lifetime. We call upon all 160 to participate and add their personal resources and expertise into issues like this. We cover many other issues besides Wen Ho Lee sort of cases. We also, some of you may know, go to events like next week in Seattle we'll be seeing President Xi when he comes in, we go to Beijing, Taiwan, and Hong Kong to talk to leadership quite often. So it's a really interesting group of people who have the capacity to get engaged in a lot of controversial issues. In the case of Wen Ho Lee, he came to us through Brian, we also had many people affiliated with the National Laboratory where Wen Ho Lee was working. In this particular case all I can say is that there's American baseball player named Yogi Berra and he was very famous for his saying, "It's déjà vu all over again," meaning here we are 16, 17 years later. The Wen Ho Lee case was in 1999 and here we are in the year 2015, 16 years after. The Wen Ho Lee case began about a year before it actually came to the surface, so it's about 16 years or 17 years later, and we're sitting here in this same position. Let's all sit back

and have a moment of silence to think about that. As Brian knows and some other people in the Committee of 100 would say, for me it's déjà vu all over again. I've been in these rooms, 16, 17 years ago, 10 years ago, and 5 years ago talking about this issue. And that's why I had a lot of interest in coming to speak to groups like this as another concerned American citizen of Chinese background. For thinking about the posterity, like Brian, I don't look my age, but I have four grandchildren in this country and why I continue to be engaged, and this is because my grandchildren will be living and dying in this country. Therefore I am very, very concerned about its future.

To give a little bit of backdrop, I want to bring up two points, which you'll have to go home and do a little bit of homework to understand them because I don't want to take up time to explain the whole thing. Take down a note or put it into your smart phone: go to Wikipedia and look up something called "Blue Team." It might say, "Anti-Chinese psychology that has permeated into this country's leadership and thinking" – into organizations like the Defense Department, Justice Department, and so on. And you'll also get a very good background – google "blue team China" and a story from *The Washington Post* with the dateline February 22, 2000 will give you some background on Blue Team and how they exist. Because we have to sit back here, personally for me 17 years later, and I don't know if I could be here 17 years from now, I don't want to be here 17 years from now talking about the same thing. But 17 years is a long time. And the Blue Team will explain to you that this phenomenon of anti-Chinese psychology started back in the McCarthy era. I won't go into detail, that's just a short introduction. And therefore, we as leaders of groups here, American groups with Chinese members, Chinese American members, need to get concerned. I spoke about this 16, 17 years ago when the Wen Ho Lee case, and I call upon for instance the Asian legal community as well as the whole legal community to think and work on a systematic way that someone like Brian, who has worked systematically for the last 17 years, working and defending and speaking out on these cases, and also to work on the costs of defense. We have to think in the case of Dr. Xi and Sherry here, how to help preserve their reputations and many of us need to stand up and step forward to defend their reputations, so that all of those who are impacted by this are not besmirched for life. Those are the concerns. Wen Ho Lee has personally become a friend of mine, as a result of this case, and I had lunch with him in the San Francisco area, where he lives, about once or twice a year. Wen Ho Lee has not worked a single day since the case. He got a small settlement, which clearly was not enough to take care of the rest of his life. He was 59 years old, similar to Sherry's age, and was not able to find work again. Then subsequently he went into social security retirement, but lives very, very modestly today. That's what happened to him. So therefore, we as Americans of Chinese heritage, citizens as well as naturalized or otherwise of this country, need to step forward and find ways not to see this repeated again, and stop the déjà vu.

BRIAN SUN: Thank you Henry. Let me ask you this Peter – I welcomed you to the club earlier, from your perspective as a lawyer, I presume until these cases came along you had not handled cases of this nature. One of these questions we often get is: are these cases a result of racial profiling? Since the Wen Ho Lee case, I get called rather on frequently by clients saying, "There's racism going on in my case and what not." The question I posed with Henry years ago was, would Wen Ho Lee have been prosecuted or indicted if he hadn't been Chinese? And I think we can pretty much answer that question. Not to put you on the spot here, but within the context of Dr. Xi and Sherry Chen, do you have any thoughts about the racial profiling aspects

and how they come into play here? We can't solve this geopolitical stuff I was rambling about earlier.

PETER ZEIDENBERG: I find it almost impossible to believe, as I've said to others, that if you change the countries involved and it wasn't China, and all the other facts stayed the same, and you talked about it being France or Great Britain or it was Canada, you know almost any other country, it's almost impossible to imagine this coming to light. In fact, in Sherry's case, it all got kicked off because a coworker, a colleague or a supervisor wrote an email saying "she just came from China, she's asking a bunch of questions that I think basically are out of her lane – someone should look into this." And she said it – it's because she came back from China. If she had come back from Ireland, I don't think she would've sent that email. In Professor Xi's case, this technology was not protected, it was not restricted technology – they basically ginned up this case against him. There was no economic loss involved. Turns out their facts were wrong in the first place, but it was such a manufactured case that it was not a righteous case that any prosecutor was thinking, "someone was really harmed here, we have to fix this." It really is impossible for me to imagine that this case would've happened had the other country that he was exchanging these emails with wasn't China. So, I hate to label, because the people involved did ultimately do the right things by agreeing to dismiss the case, but there's no question in my mind that it strongly influenced the decision to first get this case on their radar screen and then decide to go ahead with it.

BRIAN SUN: This is really more of a defense lawyer question, but do you think the fault is in the hands of the agencies, the investigators, the AUSAs who approve the indictments? Is there a lack of supervision going on, is there a lack of proper assessment of the evidence before they charge? Because let's face it, in our world, in our white collar world, most cases get indicted because there's some evidence to indict, right?

PETER ZEIDENBERG: I'd say the answer to your question is yes, yes, yes, yes, and yes. Lack of supervision, rushing ahead – I think a huge problem with these cases, both these cases, was the fact that they indicted first, and then we get an opportunity to meet with the government and to explain what went wrong. I really hope that the lesson learned here would be from the government's perspective to say, "Look, let's give them a target letter," which for the uninitiated is you send to the person of interest and the government sends them a letter that says, "We are looking at you very closely and you may be arrested imminently. You need to get a lawyer." That gives your lawyer the opportunity to come in and make the pitch that I made without embarrassing the government and without causing reputational harm and so much financial harm to the defendants. What's particularly upsetting about this is that one of the justifications for not doing that is when people are a flight risk, or if they're a danger. And neither of those issues were present here. They didn't ask for Sherry or for Professor Xi to be detained, which was nice that they didn't do it, but if you're not going to do it, then why did you arrest them in the first place? Why not give them an opportunity to surrender themselves, why not give them an opportunity to have an attorney come in to make an explanation to you?

BRIAN SUN: I've been thinking about questions that I can try to ask Dr. Chen and Dr. Xi, but I sort of think that maybe the best way for me to approach it is to just ask each of you to maybe just tell people here in your own words what you want to tell them about your experience. I

know parts of it have been spoken about publicly with journalists, but in this context and in this room here with persons who I think all mostly share some bond with you, I'd like to ask each you to just make some comments about the experience, horrible that it was, and maybe share insights or maybe some lessons. I'll start with Dr. Chen.

SHERRY CHEN: Sherry Chen. First I'd like to thank you, the Committee of 100, for organizing this seminar; Brian's presentation was very informative. I wish I had heard of this before the tragedy fell on my head last year and [that I had] been aware of these issues. Also, I would like to thank you, the community, for your support and your help in getting my job back. This is really, I didn't expect any of this to happen, this was just something that suddenly fell from the sky – I had no idea and I didn't prepare. I think that most of the charges – probably some of you have heard – they brought four charges against me, then the charges increased to eight, and finally [they were] dropped one week before trial. One of the main reasons, I think, why they charged me is based on one accidental visit – we didn't plan that, just a visit to someone I went to graduate school with a long time ago, thirty years ago, who happened to hold a higher government position in China. I went to see him for a personal matter and he had no idea why I was in Beijing, and why I wanted to see him. I just showed up and we talked. I think then he, just before I left, said, “By the way, we are in the same technical field. So by the way, do you know this?” about a water management issue. I don't deal with water management issues, so I said “I'm not sure. I will go back and check to see what I can find.” I came back and very openly went to my supervisor, because I couldn't find a really general [information about this question]. I said, “Do you know anyone I can talk to?” So he pointed me to one person in core engineering, where they manage water management, they do that type of work. I had worked with her before, so I said, “Yes, sure,” and I followed his instructions and made a phone call. So actually, my supervisor already told her “Sherry is looking for some public information – is there anything you can send her to?” So she knew where I was coming from and when I got there, I basically started with who, when, where, and what: who I talked to, what we talked about it, what is the information we are looking for, and when it happened. I told her that I went to China and met with my old colleague, and basically that was it. Everything was transparent. So then I clearly just said, “If there was any website that you could send me to that I could send to my older colleague.” I didn't feel anything was wrong, I just didn't know that it started from there. She reported it to the security agency, and they started a whole investigation.

One day, just a normal day, there were two security agents that showed up in our building. Not FBI, but Department of Commerce – their two agents showed up. They were looking for one of my coworkers who had called in sick that day, so my supervisor had to get him in to meet with the two of them. He talked with the two agents for two hours, and then they came back to me and said, “Sherry we want to talk to you too.” I thought they were going to talk to the staff one-by-one, so I said, “Okay.” I had no idea. Finally, what I thought was just a general conversation led to something else. They started with very general questions, like, “How many people are in the building? What do they do?” something like that. So I just answered. They didn't mention any word about an investigation, or the purpose of the conversation, or give me any warnings, even less, that what I said may be used against me for criminal charges. So, then, they started asking me about things that had happened a year ago and asked me to recall everything in detail. So I tried very hard to recall what happened a year ago. I just basically tried to work with them, but the questions – you know, there were two agents and one after another they just kept asking me

and then the questions just kind of [got] jumbled, back and forth. They asked me a question that can be asked dozens of times from different angles. If you answer this question, then they jump to another one, and time goes on and I became tired and confused, because I already worked for four hours before the interview started. I worked already intensively for four hours doing river forecasting, to forecast how high [a river will rise] and which areas [will be affected], to issue warnings, and all that – it's very intensive. I already worked on this for four hours. Then I started the conversation with these two and they kept asking me to recall. You know, things happened a year ago, so, you know, you couldn't remember everything. I thought I was really, completely truthful and transparent. I really didn't think for a second there was anything wrong with that. The conversation lasted seven hours. So you know, four plus seven is 11. That's 11 hours for me that day. That's very, very hard, and I was very, very tired. I had no water, no food, no break. Then I asked them, "Should I have my lawyer?" and they said, "No, no you don't need a lawyer," and I said, "Really?", they said "Yes, really."

So I never have dealt with anyone from a security department. I thought I should trust them. I just didn't know what to do. I just didn't know. What I am getting at is the lesson learned. I just want to share with someone who might find themselves in a similar situation as mine: just learn a lesson from my experience. I should really have had my legal counsel with me that day. It's very hard to imagine that if my lawyer was with me that day, that the conversation, the interview, or the interrogation – however you call – going to go to the same past? A lawyer probably would not let them do that for seven hours with no food, no drink, no warning, and no mention of the nature of the conversation? I think the situation would be totally different – I mean, what happened after the interview, that later was an indictment. A big part of the charge was saying I was lying to federal investigators, just because you didn't remember things? They just said I lied to them. They were basically very interested in my conversation with a Chinese official. It just happened to be my older colleague, I hadn't seen him for over 10 years. So that's what happened. Form a legal counsel right away – do not wait until after everything has been said and done, and the damage has already occurred. It's going to be too late. All you can do probably is just minimize the negative impact. But it already caused too much damage.

PETER ZEIDENBERG: If I could Brian - one thing I do think as far as these statements go, just as an example of how aggressive and over the top this prosecution was, one of the questions they asked Sherry was, "When was this conversation with your former colleague in China?" and she said, "The last time I was in China, May 2013, I think." It's in the notes – "I think." In fact, it had been May 2012, and they indicted her for false statements based on that statement, which they knew the date, they could've ask her the date, she could've checked her calendar. She's obviously not going to lie about when she went to China, it's the most easily verified fact you can imagine. And she said "I think." That's a false statement. That's a five-year felony. So that's an example of really poor, poor judgment. I mean we would've won the case I think, I don't think you go to a jury on that question. It was just an example of how aggressive they were.

SHERRY CHEN: What I think is really interesting is that when I said, "I think," I had said [to the investigators] the last time I visited my parents China. Even if you look at my record, I just didn't remember there were so many things going on. Then I told them, "Oh! But I can print out the email – my conversation with the colleague, my communication with him." They didn't know anything about who I talked to, where this happened, and what he was looking for. They

didn't know anything, and I provided everything at that spot, during the same interview. I said, "I'll just go to my cubicle and print out my email." So I printed all the emails – I'm glad I printed it all. Because if I missed even one of them, then they would've charged me with another one, for what, I don't know. So I'm glad I printed them all. And the emails show the dates – what day we communicated, what happened. It showed 2012, not 2013. I said "Hey! I brought that, I printed it for you and brought it to the interview room, here are the emails." So it was already clear, I already cleared it up and clarified if I said something wrong; I showed the emails. And they had no idea those emails even existed. So they still went ahead and charged me with lying to the investigators. I give them all the information that they didn't know, so I just don't know where this is from. They still want to charge me with something – later they doubled the charges to eight. If you add that up, that's probably 60 or so years in prison for lying to the investigator. This is just unbelievable.

BRIAN SUN: Well, can I ask Dr. Xi the same question? I don't want to cut anybody off, we have a lot to talk about and we're already out of time. Dr. Xi, do you want to offer some insights and then we can maybe take some Q & A?

XIAOXING XI: First of all I want to second Sherry in thanking Peter for the excellent work defending us. The dismissal of the case happened Friday afternoon, 4:00. It's only a short five days [ago]. And just as I changed in one moment or one day from some free man to somebody under indictment, my advice is don't talk to people. You could bring yourself trouble. That is a huge change – I like to talk to people, I interact with people, I talk a lot in a day, as the chair of the department. So what I am trying to say is, the same thing is true – to change from somebody who shouldn't talk to too many people about too many details, to someone who could talk. It's the same abrupt change and, as Peter put it, it's disorienting. Also, the judge has not signed the order. As somebody who is getting a little bit paranoid about what they are going to do, maybe they'll bring new charges. So, what I'm trying to say is, I probably shouldn't be talking too much because I just don't know. I did put down my thoughts into a statement that I released if anybody has not gotten that, I have some copies to distribute. Human suffering, all those are tremendous. We already talked about it yesterday, and we mentioned that to some of the media, but I was struck by what Brian and Henry said, that this was the subject 17 years or whatever number of years ago, and we are still talking about it. I can predict we are going to talk about this for the next however many years, whether it be 20 years or 50 years. If you're talking about from the century before the last, to know all the discrimination against the Chinese Americans. So, we probably will be dealing with this. The message that Brian presented was extremely useful. The take-home message: don't do this, follow the law, follow the rules, and pay attention to the details, the nondisclosure agreement and all those things. That's very important. I think the take-home lesson from my case is that even if you have done nothing wrong, you can still be in trouble. And literally while what they were charging me with are such common practices by all the professors – it's the job that we're supposed to be doing. And from the interactions that I had with the agents and so on, and from the evidence that we've seen, they look at everything that I do as routine of my academic activities, and the collaborations that the U.S. government is encouraging, they looked at everything like it was criminal activities. Traveling to China so many times? That's evidence of criminal activities. Filing Schedule C? That's evidence of criminal activities. Of course the emails, and so on and so forth. That is very scary. People ask me, "Why they are looking at your emails? You must've done something suspicious." I don't

know, I really don't know. I would like to know, but I don't know how I could know. But I hope they tell me why they started checking my emails.

PETER ZEIDENBERG: If I could on that, just to echo Professor Xi's comments – one, he literally did nothing that, even in retrospect, you could say, “Boy that was kind of dumb,” even though it wasn't illegal that was kind of risky or foolish or open to interpretation. That didn't happen. So that's kind of, there isn't a lesson learned when you haven't done anything wrong. Even if you were to wind back the clock, there's nothing you would've done differently. And the other thing about how he got on the radar screen, I have my suspicions that, as you were suggesting Brian, that who you were talking to – that there may have been people that Professor Xi was talking to that the government was looking at. I imagine that somehow he got on their radar screen in that fashion and they misinterpreted what they were looking at. I don't think we will ever get an explanation.

BRIAN SUN: One of the interesting things is in the Wen Ho Lee case, it was on the eve that there was a discovery motion asking basically for racial profiling information and the government decided to throw in the towel before they had to respond to the discovery motion. So there were certain things going on that the government didn't want divulged in the case. And you know, in this era post-9/11 with national security and resources being earmarked as they are to Homeland Security and the like, just enormous resources are going into China, through FISA warrants, and affidavits, and wiretapping, and electronic surveillance. I've been picked up on two wiretaps myself – I found out later – talking to clients. In fact, in one particular wiretapping, I think I'm saying, “If anybody is listening to this call, this is a privileged communication.” Now this particular client was an FBI agent, by the way, who I was talking to, that they wire tapped, but it had to do with a Chinese American espionage case. Henry, do you want to say something? Then I think we have to open up for Q&A.

HENRY TANG: Yes, if I may comment on what I have alluded to: please go read about Blue Team, please go and look at the *Washington Post* articles. It's a little bit of homework but it helps you understand that the common thread of what happened with Sherry and what happened with Wen Ho Lee was that it was reported by coworkers. There's the common thread. And the name of the coworker who reported Wen Ho Lee, in fact he did not only report it to his superiors, he went to New York to visit and talk to a *New York Times* reporter – this is in the apology from the *New York Times* – to talk to a *New York Times* reporter by the name of James Risen who thought that he was looking for another story to win a Pulitzer Prize.

BRIAN SUN: It was Jeff Gerth.

HENRY TANG: Oh ok. His name is Notra Trulock. I'm holding up a book here called *Kindred Spirit: Inside the Chinese Nuclear Espionage Scandal*. Published in 2003, two years after the Wen Ho Lee case was dismissed, or three years after it was dismissed, but Notra Trulock could not accept the verdict, and went out and wrote this book to, you could say, nail down his case. I don't know this –

BRIAN SUN: He also sued Wen Ho Lee.

HENRY TANG: I don't know Ms. Deborah Lee, who is a non-Asian Deborah Lee, who – I read from a newspaper, only – reported Sherry's case and that's how it came to the attention of the authorities. But how does a Notra Trulock and a Deborah Lee have this kind of conviction? I would like to go back to the origin of things, that's just my nature, it's my research analyst background. How do these things sort of begin? I maintain that the Blue Team compounded my understanding – and the *Washington Post* story, please go read it – is how this permeates the atmosphere in Washington as well as in other governmental organizations. Remember, Wen Ho Lee worked in New Mexico, he was not in Washington. So it permeates this country. As a result of the Wen Ho Lee case, many Asian and Chinese scientists working at the National Laboratories where Wen Ho Lee worked, came forward and confirmed that the same suspicious conditions existed for them, from their coworkers. So we have a crisis of either confidence, suspicion, and mutual faith inside the governmental structure. That is where we need to address the problem. I hope both Professor Xi, who of course is going to be retaining his Chairmanship, and Sherry will get full rights and retains her employment and everything else. But it sure does look like we will be here again. And that's what I want to stress to everyone in this audience, out there in the public, that we must come together and face it on that level.

BRIAN SUN: We could go on for quite a while folks, but it's getting late so I want to open this up for Q&A.

AMY PLATT (AUDIENCE MEMBER): I'm Amy Platt, I'm the Director of International Affairs for the American Physical Society, an organization with 50,000 physicists world-wide. So we're getting a lot of questions from our members for guidance – they are concerned about some of the same things that you're talking about are happening again – an accident or misstep, what have you. Do you have suggestions of guidance that we can give to our members, aside from your takeaway guidance, or other resources that we can post on our website? That would be helpful.

BRIAN SUN: That's a good question. C-100, we post some of these on our website and I think our PowerPoint is up there. That's a good point – the only thing we do right now is we're reactive, we react.

AMY PLATT (AUDIENCE MEMBER): As a lawyer, do you know of any other guidance besides what C-100 offers?

BRIAN SUN: A takeaway, quite frankly, is the human resource and employment guides of your employer. They lay out usually guidelines and procedures of how to handle intellectual property. Now I had this case with NYU where I poured over that thing, and there's a lot of inconsistencies in how professors and researchers at research institutions such as NYU handle research data and their own research. For instance, there are scientists who have rights to their own patents independent of the academic institutions or the employers that they work for. And how do you protect your intellectual property versus that of your employer? Your employer's guide is an immediate resource. But you know what – you probably have to go to your human resource people of your employer. Now they may or not be friendly to you about this stuff, but that's the first one, because these are the ones who will turn you in.

AMY PLATT (AUDIENCE MEMBER): And can we get those first three slides of your PowerPoint presentation?

BRIAN SUN: The PowerPoint is going to be available to the public. It will be emailed to you – if you email me, it will be emailed to you.

HENRY TANG: I've recently been told that there's a new phenomenon inside the government, talking about permeating, called the "National Insider Threat Task Force." This came about, I think, as a result of some of the Snowden papers and government leakages, so it's sort of a counter-movement when we bring this up. But nevertheless – it may be swimming against the tide and swimming upstream, but it must be done nevertheless. And therefore people try to speak out, continue with those efforts and then call on the institutional structure that we have in this great country to work on these things. I see Michael Lin here – one of the leaders of the Organization of Chinese in America, OCA – he is active in this. I see Margaret Fung, who is with AALDEF – the Asian American Legal Defense Fund – is here. Various other Asian, and it doesn't have to be Asian at all, other institutional entities are all interested in this, to at least help so that people like Sherry and Professor Xi are not alone. This is a very lonely place to be, with what they have just experienced. What we are trying to get the message out is, don't make these people feel alone and come together on working towards it and understanding the issues and not to condemn them.

Brian asked me to comment on what it was like during the Wen Ho Lee case – it was a very, very lonely task. Unfortunately the Committee of 100 had to be somewhat alone in the beginning because it was a very, very unusual and I guess frightful and scary kind of case. Everyone said, "Well, what happens if he actually is guilty and what will that do to your reputation?" not just mine personally, but the organization Committee of 100. Well we did some research and these things don't happen on an institutional level without due diligence. We had a legal team talk to Dr. Lee's legal team, who happened to be Brian at that time. I remember it was over Memorial Day Weekend and there was a whole one or two day cross examination, almost, about Dr. Lee's case. And after those findings, our legal team at that time felt that this was worthy of backing. And so when these things happen, institutional real issues start to arise. And that why I call on Americans, Asian Americans and all, to really join in on these efforts – support them, let them know that there are people behind them.

XIAOXING XI: Brian may I, I think I want to add a different point. That is: I have seen an urgent need for the academic community, for the funding agencies to reach out to law enforcement and educate them, because it is honestly clear that they don't know what collaboration is like. They have no idea that what we are doing is just encouraged and routine – they look at everything like criminal activity. I have seen a white paper from the FBI to the universities telling people about national security and higher education. A lot of those legitimate, but I can see easily they can be carried too far to take away our academic freedom. It is really the academic freedom is at risk. And to protect it, I think we will have to do more work somehow to educate them, so they don't look at these routine activities as something really [incoherent].

BRIAN SUN: You know, that question made me think about what we can do better. We try to go around and organize educational forums directed at people we think would be targets –

particularly scientists and engineers. But I will find this, this is no disrespect to academia researchers or whatever, but most like Wen Ho Lee, he was flouting procedures at the lab in Los Alamos. You know, stuff that they weren't enforcing, but he flouted them! He took secured, classified information home with him. Stuff like that. He broke the rules. A lot of times what goes on here with the scientists, and I love my clients, but they don't always pay attention to the rules, they just don't pay attention. It's not because they're meant to be rebellious or anything, but that's just the way they are. And they're a little bit geeky and nerdy, I hate to say it. I asked Wen Ho Lee, "Right now I'm going to put you on *60 Minutes* with Mike Wallace," and he says, "Who's Mike Wallace. What's *60 Minutes*?" Believe it or not, it's true. And the most hilarious thing he says to me – we go, after he's released, to some event and some people are coming up to him and Arianna Huffington wants to shake his hand and Larry Flynt, some of you may know who he is, and Wen Ho Lee says "Who's Larry Flynt? Who's Arianna Huffington?" This is what I'm dealing with, ok? So, the best we can do is go out and educate. And the employers can do that as well. They can sit down and tell the scientists, the researchers, the professors – look, we've got some rules about intellectual property, we got rules about what you can do, what to do and what not to do, and we're going to enforce that stuff. And try to get them to pay attention to the rules. Because that's the stuff the government is seizing on to go after people. And if you pay more attention and you don't stupidly download something on a flash drive and take it home, and then create an electronic footprint that you downloaded some valuable IP to take home with you, you've saved yourself maybe a little bit of aggravation later. Those are the kinds of things. But we can't do that unless we talk to the target constituents. So if we can go to the American Physical Society and someone gives a speech at your next conference, or someone writes a little paper that's circulated, "Does and don'ts," every little bit helps. We're pressed for time here, we could go all night. We're going to be up here for a few more minutes after we're done here hoping you'll come up and chat with us. But other than that, I want to thank you for coming. Thank you for coming out, we appreciate it and we appreciate the support.