



FAS Note: Thomas M. Lehman, a distinguished geologist at Texas Tech University, sent this letter regarding the Thomas Butler case to several Texas Tech colleagues in early January 2004.

Dear -----,

I have sent the following "essay" regarding Tech's prosecution of Tom Butler to my friends and colleagues around campus. Please READ THIS as a favor to me, and feel free to forward it to any other folks at Tech that you may feel would be interested and/or not afraid to receive this or read it. Why am I writing this? I do not know for sure, but I'm mad as hell and feel like doing something about it. I believe that Tech has committed a great injustice to a good man. And, since I have worked at Tech for about 18 years without ever having seen anything like this happen, I feel like telling someone about it, even though it will likely do no one any good. The following are my own observations and comments, and so, colored by my personal perceptions - I may be off on some of the details, but I have tried to be truthful, and I encourage you or anyone else interested to pursue these matters further. It should be very embarrassing for us all that the National Academy of Sciences, National Academy of Engineering, Institute of Medicine, NY Academy of Sciences, four Nobel laureate physicians, and many others have all stood in defense of Dr. Butler, and/or shock at the federal government's persecution of him (see for example - www.fas.org/butler/index.html) - but WE HERE AT TECH HAVE BEEN SILENT. Why?

I was on sabbatical leave this fall, so I had time to attend Dr. Butler's trial on several occasions and my wife sat in the courtroom frequently on other occasions. We were also able to talk with several friends of the Butlers. As a result, we have come to learn a great deal about this case. We were shocked that virtually no one from the Tech community was in attendance at the trial, except those committed to prosecuting Butler. Not unexpectedly, the local news organizations here in Lubbock have done a miserable job covering and no job at all investigating this case, so most in the Tech community and elsewhere are completely uninformed about what really happened there, what Tom Butler was charged with, what Tech's role was, and what he was found "guilty" of, and so on. It is a great disappointment that with five local TV stations, a newspaper, and a university journalism department, not a single real journalist has emerged to seriously investigate this case (so much for any Woodward or Bernstein wannabe that might reside in Lubbock).

As you know, I am not a "political activist" and this is the first time I have felt compelled to exercise something of what is left of our freedom of speech. In the way of "full disclosure," let me state that I had never met Tom Butler until this court case was in session. I met and talked with him briefly on two occasions while the trial was going on. My wife Elizabeth had met Dr. Butler's wife about 16 years ago when they were both members of a Tech "mom's group," and they occasionally got together at that time because our kids were about the same ages. They fell out of touch over the years. The fact is that I do not know the Butlers very well at all, but I know a smear campaign when I see one.

When I left the courtroom on the day that closing arguments were over and Judge Cummings

had given instructions to the jury, I had learned enough to be confident that Tom Butler was completely innocent of all charges lodged against him, and that he would be acquitted on every one of the charges - particularly in view of the fact that the judge instructed the jury that they could find Butler innocent (even if he had actually committed the acts he was accused of) if they felt he had acted "in good faith" - that is to say, believing himself that he was acting properly at the time. I was therefore shocked to learn that he had been found "guilty" on some 47 of the 69 charges he had been indicted on.

As you may (or may not) know, politically speaking I am a very conservative Republican - and so it came as quite a shock to me to discover that my government and its agents, and my university and its agents, could and would actually come after a good man with the clear intent of destroying him - even though it had to be patently obvious to them, as it was to me, that he is a good and honest man. During the court proceedings, the federal prosecutors and Tech lawyers actually compared Butler to "a cocaine dealer smuggling illegal drugs into the country." They declared that Butler was an "evil genius," that he was "so greedy that he was willing to throw away his wonderful family, friends, and scientific reputation" to "steal a million dollars from Texas Tech." He "stole," "defrauded" and "embezzled" from his employer - I am not kidding. Those are the exact words they used. If it weren't for the fact that they were successful in destroying the Butlers' lives, the entire story would be a hilarious farce. Unfortunately, it was and is not a joke to the Butlers. They are now literally flat broke, facing life in prison, the prospect of losing even their home to the government, and have little prospect of success on appeal. I personally will never be the same. I can now see why some in our society are afraid of the police, the government, the "patriot act," and so on. If you had seen the way Tech officials, employees, and lawyers cozied up with the FBI and federal prosecutors, it would have made you sick to your stomach. It certainly did me.

1) What was Tom Butler found "innocent" of? He was found innocent of all but 3 of the 15 "serious" federal charges filed against him - for example those charges relating to "lying" to the FBI (the reason for his arrest), lying to the Tech safety officer, cheating on his income taxes, smuggling plague into the country, illegally transporting plague into the USA, to the CDC, to the Army ...etc., etc., etc. - most of the initial charges and some of those that were subsequently piled on months later in an attempt to "nail him" on something - or ANYTHING. Why was he found innocent? Because even THIS Lubbock jury recognized that the FBI agents had tricked and misled Tom Butler. One agent even lied on the witness stand. Butler did not cheat on his income taxes - he even had letters to and from the IRS explaining several previous audits. He transported bacteria samples in the same way he had on many previous occasions. The federal case was absolutely ridiculous! He was found innocent of the charges on which he was initially arrested because he didn't do anything wrong. Therefore, I will not waste any effort describing those matters or what transpired relating to them in the courtroom, although it is an instructive example on how to pile on charges in the hope that something would stick. Unfortunately, a few things did stick.

2) What was Tom Butler found "guilty" of? Only 3 of the original "serious" 15 federal charges - and all 3 of these "crimes" relate to mailing a single package via FedEx from Lubbock to Tanzania. This particular package contained samples of bacteria that had originally been collected in Tanzania, and Butler's colleagues there wanted the samples back for further research. He was found guilty of 1) not disclosing a detailed description of the contents of this

package (as I recall from the court proceedings, he checked the box for "laboratory materials" on the FedEx mailing form, rather than "commercial merchandise" as was supposedly required), 2) not attaching a hazardous materials warning, and 3) not obtaining a Department of Commerce permit for the package. Those are the three counts he was convicted of. By the way, the FedEx package arrived safely without incident in Tanzania. It was then and is now perfectly OK to mail bacteria via FedEx - Butler just didn't check the correct boxes on the forms. Now, we might ask, did Dr. Butler deliberately mail the package improperly, or did he think he was mailing it correctly? The contents of the package sure sound more like "laboratory materials" than "commercial merchandise" to me - but should Dr. Butler have known better? Perhaps. However, there remains a good bit of confusion about the proper requirements for mailing such packages - for example, the agreement under which Butler conducted research in Tanzania indicates that the bacteria samples were considered property of the Tanzanian government, and that he was required to return them - a D of C permit may not have been required to "return their property" under those circumstances. The US Army and CDC assumed that Butler knew how to properly mail these materials (since he had worked on similar things for many years), and Butler assumed that if those agencies had specific mailing requirements, they would have informed him (as on many previous occasions, the agencies involved sent Butler explicit instructions on proper transport forms). Both assumptions were apparently wrong. I have subsequently learned that Butler could have simply and legally sent the package as unaccompanied baggage on an airplane without requiring any of the haz mat or D of C labeling. Regardless, there is absolutely no question in my mind that Tom Butler acted "in good faith" and thought he was mailing that package properly. Why would he possibly want to deliberately mail it illegally? He could have easily checked the appropriate box on the FedEx form and obtained the proper labels if he thought it was necessary. The jury instructions made it clear that Butler could (and should) be found innocent as long as he did not knowingly and willfully break the law. I'm absolutely stumped as to what reasoning the jury had in convicting him.

3) Tom Butler was also found guilty of perpetrating "fraud" on Tech. In fact, most (44 of 47) of the charges he was convicted of relate to "stealing" money from Tech. These charges were added on five months after Butler's arrest as part of an effort to pressure him to accept a plea bargain. What are these charges all about? Tom Butler was engaged in CONSULTING (in this case, with the drug companies whose drugs he was testing for effectiveness in treating plague, among other things). Many of us at the university are employed as consultants by companies outside the university. In fact, most of us are paid nine-month salaries by the university and are EXPECTED to find employment elsewhere to make up the other three months pay if we wish. Some at the university are employed with the understanding that they are REQUIRED to bring in sufficient funds (through grants and consulting) to cover their own salaries - and this was indeed the case with Tom Butler. Tech claims that Dr. Butler STOLE about a million dollars over the past 15 years through his consulting work. How did he supposedly do this? His standard practice over the years was to establish a contract with a given drug company through the university to pay for a particular clinical study, and a second "companion" contract to pay him directly as a consultant for his expertise, advice, to evaluate data from other related studies, give presentations, travel, etc. (the same things we are all asked to do as consultants). It is these companion consulting contracts that Tech alleged "defrauded" the university. Butler had the checks from his consulting work sent directly to his home address (rather than to the Tech financial office, on the sound advice of his department accountant [I have done the same thing, incidentally]).

So, what are the facts regarding this supposed "fraud"? 1) The legal departments of the drug companies Butler worked for actually wrote and reviewed the contracts - and they found nothing wrong with them, 2) Officials at HSC actually signed and OK'ed the contracts [although Dr. Wesson on the witness stand claimed that the signature on one such contract was not his own (perhaps implying that Butler may have forged the signature); he returned to the stand later and had to backtrack - admitting that his secretary occasionally (often) signs things for him (as all of our secretaries do), 3) Butler even tried to arrange similar consulting agreements for other faculty (including his supervisor's wife) - something he certainly wouldn't do if he were engaged in an attempt to defraud the university! 4) This consulting arrangement was "discovered" when Dr. Pence (HSC VP for Research) found that other doctors were being paid substantially more than Butler for similar work, and she asked to negotiate a better deal for Butler (so HSC could get a bigger cut, of course). Butler told her to leave it alone because he was happy with the deal that he had. 5) Butler preferred this arrangement, because it gave HIM the ability and responsibility for distributing the funds in the way HE wished (rather than padding the budget to support the expanding bureaucracy - we have all seen this at the university). 6) Butler's department accountant (Mike Burns) at HSC testified at the trial that he was aware of this arrangement for more than 10 years - he even got approval from his supervisor (Joanne Easley) to receive cashiers checks from Butler, and periodically notified Butler when funds in his infectious diseases account were low, so that Butler could **CONTRIBUTE FUNDS FROM HIS CONSULTING** payments to the university to help support these studies, 7) Over the years Butler contributed in this way over 300 thousand dollars (of the million he "stole" consulting) back to the university HSC infectious diseases accounts, 8) Even if the university were entitled to any part of the million dollars Butler supposedly "stole", they might only claim 10 or 20 percent in "overhead" costs - **AND HE HAS ALREADY CONTRIBUTED** of his own accord back over 30 percent! 9) As part of plea bargaining offers from Tech (that eventually broke down), the university wanted Butler to "pay back," beyond the \$300 thousand he already "contributed", another \$500 thousand in "restitution" (of the million he "stole"). In my opinion, HSC was not then, and is not now, entitled to ANY of the funds Butler made as a consultant because the consulting contracts were "companion" to contracts that paid the university a like or greater amount (over a million dollars) to finance the actual clinical studies, 10) Butler received many letters of thanks from the university and HSC officials, including Chancellors Montford and Smith, for his monetary contributions to the university of over 300 thousand dollars - so they were well aware of this, 11) When Chancellor Smith was confronted on the witness stand with the actual text of the university OP on faculty consulting, **HE DID NOT EVEN RECOGNIZE IT!** The Tech OP on consulting is very vague - many of us who are engaged in consulting at this moment may very well be breaking the rules (i.e., defrauding the university) without even knowing it. It was my understanding (like Dr. Butler) that consulting agreements are not required to be processed through university offices (see OP). I too have had checks sent directly to my home address as payment for consulting work. I have not paid Tech one dime out of these funds. Why? Because these companies have paid ME to work for them, and Tech **EXPECTS** me to make a living outside the university for at least three months of the year. Those of us who have engaged in consulting work over the years could very well be next in line for the Tech lawyers to lean on.

There is no doubt whatsoever in my mind that Dr. Butler thought then and to this very day that his consulting agreements were structured properly. In fact, if Butler had undertaken the consulting work without ANY written agreement (as I have on previous occasions), he could

have received the money without committing "fraud" - IT WAS THE WORDING ON THE CONTRACTS that made it appear to be a case of "fraud" (the consulting contracts "looked" just like the clinical study contracts). Nobody had ever previously questioned the way in which these contracts were written. EVEN IF TTU AND HSC HAD REQUESTED THAT BUTLER RETURN PART OF HIS PAY AS CONSULTANT IN "OVERHEAD" BACK TO THE UNIVERSITY, THE FACT IS HE ALREADY HAD RETURNED SOMETHING IN THE NEIGHBORHOOD OF 30 PERCENT! How could this possibly be construed as "a deliberate scheme to defraud the university" (those are the prosecutor's words)? Remarkably, the jury found that 18 of Butler's 22 consulting contracts supposedly defrauded the university, while they found that 6 similar or identical contracts were perfectly legitimate! (that is, out of 54 fraud charges relating to these contracts, the jury convicted on 44, but acquitted on 10) How can that possibly be? Was he a crook part of the time but honest the rest of the time? Obviously, the jury arrived at a compromised verdict.

Many of my friends and colleagues who do not engage in consulting work may believe that there is something improper about this sort of activity, but I can assure you that those of us in fields of science, engineering, and medicine - if we are worth our salt - are consulting. In my opinion, only the "dead wood" faculty do not apply their knowledge and expertise to issues in the "real" world. Why do we consult? 1) Of course, consulting work benefits us financially as individuals, and as I state above, the university only pays most of us to work for them nine months out of the year. We are free to do what we want in the remaining three months - in fact we are encouraged to do so. 2) Consulting work benefits us in the classroom. Our students need to know what kind of work is required of them in industry. They want to hear in the classroom about how their studies are applied in the "real" world. Faculty with this sort of experience gain credibility in the eyes of their students. 3) Consulting gains respect and recognition for the university in industry and the community outside. It establishes connections in industry and government that provide a "foot in the door" for employing our students after they graduate. There are many solid reasons that consulting benefits the university. For Tech to portray this as a means to "defraud" the university is very disturbing and hypocritical. Dr. Butler was engaged in honest consulting, plain and simple.

4) How could failing to fill out a mailing form on a package, and failing to insure that the wording on contracts was proper, be construed as "crimes" ? Most of us do not read the fine print on the back of a FedEx mailing form, or the fine print on a contract - that's what lawyers and bureaucrats are supposed to do. In the big picture of things, scientists do science - bureaucrats handle paperwork. There are many people at TTU and HSC whose paid full-time jobs are to make sure paperwork is filled out properly. We all know there is an enormous weight of bureaucracy on campus. When we as scientists, doctors, and engineers apply for a grant requesting almost 50 percent in "indirect" costs and overhead, we expect that that money siphoned off goes to people (such as in offices of Research Services and Safety offices) whose job it is to make sure that these sorts of things (contracts and hazardous materials warnings) are done properly. The many layers of administrators at Tech (as in the government) have never actually done research or published a paper, and do not really know what research is all about. In fact, all of Dr. Butler's accusers in the courtroom - from auditors all the way up to Chancellor Smith are not active in research, and have probably not published much - because they are not scientists, they are bureaucrats. It was quite obvious to me (as it would have been to any other scientist in the courtroom) that Dr. Butler's accusers had little or no experience conducting the

type of research in which Dr. Butler was engaged. Had they ever tried to work on infectious disease in an impoverished third-world country? Who are they to judge and accuse? Was there someone at HSC whose job it was to make sure that such things as contract paperwork, permits, and forms were done "according to code"? I suspect that there was and is. Those of us who actually do science are unconcerned about paperwork. The paid staff and administrators in Tech's and HSC's safety offices and research services offices are responsible for contract paperwork - and they were the ones pointing the finger at Dr. Butler.

5) What was Tom Butler doing with the plague bacteria anyway? The US Army and Centers for Disease Control ASKED Butler to conduct research testing effective treatments for plague. They were concerned that plague bacteria could be "weaponized" and needed to know the best antibiotic for mass public inoculation if necessary. He was in Tanzania working with Tanzanian doctors collecting samples from infected people (in the very same area where terrorists themselves might be capable of obtaining plague for weaponization) and working with Tanzanian doctors to test the effectiveness of several drugs, including gentamicin. The Army and CDC could not do this work themselves in a foreign country. He found that gentamicin was the most effective drug - and you know what? If terrorists were to attack us today with plague, we would all be treated with gentamicin. Thank you Dr. Butler and your colleagues.

Most people in the university community do not even know that Tom Butler was a military physician during the Vietnam War, and it was at that time - while treating American soldiers - that he also treated civilians infected with plague, and became interested in the disease. He made many return trips later (transporting bacteria samples then as he did recently), as well as spent time in other impoverished third world countries studying and treating infectious diseases. He was one of the first doctors in Lubbock to treat AIDS patients back in the early days when that disease was a subject of hysteria. He was heavily recruited by TTU HSC and did not let them down over 15 years of research. When the US Army and CDC wanted an expert to be part of an effort to protect Americans from a potential terrorist plague attack, who did they get? (I sure wouldn't go to Tanzania and extract fluids from bulging bubos on patients' bodies) How could such a humanitarian and patriot possibly be an "evil greedy genius" (prosecutors words, not mine). It seems to me that a doctor with his credentials could easily have made an evil greedy fortune working directly for the drug companies instead of at a third-tier university!

6) How could this all happen? When push came to shove, EVERYONE RAN AND HID. People at HSC and CDC and elsewhere went into full scale CYA mode. Chancellor Smith even claimed on the witness stand that he did not know Tom Butler (although he must certainly have been aware of Butler's prior HSC Internal Review Board audit, his grievance filed against Dr. Pence, their kids on the same swim team, photographs at parties together, detailed conversations recalled by all, etc., etc). It was quite obvious to all in the courtroom that Dr. Pence had a serious conflict with Dr. Butler dating back many years (a long story in itself). Dr. Wesson even attempted on the witness stand to impugn Butler's scientific work! He suggested (through arrogance or ignorance or both) that Dr. Butler may have calculated the incorrect dosage of antibiotic in treating plague victims - he accomplished this feat by reviewing several pages of Dr. Butler's Tanzanian lab notebook and adding columns of figures there showing patients' body weights and dosages (of course, anyone who has actually DONE science would recognize the foolishness of such a thing - trying to evaluate a scientist's conclusion based on years of research on the basis of a few pages in a lab notebook! Only a fool indeed would attempt to

reconstruct my thought processes on the basis of pages in my field notebook!). Of course, Dr. Wesson was unaware of how patient's body weights are estimated in the field, how the drugs are packaged in doses for distribution, and so on, and so on. Why? Because he had never really done this sort of work at all, or ever worked in such an inhospitable setting. Dr. Wesson also suggested that Butler did not obtain proper signed consent forms from the plague patients in Tanzania (Of course, it didn't occur to him that these poor plague-suffering people were illiterate and spoke only Swahili, and so could only give verbal consent to their Tanzanian doctors!). In the end, I believe that the jury (obviously, like Dr. Butler's accusers, lacking an understanding of science themselves) must have seen the weight of all Texas Tech on that side of the courtroom, and had to find Butler guilty of at least something. They obviously mistrusted the government since Butler was acquitted of most of those charges - but how could they not trust their beloved Texas Tech?

7) What happened to the "missing vials" of plague? After all, that's what really started all this. At this point nobody really knows what happened to the "missing vials". Dr. Butler HIMSELF REPORTED the specimens missing. After thorough searches, they could not be found. Tech "officials" made a huge mistake right off the bat by blowing the situation all out of proportion, calling a press conference, setting up the podium, and so the TV cameras were rolling (by the way, the FBI was upset by this - they had preferred that the matter be handled quietly - and perhaps it was THIS grand public display on Tech's part that forced the federal agents to find a scapegoat somewhere). After many hours of interrogation (during which time, he naively waived his Miranda rights because he had literally done NOTHING wrong), the FBI agents convinced Dr. Butler that it was possible he had inadvertently destroyed the samples - perhaps some weeks earlier when a small spill in the lab had required sterilization of some lab materials. Butler was led to believe that the public's fears needed to be quieted, and that all of this problem would "go away" if he could "remember" that he may have destroyed the samples. He acquiesced to this notion (and of course was immediately slapped in hand cuffs). The jury obviously saw (as did everyone else in the courtroom) that Dr. Butler had never lied to the FBI or anyone else. But the fact remains that, to this day, we do not know for sure what actually happened to those "missing vials."

8) What could possibly be the motivation behind this persecution? Is it just a coincidence that Dr. Butler had filed a grievance against HSC VP for Research (Dr. Pence) the year before? In the courtroom we only heard bits and pieces revealing a long-running "feud" between Drs. Butler and Pence. Is it possible that this entire sad affair could be rooted in a tawdry tale of retribution? What is Dr. Pence doing now? Is she still in her job? What happened to the safety officer at TTU HSC? I have heard "through the grapevine" that they both have been reassigned. Why?

The FBI and federal prosecutors may have stumbled into a situation forcing them to build a case against Butler - because Tech did not keep the "missing vials" issues quiet, and so the FBI felt compelled to charge Butler with something. They may also have been frustrated in their attempts to apprehend the culprit in the anthrax murders, whom they may believe is a renegade scientist - or perhaps they needed to put a head on a pike as warning to all scientists involved in research on such things that "this could happen to you" if you're not very very very careful.

9) Why have you not heard any of these things about Tom Butler? a) The university won't tell you because the administration is committed to ruining him (they really need a scapegoat now

that the federal charges against Butler mostly fell apart). b) The news media here is uninterested or incompetent or both. c) People "in the know" are afraid to talk in fear of retribution by Tech. One thing I have learned during this whole sad affair is that there are people at this university who can and will seek retribution against you if you chastise them or criticize their use of power. Perhaps I was naive to think otherwise. So, it is certainly understandable that many (most) have chosen to keep their mouths shut about this whole thing. d) The Butlers are quiet, decent, and formerly, utterly naive people - they made the mistake of trusting the government and Tech, they waived their rights because they did nothing wrong, they hired (in my opinion) a local small time attorney who was way out of his league when the government prosecutors and Tech brought out the big guns, and they have no money left to hire a PR firm or play in the media circus like the real criminals do.

It is probably too late to save the Butlers' lives from ruin, but we should all open our eyes and see that OUR university not only let them down but, in fact, was largely responsible for their ruination.

Regretfully yours - [Tom Lehman](#)