

# U.S. v. Wen Ho Lee



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## Synopsis of the Wen Ho Lee case

Dr. Wen Ho Lee was a nuclear physicist employed at the Los Alamos National Laboratory in New Mexico. On December 10, 1999, he was charged on 59 counts of mishandling classified information, 39 of which carried a life sentence. Imprisoned for 278 days in solitary confinement, he was eventually released on time served while pleading guilty to a felony count of mishandling classified information. At the plea sentencing hearing, the presiding judge issued an apology to Dr. Lee for the "top decision makers in the Executive Branch...having embarrassed our entire nation and each of us who is a citizen of it."

The play reading is a reenactment of some of the memorable scenes from the case. The play starts off on March 6, 1999 when the New York Times prints a front-page story about a security breach at Los Alamos involving one of the United States' most advanced thermonuclear warhead, the W-88. The FBI, concerned that their prime suspect will learn about their investigation and flee the country, decide to confront Dr. Lee and try to extract a confession from him. He is taken to a room without an attorney for himself present and threatened with the electric chair unless he cooperates with their investigation.

Two days after the March 6 article, he is personally fired by then Secretary of Energy Bill Richardson. His employment at Los Alamos is terminated, and his name is leaked to the press. He becomes publicly known as the scientist who betrayed his country and passed along nuclear secrets to China. Eventually, he is arrested and indicted on 59 counts of violating provisions from the Atomic Energy Act and Espionage Act. At one of his bail hearings, senior lab directors testify that the material he supposedly has in his possession are the "crown jewels" of the nuclear weapons arsenal and "would change the global strategic balance" if fallen into the wrong hands.

The presiding judge, Judge James Parker -- presented with such captivating testimony -- decides that no amount of restrictions before the trial could be imposed on Dr. Lee could guarantee the safety of the nation. He orders solitary confinement with handcuffs attached to a metal belt and shackles at the ankle belt and exercise for only one hour a week. The harsh conditions imposed would eventually spark public demonstrations and widespread outrage within the Chinese American and scientific community, despite a lot of initial reluctance and doubt about helping Dr. Lee in the beginning.

Eventually, the case would fall apart, thanks in part to a dedicated defense team, affidavits filed on behalf of Dr. Lee, and favorable testimony given during subsequent hearings. The reading of the apology from Judge Parker is taken from the actual remarks read at

the courtroom hearing during the plea sentencing.

Suggested readings:

A Convenient Spy, Ian Hoffman and Dan Stober

My Country Versus Me, Helen Zia (as told by Wen Ho Lee)

(clack)

**FBI INTERROGATOR:** Have you seen the article in the newspaper? (*holding the newspaper in one hand*) This one that came today in the New York Times. (Pause) China Stole Secrets for Bombs.

**WEN HO LEE:** My daughter told me that she read it -

**FBI INTERROGATOR:** You should read it. It's not good, Wen Ho. We need to address a couple of issues that basically Washington has and it's boiling right down to your job, is what it's boiling down to.

**WEN HO LEE:** What's that?

**FBI INTERROGATOR:** Your job.

**WEN HO LEE:** I will never be able to work at the Lab? That what you saying?

**FBI INTERROGATOR:** Absolutely. Basically there is a person at the laboratory that's committed espionage and that points to you.

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**ALBERTA LEE:** (*reading the New York Times article out loud in a library*)\_“Breach at Los Alamos: China Stole Nuclear Secrets for Bombs”.

“Government investigators had identified a suspect, a Los Alamos computer scientist who is Chinese American.”

March 6<sup>th</sup>, 1999 - Front page of the New York Times.

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**FBI INTERROGATOR:** You gotta understand, you're being looked at as a spy! I mean look at this newspaper article! It all but says your name in here.

**WEN HO LEE:** But I'm telling you, I did not do anything...

**ALBERTA LEE:** *(continuing her reading of the NYTimes article)* "Senior administrations officials credit Notra Trulock with forcing them to confront the realities of Chinese atomic espionage."

**FBI INTERROGATOR:** What are you going to tell your friends? What are you going to tell your wife and your son? What's going to happen to your son in college?! When he hears on the news, "Wen Ho Lee arrested for espionage." Do you know how many people have been arrested for espionage in the United States?

**WEN HO LEE:** I don't pay much attention to that.

**ALBERTA LEE:** *(still reading)* Redmond recalled saying, "This is going to be just as bad as the Rosenbergs."

**FBI INTERROGATOR:** Do you know who the Rosenbergs are? The Rosenbergs are the only people that never cooperated with the Federal Government in an espionage case. You know what happened to them? They electrocuted them, Wen Ho. They didn't care whether they professed their innocence all day long. Okay? Do you want to go down in history? Whether you're professing your innocence like the Rosenbergs to the day that they take you to the electric chair. Do you want to go down in history? With your kids knowing that you got arrested for espionage?

**WEN HO LEE:** My daughter already told me this morning. She reads the New York Times.

**FBI INTERROGATOR:** Does she think this was you?

**WEN HO LEE:** Alberta?

**NARRATOR:** Alberta Lee, Wen Ho Lee's daughter, immediately calls her father after reading the Times article.

**WEN HO LEE:** Don't worry, it will all be over soon. They'll find out the truth, and I'll be back at work like normal.

**ALBERTA LEE:** Dad this story is about you. The New York Times is saying you're worse than the Rosenbergs! You need to get a lawyer -

**WEN HO LEE:** A lawyer? No - too expensive.

**ALBERTA LEE:** My father still resented paying a lawyer \$200 for drafting his will.

**WEN HO LEE:** Why hire a lawyer? I haven't done anything.

**FBI INTERROGATOR:** Does she think this was you?

**WEN HO LEE:** No. Of course, my daughter believes I didn't do it; I'm (*said quickly in sequence*) innocent, innocent, innocent, but I don't know what can I do.

(3 clacks, alternating)

**NARRATOR:** Monday, March 8, 1999:

This is notification that your employment with the Los Alamos National Laboratory is terminated effective immediately.

**VOICE #1:** Headlines CNN: "Nuclear Physicist Wen Ho Lee Charged with 59 Counts in Los Alamos Case."

**VOICE #2:** Senator Richard Shelby: "Wen Ho Lee is responsible for the greatest loss of our nuclear military secrets in our nation's history" -

**VOICE #1:** Steve Younger, director at Los Alamos: "These codes, in my opinion, represent the gravest possible security risk to the United States."

**VOICE #2:** "One scientist said Lee may have a reasonable explanation, 'If he's the greatest spy of the 20<sup>th</sup> century, why is he out there mowing his lawn?'"

*(clack)*

**WEN HO LEE:** *Alberta - The FBI is coming to arrest me. Don't be alarmed, but it's going to be on the news tonight. Don't worry. I'll be okay.*

**NARRATOR:** With full knowledge and approval by Attorney General Janet Reno, Wen Ho Lee was held in solitary confinement for 278 days. His family was allowed to visit him once a week.

**ALBERTA LEE:** I was shown into a yellow room, with very bright lights, and a glass partition. My dad came in a red jumpsuit, with handcuffs attached to a metal belt and shackles in the ankles. He looked like an animal being led around. He sat down and tried to re-assure me that everything would be all right. But I just kept crying. He said, "It's going to be okay." But I felt hopeless.

**VOICE #1:** Dear Mr. Lee, We heard and met with your daughter, Alberta Lee. She has been very eloquent in sharing with us what you have been going through. Good luck and be strong.

**VOICE #2:** *(said in a rage tone to underline the racist attitude in the letter):* Dear Mr. Lee - Get out of this country you worthless piece of shit - and take your children with you. None of you traitor chinks are welcome in the U.S.A. Once a Chinese, always a Chinese. We don't want your people.

**WEN HO LEE:** My lawyers were spending a significant time on my case. My arrangement with the firm -

**LAWYER:** Was not pro bono.

**WEN HO LEE:** *(first looking at lawyer and then turning to the audience)* Very expensive.

**LAWYER:** So we put a fee cap on his case, charging only 8 hours a day per lawyer - even if they each worked 16 hours a day.

**WEN HO LEE:** *(watching the lawyer finish and then turning to the audience)* Still very expensive.

**LAWYER:** It became clear to us that Dr. Lee didn't have the money needed to pay for our fees; so, we suggested that he try to raise money through a legal defense fund.

**WEN HO LEE:** Never heard of such a thing.

**LAWYER:** We told him it had been done before. If someone set up a fund raising campaign for your mounting defense bills -

**WEN HO LEE:** And if not enough money was raised?

*(They look at each other)*

**NARRATOR:** Cecilia Chang, a family friend, began raising money for the Wen Ho Lee Legal Defense Fund.

**CECILIA CHANG:** *(hands gesticulating)* "I need a place for a party. I know I'm asking for the impossible. But this is an impossible case."

**NARRATOR:** On December 21<sup>st</sup>, She gathers 200 Asian Americans in San Francisco to celebrate Wen Ho Lee's 60<sup>th</sup> birthday.

**CECILIA CHANG:** "I know people won't go to a protest. But they will go to a birthday party."



**NARRATOR:** That night, they raised \$20,000 for the Wen Ho Lee legal defense fund.

**CECILIA CHANG:** Initially, when I asked people to donate to the legal fund, I got bombarded with questions -

**SKEPTIC #1:** (*arms crossed*) How can you be sure he's innocent?

**SKEPTIC #2:** It's on the news, EVERYONE is saying he's a spy -

**SKEPTIC #1:** Isn't he from Taiwan?

**SKEPTIC #2:** Is he Pro-China?

**CECILIA CHANG:** Wen Ho Lee is an American Citizen. That means he is protected by our Constitution.

**SKEPTIC #1:** Why are you doing this - are you related?

**SKEPTIC #2:** If he's innocent, then how come he hasn't come out and said so?

**CECILIA CHANG:** I don't know if he is guilty or innocent. But I do know one thing for sure. His due process is being violated.

(*clack*)

**NARRATOR:** DUE PROCESS - *The Fifth Amendment states:*

**VOICE #1:** "No person shall be deprived of life, liberty, or property, without due process of law."

**CECILIA CHANG:** Our constitution provides standards for fair treatment of citizens by their government. These standards include things like adequate notice, assistance of counsel, the right to remain silent, the right to a speedy trial.

**SKEPTIC #1:** But if he's not innocent, how can I support him?

**SKEPTIC #2:** Look, he's either innocent, or guilty. If he doesn't declare he is innocent, I'm sorry but to me, it looks like he must be guilty.

*(clack)*

**CECILIA CHANG:** *(frustrated by the questions, she exasperates loudly before continuing)* I knew I had to show people what I was witnessing in the courthouse. Tell them about how one small person is facing all the money and power of the government. And I knew that if I can get the message out, then the money we needed will follow.

*(2 clacks)*

**WEN HO LEE:** Before there was Moveon.org, there was Wenholee.org *(said in a light, playful tone)*. The website would become the central switchboard and organizing tool for supporters. Through Alberta, I learned that people were taking action in support of my case.

**ALBERTA LEE:** Dear Father, I am in Sacramento right now. I just spoke in front of a crowd of 700 people. I want you to know that there are a lot of supporters. Dad, we are fighting for you! I love you and am very proud of you. Alberta.

**NARRATOR:** March 2000 – wenholee.org organizes a demonstration in San Francisco to mark Lee's 100<sup>th</sup> day of imprisonment

**CECILIA CHANG:** We need to shed the stigma that Asians are passive and can be walked on all over. None of us can afford to sit still and be a bystander.

**WEN HO LEE:** I felt extremely grateful to all of the people who were doing things for me - things that I had never imagined doing myself.

**NARRATOR:** May 3<sup>rd</sup>, 2000 – A rally is held in front of the Santa Clara County building seeking Lee’s release and bail

**CECILIA CHANG:** . We are part of the battle whether we like it or not. We have the power to protect ourselves if we choose to act together as a group.

**NARRATOR:** from an Ad in the New York Times:

*(Slow down)*

**VOICE #1:** Why is Dr. Wen Ho Lee still languishing in prison?

**VOICE #2:** It should chill us that our government is still persecuting Dr. Lee and bankrupting his family long after any basis for prosecution has evaporated.

**VOICE #1:** As Americans – we demand justice.

**VOICE #2:** Drop all charges.

**VOICE #1:** Free Dr. Wen Ho Lee now.

*(3 slow clacks in unison)*

**NARRATOR:** September 15<sup>th</sup>, 2000: Judge James A. Parker, U.S. District Court, New Mexico.

**JUDGE PARKER:**

Dr. Lee -

The Executive Branch of the United States Government has until today, vigorously opposed your release from jail, even under what I had described as Draconian conditions of release.

With more complete, balanced information before me, I feel the picture has changed significantly from that painted during the December hearing.

Dr. Lee, I tell you with great sadness that I feel I was led astray by our government.

I am sad for you and your family because of the way in which you were kept in custody while you were presumed under the law to be innocent.

I am sad that I was induced to order your detention, since the Executive Branch now concedes that it was not necessary to confine you at any time before your trial.

I am sad because the resolution of this case drug on unnecessarily long.

Let me turn for [a] moment to something else.

I want to make a clarification here.

In fairness, I must note that virtually all of the lawyers who work for the Department of Justice are honest, honorable, dedicated people, who exemplify the best of those who represent our federal government.

It is only the top decision makers in the Executive Branch, who have caused embarrassment by the way this case began and was handled. They did not embarrass me alone. They have embarrassed our entire nation and each of us who is a citizen of it.

Although I have no authority to speak on behalf of the Executive Branch, I sincerely apologize to you, Dr. Lee, for the unfair manner you were held in custody.

Court will be in recess.

**WEN HO LEE** (*leaning over*): I leaned over to my attorney and asked him, "Is it common for a judge to talk like this?"

**LAWYER**: "No, Wen Ho. This is very, very rare."

Footnotes:

- The play was initially performed on April 17, 2005 using three black musical stands spaced evenly apart on a 8 ft. wide stage with only three actors. John Thomas took the role of the FBI interrogator and Judge James Parker, while John Shin played the role of Wen Ho Lee. Catherine Castellanos had the role of Alberta Lee and Cecilia Chang. The other lines (now listed as Voice #1, Voice #2, Skeptic #1, and Skeptic #2) were read by the actors when not assuming their main roles.
- The clacks were done with wooden sticks. The alternating clacks were done with two people each having a pair of these sticks with one clack following in succession with another.
- The play begins as the FBI investigator confronts Wen Ho about the New York Times article. There is a separate but parallel track in the script with Alberta Lee reading the March 6 New York Times article in a library and calling her father to plead him to get a lawyer.
- The point of the scene with the 60<sup>th</sup> birthday is to highlight the doubts and questions that a lot of people had about coming to Wen Ho Lee's defense. Regardless of his guilt or innocent, Cecilia realizes with some frustration that she must explain to people that every citizen in the United States is guaranteed the right to due process and fair treatment by their government. Still, there are a lot of lingering doubts, as highlighted by the commented, "Look, he's either innocent or guilty. If he doesn't declare he is innocent, I'm sorry but to me, it looks like he must be guilty." The reluctance for people to voice their opinions, especially in the beginning, is one of the hallmarks of this landmark case.
- The humorous line in this play is the line, "Before the Moveon.org, there was Wenholee.org," which is delivered with a particular light and playful tone. This quote came from an April 10 article about Cecilia Chang in the San Francisco Chronicle.

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March 6, 1999

## **China Stole Nuclear Secrets From Los Alamos**

By JAMES RISEN and JEFF GERTH

The New York Times

WASHINGTON -- Working with nuclear secrets stolen from a U.S. government laboratory, China has made a leap in the development of nuclear weapons: the miniaturization of its bombs, according to administration officials.

Until recently, China's nuclear weapons designs were a generation behind those of the United States, largely because Beijing was unable to produce small warheads that could be launched from a single missile at multiple targets and form the backbone of a modern nuclear force.

But by the mid-1990s, China had built and tested such small bombs, a breakthrough that officials say was accelerated by the theft of U.S. nuclear secrets from Los Alamos National Laboratory in New Mexico.

The espionage is believed to have occurred in the mid-1980s, officials said. But it was not detected until 1995, when American experts analyzing Chinese nuclear test results found similarities to America's most advanced miniature warhead, the W-88.

By the next year, government investigators had identified a suspect, an American scientist at Los Alamos laboratory, where the atomic bomb was first developed. The investigators also concluded that Beijing was continuing to steal secrets from the government's major nuclear weapons laboratories, which had been increasingly opened to foreign visitors since the end of the Cold War.

The White House was told of the full extent of China's spying in the summer of 1997, on the eve of the first U.S.-Chinese summit meeting in eight years -- a meeting intended to dramatize the success of President Clinton's efforts to improve relations with Beijing.

White House officials say they took the allegations seriously; as proof of this they cite Clinton's ordering the labs within six months to improve security.

But some U.S. officials assert that the White House sought to minimize the espionage issue for policy reasons.

"This conflicted with their China policy," said a U.S. official, who like many others in this article spoke on condition of anonymity. "It undercut the administration's efforts to have a strategic partnership with the Chinese."

The White House denies the assertions. "The idea that we tried to cover up or downplay these allegations to limit the damage to United States-Chinese relations is absolutely



wrong," said Gary Samore, the senior National Security Council official who handled the issue.

Yet a reconstruction by The New York Times reveals that throughout the government, the response to the nuclear theft was marked by delays, inaction and skepticism -- even though senior intelligence officials regarded it as one of the most damaging spy cases in recent history.

Initially, the FBI did not aggressively pursue the criminal investigation of lab theft, U.S. officials said. Now, nearly three years later, no arrests have been made.

Only in the last several weeks, after prodding from Congress and the secretary of energy, have government officials administered lie detector tests to the main suspect, a Los Alamos computer scientist who is Chinese-American. The suspect failed a test in February, according to senior administration officials.

At the Energy Department, officials waited more than a year to act on the FBI's 1997 recommendations to improve security at the weapons laboratories and restrict the suspect's access to classified information, officials said.

The department's chief of intelligence, who raised the first alarm about the case, was ordered last year by senior officials not to tell Congress about his findings because critics might use them to attack the administration's China policies, officials said.

And at the White House, senior aides to Clinton fostered a skeptical view of the evidence of Chinese espionage and its significance.

White House officials, for example, said they determined on learning of it that the Chinese spying would have no bearing on the administration's dealings with China, which included the increased exports of satellites and other militarily useful items. They continued to advocate looser controls over sales of supercomputers and other equipment, even as intelligence analysts documented the scope of China's espionage.

Samore, the Security Council official, did not accept the Energy Department's conclusion that China's nuclear advances stemmed largely from the theft of U.S. secrets.

In 1997, as Clinton prepared to meet with President Jiang Zemin of China, he asked the CIA for a quick alternative analysis of the issue. The agency found that China had stolen secrets from Los Alamos but differed with the Energy Department over the significance of the spying.

In personal terms, the handling of this case is very much the story of the Energy Department intelligence official who first raised questions about the Los Alamos case, Notra Trulock.

Trulock became a secret star witness before a select congressional committee last fall. In a unanimous report that remains secret, the bipartisan panel embraced his conclusions about Chinese espionage, officials said. Taking issue with the White House's view, the panel saw clear implications in the espionage case for U.S.-China policy, and has now made dozens of policy-related recommendations, officials said.

A debate still rages within the government over whether Trulock was right about the significance of the Los Alamos nuclear theft. But even senior administration officials who do not think so credit Trulock with forcing them to confront the realities of Chinese atomic espionage.

China's technical advance allows it to make mobile missiles, ballistic missiles with multiple warheads and small warheads for submarines -- the main elements of a modern nuclear force.

While White House officials question whether China will actually deploy a more advanced nuclear force soon, they acknowledge that Beijing has made plans to do so.

In early 1996 Trulock traveled to CIA headquarters to tell officials there of the evidence his team had gathered on the apparent Chinese theft of U.S. nuclear designs.

As Trulock gathered his charts and drawings and wrapped up his top-secret briefing, the agency's chief spy hunter, Paul Redmond, sat stunned.

At the dawn of the Atomic Age, a Soviet spy ring that included Julius Rosenberg had stolen the first nuclear secrets out of Los Alamos. Now, at the end of the Cold War, the Chinese seemed to have succeeded in penetrating the same weapons lab.

"This is going to be just as bad as the Rosenbergs," Redmond recalled saying.

The evidence that so alarmed him had surfaced a year earlier. Senior nuclear weapons experts at Los Alamos, poring over data from the most recent Chinese underground nuclear tests, had detected eerie similarities between the latest Chinese and U.S. bomb designs.

From what they could tell, Beijing was testing a smaller and more lethal nuclear device configured remarkably like the W-88, the most modern, miniaturized warhead in the U.S. arsenal. In April 1995, they brought their findings to Trulock.

Officials declined to detail the evidence uncovered by the Los Alamos scientists, who have access to a wide range of classified intelligence data and seismic and other measurements.

But just as the scientists were piecing it together, they were handed an intelligence windfall from Beijing.

In June 1995, they were told, a Chinese official gave CIA analysts what appeared to be a 1988 Chinese government document describing the country's nuclear weapons program. The document, a senior official said, specifically mentioned the W-88 and described some of the warhead's key design features.

The Los Alamos laboratory, where the W-88 had been designed, quickly emerged as the most likely source of the leak.

One of three national weapons labs owned by the Department of Energy, Los Alamos, 35 miles outside Sante Fe, N.M., was established in 1943 during the Manhattan Project. Trulock and his team knew just how vulnerable Los Alamos was to modern espionage.

The three labs had long resisted FBI and congressional pressure to tighten their security policies. Energy officials acknowledge that there have long been security problems at the labs.

Los Alamos and Sandia National Laboratories, also in New Mexico, had in 1994 been granted waivers from an Energy Department policy that visiting foreign scientists be subjected to background checks.

Lab officials resented the intrusions caused by counterintelligence measures, arguing that restrictions on foreign visitors would clash with the labs' new mandate to help Russia and other nations safeguard their nuclear stockpiles.

The Clinton administration was also using increased access to the laboratories to support its policy of engagement with China, as had been done under previous, Republican administrations.

In December 1996, for example, China's defense minister, Gen. Chi Haotian, visited Sandia on a Pentagon-sponsored trip. Energy Department officials were not told in advance, and they later complained that Chi and his delegation had not received proper clearances, officials said.

Still, there is no evidence in this case that foreign visitors were involved in the theft of information.

In late 1995 and early 1996, Trulock and his team took their findings to the FBI. A team of FBI and Energy Department officials traveled to the three weapons labs and pored over travel and work records of lab scientists who had access to the relevant technology.

By February the team had narrowed its focus to five possible suspects, including a computer scientist working in the nuclear weapons area at Los Alamos, officials said.

This suspect "stuck out like a sore thumb," said one official. In 1985, for example, the suspect's wife was invited to address a Chinese conference on sophisticated computer topics even though she was only a secretary at Los Alamos. Her husband, the real expert, accompanied her, a U.S. official said.

By April 1996, the Energy Department decided to brief the White House. A group of senior officials including Trulock sat down with Sandy Berger, then Clinton's deputy national security adviser, to tell him that China appeared to have acquired the W-88 and that a spy for China might still be at Los Alamos.

"I was first made aware of this in 1996," Berger, now national security adviser, said in an interview.

By June the FBI formally opened a criminal investigation into the theft of the W-88 design. But the inquiry made little progress over the rest of the year. When Energy Department officials asked about the inquiry at the end of 1996, they came away convinced that the bureau had assigned few resources to the case.

A senior bureau official acknowledged that his agency was aware of the Energy Department's criticism but pointed out that it was difficult to investigate the case without alerting the suspects.

The bureau maintained tight control over the case. The CIA counterintelligence office, for one, was not kept informed of its status, according to Redmond, who has since retired.

Energy Department officials were also being stymied in their efforts to address security problems at the laboratories.

After Frederico Pena became energy secretary in early 1997, a previously approved counterintelligence program was quietly placed on the back burner for more than a year, officials said.

In April 1997, the FBI issued a classified report on the labs that recommended, among other things, reinstating background checks on visitors to Los Alamos and Sandia, officials said. The Energy Department and the labs ignored the FBI recommendation for 17 months. An Energy Department spokeswoman was unable to explain the delay.

Another official said, "We couldn't get an order requiring the labs to report to counterintelligence officials when the Chinese were present. All those requirements had been waived."

In early 1997, with the FBI's investigation making scant progress and the Energy Department's counterintelligence program in limbo, Trulock and other intelligence officials began to see new evidence that the Chinese had other, ongoing spy operations at the weapons labs.

But Trulock was unable to quickly inform senior U.S. officials about the new evidence. He asked to speak directly with Pena, the energy secretary, but had to wait four months for an appointment.

In an interview, Pena said he did not know why Trulock was kept waiting until July but recalled that he "brought some very important issues to my attention and that's what we need in the government."

Pena immediately sent Trulock back to the White House -- and to Berger.

"In July 1997 Sandy was briefed fully by the DOE on China's full access to nuclear weapons designs, a much broader pattern" said one White House official.

Officials said Berger was told that there was evidence of several other Chinese espionage operations that were still under way inside the weapons labs.

That news, several officials said, raised the importance of the issue. The suspected Chinese thefts were no longer just ancient history, problems that had happened on another administration's watch.

Berger quickly briefed Clinton on what he had learned and kept him updated over the next few months, a White House official said.

As Trulock spread the alarm, his warnings were reinforced by CIA Director George Tenet and FBI Director Louis Freeh, who met with Pena to discuss the lax security at the labs that summer.

"I was very shocked by it, and I went to work on shifting the balance in favor of security," Pena said. He and his aides began to meet with White House officials to prepare a presidential order on lab security.

The FBI assigned more agents to the W-88 investigation, gathering new and more troubling evidence about the prime suspect.

According to officials, the agents learned that the suspect had traveled to Hong Kong without reporting the trip as required by government regulations. In Hong Kong, officials said, the FBI found records showing that the scientist had obtained \$700 from the American Express office. Investigators suspect he used it to buy an airline ticket to Shanghai, inside the People's Republic of China.

With Berger now paying close attention, the White House became deeply involved in evaluating the seriousness of the thefts and solving the counterintelligence problems at the laboratories.

Trulock's new findings came at a crucial moment in U.S.-China relations. Congress was examining the role of foreign money in the 1996 campaign, amid charges that Beijing had secretly funneled money into Democratic coffers.

The administration was also moving to strengthen its strategic and commercial links with China. Clinton had already eased the commercial sale of supercomputers and satellite technology to China, and now he wanted to cement a nuclear cooperation agreement at the upcoming summit, enabling American companies to sell China new commercial nuclear reactors.

In August 1997, Berger flew to Beijing to prepare for the October summit. He assigned Samore, a senior NSC aide in charge of proliferation issues, to assess the damage from the Los Alamos spy case.

After receiving a briefing from Trulock in August, Samore asked the CIA's directorate of intelligence to get a second opinion on how China had developed its smaller nuclear warheads. It was, an NSC aide said, "a quick study done at our request."

The analysts agreed that there had been a serious compromise of sensitive technology through espionage at the weapons labs, but were far less conclusive about the extent of the damage. The CIA argued that China's sudden advance in nuclear design could be traced in part to other causes, including the ingenuity of Beijing's scientists.

"The areas of agreement between DOE and CIA were that China definitely benefited from access to U.S. nuclear weapons information that was obtained from open sources, conversations with DOE scientists in the U.S. and China, and espionage," said a U.S. official.

"The disagreement is in the area of specific nuclear weapons designs. Trulock's briefing was based on a worst-case scenario, which CIA believes was not supported by available intelligence. CIA thinks the Chinese have benefited from a variety of sources, including from the Russians and their own indigenous efforts."

Samore assembled the competing teams of CIA and DOE analysts in mid-October for a meeting in his White House office that turned into a tense debate.

The CIA report noted that China and Russia were cooperating on nuclear issues, indicating that this was another possible explanation of Beijing's improved warheads.

Trulock said this was a misreading of the evidence, which included intercepted communications between Russian and Chinese experts. The Russians were offering advice on how to measure the success of nuclear tests, not design secrets. In fact, Trulock argued, the Russian measurement techniques were used to help the Chinese analyze the performance of a weapon that Los Alamos experts believed was based on a U.S. design.

"At the meeting, Notra Trulock said that he thought the CIA was underplaying the effect that successful Chinese espionage operations in the weapons labs had had on the Chinese nuclear weapons program," said one official.

Relying on the CIA report, Samore told Berger in late September that the picture was less conclusive than Trulock was arguing. Officials said he began to relay that view before hearing Trulock's rebuttal of the CIA study at the October meeting.

Samore told Berger "there isn't enough information to resolve the debate, there is no definitive answer, but in any event this clearly illustrates weaknesses in DOE's counterintelligence capability," said one official familiar with Samore's presentation.

CIA officials strenuously deny that the agency's analysts intended to downplay Trulock's findings.

The FBI inquiry was stalled. At a September 1997 meeting between FBI and Energy Department officials, Freeh concluded that the bureau did not have enough evidence to arrest the suspect, according to officials.

The crime was believed to have occurred more than a decade earlier. Investigators did not then have sufficient evidence to obtain a secret wiretap on the suspect, making it difficult to build a strong criminal case, according to U.S. officials. FBI officials say that Chinese spy activities are far more difficult to investigate than the more traditional espionage operations of the former Soviet Union.

But even if the bureau couldn't build a case, the Energy Department could still take some action against someone holding a U.S. security clearance. Freeh told DOE officials that there was no longer an investigative reason to allow the suspect to remain in his sensitive position, officials said. In espionage cases, the FBI often wants suspects left alone by their employers for fear of tipping them off prematurely.

But the suspect was allowed to keep his job and retain his security clearances for more than a year after the meeting with Freeh, according to U.S. officials.

In late 1997, the NSC did begin to draft a new counterintelligence plan for the weapons labs, and Clinton signed the order mandating the new measures in February 1998. In April, a former FBI counterintelligence agent, Ed Curran, was named to run a more vigorous counterintelligence office at Energy Department headquarters.

The administration explained aspects of the case to aides working for the House and Senate intelligence committees beginning in 1996. But few in Congress grasped the magnitude of what had happened.

In July 1998, the House Intelligence Committee requested an update on the case, officials said. Trulock forwarded the request in a memo to, and in conversations with, Elizabeth Moler, then acting energy secretary. Ms. Moler ordered him not to brief the House panel for fear that the information would be used to attack the president's China policy, according to an account he later gave congressional investigators. Ms. Moler, now a Washington lawyer, says she does not remember the request to allow Trulock to brief Congress and denies delaying the process.

In October, Ms. Moler, then deputy secretary, stopped Trulock from delivering written testimony on espionage activities in the labs to a closed session of the House National Security Committee.

Ms. Moler told Trulock to rewrite his testimony to limit it to the announced subject of the hearing, foreign visitors to the labs, an Energy Department spokeswoman said. The issue came up nonetheless when committee members asked follow-up questions, Energy Department officials said.

Key lawmakers began to learn about the extent of the Chinese theft of U.S. nuclear secrets late in 1998, when a select committee investigating the transfers of sensitive U.S. technology to China, chaired by Rep. Christopher Cox, R-Calif., heard from Trulock.

Administration officials say that Congress was adequately informed, but leading Democrats and Republicans disagree. Rep. Norman Dicks, D-Wash., the ranking minority member on the House Intelligence Committee and also a member of the Cox committee, said that he and Rep. Porter Goss, R-Fla., chairman of the House intelligence panel, were not adequately informed.

"Porter Goss and I were not properly briefed about the dimensions of the problem," he said, adding: "It was compartmentalized and disseminated over the years in dribs and drabs so that the full extent of the problem was not known until the Cox committee."

Last fall, midway through the Cox panel's inquiry, a new secretary of energy, Bill Richardson, arrived on the job.

After being briefed by Trulock, Richardson quickly reinstated background checks on all foreign visitors, a move recommended 17 months earlier by the FBI. He also doubled the

counterintelligence budget and placed more former FBI counterintelligence experts at the labs.

But Richardson also became concerned about what the Cox panel was finding out.

So in October he cornered Berger at a high-level meeting and urged him to put someone in charge of coordinating the administration's dealings with the Cox committee.

Berger turned again to Samore, officials said.

By December, Dicks, in his role as the ranking Democratic member of the Cox panel, was growing impatient with the administration's slow response to ongoing requests from the committee and its inaction on the Los Alamos spy case. Dicks told Richardson, a former colleague in the House, that he needed to take action, Richardson recalled.

Dicks' complaints helped prompt Richardson to call Freeh twice in one day in December about the inquiry, an official said.

The suspect was given a polygraph, or lie-detector test, in December, by the Energy Department. Unsatisfied, the FBI administered a second test in February, and officials said the suspect was found to be deceptive. It is not known what questions prompted the purportedly deceptive answers.

As the FBI investigation intensified, the Cox Committee completed a 700-page secret report which found that China's theft of US secrets had harmed U.S. national security -- saving the Chinese untold time and money in nuclear weapons research.

After hearing from both the CIA and Energy Department analysts, the bi-partisan panel unanimously came down on the side of Trulock's assessment, officials said.

Now, the CIA and other agencies, at the request of the Cox Committee, are conducting a new, more thorough damage assessment of the case, even as the debate continues to rage throughout the intelligence community over whether Trulock has overstated the damage from Chinese espionage.

Meanwhile, Trulock has been moved from head of DOE's intelligence office to acting deputy. While Richardson and other Energy Department officials praise Trulock's work and deny he has been mistreated, some in Congress suspect he has been demoted for helping the Cox Committee.

Redmond, the CIA's former counterintelligence chief, who made his name by unmasking Soviet mole Aldrich Ames at the CIA, has no doubts about the significance of what Trulock uncovered.

He said: "This was far more damaging to the national security than Aldrich Ames."



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September 14, 2000

## Statement by Judge in Los Alamos Case With Apology for Abuse of Power

*Following is a transcript of a statement yesterday by Judge James A. Parker of Federal District Court in Albuquerque to Dr. Wen Ho Lee, who pleaded guilty to mishandling nuclear secrets, as recorded by the court reporter. At one point the federal prosecutor in the case, George Stamboulidis, defended his dealings with the defense lawyer Mark Holscher:*

**JUDGE PARKER** Dr. Lee, you have pled guilty to a serious crime. It's a felony offense. For that you deserved to be punished. In my opinion, you have been punished harshly, both by the severe conditions of pretrial confinement and by the fact that you have lost valuable rights as a citizen.

Under the laws of our country, a person charged in federal court with commission of a crime normally is entitled to be released from jail until that person is tried and convicted. Congress expressed in the Bail Reform Act its distinct preference for pretrial release from jail and prescribed that release on conditions be denied to a person charged with a crime only in exceptional circumstances.

The executive branch of the United States government has until today actually, or just recently, vigorously opposed your release from jail, even under what I had previously described as draconian conditions of release.

During December 1999, the then-United States attorney, who has since resigned, and his assistants presented me, during the three-day hearing between Christmas and New Year's Day, with information that was so extreme it convinced me that releasing you, even under the most stringent of conditions, would be a danger to the safety of this nation. The then-United States attorney personally argued vehemently against your release and ultimately persuaded me not to release you.

In my opinion and order that was entered Dec. 30, 1999, I stated the following: "With a great deal of concern about the conditions under which Dr. Lee is presently being held in custody, which is in solitary confinement all but one hour of the week, when he is permitted to visit his family, the court finds, based on the record before it, that the government has shown by clear and convincing evidence that there is no combination of conditions of

release that would reasonably assure the safety of any other person and the community or the nation."

After stating that in the opinion, I made this request in the opinion right at the end: "Although the court concludes that Dr. Lee must remain in custody, the court urges the government attorneys to explore ways to lessen the severe restrictions currently imposed upon Dr. Lee while preserving the security of sensitive information."

I was very disappointed that my request was not promptly heeded by the government attorneys.

After December, your lawyers developed information that was not available to you or them during December. And I ordered the executive branch of the government to provide additional information that I reviewed, a lot of which you and your attorneys have not seen.

With more complete, balanced information before me, I felt the picture had changed significantly from that painted by the government during the December hearing. Hence, after the August hearing, I ordered your release despite the continued argument by the executive branch, through its government attorneys, that your release still presented an unacceptable extreme danger.

I find it most perplexing, although appropriate, that the executive branch today has suddenly agreed to your release without any significant conditions or restrictions whatsoever on your activities. I note that this has occurred shortly before the executive branch was to have produced, for my review in camera, a large volume of information that I previously ordered it to produce.

From the beginning, the focus of this case was on your motive or intent in taking the information from the secure computers and eventually downloading it on to tapes. There was never really any dispute about your having done that, only about why you did it.

What I believe remains unanswered is the question: What was the government's motive in insisting on your being jailed pretrial under extraordinarily onerous conditions of confinement until today, when the executive branch agrees that you may be set free essentially unrestricted? This makes no sense to me.

A corollary question I guess is: Why were you charged with the many Atomic Energy Act counts for which the penalty is life imprisonment, all of which the executive branch has now moved to dismiss and which I just dismissed?

During the proceedings in this case, I was told two things: first, the decision to prosecute you was made at the highest levels of the executive branch of the United States Government in Washington, D.C.

With respect to that, I quote from a transcript of the Aug. 15, 2000, hearing, where I asked this question. This was asked of Dr. Lee's lawyers: "Who do you contend made the decision to prosecute?"

Mr. Holscher responded: "We know that the decision was made at the highest levels in Washington. We know that there was a meeting at the White House the Saturday before the indictment, which was attended by the heads of a number of agencies. I believe the No. 2 and No. 3 persons in the Department of Justice were present. I don't know if the attorney general herself was present. It was actually held at the White House rather than the Department of Justice, which is, in our view, unusual circumstances for a meeting."

That statement by Mr. Holscher was not challenged.

The second thing that I was told was that the decision to prosecute you on the 39 Atomic Energy Act counts, each of which had life imprisonment as a penalty, was made personally by the president's attorney general.

In that respect, I will quote one of the assistant U.S. attorneys, a very fine attorney in this case — this was also at the Aug. 15 hearing. This is talking about materials that I ordered to be produced in connection with Dr. Lee's motion relating to selective prosecution. The first category of materials involved the January 2000 report by the Department of Energy task force on racial profiling: "How would that in any way disclose prosecutorial strategy?"

Miss Fashing responded: "That I think falls more into the category of being burdensome on the government. I mean if the government — if we step back for just a second — I mean the prosecution decision and the investigation in this case, the investigation was conducted by the F.B.I., referred to the United States attorney's office, and then the United States attorney's office, in conjunction with — well, actually, the attorney general, Janet Reno, made the ultimate decision on the Atomic Energy Act counts."

Dr. Lee, you're a citizen of the United States and so am I, but there is a difference between us. You had to study the Constitution of the United States to become a citizen. Most of us are citizens by reason of the simple serendipitous fact of our birth here. So what I am now about to explain to you, you probably already know from having studied it, but I will explain it anyway.

Under the Constitution of the United States, there are three branches of government. There is the executive branch, of which the president of the United States is the head. Next to him is the vice president of the United States. The president operates the executive branch with his cabinet, which is composed of secretaries or heads of the different departments of the executive branch. The vice president participates in cabinet meetings.

In this prosecution, the more important members of the president's cabinet were the attorney general and the secretary of the Department of Energy, both of whom were appointed to their positions by the president.

The attorney general is the head of the United States Department of Justice, which despite its title, is a part of the executive branch, not a part of the judicial branch of our government.

The United States Marshal Service, which was charged with overseeing your pretrial detention, also is a part of the executive branch, not the judicial branch.

The executive branch has enormous power, the abuse of which can be devastating to our citizens.

The second branch of our national government is the legislative branch, our Congress. Congress promulgated the laws under which you were prosecuted, the criminal statutes. And it also promulgated the Bail Reform Act, under which in hindsight you should not have been held in custody.

The judicial branch of government, of which I am a member, is called the third branch of government because it's described in Article III of our Constitution.

Judges must interpret the laws and must preside over criminal prosecutions brought by the executive branch. Since I am not a member of the executive branch, I cannot speak on behalf of the president of the United States, the vice president of the United States, their attorney general, their secretary of the Department of Energy or their former United States attorney in this district, who vigorously insisted that you had to be kept in jail under extreme restrictions because your release pretrial would pose a grave threat to our nation's security.

I want everyone to know that I agree, based on the information that so far has been made available to me, that you, Dr. Lee, faced some risk of conviction by a jury if you were to have proceeded to trial. Because of that, I decided to accept the agreement you made with the United States executive branch under Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure.

Further, I feel that the 278 days of confinement for your offense is not unjust; however, I believe you were terribly wronged by being held in custody pretrial in the Santa Fe County Detention Center under demeaning, unnecessarily punitive conditions. I am truly sorry that I was led by our executive branch of government to order your detention last December.

Dr. Lee, I tell you with great sadness that I feel I was led astray last December by the executive branch of our government through its Department of Justice, by its Federal Bureau of Investigation and by its United States attorney for the district of New Mexico, who held the office at that time.

I am sad for you and your family because of the way in which you were kept in custody while you were presumed under the law to be innocent of the charges the executive branch brought against you.

I am sad that I was induced in December to order your detention, since by the terms of the plea agreement that frees you today without conditions, it becomes clear that the executive branch now concedes, or should concede, that it was not necessary to confine you last December or at any time before your trial.

I am sad because the resolution of this case dragged on unnecessarily long. Before the executive branch obtained your indictment on the 59 charges last December, your attorney, Mr. Holscher, made a written offer to the office of the United States attorney to have you explain the missing tapes under polygraph examination.

I'll read from that letter of Dec. 10, 1999. I quote from that letter:

"Dear United States Attorney Kelly and First Assistant Gorenco: I write to accept Mr. Kelly's request that we provide them with additional credible and verifiable information which will prove that Dr. Lee is innocent. On the afternoon of Wednesday, Dec. 8, Mr. Kelly informed me that it was very likely that Dr. Lee will be indicted within the next three to four business days. In our phone conversation, Mr. Kelly told me that the only way that we could prevent this indictment would be to provide a credible and verifiable explanation of what he described as missing tapes.

"We will immediately provide this credible and verifiable explanation. Specifically we are prepared to make Dr. Lee immediately available to a mutually agreeable polygraph examiner to verify our repeated written representations that at no time did he mishandle those tapes in question and to confirm that he did not provide the tapes to any third party.

"As a sign of our good faith, we will agree to submit Dr. Lee to the type of polygraph examination procedure that has recently been instituted at the Los Alamos Laboratory to question scientists. It is our understanding that the government has reaffirmed that this new polygraph procedure is the best and most accurate way to verify that scientists are properly handling classified information."

At the inception of the December hearing, I asked the parties to pursue that offer made by Mr. Holscher on behalf of Dr. Lee, but that was to no avail.

**MR. STAMBOULIDIS** Your Honor, most respectfully, I take issue with that. There has been a full record of letters that were sent back and forth to you, and Mr. Holscher withdrew that offer.

**JUDGE PARKER** Nothing came of it, and I was saddened by the fact that nothing came of it. I did read the letters that were sent and exchanged. I think I commented one time that I think both sides prepared their letters primarily for use by the media and not by me. Notwithstanding that, I thought my request was not taken seriously into consideration.

Let me turn for the moment to something else. Although I have indicated that I am sorry that I was led by the executive branch to order your detention last December, I want to make a clarification here. In fairness, I must note that virtually all of the lawyers who work for the Department of Justice are honest, honorable, dedicated people, who exemplify the best of those who represent our federal government.

Your attorney, Mr. Holscher, formerly was an assistant United States attorney. The new United States attorney for the district of New Mexico, Mr. Norman Bay, and the many assistant United States attorneys here in New Mexico — and I include in this Mr. Stamboulidis and Mr. Liebman, who are present here today — have toiled long hours on this case in opposition to you. They are all outstanding members of the bar, and I have the highest regard for all of them.

It is only the top decision makers in the executive branch, especially the Department of Justice and the Department of Energy and locally, during December, who have caused

embarrassment by the way this case began and was handled. They did not embarrass me alone. They have embarrassed our entire nation and each of us who is a citizen of it.

I might say that I am also sad and troubled because I do not know the real reasons why the executive branch has done all of this. We will not learn why because the plea agreement shields the executive branch from disclosing a lot of information that it was under order to produce that might have supplied the answer.

Although, as I indicated, I have no authority to speak on behalf of the executive branch, the president, the vice president, the attorney general, or the secretary of the Department of Energy, as a member of the third branch of the United States Government, the judiciary, the United States courts, I sincerely apologize to you, Dr. Lee, for the unfair manner you were held in custody by the executive branch.

<http://wenholee.org/transcript4868.htm>

**Declassified version of FBI interrogation (March 7, 1999)**

**FBI/004868-004950**

**www.wenholee.org**

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The following is a transcript of a consensually monitored interview between Special Agent (SA) CAROL COVERT, SA JOHN HUDENKO and WEN HO LEE on March 7, 1999.

(xxx) designates text that has been blacked out on the transcript

Tape 1 of 2

(xxx): (On the telephone) Who is this?... Okay... Yes... All right, thanks. Bye (End of telephone conversation)... Hi, WEN HO.

(Conversation in the background is unintelligible).

(xxx): Listen, I explained to him the situation about the package and the telephone.

(xxx): I got it.

(xxx): I know you did. But... He came with (xxx). Let me explain what's going on.

(xxx): Mm. Come on in here. Let's uh, let me grab this stuff.

Lee: Okay. This is your office, (xxx)?

(xxx): Huh?

Lee: Is this your office?

(xxx): Oh no, no no (xxx). I wish. My, my office is a cubical about this big.

Lee: Okay.

(xxx): (Chuckles). What happened?

(xxx): (xxx) is with him. He's downstairs.

(xxx): Oh.

(xxx): What happened was that (xxx) showed up at your place about, about a half hour...

Lee: About a half hour before I came here?

(xxx): And so (xxx) is a good friend of his. (xxx) knows what's going on. WEN HO has confided in (xxx) and told him roughly what's going on and would like (xxx) to participate.

Lee: I like him to. He also went to China in 86 with me. So there may be some information he can help.

(xxx): And so let me just tell you what happened. I, I told (xxx) that, that this is a little strange having a (sighs) stranger walk in on a situation like this. And that number one, you probably wouldn't be too fired up about that for obvious reasons. Uh, but he's, he's, you have somebody at your house or will have in an hour or so...?

Lee: Yeah,...

(xxx): ...is that what you...

Lee: ... I, I, I have a visitor come to my house to, to pick up the piano. I sold, you know we, we never use the piano (chuckles) for a long time.

(xxx): Oh, okay.

Lee: ...(Unintelligible).

(xxx): So I told (xxx) to wait downstairs, and I need to go tell (xxx) what the deal is because he would like... If you permit I will bring (xxx) up here. If not, I will tell (xxx) and he will stay outside? He may not stay in the lobby according to the guards. He's gotta be outside. Let's see, what's the next thing? Next thing is that uh, I told him that I haven't seen the package and I don't know who you had on the phone call, but I told him you did not sound very happy.

(xxx): You don't want to see the package.

(xxx): (Well, that's one question he has is whether he can have something that's in the package. Uh, he does not want to really answer questions. He says he does not feel very well and he wants to know if he can do this tomorrow or another day or something. I told him that based on what I heard, he better talk to you and let you tell him what's going on.

(xxx): Yeah, why don't you go tell (xxx) that, you know, we need a little time with WEN HO. Because uh-mm, you won't believe what's in this package, and you won't believe the phone call I just had from Headquarters.

(xxx): Okay.

(xxx): So uh-mm.

(xxx): How long should I tell him to hang tight?

(xxx): I'd tell him, you know.

(xxx): He hasn't had lunch. Neither has WEN HO.

(xxx): Huh?

Lee: (xxx) can I have, can you do me a favor? Let (xxx) set maybe outside the door out here because, you know, I don't very well and sometime I conversation, maybe not quite right and may need his help.

(xxx): Huh,...



Lee: You know (unintelligible).

(xxx): ...why don't you deal with that, but I don't think that we can do anything about that.

(xxx): Okay, well, uh, they won't let him stay inside unless he's escorting the whole time and, and, so unless he's in this room, he can't come in. So that's that.

(xxx): Why don't you tell him to just grab some lunch and come back.

(xxx) Well, he, he hasn't had lunch. That's true. Neither has he, but (unintelligible). Yeah.

Lee: I, I, I don't to stay here very long. Okay, I, you know, I want to do as brief as possible. Just tell me what the package about very quickly and then I gotta go.

(xxx): Well, why don't you deal with (xxx) first and...

(xxx): Okay.

(xxx): ...and then come back, cause you should, should hear this too. Have you seen the article in the newspaper?

Lee: I didn't, but my daughter told me everything.

(xxx): I think WEN HO needs to read that article. Why don't you...

Lee: No, no I know about...

(xxx) He's comfortable with the article. His daughter either read it to him...

Lee: I know my, my daughter told me already.

(xxx): Okay.

(xxx): And she's told him about that uh, what's on TV.

Lee: Which article you talk about.

(xxx): This one that came today in the New York Times. It's yesterday's article?

Lee: Yeah.

(xxx): China Stole Secrets for Bombs.

Lee: (Chuckles) My daughter told me that she read it.

(xxx): You, you should read it. It's not good, WEN HO.

Lee: I know.

(xxx): It's uh, it's uh, very bad. I think that there's some things in here that, that we have got to address based on that phone call I got from Washington a few minutes ago. We need to

address a couple of issues that basically Washington has and it's boiling right down to your job, is what it's boiling down to.

Lee: What's that?

(xxx): Your job.

Lee: What do you mean...

(xxx): Whether you have a job or, or not and that's why I think we need to get this addressed so...

Lee: You mean, I never be able to work at the Lab? That what you saying?

(xxx): Absolutely.

Lee: Well,...

(xxx): That's absolutely true...

Lee: ...Can I, can I retire?

(xxx): Uh-mm, you know, I don't know.

Lee: No, no, the lab said yes. I already that that.

(xxx) You know, this is, this is a big problem, but uh-mm, I think you need, I think you need to read this article. Take a couple of minutes and, and read this article because there's some things that have been raised by Washington that we have got to get resolved. But just take a couple of minutes...

Lee: Okay.

(xxx): ... and why don't you do that and uh, come on back up...

(xxx): The, the other thing he says is that, he's hoping that next week if and when you talk by then he'll get an attorney involved. And I told him that he needs to see what you have here to talk to you and take all of that into account when he uh, talks to an attorney.

(xxx): Yeah, basically WEN HO, based on the conversation with Washington. There isn't going to be a next week.

Lee: What do you mean?

(xxx): So.

Lee: What do you mean there's not going to be...

(xxx) I don't think we're going to be talking after today.

Lee: Huh?

(xxx): So, why don't you read this article?

Lee: You mean we're, we're never going to talk next week? Is that what you're saying?

(xxx): Yeah. I think this is it. This is going to be it.

(xxx): That's part of what the problem is.

(xxx): Yeah.

(xxx): Well, why don't I tell him that he needs to find some lunch then?

(xxx): Okay, yeah, let's do that.

Lee: And, and what, how long it takes? I, I want to know the time.

(xxx): It shouldn't take long at all. I mean, I, I think we can get through this, you know, pretty quick.

(xxx): Maybe an hour or so.

(xxx): Yeah.

Lee: I am...

(xxx): Time for lunch.

(xxx): Just, just enough time for him to have lunch.

Lee: Okay, tell him finish lunch and come back?

(xxx): Yeah.

(xxx): Okay, that's what I'll do. All right.

(xxx): Did you want this back, (xxx)?

(xxx): Oh no. That's yours.

(xxx): Okay.

Lee: How come he cannot come here?

(xxx): Because this is a cleared building facility. Unless you're escorted and somebody is with you all the time. They won't let people in this building.

Lee: He can, we can uh, (xxx) over there by our... (unintelligible).

(xxx): Well, no because I think (xxx) has, (xxx) needs to hear what's in the package too because (xxx) had to leave because I was waiting for this to come. But you read that and it's on the next page as well, WEN HO. And let me call Washington real quick while you read that.

(Brief pause).

(xxx): (Background. On the phone). Hey... So you were saying... Uh-huh... Absolutely... I mean, I, I need, I need the stats, I need it straight...Right... Exactly... Yeah, that would work... Okay... Uh-mm... Thanks... Okay... Who's making that decision? ... Okay... I understand... Uh-huh... Right...

(Background, sounds like a pager just went off).

(xxx): ...alright... I've got Washington on the line. Hey, (xxx).

(xxx): Ya.

(xxx): Mm... Okay... Right... Okay, well... I, uh, I'll take care of it... Thanks a lot, bye.

(Brief pause).

(xxx): (xxx)... (Unintelligible).

(xxx): Oh, okay.

Lee: Can you open that 'cause I, I think, I have read the Monitor this morning and it's very similar to this.

(xxx): Oh, okay.

Lee: I, I don't know, I didn't finish the details, but can you, you've read this right?

(xxx): Yup.

Lee: Can you give me just verbally what is the important part related to me.

(xxx): The important part is that, uh, basically that is indicating that there is a person at the laboratory that's committed espionage and that points to you.

Lee: But do they have any proof, evidence?

(xxx): You know WEN HO. There is a situation like (xxx) and I told you on Friday. That Washington has a bunch of facts and...

Lee: Uh-huh.

(xxx): ...and the facts are this. In 1988 you went to China.

Lee: Yeah.

(xxx): Okay, and you met (xxx).

Lee: Yeah.

(xxx): ... in your motel room and you're telling us that you didn't say anything to this man who asked you a question about (xxx).

Lee: That's right.

(xxx): And in 1994, (xxx) comes back and you meet him at the laboratory, and you, are treated like, by him like your old friend.

Lee: It's not...

(xxx): And, and Headquarters basically in Washington and the Department of Energy, they don't think that's true. And I don't think-that's true. I don't think that you can have a person in your in hotel room for any period of time and not answer questions.

Lee: No. I deny, I say, I'm not, uh, I don't know that question and I'm not interested in discuss that. That's true, but that's all... I'm telling you the true. That's it (sighs).

(xxx): But, but, look at it from our stand point, WEN HO. Look at it from Washington's stand point...

Lee: Yeah.

(xxx): ... You have an individual that's involved in the Chinese Nuclear Weapons Program. And they come to your hotel room, and they feel free and comfortable enough to ask you a major question about (xxx).

Lee: Uh-mmm.

(xxx): ... and then 1994, they come to laboratory and they embrace you like an old friend. And people witness that and things are, are observed and you're telling us that you didn't say anything, you didn't talk to them and everything points to different to that.

Lee: Well, (sighs).

(xxx): So, you know, I mean, it's, it's, it's an awkward situation that, I... I can understand, you know where, where these things could happen, I mean, you were treated very nicely in 1986 when you went to China.

Lee: Uh-hum.

(xxx): I mean they were good to you. They, they took care of your family. They took you to the Great Wall. They had dinners for your. Everything. And then in 1988 you go back and they do the same thing and, you know, you feel some sort of obligation to people to, to talk to them and answer their questions...

Lee: No, no, no...

(xxx): ...you know...

Lee: ...that not true.

(xxx) ... I mean you gotta understand this is the way it is...

Lee: No.

(xxx): ... And you're being look at it as a spy!

Lee: Yes, I know, I know what you think, but all I'm saying is uh, I have never say anything classified. I have never say anything.

(xxx): It might not even be that, WEN HO. It might not even be a classified issue. It might just be something that was said, but Washington, right now, is under the impression that you're a spy. And this newspaper article is, is doing everything except for coming out with your name.

Lee: Well...

(xxx): I mean, it, it doesn't say anything in there that, that it's WEN HO LEE, but everything points to you. People in the community and people at the laboratory tomorrow are going to know. That this article is referring to you...

Lee: Okay.

(xxx): ... It's on all the TVs!

Lee: ...(xxx) let me ask you this. Okay? If you want me to swear with the God or whatever, okay? I can swear if that's what you believe. I never tell them anything classified. I never told them anything about nuclear weapons, (xxx) (xxx) I never answer. That's all I can tell you.

(xxx): But,...

Lee: Okay?

(xxx): ... what happened, WEN HO, something else had to have happened in that motel room. Something had to have happened when they came to your room.

Because it's, it's just logical. (xxx) and I have been working this stuff for years. We know how the Chinese operate. We know ho...

Lee: What do you mean, what do you mean...

(xxx): ...they operate.

Lee: ...something happen? What do you mean?

(xxx): Something happened in that room that you're not telling us?

Lee: No, that... So this, this is what I'm saying. You know, we, we may chat something social, okay? Like a, I don't even remember what we have said in that room in the hotel, okay? I, I frankly tell you, I don't remember anything except (xxx) (xxx) I don't remember we are talk about or, or how you like this, you know Great Wall. I mean (clears throat), all I can remember is when they asked me this question. (xxx) (xxx) I told them, I don't know and I, I am not interesting in discuss. And then we switched to different conversation. I

don't even remember what we said before or what we said after. I mean it's been such a long time, but I know it's nothing to do with technical. Okay.

(xxx): Something though, WEN HO, may be happened because here's, here's...

Lee: No, I, I...

(xxx): ... do you know what's in this package? Do you know what's in the package that I got today and the phone call that I got from Washington? You failed your polygraphs.

Lee: Okay.

(xxx): You failed the one that you, you had in December. Okay? You failed that. The polygraph that (xxx) gave you?

Lee: Uh-mm.

(xxx): You couldn't pass it. When they asked you questions and they got down to issues about code issues, and they got down to weapons questions. You couldn't pass your polygraph.

Lee: That, that, Washington, D.C., polygraph. They did not ask me anything about codes.

(xxx): The Department of Energy polygraph?

Lee: They did...

(xxx): Whatever they asked you, you failed.

Lee: ... they only asked one question. Do you know what question is that?

(xxx): What was the question, WEN HO?

Lee: They only asked me. It's hard for me to say it, but it's something like uh, (pause). Did I pass information to somebody who can use that information to overthrow the U.S. Government (chuckles). Something like that. Do you understand?

(xxx): Well you failed! You failed that question!

Lee: How do you know I fail?

(xxx): I got it right here! The reports that they sent me! The video tapes when you were video taped in your polygraph?...

Lee: Yeah.

(xxx): ... all the analysis that's been done in Washington! You failed WEN HO!

Lee: Why, why they told me...

(xxx): There's there's a black line and there's a white line. You either passed or you failed. You failed. When (xxx) talked to you in February? He asked you questions...

Lee: (Sighs).

(xxx): ... And then (xxx) gave you a polygraph, you know what the results say in the second package? You failed that too. You failed everything!

Lee: Okay...

(xxx): And now, now, WEN HO! The Department of Energy has notified our Headquarters, and that's what they just told me on the phone. You are a scientist.

Lee: Yes.

(xxx): A nuclear scientist.

Lee: Yes.

(xxx): With no clearance. You are, you are going to be an unemployed nuclear scientist. You are going to be nuclear scientist without a clearance! Where is a nuclear scientists without a clearance gonna get a job?

Lee: I cannot get any job.

(xxx): You can't! WEN HO, you gotta tell us what went on in that room. You got to tell us why you're failing these polygraphs! Washington is not going to let you work in a laboratory or have a clearance! Unless...

Lee: Okay.

(xxx): ... we can get an explanation as to what happened!

Lee: Okay, I, you know, I'm... I can retire to tell the truth... I'm 59 and something.

(xxx): You know what, WEN HO? If you retire...

Lee: Yeah.

(xxx): ... and the FBI comes in later on down the road. A day, an hour, a week, and we come knocking on your door, we have to arrest you for espionage!

Lee: Yeah.

(xxx): Do you, do you really think you're gonna have a retirement? Do you really think that you're going to be able to collect anything?

Lee: No, no, but, but, look, look...

(xxx): They're going to garnish your wages!

Lee: (Sighs) you, you going to arrest me. I think you have to at least give me the evidence. You cannot depend on that. Uh-huh, how you call it? huh...

(xxx) : When somebody comes knocking on your door, WEN HO...



Lee: ...No, no, no.

(xxx): ...they're not going to give you anything other than your Advice of Rights and a pair of handcuffs! That's all your going to get!

Lee: But, but...

(xxx): And now, what are you going to tell your friends? And what are you going to tell your family? What are you going to tell your wife and your son. What's going to happen to your son in college?!

Lee: I know, I know...

(xxx): When he hears on the news. Instead of an article like that in the front page of the paper. It says "WEN HO LEE arrested for espionage." What's that going to do?

Lee: But (xxx) I'm telling you, I did not do anything like that.

(xxx): But WEN HO, I'm telling you. The facts are right here! the facts are if you're saying you didn't do anything that's not what this shows. All of the polygraphs that you're taking, and all the stuff you're telling everybody, you're failing! Why are you failing...

Lee: Well,...

(xxx): ...your polygraphs?

Lee: ... I don't know. I, I, I, I don't know why I fail, but I do know I have not done anything uh, I have not done anything I say, I don't know how to say, how to say English (chuckles). That's why I needed (xxx). I never give any classified information to Chinese people. I never tell them anything relating to nuclear weapons, uh, data or design or whatever, I have never done anything like that. And, on the, on the first polygraph I failed from the (xxx) I told you the question what that, did I give any classified information to somebody which can use to over throw government. I, my answer is no, cause I didn't, I never done that. And then the polygraph give by (xxx) in February 10. Those two questions is as... as say... let me put this way. (xxx) will ask me, "WEN HO, are you a woman?" And I say no, and then (xxx) would say, you fail. Just like that, that's the same concept.

(xxx): That's not what happened, WEN HO. What happened let me tell you what happened. Okay? Here's the deal. You got asked a very specific question, okay?

Lee: Uh-mm.

(xxx): And you failed it. Okay?

Lee: Yeah, he asked...

(xxx): So...

Lee: ...he asked me. Did I, I, I give... in, in, information to, to unauthorized person. And I, I didn't do it.

(xxx): Okay, but...

Lee: I didn't do it. So I, I, I know how, not done anything like that (chuckles).

(xxx): Okay, let's, let's clear your whole mind here, WEN HO. Let's forget the W-88 information. Let's forget the code information. Let's just look at when you were in the hotel room with (xxx).

Lee: Uh-huh, yeah.

(xxx): Okay?

Lee: Yeah.

(xxx): I mean, let's, let's look at this whole scenario. Let me tell you how the Chinese operate.

Lee: Okay.

(xxx): Okay? (xxx) and I have worked this stuff for years...

Lee: Okay.

(xxx): ...What happens is exactly what happened with you. You go to a conference in 1984 here in the United States. Doesn't that strike you a little strange that the only Chinese people that are there, are two people that end up coming and talking to you? And doesn't it strike you strange that in 1986 those same individual that was there...

Lee: Uh-huh.

(xxx): ... comes to you in 1986 and you see him again?

Lee: Uh-huh.

(xxx): And they introduce you to some other people? And in 1988 you...

Lee: No, no...

(xxx): ...see the same people?

Lee: ...85 is the...

(xxx): No, no, the point is WEN HO. In, in 1984, 85 (xxx) met you in Hilton Head.

Lee: Right.

(xxx): And in 1986, (xxx) invites you to China.

Lee: That's right. Because...

(xxx): And in 1988, (xxx) invites you back to China.

Lee: That's right.

(xxx): In 1986, (xxx) goes ahead and he introduces you to (xxx). And then (xxx) has the nerve to come into your hotel room out of the clear blue sky with HU SI DE in 1988...

Lee: Uh-mm.

(xxx): WEN HO, that doesn't fit. That's not the way the Chinese operate.

Lee: Mm.

(xxx): Let me show you how they operate. I can understand where you're coming from. I mean, look at. You go there in 1986, and they treat your family very well.

Didn't they?

Lee: Yes.

(xxx): They, they were wonderful.

Lee: Uh-huh.

(xxx): You got escorted around. You got taken to museums. The family was treated well.

Lee: Yeah, yeah.

(xxx): So were you.

Lee: Uh-huh.

(xxx): Right?

Lee: Well, I wasn't (unintelligible).

(xxx): They, they take you to the Great Wall. You enjoyed that didn't you?

Lee: That's right.

(xxx): And, and didn't you feel inside you were obligated to go and give that presentation at IAPCM?

Lee: By the way, uh...

(xxx): Didn't you, didn't you feel that, that's what you should do, because, didn't you...

Lee: Yes,...

(xxx): ...tell (xxx) that and I because...

Lee: ...yes, yes,....

(xxx): ...it's expensive for them to come to the seminar?

Lee: ... that's right, I , I went there, just to do them a favor.

(xxx): You did them a favor.

Lee: Yes.

(xxx): And, why did you do them that favor? Because you felt you owe them something for the way that they were treating you and your family. Didn't you?

Lee: That's, well, by the way.

(xxx): Didn't you?

Lee: Yes, yes.

(xxx): Isn't that the reason?

Lee: No, part of the reason...

(xxx): Listen, listen to me WEN HO.

Lee: Yeah.

(xxx): This is how they operate.

Lee: Okay.

(xxx): This is what...

Lee: Okay.

(xxx): ...they do.

Lee: ...okay, go ahead just, just finish that.

(xxx): Okay?

Lee: Yeah.

(xxx) Now, I mean, I, I can understand if they came to your hotel room, and they asked you a question.

Lee: Uh-mm.

(xxx): If you said, yes. (xxx) (xxx) And you said, yes. I can understand that you're nervous about that or you're upset, or that it bothers you. But let me tell ya', saying yes is no way near as bad as sitting down and say yes and this is how they do it. And giving them a full blown explanation as (xxx) If you said yes to that question, it's not like that's a big deal. It's not like it's as big of a problem as if you said yes and you gave them a big explanation. But WEN HO, for some reason you're failing your polygraph. And everything seems to point to that particular incident.

Lee: But, but I did not, I did not, say yes, I did not explain to them...

(xxx): Did you say no and explained something else?

Lee: I told them I said no, okay?

(xxx): No, but, did you, did you...

Lee: No, no,...

(xxx): ...did you say...

Lee: ...I, no, what I say is that, I say I am not interested on this problem, on this question, and I don't know. I don't know the answer and I, I'm not interested in this question, that, that is exactly what I told them. I'm not interested in discuss this...

(xxx): Then, why are you failing your polygraph?

Lee: I don't know.

(xxx): You know, WEN HO, this, it's bad. I mean look at this newspaper article! I mean, "China Stole Secrets For Bombs." It all but says your name in here. The polygraph reports all saying you're failing.

Lee: Well, I don't know...

(xxx): Pretty soon you're going to have reporters knocking on your door.

Lee: I do...

(xxx): They're going to be knocking on the door of your friends. They're gonna' be uh...

Lee: Yes.

(xxx): ...They're going to find your son. At Case Western University.

Lee: Uh-huh.

(xxx): And they are going to say, you know your father is a spy?

Lee: But I, I'm not a spy.

(xxx): Do you want that to happen?

Lee: I know, but I'm not a spy, okay?

(xxx): But WEN HO, something else must have happened for you not to be able to pass these polygraphs.

Lee: I don't know. I don't know what to explain. I did not, I did not tell them anything about (xxx) (xxx) I told them I say, I... let's see. I don't know and I'm not interested discuss this question. That's exactly what I told them. I remember very well.

(xxx): Well, let me ask you something. Where was (xxx)?

Lee: She is home.

(xxx): No, no, in 1988.

Lee: Oh, she... I don't know. She's not in the room. She's not in the hotel at that time. I don't know where she go. I can't remember.

(xxx): You know, WEN HO, more than one person knows about this.

Lee: Huh?

(xxx): I mean, when you have something like this that happens and you have people show up in your hotel room and, they don't come alone. I mean, you've got (xxx) in your hotel room. You've got (xxx) in your hotel room. You've got people down in the lobby that probably saw them come up. You've got your wife who was traveling with you, who's no longer in the room supposedly. Did you discuss this with her? Did she know, that (xxx) and (xxx) came into your room?

Lee: When, when, when they came, my wife, I know she's not in the room. I know that. It's only three of us.

(xxx): Did you tell her what happened in the room?

Lee: No, I, I forgot to tell her, but I think she know now cause during uh, last few days I started to explain to her, but I told you, uh, you probably don't know this. I, when I was 16 years old in high school?

(xxx): WEN HO, this doesn't have anything to do with when...

Lee: No.

(xxx): ...you were 16.

Lee: No, let me tell you this. I have a surgery on appendix.

(xxx): WEN HO.

Lee: No, let me finish this.

(xxx): Wait, wait, this isn't important. WEN HO! You know, I, I understand but this isn't important. What's important is what's in that newspaper article...

Lee: Yes, yes.

(xxx): ...What's important is what's going on in Washington. And what's going on in Washington is they're saying back in Washington "WEN HO LEE works at Los Alamos National Laboratories. WEN HO LEE is failing his polygraph exams. WEN HO LEE is not fessing up on everything that he knows. WEN HO LEE was approached by a nuclear scientist in his off, in his hotel room and WEN HO LEE has done something." And WEN

HO LEE is gonna to be a nuclear scientist without a clearance and without a job. And pretty soon what's going to be in papers is WEN HO LEE arrested for espionage.

Lee: But I don't know about the, the law. L-a-w. Cause I, I, I never studied law.

(xxx): You're gonna learn quick!

Lee: (Chuckles).

(xxx): You're gonna learn real quick when they come and they knock on your door and they put a pair of handcuffs on you WEN HO!

Lee: No, let me do this because the situation has been so bad. And I..

(xxx): WEN HO, this is, this is it. This situation can't get any worse.

Lee: Uh-hum.

(xxx): The best thing that you can do is to remember what happened and to remember if you said yes to their questions. To remember if you said anything that gave them any...

Lee: I remember...

(xxx): ...information.

Lee: ... I remember very well. I told them, I don't know and I am not interested in discuss this problem. Exactly, this is what I remember. My memory, for that I think that I remember very well. Whatever, however, that what happened before, and whatever, and what happened after that. I don't remember. It's been a while, okay?

But for this question, I remember very well. I told them, I say, I don't know. Remember, I don't know and I am not interested in discuss this question.

(xxx): You know what can happen next?

Lee: Yeah.

(xxx): What if they polygraph (xxx)? What if they decide, okay. We're going to go polygraph your wife.

Lee: On what? On what subject?

(xxx): On this subject. Your wife went to China with you.

Lee: But she's not in the room.

(xxx): What difference does it make? Husbands and wives tell each other things. Don't you think they're going to go knocking on your door here pretty soon. If they don't knock on your door with a pair of handcuffs.

Lee: Now you can tell, you can ask...

(xxx): They're, they're going to knock on your door with another polygraph person to polygraph (xxx).

Lee: Yeah, you can go and do that, but I...

(xxx): And then what's that gonna look like to the kids? What's your son going to think when your, your wife gets polygraphed? And what are the people that you work with gonna think of? What are they gonna be saying tomorrow morning? This is in the newspaper. It's in the Los Alamos Paper.

Lee: (xxx) (xxx)

(xxx): It's in the Monitor.

Lee: (xxx)...

(xxx): It was on t.v. today, WEN HO.

Lee: I know. (xxx) let me tell you this. I don't know what's going on in Washington, D.C. or FBI or DOE, or whatever, okay. I have no idea what's going on. But I can tell you one thing, truth, okay? When (xxx) told, asked on those two, uh, lie detector. Did I pass the W-88 information to unauthorized person. I know from my mind, I didn't do it. I have nothing, I never passed any information to any unqualified person and when he asked me, did I pass the code, the two sensitive codes, to and, un, un, un, un, un, unauthorized person, I know I did not do it. So I feel very comfortable. I should be okay for that part of that polygraph.

(xxx): But if you're comfortable, WEN HO. Then why did you fail the polygraph?

Lee: I don't know. I don't know. That's why I say, I, that's why I say. I'd be willing to do another polygraph on those two issues.

(xxx): There's no other polygraph WEN HO. Washington's got those results. They have done two polygraphs.

Lee: Yeah.

(xxx): You haven't passed either one of them.

Lee: Well.

(xxx): There is no other polygraph. If there's ever going to be another polygraph, they're going to go polygraph (xxx) is what they're gonna do and they are going to talk to your wife.

Lee: Okay, well, if you, if you want to do that, go ahead.

(xxx): Not me! It's not going to be me WEN HO! This is, this is out of my hands. (xxx) and I have nothing that we can do about this. You're gonna go, you're gonna go to the laboratory and you're going to find out that they're not going to give you back your clearance.

Lee: Yeah.



(xxx): And you're not going to have a job! And if the FBI comes down later on with proof. That what you're telling us is a lie but that you haven't fessed up completely and later on down the road, whether it's a day, a week, a year or ten years. They're going to come, they're going to put handcuffs on you and they're going to take you away and it's going to be plastered all over the newspapers... I'm not saying I believe everything that's in that newspaper, WEN HO.

Lee: Yeah.

(xxx): But you know what I believe? I believe that you're not telling me the truth. I believe something else happened in that room and that's why you're failing the polygraph. And unless you can come up with what happened in that room, part of a conversation that's causing you problems.

Lee: No.

(xxx): You're never going to pass a polygraph. And you're never going to have a clearance. And you're not going to have a job. And if you get arrested you're not going to have a retirement.

Lee: Well, okay, I, let's, let's stop here cause I'm very tired, okay, I'm, I'm...

(xxx): WEN HO, this is serious. What are you going to do tomorrow when all the people that you used to work with come in and start talking to you about that newspaper article?

Lee: I...

(xxx): What are you going to tell the scientists when they say WEN HO, they're accusing of spying. Do you know what a spy is?

Lee: I know, most of my friends include (xxx), (xxx) just met (xxx) and I have many other friends...

(xxx): They're not going to be your friends, WEN HO...

Lee: No, no, no, they...

(xxx): ...tomorrow morning.

Lee: ... they, can prove...

(xxx): No.

Lee: ... they can be, they can be a volunteer to do evidence based on, I know them for 20 years.

(xxx): WEN HO, nobody is going to be able to do anything for you. (xxx) wasn't in China with you.

Lee: No, he was in China, 86 with me.

(xxx): But he wasn't in your hotel room.

Lee: No, he's not there, right, he wasn't.

(xxx): You're the only person that was in your hotel room, you said with these two people. Even (xxx) wasn't there, okay?

Lee: Yeah.

(xxx): (xxx) isn't going to be able to do a thing for you. You know what he's going to say? They're going to say, "(xxx) were you in China in 1986? And he's going to say "Yes, I was." And they're going to say, "Do you know whether WEN HO LEE talked to (xxx) in his hotel room? He's going to say "Hey, I wasn't in the hotel room." You're going to be hung out to dry!

Lee: But, but (xxx) can tell you he believes I'm an honest person...

(xxx): Hey!

Lee: ...I, I, I will not say that.

(xxx): That's great, (xxx) can say he believes I'm a great person too, and I can go home, and I can be beaten up by my husband and the dog and he's not going to know.

Lee: (xxx).

(xxx): WEN HO, if (xxx) wasn't there he can't do anything for you!

Lee: Okay, (xxx), we're not, we're not going to get anywhere by, by this kind of conversation (chuckles).

(xxx): WEN HO, you're in trouble. You are in big trouble!

Lee: I know, but, but I can tell you one thing. I'm the victim. I am innocent and...

(xxx): That doesn't make it look like you're innocent.

Lee: No, no, no.

(xxx): You know what that makes it look like? You know, when I first read that, I had to read it twice, okay? You know what I thought the first time I read that?

Lee: By the way,...

(xxx): I say...

Lee: ...by the way, can you make a copy of this? Do you have a copy...

(xxx): You know,...

Lee: ... of this?

(xxx): ... you know, you know what I thought when I first read this WEN HO?

Lee: Yeah.

(xxx): I read this and I said, if I didn't even know you...

Lee: Yeah.

(xxx): ...my first thought would be. Wow! There's a guy here that works at the Laboratory that's a U.S. citizen. That'd got a clearance, and he just dumped on the United States. He loves China. He sold out the United States.

Lee: No, that's not true.

(xxx): Well, you know what? That's what people are going to think, WEN HO. The newspapers don't portray people nice!

Lee: I know, I know.

(xxx): And you're going to have all these people that you used to work with, they're going to be coming up to you tomorrow if they even want to talk to you, and they're going to be looking at you like you gave away everything that they're trying to save when they develop nuclear weapons. They're trying to protect the United States.

Lee: (xxx) we're not going to go anywhere. Beg your pardon, okay. Uh-mm, I have to go because I'm very tired.

(xxx): WEN HO, if you walk out that door today, that's it. I can't do anything for you. I can't do a thing for you! IF I don't have something that I can tell Washington as to why you're failing those polygraphs, I can't do a thing.

Lee: Well, I understand.

(xxx): I can't get you your job. I can't do anything for you, WEN HO. I can't stop the newspapers from knocking on your door. I can't stop the newspapers from calling your son. I can't stop the people from polygraphing your wife. I can't stop somebody from coming and knocking on your door and putting handcuffs on you...

Lee: Okay.

(xxx): ...I can't do a thing!

Lee: I mean whatever. You people want to do, like I, what you just said, go ahead do it. Cause I, I don't know what, I don't know how to handle this case. I'm an honest person and I'm telling you the truth, and you don't believe it. I, that's it.

(xxx): If you were me, if you were in my shoes. Would you believe it? Would you believe, WEN HO, that I could go to China, and I could get wined and dined, and I could have people driving me all over the Great Wall, and I can have them showing my family everything, and I can have them taking them to museums, doesn't it seem strange?

Lee: You may thank I (unintelligible).

(xxx): Would you think that, that is strange? If you were me?

Lee: No.

(xxx): You wouldn't think that's strange?

Lee: No, you may think, when people, when the Chinese people do me a favor, and I will end up with tell them some secret, but that's not the case, okay?

(xxx): WEN HO, I understand.

Lee: That's not the cause. I, cause I have a rule in my mind. If this thing is classified, if thing is nuclear, I'm, I'm not, I'm not suppose to say.

(xxx): What if in your mind it's not classified?

Lee: What?

(xxx): What if in your mind it's not classified?

Lee: What do you mean? Not classified?

(xxx): Well, you say, if in your mind it's classified, you're not going to tell them anything, okay?

Lee: If, if if...

(xxx): What if it's not?

Lee: What do you man not? Like what? Like it...

(xxx): What if they ask you a question...

Lee: Like what?

(xxx): (xxx)

Lee: That's classified.

(xxx): ... and you say, that's classified! Exactly, that's exactly what you say. I can't answer that question. It's classified.

Lee: No, I didn't say...

(xxx): But, but what if, what if, okay? What if they ask you that and you say, "I can't answer that question. I don't want to talk about that." What if they say, "Oh, okay, WEN HO, we don't want to make you nervous," and they start asking you other questions that aren't classified. Other technical questions.

Lee: Uh-mm.

(xxx): Would you answer them? Did you answer them WEN HO? Something was said in that hotel room because you can't pass a polygraph.

Lee: But, but in the hotel room, I, as I told you, I don't remember (xxx)...

(xxx): Well, WEN HO...

Lee: ...anything else...

(xxx):...that's what I'm saying...

Lee: ...yeah...

(xxx): You could walk out that door anytime you want, but you walk out that door, (xxx) and I can't do anything for you anymore. If you sit here, and you can think for me what happened in that hotel room, and if you tell me, "Yes, I accidentally said yes. I know I shouldn't have said yes, but (xxx) I said, yes, that's, that's a whole lot better, WEN HO, then if you turn around to me, and you say, yeah, I said yes, and I explained to them how you do it.

Lee: No, I didn't do that.

(xxx): Things happen, WEN HO. I understand that.

Lee: No, I didn't do it. So why should I, if didn't do it I, I don't want to tell you I do it, okay (chuckles).

(xxx): Then, then why can't you pass the polygraph? What happened in that hotel room?!

Lee: I...

(xxx): That bothers you because everything in those polygraph results from Washington...

Lee: Uh-huh.

(xxx): ...and all the reports say, you are having problems with (xxx) being in your hotel room with (xxx) and every time, every time you get asked about it...

Lee: Okay, I, I...

(xxx): ...you fail. Lee: ...okay, (xxx) before you keep, I, argue this, we can argue for next ten years and my answer is still the same. I, I remember very well, when they ask me this question. I told them, I'm not interested in, I, I don't know, I don't that, I don't know the question and I'm not interested in, in discuss this question.

(xxx): But what else did you discuss? What small talk did they make, WEN HO?!

Lee: I don't remember (sighs). (xxx)

(xxx): You, you got to try...

Lee: I know...

(xxx): ...You got to try to remember!

Lee: Well, I will try for next few days to see if I can remember.

(xxx): But there is no next few days, WEN HO.

Lee: But...

(xxx): I, I can't do anything. If I don't...if...

Lee: ...Okay.

(xxx): ...Listen to me. If I don't have an answer for Washington,...

Lee: Uh-mm.

(xxx): ...today...

Lee: Can you tell them,...

(xxx): ...As to what has happened.

Lee: ...can you tell them I said, okay, I said in that hotel room. (xxx) And I told them, I don't know and I'm not interested in discuss this question, And whatever this conversation before this question, or, whatever, conversation after this question. I don't remember at all.

(xxx): You know what, WEN HO? (xxx) and I have told them that until we're blue in the face. They don't care. (xxx) and I have told then that. (xxx) and I told them that yesterday.

Lee: I appreciate it.

(xxx): But you know what, WEN HO? They don't believe it.

Lee: Well, if they don't believe it...

(xxx): And the problem is WEN HO...

Lee: ...There's nothing I can do.

(xxx): ...that, the problem is that's the only thing that you seem to have a big problem with.

Lee: Okay, well, I tell you the truth already. You want me repeat again? I, there's nothing I can tell you because I already told you everything, okay? And if they don't believe. It's too bad. If they want to put me in jail, fine, I, I..

(xxx): Fine! That's fine!

Lee: That's fine! Because I, I told you, I tell you the truth.

(xxx): Do you know how many people have been arrested for espionage in the United States?

Lee: I don't, I don't know. I don't pay much attention to that.

(xxx): Do you know who the ROSENBERGs are?

Lee: I heard them, yeah, I heard them mention.

(xxx): The ROSENBERGs are the only people that never cooperated with the Federal Government in an espionage case. You know what happened to them? They electrocuted them, WEN HO.

Lee: Yeah, I heard.

(xxx): They didn't care whether they professed their innocence all day long. They electrocuted them. Okay, ALDRICH AMES. You know ALDRICH AMES? He's going to rot in jail!

Lee: Who?

(xxx): ALDRICH AMES, that used to work for the CIA.

Lee: I don't know.

(xxx): He's going to rot in jail, WEN HO.

Lee: Huh?

(xxx): He's going to rot in jail.

Lee: (Unintelligible).

(xxx): People don't respect him anymore. He's going to spend his dying days in jail.

Lee: I see.

(xxx): Okay? JOHN WALKER! Okay, he's another one. He was arrested for espionage. Okay? Do you want to go down in history? Whether you're professing you innocence like the ROSENBERGs to the day that they take you to the electric chair?...

Lee: (xxx)..

(xxx): ...Do you want to go down in history?...

Lee: ...(xxx)...

(xxx): ... with your kids knowing that you got...

Lee: .(xxx)

(xxx): ...arrested for espionage?

Lee: No, I know what you're saying.

(xxx): That's going to happen, WEN HO...

Lee: No.

(xxx): ...If you're not careful.

Lee: I know what you're saying, but I already told you all the truth and I, I don't what, I don't know what else to do. I just do the best I can and tell you the only thing I can, and that's what I already told you many times. And I, I think I have to go and if you want to do something, I mean, if, if Washington, D.C. doesn't believe what I said and they want to do something, I...

(xxx): What are you going to tell (xxx) What are you going to tell your son?

Lee: I just tell them what you told me. I say you people don't believe what I said and polygraph don't believe what I said, and whatever consequence I will take, okay. I'm, I'm, I'm, I'm sixty.

(xxx): Do you realize what that means, WEN HO?

Lee: What?

(xxx): Do you realize what that means?

Lee: I know, it will, it will...

(xxx): It means you're going to be an unemployed nuclear scientist with no job and if you get arrested you'll have no money...

Lee: I'll open an Cha...

(xxx): ...You won't, you won't have a house. Your kids won't have...

Lee: (xxx).

(xxx): ...anything other than the fact that...

Lee: ...(xxx) I will open a Chinese Restaurant here and you can give me...

(xxx): ...You're not...

Lee: ...welcome...

(xxx): ...going to be opening any Chinese Restaurant. You're going to be in jail, WEN HO.

Lee: Well.

(xxx): You're going to be in jail.

Lee: Eh...



(xxx): And your kids are going to have to deal with the rest of their lives, people coming up to them saying. Hey, isn't your dad that WEN HO LEE guy what got arrested up at the laboratory?

Lee: I know what you mean, and I know exactly what the consequence; however, I already told you the truth and I don't have anything better than the truth, and I only deal with the truth, okay? And that's it, and I think I have to go.

(xxx): WEN HO, why? Why? Tell me this. When you were in that hotel room...

Lee: Yes.

(xxx): ...with (xxx)

Lee: yes.

(xxx): Okay?

Lee: Yes, yes.

(xxx): Why can't you remember anything else? How come right before you take a polygraph in December...

Lee: Uh-huh.

(xxx): ...when you came back from Taiwan. How come all of a sudden after ten years, you remember that (xxx) came...

Lee: Okay.

(xxx): ...to your hotel room?

Lee: You want me, you want listen two minutes from my explanation?

(xxx): Yes, I want an explanation.

Lee: Okay, cause when I started talking you, you, you want to put my mouth shut.

(xxx): I want an explanation.

Lee: Okay, don't talk, okay? Let me tell you, okay? Alright? Just don't talk, okay? When I was a 16 years old.

(xxx): No, no, no, 16...

Lee: I told you oh, don't! (Something loud snaps in the background).

(xxx): No, no, no 16!

Lee: Stop!

(xxx): No, you stop a minute, WEN HO. Listen, no 16! I need an answer for Washington! As to why it took you ten years to remember something! Right before you were gonna be given a polygraph exam that could cost you your job?

Lee: Do you want me to explain to you?

(xxx): No, I want you to tell me that you remember something in that hotel room. I want you to tell me that in a casual conversation... you didn't talk classified, you talked about something else, but it did deal with methods or it did deal with codes, or it did deal with something else. I wanna tell me, I want to know why you're failing the polygraphs.

Lee: First of all, I don't know why I failed the polygraphs...

(End of side A-Tape 1 of 2).

(Beginning of side A-Tape 2 of 2).

Lee: ...I don't know, okay? I have no, I have no, I have idea why, okay. And the second, in that hotel I don't remember anything except that question. (xxx) I told then I don't know and I am not interested in discuss this question, Now you can remember why I told you ten times already!

(xxx): At least ten times.

Lee: And exactly that's all I remember! What else do you want?

(xxx): You know what WEN HO? Let me tell ya' when you got ready to take the polygraph in December?

Lee: Yes.

(xxx): Okay, you told (xxx) and I, okay. That the reason you remember that (xxx) and (xxx) came into your hotel room was because all of a sudden you sat there for a minute, and you were trying to think of anything that had happened that might be a problem, okay? That is the smallest problem in the world. Compared to what's going to happen to you with this newspaper article...

Lee: Uh-mm.

(xxx): ...and the press knocking on your door, and people at the laboratory looking at you like you gave away secrets...

Lee: I don't know.

(xxx): ...and then, then somebody coming and arresting you and taking you off to jail. What happened to you in your hotel room, is nothing compared to what potentially can happen because of this...

Lee: I don't know.

(xxx): ...and then, then somebody coming and arresting you and taking you off to jail. What happened to you in your hotel room, is nothing compared to what potentially can happen because of this...

Lee: Okay, I, I, I told you before. I, I don't belong to any religion. I don't go to Church. Well, I mean once in a while, but I don't believe in God, okay. However, I think there must be a something like a God, okay. Not, may not be a Christian God, but something like that, you know, super power, super creature...round the universe, and I believe he will make the final judgment for my case. And I depend on him. I don't depend on you or depend on (xxx) or depend on Washington D.C. people. I don't depend on this, I depend on this God. I think he will make a final judgment.

(xxx): You know what, the ROSENBERGs professed their innocence. The ROSENBERGs weren't concerned either.

Lee: Yeah.

(xxx): The ROSENBERGs are dead.

Lee: Yeah, but, but, okay,.... I, I, I'm not familiar with the case, and I don't read anything.

(xxx): It doesn't matter whether you're familiar with it or not...

Lee: But, I'm,...

(xxx): ...WEN HO...

Lee: I'm, just telling you. I believe truth and I believe honest, and I know, I know myself, I did not tell anything other than this (xxx) I, I, I mean, I told them, I'm, I'm not interesting in discuss and I don't know. Okay? I told you more than ten times. I believe this super creature will make a judgment on this whole situation and eventually something will be clear out, okay.

(xxx): ...You know, WEN HO. This super creature up here? He can make whatever decisions he wants to make, okay?

Lee: Uh-mm.

(xxx): This is what's gonna do you more damage than anything.

Lee: Well, I know, I know that, but...

(xxx): Do you think that the press prints everything that's true? Do you think that everything in this article is true?

Lee: I don't think.

(xxx): The press doesn't care.

Lee: Yeah.

(xxx): Do you know what bothers me? You're going to have this kind of reputation.

Lee: I know.

(xxx): You're, you're a person who came to this country, okay, because you had a feeling that you wanted to live here. And you have a lot to offer the United States.

Lee: Yes.

(xxx): And you came here, and you're a nuclear scientist...

Lee: (xxx)

(xxx): ...and, and you are a wonderful scientist.

Lee: (xxx), I'm sorry I'm really tired. I have to go.

(xxx): WEN HO, you know what's going to happen?

Lee: Let me, let me go, please.

(xxx): You know what's going to happen, WEN HO? People are going to read this stuff, and they're gonna think you're not a loyal American.

Lee: I know. My daughter already told me this morning. She reads the New York Times. She read Washington Post. She read the LA Times and she, she know everything, and she...

(xxx): Does she think this was you?

Lee: No. My daughter know I didn't do it. Of course, my daughter believes I didn't do it; that reporter or whoever the media say that, I'm innocent, but I don't know what can I do. I'm, I'm, I'm, I tell you how I feel, I feel, how you call that? Hopeless, okay.

(xxx): It is hopeless, WEN HO.

Lee: I feel hopeless. I don't know what to do!

(xxx): Well, well, the only thing that you can do is to sit here and try to remember anything...

Lee: I already told you,...

(xxx): ...that transpired in that hotel room.

Lee: I already told you, I have not said anything in that hotel room. I have not say anything, uh...

(xxx): Did you say anything at the Great Wall? Did you say anything, anytime?

Lee: No.

(xxx): There's gotta to be some explanation for (unintelligible)...

Lee: I told you, I cannot remember anything in that hotel room, okay? Just like I (unintelligible) talk here. I cannot remember anything except that (xxx) you know classified, you know. So I remember that, but anything else, I don't remember. But I do remember one thing, is I never say anything related to a nuclear weapon.

(xxx): You know, WEN HO, the, I'm telling ya', there's nothing (xxx) and I are going to be able to do.

Lee: Well,...

(xxx): You might not be, remember anything right now, but if the FBI comes down and knocks on your door in a week or two or in a month or two in a year or two, and they haul you off to jail. You're gonna have a whole lot of time to remember. And that's not going to do you any good. It's gonna be worse for you.

Lee: I know.

(xxx): If, if you cannot do something today and clear...

Lee: (sighs) (xxx)

(xxx): ...this up.

Lee: ...(xxx) Let me go, okay? I, (pause), I'm very tired. And I'm, I already told you all the truth, and if you try to dig out anything for me, from me which is not the truth. As far as I'm concerned. I have nothing to tell you.

(xxx): What are you going to do if the press knocks on your door tonight, WEN HO?

Lee: Just accept it. I don't know. I, I, you know, I, I have, I don't know what to do. I mean, I have to think about it. I'm, I, I, I told you I, I feel hopeless...

(xxx): You're, you're going to be an unemployed nuclear scientist with no clearance!

Lee: Can I go now?

(xxx): You can go anytime you want, WEN HO, but I'm telling you. If you leave...

Lee: Do you want to go through, go through...

(xxx): ...if you leave...

Lee: ...you already told me... this package.

(xxx): Package? I went through the package? It's polygraph results, it's, it's a write-up from an analyst at Headquarters. It's write-ups from analysts at DOE. It's write-ups from everybody that is familiar with how the Chinese operate. It's write-ups from everybody that's looked polygraph reports for everything...

Lee: Now, how...

(xxx): ...that you did.

Lee: How come yesterday...you told me uh-mm, yesterday, you told me it's optim, optim, optimistic...

(xxx): I thought it was an optimistic package!

Lee: ...and some...

(xxx): Washington told me when they were sending that package out in the phone yesterday. You're going to get a package in the mail. You need to talk to WEN HO because the package narrows down one or two issues and that's all there is to it, and we'll talk to you tomorrow when you get the package 'cause there's no way that they could talk to me on my cell phone yesterday...

Lee: Uh-huh.

(xxx): ...in the car. Well, you saw me, WEN HO, I was on the phone when you got here. Washington called me while I got that package, there was a note in it that said to call Washington when I open it and when I called them they said, "This is the way it is. WEN HO failed his polygraph in February. WEN HO is not going to have a clearance. WEN HO is not going to have a job, and if WEN HO walks out of here today and we don't get some clarification out of this issue, WEN HO might be facing the FBI knocking on his door.

Lee: Okay.

(xxx): And somewhere down the line WEN HO might be facing jail. And WEN HO might be facing the same things that happened to the ROSENBERGs, and WALKERs and everybody else. WEN HO is going to be in jail, and everybody is going to look at you, and say, "My God, I can't believe what happened to WEN HO." And you can...

Lee: Do, do, do you...

(xxx): ...profess your innocence...

Lee: ...do, do you...

(xxx): ...all you want!

Lee: ...do you remember Friday we were talk about, how come when I come home I did not report to (xxx) about (xxx)

(xxx): Uh-mm.

Lee: Are you interested to discuss that question?

(xxx): Not if you want to take me back when you were 16.

Lee: (Sighs).

(xxx): the only thing I'm interested in, WEN HO is helping you because you walk out that door today, and I'm telling you, it's out of our hands!

Lee: Okay.

(xxx): It's out of our hands. There's nothing that we can do!

Lee: Okay, do you want, before I walk out. I'm going to walk out, okay? Before I walk out do you want to spend a minute, two minutes and don't say anything just listen to, to me to what I'm starting to tell you.

(xxx): Okay.

Lee: Can you do it?

(xxx): Tell me.

Lee: I'm going to tell you the 16 years old, okay. Keep your mouth shut.

(xxx): Okay, I'll keep my mouth shut.

Lee: When I was 16 years old, I had a surgery on my appendix, okay? And I spent seven days in the hospital and after that, I go home for three weeks, rest, I mean recovery and for the next whole year, the whole year, my memory goes way down, okay? Way down, way down, and I don't understand why, because I used to have a very good memory at 16 years old. And the reason I say my memory go bad is that, I, I have a English course and every morning I wake up and I look at vocabulary, you know like a window, you know, tree. At that time, that's the way study, you know. Window, tree, or maybe, you know, vocabulary, the English words, and I memorized those in uh, like a between ten before ten o'clock in the morning. And usually I, I read those, memorize, on the, on the bus from my home to school. I study those, you know, go on the bus you have nothing to do, so I just open my book and try to memorize. And when I go to school, I usually do very good on English, okay? Before my surgery. But for that 16 years old, when I was 16. I failed every day because I didn't, I tried to remember but as soon as I walked to the school, it's all gone. It's all gone! So my memory just suddenly go bad. And I did not recover my memory, within, I would say them months or one year. And after that I started get my memory back, and about year and a half, I think I 100 percent recover my memory. So I went back to more commission and I can remember everything. And this happened exactly like uh, in 1987. I have a colon cancer. Did you know that? And they took off 12 inch from my colon. This was done in Houston Medical Center, and the doctor is so good. They, make a clean cut everything and that was done May 1987. And for that year up to 88, you know, when I went to China, I, my wife was so worried about me health. She worry so much. She even get sick for the whole year.

(xxx): She will be real sick with all of this.

Lee: ...I know, I know that's, I mean (sighs) so when we went to China we look for the doctor, you know, to get advice how to prevent the cancer recurring, okay? And they told me, you know, you, you, should eat this more vegetable and not eat such and such, okay, but I'm saying, in between the May 87 when I had surgery and up to 88, I think it's probably

near the end of 88 because I'm, I was older, that's, I was 50, 47, that's it 48. I was 48 years old. And my memory got worse compared to when I was 16 years old. I know that myself. So I cannot remember too many things. And that's why when I come back from China in 88. I told you I don't remember. The, (xxx) okay? And in 88 when I come back I report to (xxx) this... oh, yeah, this is...okay?...And he write down. I don't even remember (xxx) next ten years from 88 to 98. I don't remember at all, period! Because in this period nobody do any polygraph on me. So before Christmas, 98, last year when DOE do polygraph on me, and I think the polygraph will permit people to concentrate on their thinking, more concentrate, and when, when this guy, I don't know his name, he asked me, in your life have anybody come to you and asked you about classified question. And then suddenly, I, yeah, this happened to me once, the (xxx) case, so I told him, I say I remember in 88 in the hotel room, you know, two Chinese guys (unintelligible) and you know the story. And you know, I told him, I, I don't know the answer and I'm not interested. I mean... My, my feeling is this. When human being is forced to do some more concentration, like when people do polygraph on you, you will concentrate, concentrate. And you can think about something which in the ordinary time you don't remember. But for that particular moment, you, you may remember something. Just pop up. And that's happen to me, okay? And I'm telling you that's exactly what happened to me. I'm trying to explain to you and (xxx). Now whether you believe or not, it's up to you. I'm telling you as human, I tell you how I feel, okay? You won't take it? It's up to you. you don't want to take it. It's up to you. I have no other choice, I just have to trust this superman on the universe. I hope he can help me, okay? If he doesn't want to help me, he want me, he want to put me in jail, I will take it. I could, I may die in 87, 88 if I did not find out my colon cancer earlier because, it not spread. If it spread to my liver, I probably wouldn't sit here talk to you (chuckles). So I feel very lucky. I can live up to today. I person, I feel very lucky and I, I knew... he let me to live up to today and I... the more important for me in my life is my children, at that time in 87, they were in high school, and my daughter was in high school and my son was in high school. And without my help, my daughter cannot even go to UNM.

(xxx): You know what, WEN HO.

Lee: Let me tell you this. I want to finish, then I go. If I don't help, my son would not go to medical school. He's in med school. They are doing very well. Why? Because I live from 87 to today and I help them out and for that reason I really, really thank God, okay? I thank God. I don't believe God, but trust God, alright. I say, thanks great, great thanks. I appreciate very much. Because God let me live for another ten years.

(xxx): Well, you know what, WEN HO? You could live another ten years.

Lee: Yes.

(xxx): Okay.

Lee: Yes.

(xxx): You could live another 20 years.

Lee: (Laughs). I don't know, I'm not sure I could live that long.



(xxx): But the problem is, it's going to be bad.

Lee: You, you go back to that question in the room, right?

(xxx): The problem is going to be bad.

Lee: I know, I don't know what to handle this.

(xxx): your kids are going to have to live with this, okay.

Lee: I...

(xxx): You're going to have to live with it. Your wife is going to have to live with it. This going to eat away, at them like a cancer. Just like the cancer that you had, but all the way...

Lee: ...probably worse than the cancer.

(xxx): That's right, it is worse than cancer.

Lee: Oh, sure.

(xxx): And you know what, WEN HO? (xxx) and I aren't going to be able to do anything.

Lee: Okay, I...

(xxx): We can't do anything...

Lee: ...(xxx)...

(xxx): ...If, if somebody knocks on your door...

Lee: ...yeah,...

(xxx): ...tomorrow. I can't do anything.

Lee: (xxx)...

(xxx): ...WEN HO...

Lee: ...(xxx) and (xxx) I really appreciate your kindness and your efforts, try to help me out to clean up this stuff and I've been try the best I can to work with you every time you call I say yes, and I really appreciate[sic] your time, (xxx) time, okay? I really appreciate... in my mind, I appreciate [sic]. I want to say thank you.

(xxx): You're welcome.

Lee: JOHN, thank you.

(xxx): There's nothing more we can do for you, WEN HO.

Lee: I really thank you, okay, and I hope you have good health, I hope you have good health and if something come to me. I, I, you know, they want to put me in jail, whatever. I will, I will take it.

(xxx): Well, here, take that, WEN HO.

Lee: I appreciate [sic], (xxx) I really appreciate, okay? Now, I just want the page, I don't want to take the whole thing.

(xxx): I just hope you kids can live with it, WEN HO.

Lee: Well, it... my life. I accept it, okay. I will try to do the best I can, and I, I believe, eventually, and I think, God, God, will make it his judge, judgment.

(xxx): I wish I had your confidence, WEN HO, but I don't. You know what I see? I see a lot of problems for you.

Lee: Well...

(xxx): I see no job. I see no clearance. I see no way to pay your bills. I see no way to keep your son in school. I see your family falling a part [sic]. All because of this.

Lee: Yeah, I, I don't know what to do. I, all I can say is that I, keep in my mind I appreciate both of you, okay. I, I will say thanks if I don't see you again. I appreciate it, I really appreciate it, okay. Thank you, (xxx)

(xxx): Alright, WEN HO.

Lee: I appreciate it.

(xxx): Good luck.

(xxx): I'll walk you down.

Lee: Thank you.

(End on conversation)

(End of tape 2 of 2)



[http://www.fas.org/irp/ops/ci/selective\\_prosecution.html](http://www.fas.org/irp/ops/ci/selective_prosecution.html)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JUN 23 2000 [date stamped]

UNITED STATES OF AMERICA,  
Plaintiff,

v.  
99-1417 JP

Criminal No.

WEN HO LEE,  
Defendant.

**MOTION FOR DISCOVERY OF MATERIALS  
RELATED TO SELECTIVE PROSECUTION**

Dr. Wen Ho Lee, through undersigned counsel, respectfully moves the Court, pursuant to the Due Process Clause of the Fifth Amendment to the Constitution of the United States of America, for discovery of materials relevant to establishing that the government has engaged in unconstitutional selective prosecution.

The grounds for this motion are set forth in the accompanying memorandum.

Respectfully submitted,

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I HEREBY CERTIFY that a true copy of the foregoing was mailed to opposing counsel this 25th day of June, 2000.

Nancy Hollander

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JUN 23 2000 [date stamped]

UNITED STATES OF AMERICA,  
Plaintiff,

v.  
99-1417 JP

Criminal No.

WEN HO LEE,  
Defendant.

**MEMORANDUM IN SUPPORT OF MOTION FOR DISCOVERY  
OF MATERIALS RELATED TO SELECTIVE PROSECUTION**

**INTRODUCTION**

Defendant Wen Ho Lee is the only person the U.S. Department of Justice (DOJ) has selected for indictment under the draconian Atomic Energy Act since it was passed in 1948. During this fifty-year period, the DOJ has repeatedly declined to fully investigate, much less charge, individuals who may have compromised classified nuclear weapons related information.

The DOJ also indicted Dr. Lee under 18 U.S.C. § 793(c) and (e) for the alleged mishandling of computer codes and data files, even though these files had not been classified at the time of Dr. Lee's alleged activities. Instead, the computer codes and data files had been designated as "protect as restricted data" (PARD), which ranks between unclassified and confidential on the Los Alamos National Laboratory (LANL) security hierarchy. Moreover, the government obtained the indictment under § 793 even though it concededly has no evidence that the codes and data files were ever transferred to any unauthorized person. Not one person other than Dr. Lee has ever been charged under § 793 for mishandling materials that had not been formally classified and that were not transferred.

Dr. Lee has obtained concrete proof that the government improperly targeted him for criminal prosecution because he is "ethnic Chinese." This direct evidence includes the following:

- A sworn declaration from a LANL counterintelligence official who participated in the investigation of Dr. Lee that Dr. Lee was improperly targeted for prosecution because he was "ethnic Chinese."

- Videotaped statements of the FBI Deputy Director who supervised counterintelligence investigations until last year admitting that the FBI engaged in racial profiling of Dr. Lee and other ethnic Chinese for criminal counterintelligence investigations.
- The sworn affidavit the U.S. Attorney's Office used to obtain the warrant to search Dr. Lee's home, in which the FBI affiant incorrectly claimed that Dr. Lee was more likely to have committed espionage for the People's Republic of China (PRC) because he was "overseas ethnic Chinese."
- A posting to the Los Alamos Employees Forum by a LANL employee who assisted counterintelligence investigations and personally observed that the DOE engaged in racial profiling of Asian-Americans at Los Alamos during these investigations.

Dr. Lee has requested that the government provide specific reports and files to him that squarely relate to the issue of whether he has been selectively prosecuted as a result of improper racial profiling. The government has refused to provide any of these documents to Dr. Lee.

Because Dr. Lee is the only person who has ever been selected for prosecution under the Atomic Energy Act,<sup>1</sup> and the only person ever prosecuted in remotely similar circumstances under § 793, and because he has uncovered specific direct admissions from the government that he was targeted for criminal investigation because he is "ethnic Chinese," he has made the necessary showing to obtain this discovery. Even if Dr. Lee did not have this direct evidence, he has also satisfied the stringent requirements of United States v. Armstrong, 517 U.S. 456 (1996), which held that in the absence of direct evidence of impermissible racial targeting, a defendant is nevertheless entitled to discovery if he provides some evidence that similarly situated people have not been prosecuted and that his investigation and prosecution were caused by improper racial motivations.

<sup>1</sup> At Dr. Lee's detention hearing on December 13, 1999, FBI Special Agent Robert Messemer conceded that Dr. Lee is the only person who has ever been charged under the Atomic Energy Act. See Transcript of Proceedings, December 13, 1999, at 139.

This memorandum summarizes compelling evidence that the DOJ had an informal policy of refusing to bring criminal charges in situations similar to and (even more egregious than) Dr. Lee's case. In addition, we provide several specific examples of similarly situated individuals whom the government has chosen not to indict under either the Atomic Energy Act or § 793. Unlike the meritless selective prosecution discovery motions discussed in Armstrong, where several thousand men and women of all races had been charged under the same statutes as the defendants, Dr. Lee can conclusively establish that he is the only person whom the government has ever chosen to indict under the Atomic Energy Act and the only person indicted in similar circumstances under § 793.

## **FACTUAL BACKGROUND**

### **A. The Indictment**

On December 10, 1999, the government brought a fifty-nine-count indictment against Dr. Lee. Thirty-nine counts allege that Dr. Lee violated the Atomic Energy Act because he purportedly mishandled material containing restricted data, with the intent to injure the United States, and with the intent to secure an advantage to a foreign nation. Dr. Lee was also charged with ten counts of unlawfully obtaining national defense information in violation of 18 U.S.C. § 793(c), and with ten counts of willfully retaining national defense information in violation of 18 U.S.C. § 793(e).

### **B. Dr. Lee's Discovery Requests**

Dr. Lee's counsel have made a written request to the prosecution for specific materials his counsel believe contain direct evidence that Dr. Lee was improperly selected for prosecution because he is "ethnic Chinese."<sup>2</sup> Among the several categories of materials requested were: (1) the reports and memoranda supporting the findings of the DOE's Task Force on Racial Profiling's January 2000 report, (2) the Defensive Information to Counter Espionage videotapes, that were created by DOE counterintelligence and shown to DOE employees until last year, and are now prohibited at LANL because they allegedly contain racial stereotypes; (3) DOE or DOJ memoranda and reports confirming that the FBI targets Americans of Chinese ethnicity for potential criminal espionage involving the PRC; (4) the DOJ's and DOE's responses to the numerous Congressional inquiries related to the justification for and details of the investigation of Dr. Lee; (5) the classified September 1999 State Department report by Jacqueline Williams-Bridger, detailing hundreds of cases of mishandling classified information, including cases of actual passing of classified information; and (6) information concerning specific cases in which the government declined to prosecute under circumstances similar to, or more egregious than, this case. The government has refused to produce any of the materials requested by Dr. Lee's counsel.

<sup>2</sup> See May 1, 2000, letter from Mark Holscher to AUSA Robert Gorence, attached as Exhibit A.

### **I. THE LEGAL STANDARD FOR DISCOVERY REGARDING SELECTIVE PROSECUTION**

The Supreme Court established the threshold for discovery on selective prosecution claims in United States v. Armstrong, 517 U.S. 456 (1996). The Court held that to obtain discovery in a case in which the court is asked to infer discriminatory purpose, a defendant must produce (1) some evidence that similarly situated individuals have not been prosecuted, and (2) some evidence of improper motivation in deciding to prosecute. The Court did not decide whether a defendant should be required to produce some evidence that similarly situated persons have not been prosecuted if the prosecution has admitted having a "discriminatory purpose." Id. at 469 n.3.

### **II. DR. LEE MORE THAN MEETS THE LEGAL STANDARD FOR DISCOVERY REGARDING SELECTIVE PROSECUTION**

As we demonstrate below, Dr. Lee clearly meets the legal standard that Armstrong establishes for discovery related to a selective prosecution claim. In Part A, he presents direct evidence that government officials have admitted a racial basis for investigating Dr.

Lee, and in Part B, he establishes that the government has declined to prosecute similarly situated persons.

**A. Dr. Lee has Direct Evidence that He was Targeted for Criminal Investigation Because He is "Ethnic Chinese."**

The troubling chain of events that led to Dr. Lee's indictment began when the DOE's Chief Intelligence Officer, Notra Trulock, incorrectly concluded in 1995 that the PRC had obtained the design information for the W-88 warhead from someone at the Los Alamos National Laboratory.<sup>3</sup> Mr. Trulock began an Administrative Inquiry to identify the suspect or suspects who should be the focus of this counterintelligence investigation. On May 29, 1996, Mr. Trulock issued the Administrative Inquiry which listed Dr. Lee as the main suspect. This Administrative Inquiry led to meetings between DOE counterintelligence officials and FBI Special Agents in New Mexico regarding Dr. Lee. The FBI then opened a criminal investigation of Dr. Lee.

<sup>3</sup> Just last year the DOJ conceded in a press conference that this conclusion was incorrect, and it opened a criminal investigation into the over 450 individuals outside LANL who had received this design information. See, e.g., Vernon Loeb and Walter Pincus, New Leads Found in Spy Probe, Washington Post, Nov. 19, 1999 at A1, attached as Exhibit B.

**1. Vrooman's Declaration Establishes that the Government Engaged in Improper Racial Profiling**

Robert Vrooman, who was the Chief Counterintelligence Officer at LANL from 1987 until 1998, participated in the Administrative Inquiry and assisted in the resulting criminal investigation of Dr. Lee. Mr. Vrooman is adamant that Mr. Trulock's targeting of Dr. Lee for investigation was the result of improper racial profiling. In a declaration, attached as Exhibit C, Mr. Vrooman states:

Mr. Trulock's office chose to focus specifically on Dr. Lee because he is "ethnic Chinese." Caucasians with the same background and foreign contacts as Dr. Lee were ignored. Vrooman Decl., Ex. C at 3, ¶ 9. Vrooman is also unequivocal in stating that this impermissible racial profiling was the main reason Dr. Lee was targeted for criminal prosecution. "I state without reservation that racial profiling was a crucial component in the FBI's identifying Dr. Lee as a suspect." Id. at 3, ¶ 12.<sup>4</sup>

<sup>4</sup> Vrooman consistently raised this concern with federal officials, long before he provided his declaration here. As he indicated in a May 1999 letter to U.S. Senator Domenici: "[e]thnicity was a crucial component in identifying Lee as a suspect. Caucasians with the same background as Lee were ignored." See Ex. I to Ex. C. Vrooman also wrote to Senator Conrad Burns in June 1999 that "Mr. Lee was selected as the prime suspect mainly because he is ethnic Chinese." See June 25, 1999, letter from Robert Vrooman to U.S. Senator Conrad Bums, attached as Exhibit D.

Vrooman has also made clear that Trulock, who was the highest ranking DOE employee overseeing all counterintelligence investigations, intentionally targeted "ethnic Chinese" because Trulock held the belief that these American citizens could not be trusted like other American citizens. As Vrooman states in his declaration, Trulock told him that "ethnic

Chinese should not be allowed to work on classified projects, including nuclear weapons." Id. at 3, ¶ 13.<sup>5</sup> Trulock made these statements while he was chief of the DOE's counterintelligence office, and when he was personally assisting the criminal investigation of Dr. Lee. Trulock's statements that American citizens who are "ethnic Chinese" should be barred from sensitive jobs at LANL are a violation of federal civil rights statutes that prohibit racial discrimination for employment.<sup>6</sup> Trulock's statements are further corroboration that Trulock intentionally targeted Dr. Lee because he was "ethnic Chinese."

<sup>5</sup> Vrooman confirmed this troubling fact in the letter he wrote to Senator Domenici on May 11, 1999, See Ex. I to Ex. C.

<sup>6</sup> See 42 USCA § 2000e-2 ("It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.").

## **2. Former FBI Deputy Director Paul Moore has Confirmed that Dr. Lee was Targeted by the FBI Due to Racial Profiling**

The FBI used the same impermissible racial profiling in its criminal investigation of Dr. Lee. The Deputy Director of the FBI responsible for all criminal counterintelligence prosecutions until 1999 confirmed that the FBI's criminal investigation of Dr. Lee was premised on the same impermissible racial bias, namely, that "Chinese-Americans" were more likely to commit espionage. The Deputy Director, Paul Moore, oversaw portions of the criminal investigation of Dr. Lee. In a televised interview with Jim Lehrer, on December 14, 1999, regarding the arrest and indictment of Dr. Lee, Deputy Director Moore admitted that racial profiling was used, but attempted to justify this racial classification as reasonable:

There is racial profiling based on ethnic background. It's done by the People's Republic of China. ... Now the FBI comes along and it applies a profile, so do other agencies who do counter intelligence investigations -- they apply a profile, and the profile is based on People's Republic of China, PRC intelligence activities. So, the FBI is committed to following the PRC's intelligence program wherever it leads. If the PRC is greatly interested in the activities of Chinese-Americans, the FBI is greatly interested in the activities of the PRC as [regards] Chinese-Americans.

The News Hour With Jim Lehrer, December 14, 1999, Tuesday, Transcript #6619, attached as Exhibit E at 12.

Moore's statements ignored the fact that senior FBI officials, in memoranda the government is withholding from Dr. Lee, had concluded long before December 1999 that it did not have credible evidence that the Taiwanese-born Dr. Lee had engaged in any improper activities with the PRC. In his videotaped interview, Moore then attempted to explain why the DOJ had indicted Dr. Lee:



So, now, the U.S. in my opinion, this signals that the U.S. is fighting back. This is the situation quite similar to the Al Capone case where they couldn't [lock] him up for his racketeering activities, so they cast about and they found something else that they could get him for.

Id. at 14.

Moore, however, later conceded that the FBI's targeting of American citizens who are "ethnic Chinese" for increased scrutiny for espionage did not make sense. In response to a statement by Nancy Choy of the National Asian Pacific-American Bar Association that targeting people for criminal investigation based on their race was improper, Moore backtracked from his earlier statement that the racial targeting of "ethnic Chinese" by the FBI was reasonable. After Ms. Choy challenged the profiling, Moore admitted that:

Ethnic profiling doesn't work for the PRC, it doesn't work for the FBI. You cannot predict someone's intelligence, somebody's espionage behavior based on his ethnic background.

(Emphasis added.)

Id. at 13.

Moore did not even attempt to address the issue of how such racial targeting could even be considered for a citizen of the United States who was born in Taiwan. The Attorney General of the United States, in testimony before a Senate subcommittee, also stated that it was illogical to claim that a Taiwanese-born scientist like Dr. Lee would be predisposed to assist the PRC. "Now, if you are using that information to suggest that you are an agent of a foreign power, to whit, [sic] the PRC, the immediate question is raised, how are you that if you are clearly working with the Taiwanese Government on matters that apparently involve non-classified information?" Top Secret Hearing Before the Senate Committee on the Judiciary, 106th Cong. (1999), (visited June 22, 2000)

([http://www.fas.org/irp/congress/1999\\_hr/renofisa.html](http://www.fas.org/irp/congress/1999_hr/renofisa.html)) (statement of Attorney General Janet Reno).

### **3. Acting Counterintelligence Director Washington Also Confirmed Trulock's Profiling of Chinese Americans**

Eugene Washington, who was DOE's acting Director of Counterintelligence in 1996, also believes that Trulock engaged in improper racial profiling. Washington confirmed in an interview with the Washington Post in August 1999, that "he told Trulock that he was unfairly singling out Lee and another Chinese American scientist." Vernon Loeb and Walter Pincus, Espionage Whistleblower Resigns: Energy's Trulock Cites Lack of Support as Debate About His Tactics Grows, Washington Post, August 24, 1999, attached as Exhibit F. Washington apparently sent Trulock a memorandum recommending that the investigation be closed and apparently questioning the DOE's focusing on Chinese Americans. This government has not produced this memorandum to Dr. Lee.

### **4. The Search Warrant Affidavit the DOJ Submitted to Search Dr. Lee's House Contains Additional Proof that Dr. Lee was Targeted Because He is "Ethnic Chinese."**

The once-sealed affidavit in support of a search warrant to search Dr. Lee's home confirms that the government considered Dr. Lee's race to be evidence of possible espionage.<sup>7</sup>

<sup>7</sup> This affidavit was written after internal FBI memoranda apparently concluded that Dr. Lee did not pass W-88 information to the PRC. The government has refused to turn over to the defense the FBI 302's dated November 29, 1998, January 22, 1999, February 26, 1999, and September 3, 1999, memoranda which, according to multiple press reports, directly contradicted the sworn declaration provided to the United States Magistrate Judge in New Mexico.

To support the now fully discredited allegations that Dr. Lee may have committed espionage, the affidavit asserts that FBI counterintelligence experts were relying in part on the fact that Dr. Lee was "ethnic Chinese." As the affidavit states, the "supervisory Special Agent of the FBI who specializes in counterintelligence investigations regarding the People's Republic of China" who "has supervised from FBI headquarters PRC counterintelligence investigations for the past five years" explained to the investigative agent "that PRC intelligence operations virtually always target overseas ethnic Chinese." The affidavit leaves no doubt that improper racial profiling, which started with Mr. Trulock, continued to be a substantial basis for the targeting of Dr. Lee in 1999.

#### **5. Another LANL Employee Has Also Confirmed that the DOE Engaged in Racial Profiling.**

Dr. Lee has uncovered additional corroboration that DOE's counterintelligence staff used racial profiling. In an e-mail to his fellow employees, Michael Soukup wrote that the DOE pressured him to investigate Asian-Americans because of their ethnicity when he assisted the DOE in counterintelligence investigations. See Letter of Michael Soukup, dated April 12, 2000, and published in the Los Alamos National Laboratory Online Forum, <http://www.lanl.gov/orgs/pa/News/forum/letter2000-080.html>.

Specifically, Soukup states:

While I was assigned to NIS-9 (until mid-1998), I supported, on a part-time basis, the counterintelligence investigation into alleged Chinese espionage at Los Alamos. Based upon my experience and observations, I conclude that racial profiling of Asian-Americans as a result of the investigation indeed took place, but principally at the DOE. Further, DOE personnel directed some Los Alamos National Laboratory staff to undertake research that profiled Asians and Asian-Americans at the Laboratory. I do not believe any of us were happy with this.

Soukup's statement buttresses Vrooman's declaration and provides an additional basis to believe that discovery regarding selective prosecution could lead to additional proof of improper racial profiling.

#### **B. Evidence that Similarly Situated Individuals Have Never Been Prosecuted Under the Atomic Energy Act or § 793(c) and (e)**

It is clear that race played an impermissible role for selecting Dr. Lee for prosecution under the Atomic Energy Act and the Espionage Act, 18 U. S.C. § 793. During the past fifty-two years, no American has ever been prosecuted under the Atomic Energy Act. FBI Special Agent Messemer conceded this fact at the December 13 bail hearing. See fn.1, *supra*. Evidence that similarly situated individuals have not been prosecuted can be found in both statements of DOJ officials concerning the practices of the DOJ in declining to prosecute

similar or more egregious cases as well as specific examples of similarly situated individuals that the DOJ declined to charge.

Not only have there been no other prosecutions under the Atomic Energy Act, the DOJ had a policy of not bringing cases such as this under § 793 as well. As a former DOJ official told the Washington Post a few months ago, for twenty years the Department had followed a practice of not prosecuting civilians where no evidence existed that the classified materials in question had been transferred to a third party. According to this official, "[n]o matter how gross the violation, there would be no prosecution if the agency took strong administrative action." See Walter Pincus and Vernon Loeb, U.S. Inconsistent When Secrets Are Loose, Washington Post, March 18, 2000, at A1, attached as Exhibit G. Here, not only had Dr. Lee's files not been classified at the time he allegedly mishandled them, but also the indictment does not allege that the files in question were provided to any third party and the government conceded at the detention hearing that it has no such evidence. Dr. Lee was terminated -- obviously "strong administrative action" -- and under DOJ practice there should have been "no prosecution."

Further evidence that DOJ has never prosecuted similarly situated individuals can be found in the Department's apparent blanket refusal to bring criminal charges where State Department officials have mishandled classified materials. In 1999 alone, the State Department investigated thirty-eight incidents of mishandling classified information. See *id.* A classified analysis by the State Department likewise detailed numerous similar breaches, in a September 1999 report written by Jacqueline Williams-Bridger. According to press reports, this classified document, which the government has not provided to the defense, details hundreds of breaches of appropriate procedures for handling classified information, including the intentional transferring of secret information, which did not result in criminal prosecution. See, e.g., S. Rep. No. 106-279, at 10-15 (2000); Vernon Loeb & Steven Mufson, State Dept. Security Has Been Lax, Audit Finds: Many Offices Not Swept For Listening Devices, Washington Post, Jan. 17, 2000, at A1, attached as Exhibit H. It is critical to note that these individuals who were not prosecuted included State Department employees who intentionally transferred secret or top secret information to unauthorized persons. By contrast, Dr. Lee did not provide information to any unauthorized person, and the material at issue had not been classified at the time of his alleged actions.

Employees of the DOE and the national weapons laboratories have a long history of unprosecuted mishandling of classified information. According to the 1999 Report by the President's Foreign Intelligence Advisory Board entitled *Science at Its Best, Security at Its Worst*, attached as Exhibit I, designs of classified weapons had been left unsecured on library shelves at Los Alamos, and personnel were "found to be sending classified information to outsiders via an unclassified email system," yet no prosecutions resulted. This report also outlined dozens of examples of systemic mishandling of classified information by laboratory employees. See *id.* at 3-6, 15, 22. During the entire time of LANL's woeful security record, not a single employee faced charges under the Atomic Energy Act or § 793. Based on discovery Dr. Lee has received to date, the DOE investigated dozens of cases of mishandling of classified information at LANL, without a single prosecution. See Pincus, U.S. Inconsistent When Secrets are Loose, Ex. G at 4.

In addition to the evidence of the government's practice of not prosecuting violations of the Atomic Energy Act and § 793(c) and (e), Dr. Lee has uncovered several individuals who have not been investigated criminally, much less indicted.

- **John Deutch:** During his tenure as director of the CIA, former Director John Deutch used his unsecured personal computer at home to create and access top secret files even though he had a secure computer in his home. See S. Rep. No. 106-279, at 9 (2000); Bob Drogin, CIA Reprimands 6 for Actions in Deutch Investigation, L.A. Times, May 26, 2000, at A14, attached as Exhibit J.
- **Kathleen Strang:** According to published reports Arms Control and Disarmament Agency employee, Kathleen Strang "improperly removed. . . [classified] documents from a storage vault at the State Department, repeatedly left them overnight in an open safe accessible to dozens of people without security clearances" and then ignored several warnings to protect these documents. These classified documents reportedly included highly sensitive details of how the U.S. intelligence community monitors nuclear tests and weapons development. These reports state that Ms. Strang gave other sensitive information to the Japanese. Apparently, one could draw a complete picture of how U.S. intelligence monitors nuclear tests and weapons development from these documents. See Bob Woodward, ACDA Aide Faulted on Security, Washington Post, Nov. 4, 1986, at A1, attached as Exhibit K.
- **Anonymous sources of Bill Gertz:** A government employee or government employees unknown to Dr. Lee provided Bill Gertz with classified material from the National Security Agency published in the May 1999 book Betrayal, which includes fifty-nine pages of secret documents (including those covered by the Atomic Energy Act) relating to Chinese missile technology. See Bill Gertz, Betrayal: How the Clinton Administration Undermined American Security (1999).
- **Fritz Ermarth:** CIA employee Fritz Ermarth reportedly transferred secret and top secret files between his home computer and his work computer, resulting in a virus entering the CIA's classified network. See Pincus, U.S. Inconsistent When Secrets Are Loose, at A1, Ex. G.
- **LANL Scientist:** A LANL nuclear scientist allegedly downloaded the "Green Book" containing secret restricted data regarding U.S. nuclear strategy and the vulnerabilities of U.S. nuclear weapon systems onto an unclassified LANL computer with Internet access. See id.<sup>8</sup>

<sup>8</sup> Dr. Stephen Younger, whose testimony that the nuclear balance of power

would be adversely affected if Dr. Lee were released is partly responsible for Dr. Lee being held without bond, was involved in evaluating the seriousness of this security violation and deferring the appropriate punishment of the LANL scientist referred to above.

- **M.K.:** A CIA agent identified only as M.K. sold twenty-five CIA computers to the public without erasing top-secret information on their hard drives. The CIA learned of the breach when an individual who purchased a computer called to say that the hard drive of his computer contained files that he didn't think should be there. See Vernon Loeb, CIA Employees Sue Agency for Unfettered Right to Legal Help, Washington Post, May 14, 1999, at A31, attached as Exhibit L.
- **James R. Conrad:** In 1987 the government declined to prosecute defense contractor James R. Conrad, who Department of Defense investigators accused of removing classified documents from the Pentagon. Conrad earlier had transmitted classified information including missile launch commands and wartime bomber routes over unsecured computer lines from his computer in San Diego to Fairfax County, Virginia. See Secrets Breach Reported, The Dallas Morning News, June 12, 1987, at A8, attached as Exhibit M.
- **Unnamed defense contractor:** The DOJ investigated an employee of a defense contractor in Southern California for transferring hundreds of secret documents and storing them in his garage. DOJ lawyers apparently overruled the investigative agencies and declined to prosecute this employee.

The defense has been unable to locate a single reported decision dating back to the 1950s in which a civilian was prosecuted under § 793(c) or (e) without any allegation that he provided classified material to an unauthorized person. Unlike the defendants in the cases that have been brought,<sup>9</sup> the government has not even alleged that Dr. Lee transferred national-defense information to any unauthorized recipient.

<sup>9</sup>See e.g., Coplon v. United States, 191 F. 2d 749, 750-53 (D.C. Cir. 1951) (defendant was arrested while attempting to deliver data slips of F.B.I. reports to a Russian agent); Scarbeck v. United States, 317 F.2d 546, 548 (D.C. Cir. 1962) (defendant communicated classified information to representatives of the Polish Government); United States v. Dedeyan, 584 F.2d 36, 38 (4th Cir. 1978) (defendant showed a cousin who was working with a Soviet agent a classified study); United States v. Kampiles, 609 F.2d 1233, 1235 (7th Cir. 1979) (defendant was charged with willfully delivering a national-defense document to unauthorized persons); United States v. Truong Dinh Hun, 629 F.2d 908, 911 (4th Cir. 1980) (defendant arranged to have someone deliver classified papers to Vietnamese agents); United States v. Harper, 729 F.2d 1216, 1217 (9th Cir. 1984) (defendant was charged with obtaining and selling national-defense information to Polish agents); United States v. Smith, 780 F.2d 1102, 1103 (4th Cir. 1985) (defendant sold classified information to a Soviet agent); United States v. Walker, 796 F.2d 43, 45 (4th Cir.

1986) (defendant was arrested while attempting to deliver classified defense information to a Soviet agent); United States v. Zettl, 835 F.2d 1059, 1060 (4th Cir. 1987) (defendant delivered Navy program element descriptions to an unauthorized person); United States v. Morison, 844 F.2d 1057, 1060 (4th Cir. 1988) (defendant sent secret Naval satellite photographs to a British publisher for publication); United States v. Whitworth, 856 F.2d 1268 (9th Cir. 1988) (defendant was charged with obtaining and delivering national-defense information to a foreign government); United States v. Miller, 874 F.2d 1255, 1258 (9th Cir. 1989) (defendant copied and delivered national-defense information to the Soviet government).

Even the defendants in reported military court cases, tried under the more stringent provisions of the Uniform Code of Military Justice, were tried when the evidence showed that they actually transferred materials or allowed an unauthorized third-party to physically obtain classified information.<sup>10</sup>

<sup>10</sup> See, e.g., United States v. Roller, 42 M.J. 264, 265 (C.M.A. 1995) (defendant left classified documents in his garage, which allowed a moving company employee to obtain access to the documents); United States v. Baba, 21 M.J. 76, 77 (C.M.A. 1985) (defendant was charged with willfully delivering or cause to deliver three documents to unauthorized persons); United States v. Gonzalez, 16 M.J. 428, (C.M.A. 1983) (defendant left two classified messages in an unauthorized recipient's desk drawer); United States v. Grunden, 25 C.M.A. 327, 2 M.J. 116, 119 (C.M.A. 1977) (defendant attempted to communicate national-defense information); United States v. Anzalone, 40 M.J. 658, 813 (N-M.C.M.R. 1994) (defendant disclosed and mailed information about military forces to unauthorized persons); United States v. Schoof, 34 M.J. 811, 813 (N-M.C.M.R. 1992) (defendant attempted to deliver microfiches to a foreign power); United States v. Lonetree, 31 M.J. 849, 852 (N-M.C.M.R. 1990) (defendant identified the names of United States intelligence agents to Soviet agents and provided the floor plans and office assignments of personnel in United States Embassies in Moscow and Vienna). But see United States v. Chattin, 33M.J. 802, 803 (N-M.C.M.R. 1991) (Defendant pleaded guilty to removing classified documents and willfully retaining it. Chattin was sentenced to confinement for four years, reduction to pay grade E-1, forfeiture of all pay and allowances, and a bad conduct discharge. The convening authority suspended all confinement in excess of three years for twelve months).

Similarly situated individuals who have not transferred any national-defense information have not been prosecuted under the Espionage Act.<sup>11</sup> The government has never alleged that Dr. Lee transferred the materials to anyone, nor that he left them unprotected where they could be stumbled upon by anyone. In fact, the evidence presented by the government itself at the bail hearings in this case confirms that Dr. Lee password-protected any materials on which he worked.

<sup>11</sup> Dr. Lee anticipates that the government will attempt to rely on United States v. Poulsen, 41 F.3d 1330, 1333-35, (9th Cir. 1994) (defendant was charged with violating 18 U.S.C. § 793(e), in a second superseding indictment, for storing computer tapes of United States Air Force tasking orders in a rental storage unit). But Poulsen was not similarly situated to Dr. Lee because Poulsen allowed a third party to gain actual access to the tapes. Unauthorized third-party access constitutes

transfer of the information. Poulsen stole the computer tapes from a previous employer and stored the tapes under a false name and address. Defendant then defaulted on the rental payments. The tapes were discovered by a third party, the rental-unit owner, while the rental-unit owner was evicting all contents from the unit due to defendant's seventy-one-day default.

**C. Dr. Lee Meets Both Prongs of the Test Stated In Armstrong.**

Dr. Lee indisputably meets both prongs of the Armstrong test, and must be granted discovery because he has submitted credible evidence that similarly-situated individuals have not been prosecuted as well as statements from government and law enforcement officials demonstrating improper motivations to prosecute Dr. Lee. Dr. Lee was selected from among more than a dozen identically situated individuals at LANL for criminal investigation in 1996 because he was "ethnic Chinese." This improper classification was employed for the next three years, and was explicitly reaffirmed in the April 9, 1999, search warrant application. The evidence of selective prosecution Dr. Lee has already uncovered far exceeds the Armstrong threshold.

Armstrong denied discovery to defendants who were charged with distributing crack cocaine in violation of 21 U.S.C. §§ 841 and 846. In Armstrong, the defense offered only one hearsay affidavit that in the year Armstrong was prosecuted, the twenty-three other § 841 cases handled by the Federal Public Defender in Los Angeles involved black defendants. See *id.* at 459. The defendants in Armstrong presented no evidence that the prosecution undertook any targeting based on race, see *id.*, nor did the defendants make any showing that non-blacks had not been charged in other years or by one of the ninety-two other U.S. Attorney's Offices in 1991. In Armstrong, the government submitted proof that 3,500 defendants had been charged with violating § 841 in the previous three years and eleven non-blacks had been charged for distributing crack cocaine. *Id.* at 482 n.6.

Dr. Lee's compelling showing here stands in stark contrast to the anemic showing in Armstrong. First, this Court has direct evidence in the form of a sworn declaration and a videotaped statement from government agents who assisted in the criminal investigation of Dr. Lee, which establish that a racial profiling was used to target Dr. Lee. Second, in contrast to Armstrong, where the government proved that 3,500 men and women of all races had been charged under §§ 841 and 846 during a three-year period, Dr. Lee is the only person who has been charged under the Atomic Energy Act in the past fifty-two years. Third, Dr. Lee has provided this Court with examples of similarly situated non-Asians who have not been prosecuted under either the Atomic Energy Act or § 793. The defendants in Armstrong made no showing whatsoever that similarly situated non-blacks had not been prosecuted. Equally as compelling, Dr. Lee has provided this Court with evidence that the DOJ had a policy of not prosecuting individuals similarly situated to Dr. Lee. Additionally, no case has been brought under § 793 involving prosecution for information that had not been formally classified at the time of the defendant's conduct.

The evidence Dr. Lee has presented by far exceeds the threshold found sufficient to permit discovery in other cases decided under the Armstrong standard. For example, In United States v. Jones, 159 F.3d 969 (6th Cir. 1998), the Sixth Circuit overturned a District Court's decision and granted discovery under circumstances directly analogous to this case. In

Jones police officers sent taunting letters to two black defendants, but not to a white defendant involved in the same conspiracy, and made a T-shirt with the black defendants' pictures, but not the white defendants. In Jones, the court found that the taunting letters and T-shirt had established a prima facie case of racial motivation on the part of the investigating officers, and had set forth "some evidence" of discriminatory effect, warranting discovery. The court found that although the defendant was unable to produce "prima facie evidence" of discriminatory effect, "some evidence" was enough when coupled with the evidence of discriminatory motivation. Id. at 977. The Jones analysis holds even greater force here, where key investigators have unequivocally stated that the DOE practiced racial profiling which led to Dr. Lee's indictment, and the lead counterintelligence official at DOE made racially-charged statements regarding the fitness of American citizens who are "ethnic Chinese" to work on nuclear weapons programs. Dr. Lee has presented more than "some evidence" of discriminatory effect. Unlike the defendant in Jones who could not show that others were not prosecuted, Dr. Lee has shown that no one else has ever been prosecuted under the Atomic Energy Act provisions at issue in this case, nor has anyone else been prosecuted under § 793 for mishandling information that had not been formally classified and that had not been furnished to any unauthorized person.

Similarly, in United States v. Tuitt, 1999 WL 791927 (D.Mass. 1999), the trial court ordered that the defendant be provided discovery under far less compelling circumstances. In Tuitt, the defendant's attorney compared four counties within the judicial district over a four-month period and found a statistically significant difference between the crack cocaine prosecutions brought in federal court and the crack cocaine prosecutions brought in state court. See id. at \*4. Tuitt held that this showing was enough to meet the Armstrong standard where "Defendant is simply attempting to gain discovery so that he can more adequately determine whether a selective prosecution claim might indeed be viable." Id. at \* 11. Again Dr. Lee far surpasses the threshold met by the Tuitt defendant. Rather than four months, Dr. Lee's attorneys examined reported cases covering fifty years, and rather than four counties, the search covered fifty states, without finding a single other reported case of prosecution under the Atomic Energy Act.

Similarly, in United States v. Glover, 43 F. Supp. 2d 1217 (D. Kan. 1999), the court granted discovery on a selective prosecution claim regarding imposition of the death penalty where the defense provided far less evidence on either prong of the Armstrong test. In Glover, the defendant presented some statistical evidence that over a three-and-one-half-year period, "the Attorney General authorized a greater number of black defendants for death-penalty prosecution than white defendants." Id. at 1234. The court found that this evidence, coupled with evidence that two other similarly-situated defendants were not prosecuted in federal court, was enough to permit discovery. See id. Rather than the mere statistical inference found sufficient in Glover, Dr. Lee has presented credible evidence in the form of specific statements made by investigators in this case that race was a factor in selecting Dr. Lee for prosecution. Moreover, he has presented some evidence of not two, but several individuals mishandling classified information without facing criminal charges of any kind, much less a potential life sentence.

## CONCLUSION



Dr. Lee has presented compelling evidence the government singled him out for prosecution because of his race and refused to prosecute similarly situated individuals. Dr. Lee is entitled to the information the government is withholding from him -- information that will prove this is an egregious example of selective prosecution in violation of Dr. Lee's rights under the United States Constitution.

This Court should grant this motion and order the government to provide Dr. Lee the requested discovery materials, as set forth in Exhibit A.

Respectfully submitted,

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Attorneys for Defendant Dr. Wen Ho Lee



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

[date stamped August 25, 2000]

UNITED STATES OF AMERICA,  
Plaintiff,

v.  
99-1417 JP

No. CR

WEN HO LEE,  
Defendant.

**ORDER**

On August 15, 2000 a hearing was held on Defendant's "Motion for Discovery of Materials Related to Selective Prosecution," (Doc. No. 87). George Stamboulidis, Laura Fashing, Michael Liebman, and Paula Burnett represented the government; Mark Holscher and John Cline represented Defendant, who was present. Having carefully reviewed the briefs, the evidence, and the applicable law, I find that *in camera* review of certain evidence that Defendant seeks is appropriate and would be helpful to me before I make a final ruling on the motion.

Defendant seeks six categories of materials, including:

(1) the reports and memoranda supporting the findings of the DOE's Task Force on Racial Profiling's January 2000 report, (2) the Defensive Information to Counter Espionage videotapes<sup>1</sup> that were created by DOE counterintelligence and show to DOE employees until last year... (3) DOE or DOJ memoranda and reports confirming that the FBI targets Americans of Chinese ethnicity for potential criminal espionage involving the PRC; (4) the DOJ's and DOE's responses to the numerous Congressional inquiries related to the justification for and details of the investigation of Dr. Lee; (5) the classified September 1999 State Department report by Jacqueline Williams-Bridger... and (6) information concerning specific cases in which the government declined to prosecute under circumstances similar to, or more egregious than, this case.

<sup>1</sup> Mr. Holscher represented at the hearing that there is only one videotape. (Memo. in Supp. at 4) This list is based on a letter from Mr. Holscher to the government dated May 1, 2000. (See id. Ex. A.) The May 1, 2000 letter lists thirty-two somewhat more specific items that Defendant contends would support a claim of selective prosecution. (Id.) The government refuses to disclose the requested materials on the grounds that (1) the decision to prosecute is ill-suited to judicial review, (2) law enforcement would be chilled by subjecting the prosecutor's decisions to outside inquiry; (3) discovery would reveal the government's enforcement policy, (4) discovery would reveal the government's strategy, and (5) discovery would divert prosecutorial resources. (See Resp. at 4, Tr. at 40-43)

The government's first concern is premature given that the only question before the Court at this point is whether discovery is warranted. The same is true for the government's second ground for not disclosing the requested information. There is also no evidence, or reason to believe, that law enforcement would in any way be chilled by an *in camera* review of certain of the materials Defendant requests. Similarly, the government's enforcement policy will not suffer from an *in camera* review of certain materials. Also, an *in camera* review will not reveal to Defendant any of the government's prosecution strategy. Further, it is highly unlikely that the materials ordered produced for *in camera* review will reflect any prosecutorial strategy.

What remains is the government's concern, identified in United States v. Armstrong, 517 U.S. 456, 468 (1996), with expending prosecutorial resources. As the government candidly admitted, it can with little effort procure certain of the items described below. (See Tr. at 42.) Certain other categories of materials will require more work to compile. However, any diversion of prosecutorial resources will be minimal given that (1) much of the information for which some research will be required is in the apparent control of, and can be gathered by, individuals/agencies other than the U.S. Attorneys prosecuting this case, and (2) monitoring compliance with this order will impose a burden that is so slight as to be quite easily performed by persons within the vast array of prosecutorial resources the government has already deployed in this case.

IT IS THEREFORE ORDERED THAT the government must produce, by September 15, 2000, the following materials for *in camera* review:

- (1) The DOE's Task Force on Racial Profiling January 2000 report and any interview memoranda on which it is based, including all memoranda of the site visit to Los Alamos National Laboratory in June 1999;
- (2) the entire, unredacted DOE counterintelligence Defensive Information to Counter Espionage videotape;
- (3) DOE and DOJ records of statements by Notra Trulock discussing that any investigation should focus on ethnic Chinese;
- (4) the list of suspects created by Notra Trulock's team as part of the Kindred Spirit investigation;
- (5) the full, classified transcript of any testimony given by the Attorney General and any other DOJ (including FBI) and DOE officials before any congressional committee with respect to Defendant and the investigations in this case;
- (6) FBI 302s dated November 29, 1998; January 22, 1999; February 26, 1999; and September 3, 1999 which relate the number of individuals who had access to W-88 information;
- (7) the classified September 1999 State Department Report by Jacqueline Williams-Bridger; and

(8) the final reports of all administrative inquiries conducted by DOE of LANL employees regarding improper handling of restricted data from the beginning of 1987 to the present.

[signed: James A. Parker]

UNITED STATES DISTRICT JUDGE



<http://www.fas.org/irp/ops/ci/goad.html>



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## DECLARATION OF WALTER GOAD

I am Walter Goad, Fellow Emeritus of the Los Alamos National Laboratory. At LANL, Fellow is a status recognizing scientific excellence outside the managerial ladder. I hold a PhD in Physics from Duke University. I have been awarded a Los Alamos National Laboratory Distinguished Service Award and am a Fellow of the American Physical Society and of the American Association for the Advancement of Science. I reside at 156 Santa Fe County Road 84C, Espanola, NM 87532.

I joined the staff of the Theoretical Division of what was then the Los Alamos Scientific Laboratory in late 1950, as the crash program to develop thermonuclear weapons was getting underway. The crash program was ordered by President Truman in the wake of the first Soviet atomic bomb test. I came out from Duke with my professor, Lothar Nordheim, who had been recruited to visit for a year by Edward Teller. For the next fifteen years I was a member of the team that developed the first thermonuclear weapons and several subsequent generations of thermonuclear weapons.

Development of nuclear weapons is the work of many hands. Science, engineering, fabrication and testing are all necessary, and in all these efforts creating workable concepts is the key to success. At the core of the work is a team of theoretical physicists who must find workable concepts for the basic design of the weapon itself. They have to understand and analyze all the physical mechanisms and material behaviors involved in the explosion of the weapon, and with feedback from all the other groups involved, come up with the detailed design. I was a member of this core theoretical team at Los Alamos, contributing to every aspect of its work.

The late J. Carson Mark was Theoretical Division Leader and shepherded the work with great skill and wisdom. Otherwise, the theoretical team was without formal hierarchy. Dr. Mark often summarized the current status of our work, sketching a view of current priorities, and members of the team took on problems according to individual abilities and interests. The core team usually averaged a dozen people or so, sometimes augmented by such eminent visitors as Enrico Fermi and Hans Bethe. We developed the basic approaches which still form the basis of U.S. nuclear design efforts, including early versions of the computer codes. Gradually, in the 1960s, the work became more structured, and a Theoretical Design Division was formed, predecessor of the current X-Division. Now, as current leaders of the nuclear weapons effort have testified, X-Division has hundreds of members in a highly structured organization.

Around 1960 cooperation with the U.K. nuclear weapons effort, which had been suspended at the end of WWII, was reinstated, and for several years I served on Joint Working Groups

whose mission was to see how we could now help each other. The U.K. effort was nearly as unstructured as our own. I feel that I have direct hands-on experience in two distinct nuclear weapons programs, experience with a breadth that is now rare.

Since about 1970, I have worked primarily on research in computational biology, although I have continued to follow the weapons program with interest.

I have studied the indictment of Dr. Wen Ho Lee, and the transcript of his detention hearing before Judge Parker. I have also studied the testimony of Dr. Stephen Younger before Magistrate Judge Svet.

Dr. Younger before Magistrate Judge Svet, and then Dr. Paul Robinson before Judge Parker, testified in apocalyptic terms of danger to the U.S. strategic position posed by the computer codes and data copied onto tapes by Dr. Wen Ho Lee. My experience and expertise tells me that these assertions are exaggerations, grossly misleading in their import. As I explain more fully in the Appendix (which I incorporate in this declaration) the scientific knowledge and computational expertise required for nuclear weapons design is now widely dispersed. Therefore any nation with a substantial scientific establishment is capable of designing nuclear weapons on its own. Only a group already deeply engaged in the design of nuclear weapons could profit from the Lee tapes (if they still exist). At most, the U.S. codes and data could augment, not revolutionize, their efforts. Furthermore, changes in the world strategic balance require not just scientific expertise and information, but the commitment of extensive technical and industrial resources to the practical development, production, and deployment of weapons and weapons carriers.

Dr. Robinson's testimony that loss of the Lee tapes could catastrophically endanger U.S. missile defense deserves special notice. In the late 1950s, Dr. Lew Allen and I made the first assessment of the nuclear aspects of missile defense by nuclear warhead-carrying anti-missile-missiles. Dr. Allen was then an Air Force Captain; later he became Air Force Chief of Staff and Director, successively, of the National Security Agency and the Jet Propulsion Laboratory. The missile defense system now under consideration would not use this technology, but the fundamental problem of missile defense was already clear. At very low cost, attacking missiles can in mid-flight deploy decoys or enveloping radar shields which can effectively confuse any defense. Nothing has changed that. For any nation developing missile carriers for nuclear weapons, the kinds of incremental advances available from advanced nuclear weapons design have essentially no impact on this basic problem of missile defense.

Summing up, Drs. Younger and Robinson assert that in foreign hands the Lee tapes could reorder the world strategic balance, that their possible existence poses a danger equivalent to "betting the country" or leaving the "crown jewels" open to theft. From the perspective of my experience and expertise, these assertions represent unbridled exaggeration. The result is not a measured judgment of risk, but incitement of apprehension, even paranoia, that can override fairness and justice.

Unhappily, our history has seen other examples in which exaggerations of danger have overridden the traditional American values of fairness and justice--most memorably to people of my generation, in the era of Senator Joseph McCarthy. These currents of fear are

always deeply troubling and damaging, and in this case are doing specific and incalculable damage to the very military-scientific establishment that is ostensibly being protected.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 17, 2000.

[signed]

Walter Goad

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## APPENDIX

New scientific discoveries in the 1920s and 1930s made nuclear weapons possible and by the onset of WWII this was widely understood around the world. The question was, could a workable weapon be built. Those who thought deeply about the problem knew, roughly, how to go about finding out. The U.S. succeeded by bringing enough scientific talent and industrial capability to the task, redirecting resources from other areas of military technology. The Germans seem to have failed because they thought a workable weapon could not be developed, and certainly not by the Americans. The biggest secret, that it was possible, was broken to the world by the detonations at Hiroshima and Nagasaki. In the years since, the technology of nuclear weapons has been widely publicized in magazine articles and books, and now on the Internet.

Now, 55 years after Hiroshima, the fundamental data and the computational methods needed by nuclear weapons designers have been brought to a high state of development by the worldwide scientific community pursuing not weapons design but fundamental scientific questions. There has been much work on the structure and behavior of stars and astronomical objects of all kinds. Scientists have pursued the behavior of extreme states of matter in these and all kinds of other cosmic and terrestrial contexts, including nuclear and thermonuclear reactors. There has been much work in computational physics of the atmosphere and the coupled ocean dynamics. These represent systems at least as complex, in many ways more complex, than nuclear weapons. The basic problems and techniques of computation and physical analysis extend seamlessly over all these fields.

And in all these endeavors, there have remained basic scientific problems of computability which cannot be solved by more computing power alone. These are typified by the problem of long range predictions of weather and climate, and extend to predictions of nuclear weapons behavior. This accounts for the fact that, after the enormous investment of effort over many years, weapons codes can still not be relied on for significantly new designs. This is testified to, for example, by Dr. Paul Robinson before the Senate Armed Services Committee on the Comprehensive Test Ban Treaty. He opposed the treaty on the ground that, to develop significantly new nuclear weapons, the U.S. required the ability to conduct tests.

In some corners of the world of relevant data, there are results from classified work in the U.S. that are of value in improving the accuracy of some of the computational modules of the U.S. weapons codes. These incremental improvements are of value, of course, but make marginal contributions to the overall reliability of the codes.

To pursue nuclear weapons development requires commitment by a substantial group of able scientists. The techniques and data needed are at hand in the scientific literature, but the group must come, by practice, to thoroughly understand them. (As Dr. Younger testified before Magistrate Judge Svet, "it is possible to run [the U.S. codes] and get the wrong answer"). To actually achieve results, the design group must be part of a much larger engineering and industrial-military complex. Dr. Younger suggests that such a group could train itself by studying the hundreds of thousands of lines of computer code included in the Lee tapes. I think this a particularly inefficient way of going about it, given all the fundamental information in the scientific literature, although to the extent that the databases accompanying the codes save effort needed to marshal relevant data, they could make a contribution to the design group's efforts.

No computer code is in itself a recipe to be relied on. Scientific judgment must deal with uncertainties in the relation of computation to reality in ways consonant with the particular priorities and resources at hand--reconciling reliability and safety, cost and availability of materials and manufacturing capabilities, suiting warheads to carrier design, and so on. Only a highly capable group would have any chance of using U.S. source-language design codes to find out how U.S. scientists deal with these uncertainties by appealing to test data. Although any group with limited manpower would find it a severe drain of effort to trace through and understand hundreds of thousands of lines of source code, it is possible that it could realize some advancement of its effort if it came to understand aspects of U.S. experience.

The extent to which test data is included in the Lee tapes has not been established in the testimony produced by the government. Nevertheless, in considering how such data might be used, we have first to remember that the U.S. designs its weapons in the context of a lavish nuclear-military industrial complex, almost unlimited in its capability; no particular U.S. design is likely to closely match another group's priorities. Second, as indicated above, the use of design codes to extrapolate significantly beyond tested designs is highly problematical. Thus, any group that relied on its understanding of U.S. experience from the Lee tapes alone would significantly expand the inherent uncertainties of its work. The Lee tapes might augment an experienced foreign design group's work, but not qualitatively change it.

We can note the conditions under which two relatively poor nations, India and Pakistan, recently acquired nuclear weapons. Both possess substantial scientific establishments and were willing to commit the required resources. As dangerous as these developments are to the stability of the region, no one has argued that they affect the world strategic balance.

Earlier, China tested a number of nuclear weapons. It has a large pool of well-trained scientists, many educated in the West, and it also has, at least potentially, extensive resources for building weapons and carriers and maintaining them. Its ability to shift the world strategic balance depends on its committing the required resources to building and maintaining weapons and carriers. Just as the U.S., it undoubtedly has the ability to design weapons tailored to particular military uses, but with its own design priorities. For all the reasons discussed above, there is no reason to suppose that knowledge of U.S. computer codes and design practices could more than modestly augment Chinese capabilities.



In summary, the situation created by proliferating nuclear weapons is indeed dangerous, but there is no reason to suppose that deciphering and running the complicated computer codes with accompanying data on the Lee tapes could make more than a marginal difference. As noted above, for all its scientific and computational might, the U.S. is still only able to make incremental advances on the basis of computer codes.

Nevertheless, the U.S. classified literature, taken as a whole, contains a great deal of information acquired at great cost, and its protection is properly a national priority. These secrets are much more akin to ordinary industrial proprietary secrets whose loss could offer finite but valuable aid to a competitor than to crown jewels whose loss would be catastrophic.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,  
Plaintiff,

v.  
99-1417 JC/DS

Criminal No.

WEN HO LEE,  
Defendant.

**DECLARATION OF DR. HAROLD M. AGNEW**

I, Dr. Harold M. Agnew, do hereby declare and state:

1. I was the Director of Los Alamos National Laboratory from 1970 until 1979. I have been directly involved in research and testing of nuclear weapons for the last fifty years. I have had the privilege of advising Presidents Lyndon B. Johnson, Richard Nixon, Jerry Ford, Jimmy Carter, George Bush, and their senior staff, and the United States Congress regarding matters relating to nuclear weapons.

2. I have a doctorate in nuclear physics from the University of Chicago and have devoted my life to understanding nuclear weapons and to monitoring the development of nuclear weapons and nuclear energy throughout the world. My most recent work has included the following:

3. I am familiar with all aspects of U.S. nuclear weapons design and manufacture. When I was director of Los Alamos, I, along with many other scientists, oversaw the basis for the design of the W-88, which is a modern U.S. nuclear warhead.

4. I disagree with the statement that if the People's Republic of China ("PRC") or some other nuclear power obtained the codes at issue here, it "would change the global strategic balance" and would jeopardize the security of American citizens.

5. If the People's Republic of China had already obtained these codes, or were to obtain these codes, it would have little or no effect whatsoever on today's nuclear balance. In reaching my firm conclusion, I am not expressing any opinion on the guilt or innocence of Dr. Lee, nor would I condone the passing of nuclear codes or any classified information by a United States individual to a foreign power, or the mishandling of such codes.

6. A brief summary of the reasons why the codes would be of little or no value to the People's Republic of China are set out in a letter I wrote to the *Wall Street Journal* which was published on May 17, 1999. I did not write this letter at the request of any third party, and I did not even know whether Dr. Lee was going to be charged at the time that I wrote this May 17, 1999 letter.

7. To fully understand why the codes for the United States nuclear stockpile would be of very limited use to the People's Republic of China or any other foreign country with a

nuclear arsenal, one must understand that the PRC and the former Soviet Union have developed their own codes for the design of nuclear weapons. These nuclear weapons were tested by the PRC and the former Soviet Union from 1949 until 1996, using various techniques. The Soviet union and the PRC developed codes tailored specifically for the materials, weapons designs, delivery vehicles and manufacturing capabilities that these nuclear powers possess. Thus, today the PRC possesses a nuclear capability based on tested nuclear weapons and its own existing codes. As I concluded in my letter to the *Wall St. Journal*, in my opinion, "no nation would ever stockpile any device based on another nation's computer codes." Nor would they place any weapon in their stockpile without a nuclear test.

8. In addition, it is unlikely that the codes in question would be used by any nuclear power. It appears that most, if not all, of the codes presently being refined and developed at Los Alamos Laboratory were modified after all of the current U.S. nuclear systems had entered our nation's stockpile. It is highly likely that most, if not all, of the revised and updated codes in question were never used in their present state to design an existing nuclear weapon that has been tested and stockpiled. Thus, the PRC or other foreign power should not assume that these codes were the exact codes used for existing nuclear weapons that have been tested.

9. Further, the present value to a foreign power of any code for U.S. nuclear weapons design was long ago diminished by the wide distribution of the underlying science and engineering of the United States' and other nations' nuclear design codes. This information has been widely available in the open literature.

I declare that the foregoing is my opinion and correct to the best of my knowledge and that this declaration was executed on May 27, 2000, at Solana Beach, CA.

[signed]  
Harold M. Agnew



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### **DECLARATION OF ROBERT VROOMAN**

I, Robert Vrooman, do hereby declare and state:

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

2. I did not tell Agent Messemer that Lee probably assisted the Chinese by helping fix Chinese hydrocodes during his travel in 1986 and 1988. His allegation that I did so is false. Our April 28, 1999 meeting focused on [approx. one line deleted] and Agent Messemer's theory that there was something inappropriate going on [words deleted]. I attended that interview solely as a favor to John Browne, the director of Los Alamos National Laboratory. When it was over, I told Browne that I considered the interview strange, because it had nothing to do with the Lee case. I later learned from officials at the CIA that Agent Messemer was falsely informing CIA officials that I had been critical [word(s) deleted]. At the time, Agent Messemer was attempting to shift blame to the CIA for possible fallout [words deleted]. I sought to obtain a copy of Agent Messemer's memoranda of my interview and to have it corrected. See Attachment one. The FBI refused to provide me a copy of this memorandum, which I expect contains false information.

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

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

5. Of the twelve people ultimately chosen for the short list on which the investigation focused, some had no access at all to W-88 information, and one did not have a security clearance, but this individual is ethnically Chinese. I do not believe this was a coincidence. Further, this ethnically Chinese individual did not fall within the "matrix" which Agent

Messemer claims was used by the DOE and FBI. In addition, although there were other names on the AI list, Mr. Trulock made clear that Dr. Lee was his primary suspect.

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

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

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

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

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

[signed]  
Robert Vrooman

---

[Attachment one]

September 17, 1999  
Robert S. Vrooman  
P.O. Box 348  
Gallatin Gateway, MT 59730

David V. Kitchen  
Special Agent in Charge  
FBI 415 Silver SW  
Albuquerque, NM 87102

Dear Mr. Kitchen:

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

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

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

Sincerely yours,

[signed]

Robert S. Vrooman



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### **DECLARATION OF CHARLES E. WASHINGTON**

I, Charles E. Washington, do hereby declare and state:

1. I am the former Acting Director of Counterintelligence at the U.S. Department of Energy. I have worked at the Department of Energy since 1991. Before becoming the Acting Director of Counterintelligence, I also held the positions of counterintelligence analyst, program manager and division director. I received the highest annual evaluation of "outstanding performance" as acting director and for every year preceding that since 1992. While I was acting director, I worked directly with Mr. Notra Trulock.

2. Before joining the Department of Energy, my work experience included the following: I am an honorably discharged and decorated, Viet Nam era veteran, and I was a federal criminal investigator for the Air Force Office of Special Investigations (OSI) from 1978-1991. While employed at the OSI, I investigated a variety of criminal activity, and specialized in counterintelligence. From 1984-1990, I worked counterintelligence exclusively, serving as an analyst, branch chief, and division chief for the OSI regional headquarters in Ankara, Turkey. As the OSI Regional Counterintelligence Division Director, I was employed at the regional headquarters in Ankara, Turkey, and I had counterintelligence responsibility for more than 20 Army and Air Force installations in Turkey alone, and for 22 on-call countries in the Middle East and Africa.

3. I have read the Washington Post article of August 24, 1999, which was submitted by Dr. Wen Ho Lee's counsel in this case. The statements attributed to me are accurate, except that my problems with Mr. Trulock were exacerbated by the Administrative Inquiry, and not due exclusively to it.

4. I have read Mr. Bob Vrooman's declaration, including the portions of his declaration regarding statements and actions of Mr. Notra Trulock. As Acting Director of Counterintelligence, I worked directly with Mr. Trulock. While I was Acting Director, I read the Administrative Inquiry that was prepared concerning Dr. Lee. I also participated in discussions regarding the defects and inadequacies of the Administrative Inquiry. Based on my experience and my personal knowledge, I believe that Mr. Trulock improperly targeted Dr. Lee due to Dr. Lee's race and national origin.

5. My reaction upon reading the Administrative Inquiry was that the inquiry was wholly lacking in any support to identify Dr. Lee as a suspect. Upon reading the AI, I also concluded that the investigation was a fishing expedition. As stated in the Washington Post article, I wrote to Mr. Trulock, and I also talked with him. I recommended among other things, that the AI be closed due to a complete lack of evidence.

6. Based upon my personal experience with Mr. Trulock, I strongly believe that he acts vindictively and opportunistically; that he improperly uses security issues to punish and discredit others, and that he has racist views towards minority groups. I am a black man of African-American origin, and I personally experienced his misconduct, and I know of other minorities who were victimized by Mr. Trulock. At one point I was forced to call outside

police officers due to Mr. Trulock's abusive behavior, and I brought a lawsuit against the Department of Energy based on that incident, as well as other improper conduct by Mr. Trulock. That case was settled favorably to me by the Department of Energy this year with a pay raise, a cash award, restoration of leave, and other incentives.

7. I have been informed of the section of FBI Special Agent Messemer's declaration which states that a "completely new" investigation was initiated against Dr. Lee in March, 1999, after certain files were found on the open computer and certain documents in his office were found to not have appropriate markings. While I do not know the specifics of these alleged infractions, based upon my experience at the Department of Energy, I know that there were instances where DOE employees compromised classified or other sensitive information, where computers were improperly used, and where files were inappropriately marked, but criminal investigations were not opened.

8. Based upon my experience in counterintelligence and my personal experience with the AI and Notra Trulock, I have concluded that if Dr. Lee had not been initially targeted based on his race (Taiwanese-Chinese), with the resulting wide press disclosures that he had purportedly [words deleted] and the politicizing of the situation, he may very well have been treated administratively like others who had allegedly mishandled classified information.

9. In the counterintelligence training I have received and in my counterintelligence experience, I am unaware of any empirical data that would support a claim that Chinese-Americans are more likely to commit espionage than other Americans. Further, I know of no analysis whatsoever that has been done as to whether American citizens born in Taiwan would be more likely to commit espionage for the People's Republic of China.

10. I am aware of Department of Energy employees who were not imprisoned or prosecuted for committing offenses that are much more serious than the "security infractions" alleged to have been committed by Dr. Lee. I am personally aware of a DOE employee who committed a most egregious case of espionage that cost our nation billions of dollars and drastically impacted our national defense. That DOE employee was not prosecuted.

11. I was informed of the government's claim that no other individuals have committed similar offenses to Dr. Lee and avoided prosecution. Although I do not currently have access to Department of Energy and FBI files regarding investigations of other DOE employees, I am certain that DOE files contain information that would prove that this claim is false. There is a big difference between a security infraction and espionage; security infractions are less serious. Security infractions within DOE are not unusual, and as long as one is in good favor, security infractions generally do not result in harsh discipline, much less criminal prosecution and pre-trial confinement. Many security infractions involving classified information simply result in a form being completed that indicates the violator was verbally counseled, even though these counselings frequently did not occur. I do not believe that prior to the AI involving Dr. Lee, that other DOE employees who were in good favor underwent this type of extreme scrutiny and criminal prosecution, when they committed security infractions.



I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct. Executed on August 11, 2000 in Greenbelt Maryland.

[signed]

Charles Washington

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## The Spy of the Century?

Accused of mishandling classified material, Taiwan-born Wen-ho Lee is in jail, shackled and isolated. His family fights on; the scientific community asks questions

By RON GLUCKMAN

In a tiny county jail cell in Santa Fe, shackled and isolated, sits the Spy of the Century: Wen-ho Lee, super-spook who stole the crown jewels of the Pentagon's nuclear arsenal and endangered world peace by passing them to China. Or, at least, so he is portrayed by the U.S. government and much of the American media. In fact Lee, an American citizen and veteran mechanical engineer, has not been charged with espionage at all, but rather of mishandling classified material. For months investigators have been trying to make Taiwan-born Lee confess to spying for Beijing -- in the process denying him access to newspapers, radio and phone calls to anyone other than his lawyers and immediate family.



Ron Gluckman for Asiaweek  
The rock plateau houses the top-secret Los Alamos National Laboratory

To many, the heavy-handed tactics recall the communist witch-hunts of the 1950s, only today's red menace is China, not the Soviet Union. This, perhaps, should come as no surprise. The allegations against Lee emerged in the wake of the 1999 Cox Report, a controversial document that purports to show evidence of Chinese espionage going back decades. Moreover, it is election time in the U.S., and vilifying Beijing is all part of the campaign fireworks.

Whether or not Lee is a spy, the handling of the case already has had far-reaching consequences -- worsening fractious U.S.-China relations, angering Asian-Americans within and without the research establishment and rocking the U.S. justice system. At issue is what some see as a tainted investigation that targeted Lee from the outset because of his ethnicity, and seems to have focused only on evidence that would secure a conviction.

Before his sudden notoriety, Lee had led a quiet existence as a scientist in Los Alamos, New Mexico, a mountain town born of brilliance. The desolate stretch of red-rock plateau was secretly settled in 1943 after the Allies learned that Nazi Germany was working on a new weapon of mass destruction. America's best brains rushed to produce their own version -- and did so, exploding the first atomic bomb on Aug. 6, 1945.

Today, the men and women who work at Los Alamos National Laboratory (LANL) help map the planet, harness lasers for medical use and plan a host of other innovations. Only part of LANL's present work relates directly to weapons research. And, despite machine guns and barbed wire around a building with enough plutonium to end life on Earth hundreds of times over, almost all weapons work is now done by computer.

The big challenge at Los Alamos is certifying the readiness of America's nuclear arsenal. Researchers are assisted by Blue Mountain, the world's most powerful computer. Even so, equations are so complex they can run for a full year. And it falls to human minds to devise increasingly innovative simulation tests.

That's where Wen-ho Lee comes into the picture. A specialist in the field of fluid dynamics, he

devised elaborate computer codes to predict how materials would change in the face of an enormous force. Like an atomic bomb.

### **A Classic Over-Achiever**

Lee's is the classic story of the over-achieving immigrant. Born in 1939, he was one of 10 children of poor farmers from Nantou, a rural area of Taiwan, near Taichung. Lee's parents died soon after World War II, and he was raised by relatives. Early on, Lee proved himself a gifted scholar. After earning a B.Sc. in mechanical engineering from Tainan's National Cheng Kung University in 1963, he competed hard for a student visa to the U.S. Two years later, the shy, diminutive 26-year-old arrived in College Station, Texas, to attend Texas A&M, where he took a masters in 1966 and a doctorate in mechanical engineering in 1969.

By all accounts, Lee worked just as hard to fit in. He bought a blue Mustang, the cool car of the time, and practiced American sports lingo, especially references to football. A trip to California's Rose Bowl with a group of Taiwan immigrants resulted in a romantic touchdown: Identifying the prettiest girl in the group, Lee made sure he drove her home last. Five weeks later, Wen-ho and Sylvia were engaged. After marrying, they moved often, following Lee's work. A son, Chung, was born in New Jersey in 1972, and a daughter, Alberta, in San Diego in 1973. Lee became a U.S. citizen in 1974.

This was a nuclear family in every way. After a 1978 research posting at Los Alamos, Lee was hired at LANL full time in 1980. His wife worked there for years as a programmer and even the kids spent summers at the facility -- Alberta mapping data from a nuclear test site, Chung running computer codes. In quiet, crime- and pollution-free Los Alamos, the Lees established a tidy household with few concessions to their origins. Chinese was spoken at home, but the kids joined the scouts, played soccer and studied music. Alberta describes a sheltered, disciplined, but extremely happy upbringing. She and her brother grew tall. "I attribute it to father's cooking," jokes Alberta. Dr. Lee loved to whip up Chinese dishes, using home-grown bok choy, asparagus and snow peas.

Lee's colleagues and neighbors describe the accused as a loner who seldom socialized outside his family. Even Don Marshall, who lives next door and worked with Lee at the lab's top-secret X Division, admits he didn't know his colleague well. But one thing people knew for sure: Lee was fanatical about fishing. Everyone on tree-shaded Barcelona Lane in White Rock, a picturesque suburb of Los Alamos, recalls the same familiar sight -- Lee returning home with his catch.

Perhaps it is fitting, then, that the world's first view of Lee was that of a slight, old man in a rumpled fishing hat. That photograph ran in papers and on television screens around the world in March of 1999. Wen-ho Lee's ordeal had begun.

### **Paranoia And Politics**

It all started with a shadowy tip. U.S. authorities claim that in 1995 a Chinese agent passed on documents detailing Beijing's weapons program. Some designs so closely mirrored America's own bombs, particularly the W-88 mini-warhead, that a determination was made that the technology must have been passed to the Chinese. From there, everything moved backward. Rather than cast a wide net to ferret out clues, investigators chose to match culprits to the likely time-frame. The data were believed to have been leaked in the mid-1980s. Suspicion quickly settled on Lee, who made two trips to Beijing in 1986 and 1988. Lee has acknowledged meeting counterparts in Chinese weapons research on the trips. That is no secret. He did so with the approval of his employer. LANL paid for both trips.

The Lee investigation lumbered along for more than three years without producing any hard evidence of espionage. A turning point came in late 1998. Word began circulating in the media that Chinese agents had infiltrated the American security apparatus. About that time, Lee was hauled in for questioning. The family home was searched in April 1999, whereupon intelligence agents announced an astonishing find: Lee had allegedly copied 400,000 to 800,000 pages of classified documents -- "the blueprints for the entire American nuclear arsenal." Agents claimed he had spent hours copying information from classified to unclassified computer systems, then downloaded the data to portable tapes, some of which remain unaccounted for.

The Lees quickly learned what it meant to become the property of the police and press. The family home was staked out. The car was bugged. Lee could barely go to the toilet unobserved. Agents tailed him on fishing trips. "The FBI was everywhere and the reporters camped out on the street," says Eve Spencer, who lived two doors down from the Lees. "It was a total circus."

As the surveillance became increasingly intrusive, Lee began avoiding old friends, say colleagues, fearing that he would implicate them by association. When friends dropped by the Lee home, the scientist wouldn't even open the door. At least once, he used a co-worker's home phone so he could call relatives without federal agents listening in. The circus ended when Lee was finally arrested on Dec. 10, 1999, and put in solitary confinement.

Well before that, Lee's daughter Alberta had begged her father to get a lawyer. "He kept saying: 'I didn't do anything. Why would I need an attorney?' Dad is such a simple person. Right until the end, he actually thought he was helping the investigation." Perhaps that's because he and his wife had done just that in the past.

In the early 1980s, Lee was an FBI informant during an investigation of a Taiwan-born scientist at Lawrence Livermore National Laboratory near San Francisco. For her part, Sylvia helped the FBI keep tabs on visiting mainland scientists, allowing authorities to monitor her conversations with them. She also provided the FBI with translated copies of her correspondence with mainland scientists.

In 1982, Lee himself came under counter-intelligence scrutiny, and once again soon after. Both times he was cleared. But matters were different this time. A variety of political and defense considerations meshed with the same need: produce an arrest. Lee fit the profile. After all, he was ethnic Chinese.

Coming at a low point in U.S.-China relations, the Lee case became fodder for hardline Republicans, who accused the White House of being soft on Beijing. The Clinton administration countered that if a spy had slipped into the nuclear treasury, it happened in the 1980s, when George Bush and Ronald Reagan were in the White House. The longer the W-88 investigation ran without producing a smoking gun, the more embarrassing it got. Damage control became the overriding concern as numerous agencies launched their own investigations and the FBI was ordered to start over from scratch. Again, they settled on Lee as the prime suspect -- even though they could charge him only with mishandling classified documents.

Upon what evidence it is impossible to ascertain. Beyond testimony presented in bail hearings, authorities refuse to discuss the case. National security, they say, using the same rationale to deny Lee visitors, save for meetings with lawyers, and only an hour a week with immediate family. Until recently, Lee wasn't even allowed the hourly outdoor breaks enjoyed by most county inmates. This is due to Special Administrative Measures, rarely applied restrictions in security cases that override the human rights granted even to convicted rapists and murderers. "He's being treated like an animal or worse," says a friend and former colleague. "It makes me ashamed to be an American."

The case has shaken not only the U.S. research community, but the justice system as well. Everything about the situation is unusual, from the special security chambers that will have to be built so Lee and his lawyers can go over classified material in advance of a November trial to the strange charges against Lee. He is accused of 59 counts of mishandling classified material, but the original indictment was under statutes of the Atomic Energy and Federal Espionage acts, which have never been used to prosecute anyone.

To date, no evidence has been shown that any of the data Lee allegedly copied was conveyed to a foreign power -- a key facet of a successful espionage prosecution, according to legal experts. Nor is there any proof that the data on the W-88, the basis for the original investigation, was ever passed to China. In fact, the government's own reviews of the case conclude that it wasn't.

Perhaps most damaging to government credibility is the condemnation by former intelligence agent Robert Vrooman, who worked on the case from 1995 to 1998. "There is not one shred of evidence that the information that the intelligence community identified as having been stolen by the Chinese came from Wen-ho Lee, Los Alamos National Laboratory, the Department of Energy complex or from a DOE office," says Vrooman, now a security consultant in Los Alamos. Vrooman told The Washington Post: "This case was screwed up because there was nothing there. It was built on thin air."

Evidence of lax security is indisputable, however. Case reviews found that workers in Lee's X Division often stacked piles of classified papers, containing the same codes he is charged with downloading, in hallways when their offices became too cluttered. "This entire case arose from a sense that some power was stealing secrets, but there is no evidence at all that that happened," says Lee's attorney, Brian Sun. "After over 1,000 interviews and one of the most extensive investigations in U.S. history, they have still come up with zero."

### **In The Name Of The Father**

"I used to trust the government, but not anymore!" says the woman at the microphone. "Know your rights. Don't trust the government!" Few workers heading home from San Francisco's financial district pay heed to the small gathering in Portsmouth Square. Pigeons roost on park benches, as the suits slip past panhandling Vietnam vets and a card table manned by socialists with this banner: Down With Anti-Asian "Spy" Witch-hunt! Afterwards the speaker, Alberta Lee, meets supporters for snacks and tea at the nearby Chinese Community Center. It is another fundraiser in late January. "This has totally turned me around," she says. "A lot of people take for granted that the government knows what it is doing. I'm scared because I've found that's not true. And it terrifies me."

Alberta is the main mouthpiece for her father's defense. Locked up and denied access to the outside world, Lee can't defend himself. Even when Alberta visits, the two are separated by a glass wall, and a federal agent sits close by. Until recently, family members were not allowed to converse in Mandarin. Now, a Chinese-speaking federal agent sits in to ensure that the security of the world's sole superpower is not compromised by the short, stilted family reunions.

Alberta has largely put her life as a software worker in North Carolina on hold. She shuttles around the U.S., making speeches, mustering support. This seems to be a family decision, as Chung is immersed in the final phase of medical studies in Cleveland. Sylvia still goes about her daily life in the Los Alamos home, but she has maintained a strict silence. "We decided to try and maintain as normal a life as possible," says Alberta. "As normal as possible when something like this happens," she adds, her voice breaking. "It's been a nightmare."

Nonetheless, Alberta's efforts are paying off; throughout America she encounters ethnic Asians who are incensed by what many deem racially motivated allegations against a U.S. citizen. They are pouring money into the defense fund, mobilizing politically, and urging ethnic Chinese graduates to boycott U.S. labs. Cecilia Chang, a Hong Kong-born resident of suburban San Francisco, runs the Wen-ho Lee Defense Fund from her family home. "After three years and spending so much money [on the investigation]," she asks, "where are the results? All we see is that Lee is being made to suffer. It's a complete injustice."

At U.S. national labs, the climate is one of fear and paranoia -- with ethnic Chinese researchers looking over their shoulders. "They want us to be Americans and work in their defense labs," says a Taiwan-born scientist. "But they never treat us as Americans. They always treat us like foreigners, like Chinese." He and others cite the double standard of John Deutch, an ex-Central Intelligence Agency director who accessed classified files from an unsecured home computer -- apparently leaving the nation's secrets vulnerable to hackers -- and was let off with a slap on the wrist. "Deutch hasn't been reprimanded," says one scientist bitterly. "He's not chained up like Wen."

Still, in private, some colleagues, many of them ethnic Chinese, are unwilling to give Lee unconditional support. They recall strange phone calls with their friend and curious behavior. "Like all those fishing trips," says one. "Why was he always going off on his own?" There are rumors that

Lee was unhappy at work, in danger of losing his post and looking for other opportunities. And there are still questions about Lee's professional behavior. Already, his 10-person defense team has explained away some of the accusations. For instance, Lee's computer access code was used extensively to log into the classified system by remote from Los Angeles. Not a foreign agent, according to Alberta, who testified that she used her father's secret code to gain high-speed lines through the lab to an online game she played while in university.

Other matters are more perplexing. For example, how to explain all the copying of classified material? Defense lawyers have suggested Lee was only protecting time-consuming research from computer crashes. Yet colleagues note that the lab has back-up systems. And despite defense claims that taking work home is common, dozens of colleagues say no way. Never. "That's the mystifying thing," one concedes. "I can't think of any reason why anyone would do such a thing. It's just such a huge breach of security. I'm fully behind Wen-ho Lee, but I'm baffled, too." He adds: "Still, I'm sure there's a reasonable explanation. I just want to hear it from Wen." That's what the Lee family, Los Alamos and all of America is waiting for, too.

**Write to Asiaweek at [mail@web.asiaweek.com](mailto:mail@web.asiaweek.com)**



## How the New York Times helped railroad Wen Ho Lee

Its reporters relied on slim evidence, quick conclusions and loyalty to sources with an ax to grind. Too bad the paper of record learned nothing from its role in Whitewater.

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**By Eric Boehlert**

Sep. 21, 2000 | Don and Jean Marshall sat down to dinner with their son the night of March 8, 1999, when the phone rang. Their caller I.D. indicated the person on the other end was from the New York Times. "We just laughed and thought they were trying to sell us a subscription," recalls Don Marshall, who works at the nuclear science laboratory in Los Alamos, N.M. "If it was a reporter they'd want to talk to a lab manager, not a lowly staff worker like me. I didn't even pick up the phone."

After dinner Don and his wife, who also works at Los Alamos, headed back to work. As they turned their car around and were about to head up the hill past the house of their good friend and neighbor of 20 years, Los Alamos scientist Wen Ho Lee, they noticed, as if out of a movie, a man suddenly appear from the shadows. It was James Risen, the reporter from the New York Times. He wanted to know if they'd heard that Lee had been accused of spying for the Chinese. They talked for a while on the front lawn. "It's one of those images that's burned in my memory," says Jean.

Stunned, the Marshalls drove to the lab, where they surfed the Web in search of news articles and found the New York Times' March 6, Page 1 piece. It was coauthored by Jeff Gerth and Risen, and it had exploded like a grenade inside Washington: "Breach at Los Alamos: A Special Report: China Stole Nuclear Secrets For Bombs, U.S. Aides Say." Although it did not name Lee (that came two days later), the 4,000-word story made it clear he was the prime suspect in what the paper was calling a historic bout of Communist espionage, and one that the Clinton administration had dragged its feet on uncovering.

Out in northern New Mexico the Marshalls were not aware that the Sunday political talk shows had been awash in talk of Chinese spies. Republican Sens. Trent Lott, John McCain

and Richard Shelby were among those making the rounds, calling for investigations into an alleged White House spy coverup. On "Meet the Press," Shelby described the reported Los Alamos breach as "probably the worst leak we've had in many, many years."

The Marshalls also didn't know that on that Sunday, frantic FBI investigators, unhappy the story had been printed and feeling intense pressure from Washington headquarters, had interrogated Lee at the lab. In a grueling session conducted without an attorney present, the agents urged Lee to confess to passing classified military secrets to the Chinese during his trip to Beijing in 1988. But according to FBI transcripts, Lee, 59, in his halting English, insisted he was innocent. "I believe [God] will make the final judgment for my case. And I depend on him."

"You know what?" shot back the agent. "The Rosenbergs professed their innocence. They weren't concerned either. The Rosenbergs are dead. They electrocuted them," he said, referring to Julius and Ethel Rosenberg, who were convicted of leaking Los Alamos secrets to the Soviet Union in the 1950s.

The agents used an important prop to dramatize to Lee his dire situation: a copy of the Times' March 6 article.

"This is a big problem," stressed the FBI investigator. "I think you need to read this article, because there's some things that have been raised by Washington that we have got to get resolved."

The agent continued, "You know, Wen Ho, this, it's bad. I mean look at this newspaper article! I mean, 'China Stole Secrets For Bombs.' It all but says your name in here. Pretty soon you're going to have reporters knocking on your door. They're going to be knocking on the door of your friends. They're going to find your son at [college]. And they are going to say, 'You know your father is a spy?'"

Later in the interrogation, a bewildered Lee responded, "That reporter or whoever [in] the media [can] say that. I'm innocent, but I don't know what can I do. I'm, I'm, I'm, I tell you how I feel, I feel, how you call that? Hopeless, OK."

When Don Marshall returned Monday night to his home in White Rock, N.M, he dialed the phone number that the Times reporter had left behind. "I spoke my conviction," says Marshall. "I told him they had the wrong man. He didn't want to believe it of course. He didn't comment, but he probably thought, 'Ah-ha, Wen Ho really pulled the wool over your eyes.'"

Eighteen months after the original blockbuster exposé ran, editors at the New York Times may be wishing somebody at the paper had listened to Marshall, and to others who raised red flags about the paper's early Wen Ho Lee coverage.

Because instead of accepting congratulations for breaking the biggest spy story in a decade, editors are battling what one Timesman calls "a brewing storm" inside the paper of record.

Wen Ho Lee was charged in December with 59 counts of mishandling nuclear secrets and denied bail. He spent most of this year in solitary confinement. When the most recent bail



hearing began in August, the government's case crumbled. The most damaging revelation came from the FBI's lead agent, Robert Messemer, who was forced to recant crucial testimony he'd given in December, when he charged that Lee had lied to investigators and colleagues.

By early this month, government prosecutors, who once claimed Lee had downloaded the "crown jewels" of the nuclear defense system, agreed to free Lee if he pleaded guilty to one count of improperly downloading classified material.

On Sept. 13, after the U.S. District Court judge lit into top government officials who had "embarrassed our entire nation" in their handling of the case, Lee was free.

The stunning public turnaround suddenly drew attention to the fact that the entire premise of the New York Times' early news reports and strident editorials -- proclaiming that a Chinese-American scientist inside Los Alamos had given away nuclear secrets that had dramatically helped China improve its arsenal, and that the Clinton administration could have stopped it but chose not to -- had turned out to be flat wrong.

To date, the paper has been strangely silent about its pivotal role in the Lee saga. Attempts to get comments from executive editor Joseph Lelyveld, managing editor Bill Keller, editorial page editor Howell Raines, Washington bureau chief Michael Oreskes and reporter Jeff Gerth, among others, were unsuccessful.

A newspaper spokesperson hinted to Salon that the paper may yet address the controversy: "Our next assessment or explanation of the Wen Ho Lee case will be addressed to our readers, not other publications."

Times watchers predict that an extended editor's note addressing the paper's coverage will run in the "Week in Review" section Sunday, and that it will argue the Times was merely being aggressive in following a criminal investigation.

Many outside the paper, however, are not waiting for its official explanation.

"They rushed into this," suggests Steve Schwartz, publisher of the Bulletin of Atomic Scientists. "This story was given to them and nobody else and they decided to run it without thinking through what they were doing. They created the illusion of something that just wasn't there and ignored the other evidence that painted a different picture."

"It starts out with allegations, none of which turn out to be true," notes Walter Pincus, who has covered the Lee story for the Washington Post.

"Obviously they should be embarrassed," says Robert Vrooman, retired Los Alamos counterintelligence chief. "Gerth and Risen were in over their heads and they got snookered."

"It looks like a terrible injustice was done to a guy and his name first surfaced in the New York Times," notes Don Hewitt, executive producer of CBS's "60 Minutes," which aired an interview with Lee last year. "I'll leave it to the New York Times as to what they should do about it."

Off the record, journalists at other major media outlets are teeing off on the Times, labeling its performance "utterly reckless," suggesting the paper "fell for sources that any other reporter would have said are not playing with a full deck."

The unusually loud drumbeat of fault finding is so steady even the White House feels comfortable publicly chastising the Times. Administration spokesman Jake Siewert told Salon, "The paper singled out Wen Ho Lee as the primary suspect and now it seems to have developed collective amnesia about its earlier reporting and editorializing."

While the paper's performance raises troubling questions (to borrow a favorite Times phrase when it questions the motivations and actions of others), some see an even more perplexing trend in the work of Gerth, the influential reporter who drove the original Wen Ho Lee coverage. Gerth also broke the Loral satellite transfer story two years ago (which in retrospect seems badly inflated), as well as the Whitewater allegations in 1992. That was back before Whitewater blossomed into a megastory, but instead centered around allegations of shady Clinton investments and the couple's alleged attempts to stymie federal regulators.

But on Wednesday, independent counsel Robert Ray decided to finally shut down the six-year Whitewater investigation without bringing any charges against the Clintons. And when his predecessor, Kenneth Starr, filed his final report on the Clinton probe, he included nothing on Whitewater. Thus, those early allegations in Gerth's stories turned out to be specious and unfounded, accusations that the government spent \$52 million -- and the press untold hours -- chasing. ("Don't even mention Whitewater," sighs Pincus at the Post.)

For those who connect the dots between the three major Gerth stories, there's an unmistakable sense of déjà vu. Each contains ominous conclusions drawn from questionable evidence, lots of loaded language, loyalty to flawed sources with axes to grind, cheerleading from the editorial page and, most importantly, central accusations that simply never pan out. To some, the Wen Ho Lee saga reads an awful lot like Whitewater.

"If you look at Whitewater and Wen Ho Lee there is a very disturbing pattern of not checking sources in terms of credibility and alleging wrongdoing when none exists," says Dave Leavy, who served as spokesman for the National Security Council from 1998 until earlier this year, and who responded on behalf of the government to press inquiries into Lee's case. "Lives and reputations are destroyed."

"It's clear the Times didn't learn a single thing from Whitewater," adds Gene Lyons, an Arkansas Democrat-Gazette columnist and longtime critic of Gerth's Whitewater reporting. In his 1996 book, "Fools For Scandal: How the Media Invented Whitewater," Lyons detailed how much of Gerth's reporting was "provably false."

For example: In 1992, Gerth wrote about Beverly Bassett Schaffer, an Arkansas bank regulator appointed by then-Gov. Clinton and portrayed in the Times as a political crony who went easy on the Clinton-affiliated Madison Guaranty Savings and Loan. In his very first Whitewater article, Gerth told readers Schaffer "did not remember the federal examination of Madison." In truth, after reviewing her Madison file, Schaffer had faxed

Gerth 20 pages of notes before he wrote his damning story. "There ought to be consequences when reporters screw up this badly," says Lyons.

So the question remains: Could the Wen Ho Lee fiasco have been averted if editors at the Times had cast a critical eye on its Whitewater coverage years ago instead of encouraging Gerth's often questionable brand of reporting?

"What happens the next time Gerth shows up with a long, impenetrable story that doesn't add up?" asks New York Daily News columnist Lars-Erik Nelson, who for the past year has been critical of the Times' China spy coverage.

Though Times editors were not available to answer that question, a Nexis database search shows that Gerth has had exactly five bylines in 2000. Earlier, Gerth had been writing approximately 40 stories each year. "He's been conspicuously silent," notes Steve Aftergood, senior analyst for the Federation of American Scientists. According to a Times spokesperson, Gerth has not taken a leave from the paper this year.

A Timesman for 23 years and one who has studiously avoided the TV talk show circuit, Gerth has been heralded as the paper's top investigative reporter. That image was reinforced when he won his first Pulitzer Prize last year for leading the paper's reporting on the alleged transfer of satellite technology to China by U.S. defense contractors Loral Space & Communications and Hughes Electronics Corp.

The guts of the story were that after a Chinese rocket carrying a Loral satellite exploded and crashed on Feb. 14, 1996, Loral engineers delivered a report on the mishap but may have given the Chinese too much sensitive information in the process. Those charges are still to be considered by a Washington grand jury.

But Gerth went further. His stories also implied that a crucial White House waiver needed by Loral to launch satellites in China may have been granted simply because Loral chairman Bernard Schwartz was a longtime contributor to the Democratic Party. Once granted that waiver, Gerth asserted, Loral leaked military secrets to the People's Republic of China.

Thanks to Gerth's stories, along with the paper's urgent unsigned editorials ("There is too much evidence of wrongdoing to be suppressed or ignored," read one) and repeated, over-the-top doomsday columns by longtime Gerth supporter William Safire (who accused Loral of "the sellout of American security"), the Department of Justice launched an investigation of Schwartz and his company, partly to quell the cries of Republican protests.

On May 23, the Los Angeles Times reported that just months after looking into the matter in 1998, Justice Department investigators became convinced the Loral chairman had done nothing wrong. A task force led by Charles Labella had been unable to turn up "a scintilla of evidence -- or information -- that the president was corruptly influenced by Bernard Schwartz." One federal investigator told the paper, "Poor Bernie Schwartz got a bad deal. There never was a whiff of a scent of a case against him."

Seventeen days later, on Page 24, the New York Times reported that Schwartz had been cleared. Gerth did not write that story.

So of the three-legged Chinese espionage story Gerth built over the past two years -- transferred satellite technology, Democratic contributor Bernie Schwartz and Wen Ho Lee -- two of the legs have been kicked out from underneath him and the paper.

"If you go back three or four years ago to the San Jose Mercury News series [on the CIA and cocaine dealing], I wrote about what an overblown bullshit story it was," says Pincus at the Washington Post. The Mercury News was widely discredited as a result of that series. "I think the series on communication satellites was of the same nature."

Nonetheless, Gerth won a Pulitzer last year for his stories on Loral. Yet there is a widespread feeling in Washington journalism circles that even though he officially won the prize for his satellite technology reporting, it was his initial March 6 story on Los Alamos, and the buzz it instantly created, that landed him the award. (There's also speculation that Safire lobbied the Pulitzer committee on Gerth's behalf, waving around the reporter's Wen Ho Lee story. Safire could not be reached for comment.)

The Pulitzer committee itself seemed slightly unsure of why it was honoring Gerth. In its official release, the organization singled out Gerth "for a series of articles that disclosed the corporate sales of American technology to China, with U.S. government approval despite national security risks." (The Times used that language verbatim in its own news account of the award.) Actually Gerth and the Times accused Loral, after landing its waiver, of giving technology to China free of charge and without U.S. government approval.

The Loral stories resulted in something besides a Pulitzer: the creation of the Cox Committee, named after Rep. Christopher Cox, R-Calif. Cox was chosen by then-Speaker of the House Newt Gingrich to investigate Chinese espionage in hopes of embarrassing the Clinton administration.

Since its release one year ago, the 900-page Cox Report has been widely ridiculed for being long on conspiracy theory and short on facts. An independent analysis done by a research team at Stanford University's Center for International Security concluded, "There is no credible evidence presented or instances described of actual theft of U.S. missile technology." The Times has never reported on Stanford's findings.

It was all very reminiscent of Whitewater, where an independent counsel was named to investigate the Clintons based almost entirely on the reporting of Gerth and the New York Times. And as with independent counsel Kenneth Starr and the Whitewater investigation, Gerth enjoyed friendly Republican sources inside the Cox probe.

It's likely these sources tipped Gerth off to Notra Trulock, the renegade Department of Energy investigator who had been waging something of a one-man war against Lee and his supposed spy ring. In 1996, Trulock resurrected concern over China's alleged 1988 theft of an advanced warhead design named the W-88, which was developed at Los Alamos. Trulock singled out Lee for suspicion, since he was the only Los Alamos scientist who traveled to China in the '80s.

With his warnings dismissed by the CIA, which reasoned China obtained the W-88 data elsewhere, Trulock was welcomed with open arms by the Cox Committee staffers. And by the New York Times.

"There was a lot of gasoline on the floor and they lit a match," says Vrooman, referring to certain Republicans, Trulock and the New York Times during the political upheaval of early 1999. "The GOP lost [Monica] Lewinsky as an issue and impeachment. Now they were looking at the Chinese fundraising scandal and here comes Notra with this great story."

One former Washington bureau chief at a major daily newspaper recalls the sense of hysteria the March 6, 1999, Times story, along with Republican cries, created in the capital. "I got to Washington in the aftermath of the McCarthy era and I haven't seen anything that matches what's gone on during the last year with China."

While Gerth and his partner, Risen, never identified Trulock as their source for their story, close readers of their articles could, if they assumed the Times reporters were following an old journalism rule of thumb: Always make your sources look good. Here's what Gerth and Risen wrote March 6: "In personal terms, the handling of this case is very much the story of the Energy Department intelligence official who first raised questions about the Los Alamos case, Notra Trulock."

Illustrating the influence of the Times, "Meet the Press" host Tim Russert quickly did his best to turn Trulock into a hero, too, inviting him to appear on his May 23, 1999, show. There, Russert gave Trulock an open forum to spin his conspiracy theories about widespread Chinese espionage at the labs and the Clinton coverup. "I think the potential is on a magnitude equal to the Rosenbergs-Fuchs compromise of the Manhattan Project information," Trulock told Russert.

At the end of the interview Russert turned to his other guest, Cox, and wondered gravely, "Would the country have ever heard of the magnitude of this issue without the work and efforts of Notra Trulock?"

But critics suggest Trulock is prisoner of his own agenda. "He takes a grain of truth and distorts the hell out of it," says Vrooman, who worked with Trulock at Los Alamos for many years.

At Lee's recent bail hearing, attorneys introduced an affidavit from Charles E. Washington, who worked for Trulock as acting director of counterintelligence and is now a senior policy analyst at the Energy Department. Washington, who is black and who told the Los Angeles Times he was once spat on by Trulock, testified that Trulock "acts vindictively and opportunistically, that he improperly uses security issues to punish and discredit others and that he has racist views toward minority groups."

Fed up with Trulock's increasingly outlandish accusations, Warren Rudman, the former Republican senator and chairman of the president's Foreign Intelligence Advisory Board, struck back. In a scathing letter to Trulock last year, Rudman wrote that he had "misread professional disagreements as personal affronts," and had twisted an obligation to be

straightforward into "a license for calumny." This summer the FBI began investigating whether Trulock had disclosed classified information about the government's spy case when he tried to sell a magazine article.

In other words, Trulock, a contributor to the rabidly anti-Clinton chat site Free Republic, was hardly the most reliable source of information. Then again, neither were the Clintons' former business partner and congenital liar Jim McDougal or convicted felon and Arkansas con man David Hale. But Gerth and the Times relied on them both during their lengthy and influential Whitewater investigation. (Once Gerth even called an FBI agent on behalf of Hale, to let the him know Hale felt he was being silenced by Clinton-friendly prosecutors in Little Rock.)

Despite the now-obvious flaws in the Times' March 6 story on Los Alamos, at the time it made believers out of most readers. "I assumed maybe I had been overly critical of the Times," recalls Steven Aftergood, a senior analyst at the Federation of American Scientists. "Because now they had nailed the story down and here's the guy I figured they found transferring codes to China."

As he began to read the paper's steady stream of follow-up reports though, Aftergood's fear of widespread Chinese espionage quickly faded. "The coverage was so breathless in its speculation that China was now a nuclear power thanks to U.S. espionage. That was objectively false."

The Times told its readers as much on Sept. 7, 1999, in the form of a 5,000-word, Page 1 piece by science writer William Broad. The story seriously questioned, in a gentlemanly way, much of Gerth's and Risen's reporting. "It was what we call 'The Retraction,'" says Henry Tang of the Committee of 100, a Chinese-American group that believes Lee was singled out because of his ethnicity.

Ever since the Broad article appeared one year ago, the Times has covered the Lee story with an even hand. Risen and Gerth no longer write about the case. "I give the Times a lot of credit" for its subsequent Lee coverage, says former National Security Council spokesman Leavy. "They let another reporter with fresh eyes really challenge the conclusions of Gerth and Risen."

With Broad's story, observers might have concluded the Times was backing away from Gerth's and Risen's earlier reports. But instead of acknowledging its errors, the Times seemed to go into a bunker. In its November 1999 issue, Brill's Content ran a critical piece examining the newspaper's initial reporting on Lee. Times investigative editor Stephen Engelberg (who teamed up with Gerth to write Whitewater stories in the early '90s) promptly responded with a 2,500-word letter to the editor, adamantly denying Broad's piece was in any way a retraction. By protesting so loudly, the Times was once again seen as defending its original, and now widely ridiculed, Wen Ho Lee stories.

But finally the Lee case, already seen by many observers as weak, collapsed in spectacular fashion inside an Albuquerque, N.M., courtroom this month, leading to the obvious question: How did this all happen?

So far, the Times has refused to openly concede its role in the saga. That has made for some peculiar reading, as when concerned, unsigned editorials began calling this month for an independent body to determine whether Wen Ho Lee was fingered by investigators simply because he was Chinese-American. Compare that to the spring of 1999, when the Times editorial page had no such reservations as it lustily cheered the paper's investigative reporting. "The United States might as well have dumped its most sensitive defense secrets on Pennsylvania Avenue for Chinese spies to pick up," fulminated a May 16 editorial.

The Times' selective memory was on further display in Gail Collins' Aug. 29 column belittling the Lee prosecution, suggesting the case was "brought to you courtesy of the FBI and the Department of Energy." Collins delicately overlooked the Times' own glaring role in the rush to judge Wen Ho Lee. Reached at the paper, Collins declined to comment. Times columnist Anthony Lewis, who has also written critically of the Lee prosecution without mentioning the paper, also declined to comment, other than to agree that the Times' involvement in the Lee case "is a very good subject for exploration."

So far the Times disagrees. Despite the uproar over the unjust treatment of Lee, the Times has not published a single editorial, op-ed column or letter to the editor about the paper's Lee coverage.

"There's nothing wrong with making an error, we all make mistakes," says Aftergood. "What's scary is the paper's unwillingness to admit fault. I think the Times is doing a real disservice to its own interest. But it seems they've dug in so deep they can't get out."

At the height of the Lee story last year, Vrooman recalls receiving a request from the Times, asking for a photograph of himself. "I asked them what for and they said, 'You're a part of the story.' I said, 'Well, so are you.'" He half-jokingly suggested the paper run photographs of Gerth in its news reports about Lee.

Says Vrooman, "Nobody is going to write a history of this case without mentioning the New York Times."

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<http://www.nytimes.com/2001/02/04/national/04WEN-EDIT.html?ex=1114920000&en=71465d74c3cf4f18&ei=5070>



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## **The Making of a Suspect: The Case of Wen Ho Lee**

By MATTHEW PURDY

he crime sounded alarming: China had stolen the design of America's most advanced nuclear weapon. The suspect seemed suspicious enough: Wen Ho Lee, a Taiwanese-born scientist at Los Alamos nuclear laboratory, had a history of contact with Chinese scientists and a record of deceiving the authorities on security matters.

After a meandering five-year investigation, Dr. Lee was incarcerated and interrogated, shackled and polygraphed, and all but threatened with execution by a federal agent for not admitting spying. But prosecutors were never able to connect him to espionage. They discovered that he had downloaded a mountain of classified weapons information, but he was freed last September after pleading guilty to one felony count of mishandling secrets. Ultimately, the case of Wen Ho Lee was a spy story in which the most tantalizing mystery was whether the central character ever was a spy.

In the aftermath, the government was roundly criticized for its handling of the case; so was the press, especially The New York Times. In an effort to untangle this convoluted episode, The Times undertook an extensive re-examination of the case, interviewing participants and examining scientific and government documents, many containing secrets never before disclosed.

This review showed how, in constructing a narrative to fit their unnerving suspicions, investigators took fragmentary, often ambiguous evidence about Dr. Lee's behavior and Chinese atomic espionage and wove it into a grander case that eventually collapsed of its own light weight.



Before the criminal investigation began, weapons experts consulted by the government concluded that stolen American secrets had helped China improve its nuclear weapons, according to inside accounts of the experts' meetings. They also said the Chinese wanted to replicate key elements of America's most sophisticated warhead, the W-88, and had obtained some secrets about it. However, most of the experts agreed that those secrets were rudimentary, and that there was no evidence China had built anything like the W-88.

But in the echo chamber of Washington, that measured scientific finding was distorted and amplified as it bounced from intelligence analysts to criminal investigators to elected officials, most of them ill equipped to deal with the atomic complexities at the heart of the matter. Eventually, the notion that the Chinese had swiped the W-88 design became the accepted wisdom.

Investigators made Dr. Lee their prime suspect in the W-88 case even though they had no evidence he had leaked weapons secrets. Unanswered questions about his contacts with foreign scientists had made him suspect, but as it searched for a spy, the Federal Bureau of Investigation ignored the urging of a senior agent on the case to look beyond Dr. Lee. As a result, it failed to examine hundreds, if not thousands, of people outside Los Alamos who had access to the stolen information about the W-88.

When the government's case fizzled, Wen Ho Lee went from public enemy No. 1 to public victim No. 1. But the new label seemed no more appropriate than the first. Off and on for two decades, Dr. Lee's behavior was curious, if not criminal.

He had a knack for wandering into circumstances that aroused suspicion. In 1982, he had a walk-on role in a major espionage investigation, when he inexplicably offered to help the suspect, whom he apparently did not even know. In 1994, Dr. Lee surprised laboratory officials when he appeared uninvited at a Los Alamos briefing for visiting Chinese scientists and warmly greeted China's leading bomb designer.

As the investigation unfolded, Dr. Lee, 61, began revealing details of his contacts with Chinese scientists, including one encounter he had improperly hidden from laboratory officials. Dr. Lee, it turned out, had met the bomb designer in a Beijing hotel room years before.

Eventually, Dr. Lee fit perfectly into agents' portrait of a scientist being recruited as a spy by China.

The government's pursuit was as erratic as its quarry. The investigation was so low-key at times that Dr. Lee was allowed to travel overseas unmonitored at least twice. But after the download was discovered, the government imprisoned him for nine months by arguing that his freedom could threaten the global nuclear balance. Prosecutors charged him with crimes that carry potential life sentences, even though they had only circumstantial evidence to support the charges.

The case, like so much in the world of espionage, was a haze of ambiguity, in which everything from intelligence data to Dr. Lee's activities was subject to interpretation. Often what mattered was who the interpreters were, and what perspective they brought.

The case was first framed by Notra Trulock III, a Soviet analyst during the cold war who had become director of intelligence at the Energy Department, which maintains the nation's nuclear arsenal and runs its weapons laboratories. His influence was magnified because much of the government infrastructure that provided nuclear intelligence at the height of the arms race had fallen into disrepair.

As the case passed to the F.B.I., it acquired a classic cold war plot: spy for competing superpower steals blueprints for America's premier bomb. But this was a different, more complex story.

The other country was not Russia but China. And while Washington and Beijing had hardly become allies, their nuclear scientists were meeting regularly and sharing research. That gave China the opportunity to spy the way experts say it prefers to, mining nuggets from countless foreigners bearing secret knowledge rather than relying on a few master spies.

The case of Wen Ho Lee was propelled by the divisive politics of Clinton-era Washington. It languished for several years, only to be revived in 1998 by a confluence of forces — a White House under siege of impeachment, festering accusations of Chinese money funneled to Democratic campaigns and a House panel that saw the W-88 case as only the newest evidence of China's voracious appetite for American technology secrets.

The spying charges gained wide public attention on March 6, 1999, after The Times reported that China possessed "nuclear secrets stolen from an American government laboratory," and that American experts believed Beijing had tested a weapon "configured remarkably like the W-88." Descriptions of the espionage escalated rapidly. Two months later, the chairman of the House panel, Christopher Cox, Republican of California, wrote publicly that the Chinese had a "knockoff version of the world's most sophisticated nuclear design."

Today, the crime, whatever its extent, remains unsolved, the spy, or spies, unidentified. In its long pursuit of Wen Ho Lee, the government was driven by fear that he had given up the nation's deepest atomic secrets. The one secret he most certainly never gave up was himself.

### **STARTING OUT**

*Wen Ho Lee arrived at Los Alamos in 1978 and joined the bomb-design unit two years later. It was a time of growing scientific cooperation between China and the United States.*

In a tale laced with cross-cultural subtleties, the arcana of atomic science and the feints of the intelligence world, the most indecipherable character is the man at the center.

In part, Wen Ho Lee is an immigrant striver, one of 10 children of poor, uneducated farmers whose roots traced to Fujian province in China, across the strait from Taiwan.

Dr. Lee's childhood was an adventure of swimming and fishing and catching monkeys for pets in bamboo forests. But it was also hard, according to relatives and information Dr. Lee provided through his lawyers. (Dr. Lee declined several requests for interviews.) While Dr.

Lee was in high school, his mother committed suicide after years of declining health; his father died after a stroke a few years later.

The Lees lived through the Japanese colonization of Taiwan and the martial law of the Nationalists, who detained intellectuals suspected of subversive activity. Lee Tse-ling, Dr. Lee's nephew and a doctor in Taiwan, said the lesson the family took from these experiences was, "Don't get involved in politics."

Mathematics was Wen Ho Lee's ticket out. He studied mechanical engineering at Cheng Kung University and then came to the United States in 1964, earning a doctorate in mechanical engineering from Texas A & M in 1970. His English was heavily accented, but he embraced things American, from Aggie football to his blue Mustang. In 1974, he became a United States citizen.

Dr. Lee, his wife and two children got to Los Alamos, N.M., in 1978, and two years later he joined X Division, the bomb-design unit. As a specialist in hydrodynamics, he wrote computer codes that model the fluidlike movement of explosions. The codes help scientists design bombs and simulate weapons tests.

Los Alamos is typically suburban, with sizable homes, good schools, low crime. But it is also a place apart, a spectacular mountaintop village anointed as science headquarters of the Manhattan Project in the 1940's. Streets named Trinity Drive and Bikini Road commemorate bomb tests, and a gift shop sells \$13.50 pewter key chains of Fat Man and Little Boy, the bombs dropped on Japan.

In those early days, Dr. Lee stood out. The local Chinese community was so tiny "everybody knew everybody," recalled Cecilia Chang, a friend who became a vocal supporter of Dr. Lee. The Lees' house in White Rock, just outside Los Alamos, was an ethnic oasis where Dr. Lee offered Chinese meals made from homegrown vegetables and fish he caught.

When Dr. Lee arrived, the laboratory was assuming an important role in the changing relationship between the United States and China. Exchanges between the two countries' nuclear scientists had begun soon after President Jimmy Carter officially recognized China in 1978. They were extraordinary at first, given the secrecy shrouding America's weapons laboratories. But eventually, with the Reagan administration eager to isolate the Soviet Union, hundreds of scientists traveled between the United States and China, and the cooperation expanded to the development of torpedoes, artillery shells and jet fighters.

The exchanges were spying opportunities as well.

"In 1979, we knew virtually nothing" about China's nuclear program, said George A. Keyworth II, who was Ronald Reagan's science adviser. "By 1981, we knew a large fraction of the strategic intelligence, the big questions."

China was spying, too. Shortly after the exchanges started, the F.B.I. began an espionage investigation code-named Tiger Trap, which focused on a Taiwanese-American nuclear scientist at the government's Lawrence Livermore laboratory in California. Agents were

wiretapping the scientist's phone, and on Dec. 3, 1982, the tap picked up Wen Ho Lee offering to help find out who had "squealed on" him.

Dr. Lee's first encounter with investigators set a pattern for the future. When confronted, he said he had not known the scientist and had not tried to contact him; he confessed only when presented with evidence of his call, according to government records and Congressional testimony. Then he told investigators that he thought the suspect was in trouble for passing unclassified information. Dr. Lee said he was concerned because he himself had been giving Taiwanese officials unclassified documents that American officials say dealt with nuclear-reactor safety.

According to a secret F.B.I. report recently obtained by The Times, Dr. Lee told agents that he had not informed American government officials, "even though the documents he passed specifically stated they were not for foreign dissemination."

The report continued, "Wen Ho Lee stated that his motive for sending the publications was brought on out of a desire to help in scientific exchange." Dr. Lee also said "he helps other scientists routinely and had no desire to receive any monetary or other type of reward from Taiwan."

Dr. Lee's call could be viewed as a simple overture to a fellow immigrant scientist in trouble. It could also be seen through the eyes of a seasoned spy catcher. "This says this guy wants to be a player," said Paul D. Moore, then the F.B.I.'s chief analyst for Chinese counterintelligence.

But Dr. Lee passed a polygraph test on whether he had divulged classified data and cooperated with F.B.I. agents trying to get incriminating information on the Tiger Trap suspect. The incident was apparently never reported to the Energy Department, and the F.B.I. closed its investigation of Dr. Lee in 1984.

Had the department known, "it would have been enough to remove his security clearance," an agency official said. "The lights should have gone off with somebody."

### **MAKING FRIENDS**

***Dr. Lee traveled to Beijing twice in the 1980's. What worried his bosses was what he did not tell them when he got home.***

Throughout his career at Los Alamos, Dr. Lee traveled widely, attending scientific meetings and giving papers in places like Venice and Budapest, Britain and Hawaii. In March of 1985, he and other government scientists attended a conference in Hilton Head, S.C. Two scientists from China were also there.

"They sat in the back wearing their Mao jackets and stuck out like a sore thumb," said Robert A. Clark, a scientist who attended the conference. "Wen Ho chatted with them quite a bit." The scientists suggested that Dr. Lee and Dr. Clark attend a conference in Beijing the next year, and, with approval from Los Alamos, they went with their wives.

Dr. Clark, a defender of Dr. Lee, said it was clear in Beijing that his colleague had befriended some Chinese scientists.

"It's obvious they would chat him up with the idea that maybe one day they would get information from him," he said. "You might say he was friendlier than he should have been with these guys." But if it looked suspicious, he said, it was only because of fears of China.

Dr. Lee's wife, Sylvia, a secretary and data-entry clerk at Los Alamos, was making friends, too. She had become an unofficial hostess for visiting Chinese. Correspondence obtained by The Times shows that she served as both tour guide and research contact.

"I am very sorry to hear that Wen Ho is ill and hope he will get better soon," a Chinese scientist wrote her in a telex about a coming trip with a colleague. "Both Chen and I will be very happy if we can learn something in computational hydrodynamics and get some papers."

Mrs. Lee also gave the F.B.I. and C.I.A. information about scientists she met. She had repeated contacts with the F.B.I. in the mid-1980's, government officials and others knowledgeable about the case said. In about a dozen instances, they said, a C.I.A. agent was present and paid for the hotel room where the meetings took place.

In 1988, the Lees attended another conference in Beijing. In post-trip debriefings, American scientists often reported being approached by Chinese scientists seeking classified information, but Dr. Lee reported nothing of the sort. That worried Robert Vrooman, then the chief of counterintelligence at Los Alamos.

Mr. Vrooman says he considered Dr. Lee naïve, not nefarious. Even so, in 1990, he urged laboratory officials to deny Dr. Lee's request to visit China again. Officials decided to end Mrs. Lee's role as a hostess at about the same time.

"I have been concerned for some time that Dr. Lee did not understand the ruthlessness of intelligence agencies in trying to collect information being vital to national survival," Mr. Vrooman said last year in court documents.

### **BLAST IN THE DESERT**

*At first, the Chinese bomb test didn't alarm American officials. But how did Dr. Lee know the designer of China's new bomb?*

On Sept. 25, 1992, a nuclear blast shook China's western desert near the Silk Road once traveled by Marco Polo.

From spies and electronic surveillance, American intelligence officials determined that the test was a breakthrough in China's long quest to match American technology for smaller, more sophisticated hydrogen bombs.

China had entered the nuclear arena after other big powers and feared its large, stationary missiles were becoming vulnerable to disarming first strikes. Smaller bombs that fit on trucks and submarines would be easier to hide, have greater range and aid China's transformation from a regional to a global nuclear power.

Miniaturization was difficult science, involving complicated physics, computer work and machining. Older bombs use a ball of atomic fuel surrounded by a cumbersome array of

conventional explosives that compress the fuel until it reaches critical mass. The secret to the smaller American design was an oval-shaped mass of atomic fuel detonated by just two charges — one at each end of the oval. That step helped cut the width of bomb casings from feet to mere inches.

Shrinking weapons by using "two-point" detonation became China's holy grail. The first American nuclear scientists who went to China in the late 1970's were peppered with questions about miniaturization. When the Tiger Trap suspect was stopped at an airport en route to China in 1981, officials said, he was carrying detailed answers to five weapons questions, including one about two-point detonation. Though officials believed that secrets leaked in the Tiger Trap case, they felt the evidence was too weak to bring criminal charges. The suspect maintained his innocence; he now refuses to discuss the case.

The 1992 test was a leap forward, but it did not initially alarm American nuclear intelligence experts, since countries like Russia and Britain had mastered two-point technology years before. Besides, the diplomatic wind was blowing in a different direction.

With the cold war over, the United States and other countries were trying to defuse the arms race with global cooperation. As a sign of the new openness, the Energy Department began declassifying millions of ideas and documents about nuclear arms, and even encouraged weapons scientists to share unclassified computer codes with their foreign counterparts.

Washington began working with Moscow to secure its plutonium stockpiles. And Beijing agreed to a partnership on arms control and methods of verifying a test-ban treaty — an agreement destined to bring the two nations' nuclear scientists even closer together.

On Feb. 23, 1994, Los Alamos was host to the highest-level group of Chinese weapons officials ever to visit the United States. Leading the delegation was Hu Side (pronounced se-DUH), the new head of the Chinese Academy of Engineering Physics, the nation's bombmakers. American intelligence officials had learned that he was the designer of China's two-point bomb.

One person not on the guest list was Wen Ho Lee. "We had very tight controls on access," a laboratory official said. "The door was closed. The session was not advertised." But that afternoon, Dr. Lee appeared at a briefing and was warmly greeted by Dr. Hu.

"There is a lot of bowing and exchanging cards," another official recalled. He was startled that a midlevel hydrodynamics expert at Los Alamos knew China's top nuclear scientist. And Wen Ho Lee was not simply relatively obscure; just months before, he had learned he might be laid off because of budget cuts.

Then a translator told the official that Dr. Hu was thanking Dr. Lee in Mandarin. "They're thanking him because the computer software and calculations on hydrodynamics that he provided them have helped China a great deal," the translator said.

Laboratory officials informed the F.B.I., which had suspicions of Dr. Lee from Tiger Trap and opened an investigation. Officials did not know what to think. Dr. Lee had never

reported meeting Dr. Hu in China. If the two had an improper relationship, why expose it at Los Alamos?

### **A GREAT LEAP FORWARD**

*China's new bomb, one expert said, was 'like they were driving a Model T' and 'suddenly had a Corvette.' Was it espionage?*

Tension between security officers and scientists who see their work as apolitical and dependent on open discourse has existed at Los Alamos since the laboratory's founder, J. Robert Oppenheimer, clashed with Leslie Groves, the Manhattan Project's top military man, who so mistrusted the scientists that he wanted them to enlist and wear uniforms.

Little surprise, then, that scientific diplomacy was not universally applauded. As the Energy Department's new intelligence director, Notra Trulock, saw it, scientists might "think they're too smart to be bamboozled by some foreign intelligence officer." Periodic leaks and other security breaches, he believed, indicated otherwise.

Mr. Trulock entered the fray not as an expert on China or spy hunting or even bomb building. He had a political science degree from Indiana University and in the Army during the cold war had monitored Warsaw Pact radio transmissions on the German-Czech border. Later, he led a Los Alamos research project on the dangers of post-Communist Russia losing control of its nuclear weapons, a study that won two government awards.

In his new job in Washington, Mr. Trulock said, he figured warnings about Russia would go unheeded given President Bill Clinton's policy of engaging the former enemy. But the risks posed by China might be heard. "We focused on China because we could," he said recently.

Siegfried S. Hecker, the director of Los Alamos from 1986 to 1997, said that, in several discussions, Mr. Trulock had implied that Los Alamos "was infiltrated by Chinese agents." Once, Dr. Hecker added, Mr. Trulock told him that "just the fact that there are five Chinese restaurants here meant that the Chinese government had an interest." Mr. Trulock denies that remark.

Mr. Trulock's focus on China began when Robert M. Henson, a Los Alamos scientist and intelligence analyst, went to him in early 1995 and said his analysis showed that the Chinese had so dramatically shrunk their weapons that they had to have used stolen American secrets. "It's like they were driving a Model T and went around the corner and suddenly had a Corvette," Dr. Henson said.

Now Mr. Trulock turned to John L. Richter, a legendary bomb designer whose specialty was the main bomb component the Chinese had improved — the atomic trigger for a hydrogen bomb, known as a primary. Dr. Richter said the sketchy evidence suggested that China might have significant information about the primary of the W-88.

Dr. Richter, who had overseen the design team for the W-88, calls it "a darling." The W-88 warhead is 30 times more powerful than the bomb that leveled Hiroshima, but the compact

design of its primary allows for unusual accuracy. Beginning in 1990, hundreds were affixed to Trident missiles and deployed on submarines.

The question was how much the Chinese had reduced the size of their bomb primaries. Making a smaller weapon was a natural evolution for China, but making one as small and sophisticated as the W-88, and doing so quickly, was a monumental leap of physics and engineering that presumably would have required knowing American bomb secrets. After all, it had taken the United States three decades to go from its first miniaturized hydrogen bomb — a warhead with a primary casing about 20 inches across — to the W-88, with its 9-inch casing.

Mr. Trulock sensed espionage. He likened China's 1992 test to the first clue in other great spy cases, like the unexplained deaths of Russians working for the United States in the Aldrich Ames affair. "In this case," he said, "you had something go boom in the desert."

### **'THOUSAND-PIECE PUZZLE'**

***Officials knew the Chinese had stolen some secrets about the W-88. But how much did they know, and what had they done with it?***

To probe deeper, Mr. Trulock assembled nearly 20 weapons and intelligence experts who met in the summer of 1995 in a spy-proof room at Energy Department headquarters in Washington, sifting through intercepted signals, purloined Chinese documents, accounts of spies.

But determining the physical size of China's test bombs was nearly impossible. "You get three pieces of a thousand-piece puzzle and try to figure out what it is," one participant said. "People read in their own prejudices."

The pieces they had were hardly clear, intelligence officials said. A spy's vague report spoke of Chinese interest in a primary whose outer casing was the size of a soccer ball — about nine inches, the width of the W-88 casing. And a Chinese scientist visiting Los Alamos had recently bragged about the size of China's new bombs by holding his hands close together.

Still, while there was no question China had built smaller bombs with two-point detonation, most of the experts agreed there was no proof the Chinese had figured out anything about the W-88.

Then, in midsummer, the experts got from the C.I.A. a seven-year-old Chinese document showing that Beijing knew distinctive characteristics of the W-88, including almost the precise width of the primary casing. In spy-speak, it was a "walk-in document" because someone had offered it out of the blue.

The document, which compared China's weapons with those of various countries, was far from a blueprint for the W-88. It contained secret but rudimentary information of value mainly in making missiles that carry bombs. To Dr. Richter, the walk-in confirmed that China knew "the periphery" of the W-88, but not its design. "If you get a map of New York, is that New York?" he said. "No, it's an image."



Michael G. Henderson, a bomb designer who headed the panel of experts, said, "We all agreed there had been some hanky-panky."

But in wrestling with the implications of the espionage, the experts clashed, with their debate breaking into three positions.

The most benign was that China had effectively made all its advances on its own, even if it had done some spying.

The second, that China had benefited from a slow drip of secrets about two-point detonation, was supported by reports of many scientists asked to give up secrets while visiting China, by the files of Tiger Trap and by the walk-in document itself.

The last view was that a cold-war-style superspy had betrayed much more in a single delivery of bomb blueprints than the slow drip ever could. Dr. Henson, who had first sounded alarms about Chinese spying to Mr. Trulock, was virtually alone in arguing angrily that the magnitude of China's advancement implied the existence of a major spy. One participant recalled him "literally cursing, swearing at us," and added, "His face was red."

Having reached an impasse near the end of the summer, the group stopped its formal meetings. Months later, the few remaining experts agreed on a compromise that was spelled out in secret briefing documents, which were recently described by participants and federal officials.

On the one hand, they said, Tiger Trap had likely given the Chinese the two-point concept, and over all, espionage had "been of material assistance" to Beijing's nuclear advances. Further, they believed that China had plans to try to build a "W-88-like aspheric primary."

Even so, the experts said they had no way of knowing how small China's bombs had actually gotten and saw no evidence that Beijing had copied America's premier weapon.

Mr. Trulock remembers it differently. The panel, he said, generally agreed that the 1992 test involved something akin to the W-88 primary. "Words like 'resembled' and 'similar to,' were words that were used," he said. He accused the scientists of rewriting history to play down their role in the Lee ordeal.

Dr. Henderson, the panel's chairman, said Mr. Trulock took his own view "and ran with it." He added: "I'm sure he believes in the veracity of what he had. But, unfortunately, that doesn't mean it's true."

### **SEARCHING FOR SUSPECTS**

*Though the exact crime was unclear, an espionage investigation settled on Los Alamos, the birthplace of the W-88. Soon, the focus narrowed to Wen Ho Lee.*

If Notra Trulock ran with it, he hardly ran alone. He informed his bosses at the Energy Department. Alarmed, they asked the C.I.A. for its assessment. Initially skeptical, the C.I.A. reviewed the evidence and agreed that espionage had probably aided China. The Energy Department gave Mr. Trulock a green light to expand his inquiry and to brief top officials, from the White House, in April 1996, to the Strategic Command in Omaha.

Mr. Trulock called the investigation Kindred Spirit, and from the start, it reflected his belief that the Chinese had come close to replicating the W-88, and that one spy might have given them the blueprints.

In his briefings, he was typically careful not to overstate how much was known about Chinese spying. But he also took the stance of a military analyst in stating the worst-case scenario, people who heard his briefings said. Sometimes, he included images of China's newest missile and the W-88, implying that was where China was headed.

"We thought it best to focus on the W-88 because it was the newest system in our inventory and it was the system within the 'walk-in document' for which the most detailed information was provided," Mr. Trulock wrote in an unpublished article. And he said he feared that the secrets in the walk-in document might represent just a sampling of what the Chinese had stolen about the W-88.

The idea of a theft, without the scientists' caveats, was alarming. "I said, 'Holy cow, this is the last thing we need,'" said Daniel J. Bruno, Mr. Trulock's chief investigator on the case. "It's a very serious thing that affects your children, our children, our grandchildren."

In searching for suspects, Energy Department investigators, aided by an F.B.I. agent experienced in Chinese espionage, looked at other weapons laboratories but concentrated on Los Alamos, where the W-88 had been developed.

Since the laboratory had no records showing all contacts between American and Chinese scientists, the investigators gleaned a list of 70 potential suspects from records of laboratory employees who had traveled to China in the mid-1980's, before the walk-in document was written. The Energy Department's final report shows that more than a third were on the list for travel that had nothing to do with the scientific work of the laboratory: "chaperone with Santa Fe High School band's trip to Beijing," "personal vacation cruise to Whangpo."

Investigators also looked at people who had access to W-88 information or had security problems. The list was narrowed to a dozen suspects, half with Chinese surnames. Wen Ho Lee and Sylvia Lee were on top. The Lees had visited China twice. Dr. Lee, whose access to weapons secrets was listed as "moderate," had worked on the W-88 computer code. His appearance in Tiger Trap remained suspicious. And investigators found Mrs. Lee suspect because laboratory supervisors said she had been so eager to play host to Chinese visitors that it conflicted with her job. (The investigators were never told that Mrs. Lee had also been a source for the F.B.I. and the C.I.A.)

"Quite frankly, Wen Ho Lee being a suspect at that point is only natural, since at that time they had been looking at him for 13 years," said Dr. Hecker, then the Los Alamos director. "They would have been derelict not to look at him."

But it may also have been derelict to look only at Dr. Lee, especially since the most concrete evidence of spying was the walk-in document, and its secrets had been distributed to hundreds, if not thousands, of people at military installations and missile contractors.

It is true that Energy Department investigators were legally prohibited from looking for suspects outside their agency. But Mr. Trulock and Mr. Bruno said they told F.B.I. officials that the leak might have come from the other sources. In addition, T. Van Majors, the F.B.I. agent assisting the Energy Department, wrote a memorandum warning against focusing just on Dr. Lee, a law enforcement official said. However, the memorandum was not reflected in the Energy Department's report on the case, and in the subsequent F.B.I. investigation.

"This guy stands out higher than the rest, based on circumstantial issues," Mr. Bruno said.

Defenders of Dr. Lee have said that investigators focused solely on him because of ethnic profiling, a charge government officials deny. Still, ethnicity did play some role in their thinking. Mr. Moore, the F.B.I.'s former China espionage analyst, said that while the Chinese routinely seek information from visiting scientists of all nationalities, they concentrate on ethnic Chinese, including Taiwanese, by appealing to a "perceived obligation to help China."

When Mr. Trulock's office issued its secret report, it said Dr. Lee "appears to have the opportunity, means and motivation" to compromise the W-88. A secret Justice Department review of the case, completed last year, called Mr. Trulock's report "a virtual indictment" of Dr. Lee, a law enforcement official said.

The crime, though, was unclear. The report's damage assessment, never before disclosed, contained a hodgepodge of formulations, from the tentative (the W-88 "may have been compromised") to the certain (the Chinese had "almost a total duplicate of the W-88 warhead").

### **AN ERRATIC PURSUIT**

*The F.B.I.'s investigation of Dr. Lee started and stalled as it passed from agent to agent and was overshadowed by higher-profile cases.*

Two days after receiving the Energy Department's report in late May of 1996, and still three years before the case became public, the F.B.I. opened an investigation of Wen Ho Lee. The old inquiry, begun after Dr. Lee's encounter with Dr. Hu, was folded in.

Usually, the F.B.I. looks askance at the investigative work of other agencies. But in this case, F.B.I. officials neither interviewed the panel of weapons experts nor searched beyond the Energy Department for suspects. They accepted the Energy Department's finding as confirming their own suspicions about Dr. Lee and shipped it out to the field.

The case fell to David Lieberman, a veteran agent who worked Los Alamos counterintelligence cases part time from an F.B.I. satellite office in Santa Fe. The Lee investigation was added to his lineup of drug cases, bank robberies and crimes on nearby Indian reservations.

Promised help never came. Headquarters sent two agents to assist, but Albuquerque F.B.I. officials assigned them to general crime cases, law enforcement officials said. "It's not the

way to handle anything that's a big investigation," a former official involved in the case said. "You don't send it out to the backwater of America and assign it to someone part time."

Neil J. Gallagher, head of the F.B.I.'s national security division, acknowledged that more resources should have been devoted to the case. But he said the investigation was hamstrung because it involved espionage suspected to have occurred a decade earlier.

There were more current national security cases at the time, including the Oklahoma City bombing and the Unabomber. Besides, Chinese espionage had always been a stepchild to Eastern Bloc cases, and in the aftermath of the cold war, F.B.I. resources had shifted to things like terrorism and urban drug gangs.

Still, as the case passed from one agent to another, the F.B.I. seemed to miss one opportunity after another.

For years, F.B.I. agents did not search Dr. Lee's computer because they believed they lacked legal authority. They never looked far enough to find a waiver Dr. Lee had signed in April 1995 stating, "Activities on these systems are monitored and recorded and subject to audit." Agents never used standard investigative tools, like trash searches and stakeouts. F.B.I. officials said it was difficult to operate surreptitiously in the closed society of Los Alamos. But a veteran F.B.I. espionage investigator said agents have worked in more challenging circumstances. "We've run cases inside C.I.A. headquarters," he said.

In 1997, a new agent on the case requested a permit to eavesdrop electronically on the Lees. A secret F.B.I. report prepared to support that application flatly stated that China "seemed to have had a copy of the design" of the W-88.

Allan Kornblum, a Justice Department lawyer who reviewed the permit application, later told a Senate committee, "I was also shocked by the facts, the idea that this guy is making official trips to the P.R.C. to meet with his counterparts in nuclear weapons design."

Still, weaknesses in the Lee case were obvious. Agents had not examined any other suspects on the Energy Department's list. They had not sufficiently demonstrated a link between Dr. Lee and the compromised W-88 information, Mr. Kornblum said. Intriguing elements of the case were old. In short, "we had little to show that they were presently engaged in clandestine intelligence activities," he said, according to a report by Senator Arlen Specter, Republican of Pennsylvania.

Justice Department officials declined to act on the F.B.I.'s application. That rejection stalled the investigation again. Mr. Kornblum said he told agents in August 1997 how to "flesh out" their application, but they did not respond for nearly 18 months. F.B.I. supervisors in Washington sent Albuquerque a list of 15 investigative tasks, but only 2 were done, a Senate investigation later determined.

With the investigation flagging, the F.B.I. director, Louis J. Freeh, told Energy Department officials that concerns about exposing the investigation were no longer a reason to keep Dr. Lee in his job.

But the laboratory's top officials were never told. According to internal Energy Department correspondence, Mr. Vrooman, the Los Alamos security chief, decided after consulting with a local F.B.I. agent that it would be better for the investigation if Dr. Lee remained in the laboratory's inner sanctum, X Division.

### **IN THE ECHO CHAMBER**

*In Washington, anger at the Clinton administration and concern over China brought the W-88 case to a boil.*

In Washington, Notra Trulock was pressing his case. By his own estimation, he gave his standard briefing about China, the W-88 and leaks at the national laboratories 60 times from 1995 to 1998.

He was relentless. Unable to get an appointment with a new top official at the Energy Department, Mr. Trulock recalled, he lingered outside her office until he could slip in and hit her with his pitch. Mr. Moore, the former F.B.I. analyst, said Mr. Trulock had figured out that to get heard in Washington: "He had to hype it. He wanted people to get interested in the problem."

Mr. Trulock denies any exaggeration. In fact, there was new evidence to support his anxiety about Chinese espionage. A September 1997 Congressional report found that foreign visitors were streaming into government laboratories without background checks. Los Alamos, for example, had 2,714 visitors in two years from "sensitive" countries, but only 139 were checked. Also in 1997, a scientist named Peter Lee pleaded guilty to charges related to passing American nuclear secrets to the Chinese.

Early the next year, President Clinton issued a directive to improve security at the laboratories. But Mr. Trulock felt that changes were coming too slowly, and that laboratory officials' view of espionage was that "it couldn't happen here."

If Mr. Trulock's warnings about lax security rang true for many officials, his central point — the theft of the W-88 — met with some skepticism.

A 1997 report, prepared for the White House by the C.I.A., found that while spying had aided China's "remarkable progress in advanced nuclear weapons design," it had saved Beijing a mere two years of development. The report went on to judge that China had no W-88 duplicate.

Some experts, hearing Mr. Trulock's classified briefing, questioned whether China would even want to expend the vast resources needed to produce the W-88. Richard L. Garwin, a top federal science adviser, said he dismissed the notion as whimsical. While the highly accurate W-88 was designed for a specific cold war objective — knocking out missile silos — China's nuclear program focuses on the ability to destroy cities.

But suddenly, in 1998, Mr. Trulock found a larger and more receptive audience.

With impeachment as a backdrop, allegations that the Clinton administration was allowing China easy access to American secrets collided with charges that China's military had funneled money into Democratic coffers. The New York Times reported that the daughter

of a senior Chinese military officer was giving money to Democrats while also working to acquire sensitive American technology.

Republicans, opening a new front against a beleaguered president, created a House select committee, headed by Representative Cox, to investigate whether the government was compromising technology secrets by letting American companies work too closely with China's rocket industry. With its deadline approaching, the committee stumbled on the W-88 case.

Mr. Trulock became a star witness, and committee members were riveted by his testimony. C.I.A. analysts who testified before the committee agreed there was espionage, people who heard the secret proceedings said, but were more equivocal about its value to China.

As it was completing its work, the panel received a secret report from the National Counterintelligence Center, a federal group that seeks to outwit spies. In a brief reference, the report echoed Mr. Trulock's view that China had stolen "the design information on a current U.S. warhead," the W-88, but offered no evidence to back that finding.

The Cox committee wrote its report in late 1998, but it was not declassified and released until May 1999, after the case had broken into public view. The unanimous report accused China of stealing nuclear secrets — possibly even entire blueprints — for the warheads of "every currently deployed" long-range American missile. While acknowledging that "much is unknown" about the impact of the thefts, it judged that future Chinese designs would "exploit elements" of the W-88, and that the stolen secrets put China's bomb-design information "on a par with our own."

But John M. Spratt Jr., a Democratic representative on the committee, said the panel lacked the time and witnesses with sufficient technical background to fully examine the issues. In retrospect, he said, Mr. Trulock's testimony was more alarming than warranted.

He pointed to a 1999 report by the nation's top intelligence experts, done in response to the Cox panel, that concluded that China's theft of American secrets had "probably accelerated" its weapons development, though more "to inform their own program than to replicate U.S. weapons design."

The Chinese government issued its own response to the Cox committee. Its report, "Facts Speak Louder Than Words and Lies Will Collapse by Themselves," denied any espionage.

And in a recent e-mail response to questions from The Times, Hu Side, China's top bomb designer, said his nation's scientists "can create every advanced technology and glory which they need by their own efforts."

### **CLOSING IN**

*Bit by bit, new details of Dr. Lee's activities came tumbling out.*

The Cox committee's deliberations built pressure within the government to revive the languishing W-88 investigation.

David V. Kitchen, who became head of the F.B.I.'s Albuquerque office in August 1998, said he first learned details of the case that October, when his assistant brought him the Energy Department's 1996 administrative report.

"We couldn't understand how they came to the conclusion they came to, specifically about how Lee was the main suspect," said Mr. Kitchen, who is now retired from the F.B.I.

Mr. Kitchen wanted to close the investigation. "We worked the case for quite a while, and what did we have to show for it?" he asked. The answer was very little.

But Edward J. Curran, an F.B.I. official working at the Energy Department, had heard a secret Cox committee briefing and was aghast at what he saw as a lack of rigor in the F.B.I. investigation.

In August, the F.B.I. had run a sting operation, with an agent posing as a Chinese intelligence officer trying to lure Dr. Lee to a meeting. Even though Dr. Lee did not take the bait, Mr. Curran was concerned that if Dr. Lee was a spy, that call could have alerted him that the authorities were onto him. In December, investigators knew Dr. Lee was going to Taiwan for three weeks, but did not monitor him. Laboratory officials had not even informed the F.B.I. when Dr. Lee went to Taiwan for six weeks earlier that year to consult at a military institute.

The new energy secretary, Bill Richardson, said he decided that leaving Dr. Lee in X Division "was an unacceptable risk." On Dec. 23, after Dr. Lee returned from Taiwan, the department gave him a lie detector test. Dr. Lee was initially found to have passed the test, which included questions about divulging secrets. But he made one startling revelation.

One night during his 1988 trip to Beijing, a Chinese scientist he knew had called his hotel room and asked to meet alone. Dr. Lee agreed, and the scientist, an official in China's nuclear program, showed up with Hu Side. Dr. Hu, law enforcement officials said, asked Dr. Lee questions about how to make smaller hydrogen bombs using oval-shaped fuel.

China's top bomb designer, then, was pressuring Dr. Lee for information about two-point detonation four years before China achieved that goal. Perhaps that explained why Dr. Hu greeted Dr. Lee so warmly during the briefing at Los Alamos in 1994.

Dr. Lee told investigators that he had not answered Dr. Hu, since the information was secret, but he had never before reported the meeting to security officers, as required. It was precisely the kind of approach Mr. Vrooman, the laboratory security official, was surprised Dr. Lee had not reported in the 1980's.

That day, Los Alamos officials suspended Dr. Lee's access to X Division. F.B.I. agents had heard Dr. Lee's admission about Dr. Hu, but they did not interview him for three weeks, and even then did not grill him about it, a laboratory official who was present said. "They didn't press him to go into details," he said. "It will bother me for years."

Believing that Dr. Lee had passed the polygraph test, Mr. Kitchen asked an agent on the case to write a memorandum proposing ending the investigation, which he forwarded to Washington. But on Feb. 2, the case turned again, this time on the analysis of a polygraph

test. F.B.I. analysts reviewed tapes of the December test and decided that Dr. Lee's answers were inconclusive, after all.

Polygraph tests record factors like pulse rate and sweat gland activity to determine if a subject is being truthful. Although results are not admissible in court, law enforcement agencies, particularly the F.B.I., place great stock in their investigative value.

On Feb. 10, bureau officials administered their own test in a hotel room in Los Alamos. Dr. Lee was wired to a machine, and for the first time since he was singled out in 1996, was asked, "Have you ever provided W-88 information to any unauthorized person?"

"No," he answered.

He also said he had never given nuclear-weapons codes to an unauthorized person.

The polygraph examiner determined that Dr. Lee was deceptive, a Congressional report said.

He also told the examiner that he had helped a Chinese scientist with a mathematical problem that "could easily be used in developing nuclear weapons," Mr. Freeh later told Congress.

That evening, Dr. Lee told one of his bosses, Richard A. Krajcik, that he had failed the test, and acknowledged that "he may have accidentally passed" secrets to a foreign country, Dr. Krajcik testified in court. Dr. Lee's lawyers say he never made such a statement.

The investigation that was nearly closed weeks before was reaching a boil. After having gone on in secret for years, it was also leaking.

Back in January, The Wall Street Journal had run a news article under the headline "China Got Secret Data on U.S. Warhead — Chief Suspect Is a Scientist at Weapons Laboratory of Energy Department." The article said the Chinese had obtained information on the W-88 from Los Alamos, but investigators said they had no sign the article had alerted Dr. Lee.

Two months later, when the authorities were informed that The New York Times was preparing a major article on the W-88 case, they realized time was running out to get a confession from Dr. Lee.

Federal officials asked The Times to delay publication for several weeks, saying they were preparing to confront their suspect. Although The Times did not know the identity of the chief suspect, F.B.I. officials said they feared he would recognize himself from details in the article. The Times withheld publication for one day and said it would consider a further delay if asked personally by Mr. Freeh, the F.B.I. director. He never called.

The F.B.I. interviewed Dr. Lee on March 5, and he consented to a search of his office. The next day, a Saturday, The Times published its article, "China Stole Nuclear Secrets for Bombs, U.S. Aides Say." The article said American officials believed "Beijing was testing a smaller and more lethal nuclear device configured remarkably like the W-88." And it reflected criticism of the White House and the F.B.I. for not dealing swiftly with the Los



Alamos case. It included Paul Redmond, the C.I.A.'s former chief spy hunter, saying that "this is going to be just as bad as the Rosenbergs."

The Times article prompted a flood of press attention and upended the F.B.I.'s strategy, forcing agents to rush into a confrontation interview with Dr. Lee before they were ready, Mr. Freeh told Congress.

The F.B.I lured Dr. Lee to Santa Fe that Sunday and subjected him to a harsh interrogation. An F.B.I. agent thrust a copy of The Times at him. "Basically that is indicating that there is a person at the laboratory that's committed espionage, and that points to you," she said, according to a transcript.

"But do they have any proof, evidence?" Dr. Lee asked.

The F.B.I. had only suspicion, and the agent, who has been identified by several government officials and in court testimony as Carol Covert, laid it out in the interrogation. The Lees went to China in 1986 and "they were good to you," she said. "They took care of your family. They took you to the Great Wall. They had dinners for you. Everything. And then in 1988 you go back and they do the same thing and, you know, you feel some sort of obligation to people to, to talk to them and answer their questions."

She focused on Dr. Lee's 1988 hotel room encounter with Dr. Hu. "Something had to have happened when they came to your room," Ms. Covert said. "We know how the Chinese operate."

Dr. Lee said he had "a rule in my mind" about what was secret and what he could reveal. "You may think," he told the agents, "when people, when the Chinese people do me a favor, and I will end up with tell them some secret, but that's not the case, O.K.?"

They threatened him with losing his job, with being handcuffed, with being thrown in jail. In preparing for the interview, Mr. Kitchen said he had suggested to Ms. Covert that she bring up the Rosenbergs because of the reference in the Times article.

"Do you know who the Rosenbergs are?" Ms. Covert asked.

"I heard them, yeah, I heard them mention," Dr. Lee said.

"The Rosenbergs are the only people that never cooperated with the federal government in an espionage case," she said. "You know what happened to them? They electrocuted them, Wen Ho."

When the transcript was made public, F.B.I. officials denounced the Rosenberg reference. "She carried that a bit further than we expected her to," Mr. Kitchen said.

But Dr. Lee did not crack. Always polite, he thanked the F.B.I. agents as he left. "I hope you have good health," he said. He added: "If they want to put me in jail, whatever. I will, I will take it."

Driving up the mountain to Los Alamos from Santa Fe that afternoon with his friend Bob Clark, Dr. Lee was distraught. "They kept saying I had to say that I did this thing I didn't do," Dr. Clark recalls him saying.

Mr. Richardson announced Dr. Lee's dismissal the next day, based on a failure to report contacts with people from a "sensitive country" and mishandled classified documents found on Dr. Lee's desk.

But the F.B.I. was no closer to knowing if Dr. Lee was the suspected W-88 thief. They just had a more detailed, if more frustrating, picture of him.

"It seemed like the more times you hit him upside the head, the more truth comes out," Mr. Kitchen said. "It's like a little kid."

*Tomorrow: The prosecution unravels.*

<http://www.nytimes.com/2001/02/05/national/05WEN-EDIT.html>



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## **The Prosecution Unravels: The Case of Wen Ho Lee**

By **MATTHEW PURDY** with **JAMES STERN**

In a secure warren of the Los Alamos weapons laboratory, investigators mined the office of Wen Ho Lee. Books, reports, notes written in Chinese — everything was handled with latex gloves to preserve the evidence. Just days before, laboratory officials had fired the computer scientist for security violations, and investigators suspected he was a spy, but the search was yielding little. Then agents discovered the list.

It was on his desk, a record of computer files containing highly sensitive weapons-design information. With the help of a Los Alamos physicist, investigators determined that Dr. Lee had downloaded the secret files from the laboratory's classified computer system and transferred them to computer tapes. Some of the tapes were missing. The potential compromise of America's nuclear weapons secrets was staggering.

"It's unimaginable," the physicist, John Romero, remembers thinking.

For three years, agents had suspected Dr. Lee of giving China information on America's most sophisticated nuclear warhead, the W-88. But their meandering espionage investigation had been short on resources and long on missed opportunities. The discovery of the download, in late March 1999, was the first hard evidence of any crime — the key, perhaps, to the maddening enigma of Wen Ho Lee. Now, with the case out in the open and

hotly debated, and Dr. Lee's huge security breach raising the stakes of the investigation, the government, in the words of one F.B.I. official, "sent in the cavalry."

Agents conducted 1,000 interviews over nine months, scouring the globe for evidence that Dr. Lee had leaked his secrets. The Federal Bureau of Investigation carried out its largest computer forensic investigation ever. Investigators traced years of Dr. Lee's telephone calls. Prosecutors pressed him to explain himself, and when he did not, they brought a 59-count indictment and convinced a federal judge that he was so dangerous he had to be jailed without bail. He spent nine months in such restrictive conditions that he was shackled during recreation.

In the field and then in the courtroom, the prosecution of Wen Ho Lee was a final attempt to understand a man whose deepening suspiciousness had taunted the government for nearly 20 years. When they failed to uncover espionage, prosecutors constructed an unusual and risky strategy, seeking to put him in prison for life on charges they had no direct evidence to support. It was a leap, and in the end, it fell short.

Last September, the judge freed Dr. Lee, declaring that his jailing had "embarrassed our entire nation and each of us who is a citizen of it." The Justice Department wound up with a public relations disaster and a guilty plea to the crime it had evidence of from the start — a single felony count of mishandling national security information.

Dr. Lee, 61, had always left investigators feeling that he was hiding something. He had a history of deceiving the authorities about security matters and clandestine contact with foreign scientists. Now, agents discovered that he had tried to delete his downloaded files as they closed in on him. After he was kicked out of the bomb-design area of Los Alamos for security violations, he found ways to sneak back in. Investigators also began seeing signs that he might be exploring a relationship with a military research institute in his native Taiwan.

Whatever the evidence of deception, though, the prosecution's most powerful charges unraveled as defense lawyers homed in on gaps in the case. Without proof that Dr. Lee was a spy, prosecutors charged him with intent to injure the United States and help a foreign country. But they were never sure why he had taken the secrets, or which country he might have planned to help with them.

They initially suspected he was a spy for China. Then they toyed with China's nemesis, the regime on Taiwan. Finally, in court last summer, they presented a menu of surprising possibilities that included Australia and Switzerland. And they said they believed his motive for downloading the information was to enhance his job prospects. To the judge who had ordered him jailed, and to Dr. Lee's increasingly vocal supporters, the government's cold, hard case was melting away.

Another blow came from John L. Richter, an esteemed weapons designer who had played a crucial role in beginning the espionage investigation that ensnared Dr. Lee. Testifying in court, Dr. Richter played down the threat of Dr. Lee's crime. Although he later backed away from that assessment, Dr. Richter said he had spoken out in court because he believed Dr. Lee "had suffered enough" and should be set free.

In one sense, prosecutors got what they wanted — the felony plea and an agreement from Dr. Lee to tell all under oath. But, to this day, they remain taunted by what they do not know. The debriefings over the last few months and further investigation have left them with a blur of questions. Unsatisfied with some of his explanations, investigators are still exploring his dealings with Taiwanese and Chinese scientists.

As for the downloading itself, frustrated investigators are left with nothing but Dr. Lee's innocent explanation: He downloaded the information to protect his work and tossed the tapes that are missing in a trash bin behind his office at Los Alamos. They have never been found.

At the F.B.I., a top official voiced the bureau's latest conclusion: "I don't think anyone fully understands Wen Ho Lee."

### **KEEPING WATCH**

*Each step of the F.B.I. investigation seemed to fuel old suspicions and cast new doubt.*

Day and night throughout 1999, agents sat in cars outside Wen Ho Lee's red ranch house on Barcelona Avenue near Los Alamos, N.M., where suburban development abuts striking mesas. They trailed him everywhere, and he could hardly have appeared more harmless and cordial. He told his neighbor, Jean Marshall, that the agents especially liked it when he went fishing because it gave them a chance to get out of their hot cars. Once, when he had to travel out of town, he changed his schedule to accommodate his watchers.

But as investigators pieced together Dr. Lee's past, their already dim view of him darkened.

Their computer investigation showed that in early 1999, just as agents were pressing him for evidence of espionage, Dr. Lee had been busily trying to delete the downloaded files. On Feb. 10, for example, after failing an F.B.I. polygraph, Dr. Lee deleted 310 files, F.B.I. documents show.

Investigators also discovered that he had continued to sneak into the bomb-design area, X Division, after his access was canceled. In January of 1999, soon after losing his access, he was let in by an unwitting security officer. Other times he simply walked in behind division employees, lawyers knowledgeable about the case said. (In his recent debriefing, Dr. Lee told investigators that he had slipped in through an open door just hours after he was barred from X Division, the lawyers said.)

"Each day we found more information that cast doubt on him," said David V. Kitchen, then head of the F.B.I.'s Albuquerque office. In January, Mr. Kitchen had recommended closing the espionage investigation of Dr. Lee, because he appeared cooperative and had innocent explanations for everything. Since the discovery of the download, everything had begun to look less innocent.

In August 1998, agents ran a sting operation to see if Dr. Lee would bite at the chance to meet with an agent posing as a Chinese intelligence agent. Dr. Lee's reaction appeared ambiguous to investigators.

When the agent called, Dr. Lee said there was a laboratory policy against meeting foreign representatives without approval. However, according to a secret F.B.I. report recently obtained by The New York Times, "Lee indicated that it is all right to talk on the phone since everything Lee has done was in the open." Dr. Lee first agreed to meet the agent, then called back to say he could not. When the agent called back the next day, Dr. Lee agreed to take his beeper number.

"He doesn't take the bait," said one former government official, "but he seems to be feeling him out."

He also seemed to be feeling Taiwan out. In March and April of 1998, according to court testimony, Dr. Lee had spent six weeks in Taiwan as a consultant to the Chung Shan Institute, a government defense complex where American officials say Taiwan has done nuclear weapons research. Dr. Lee's trip was taken with the approval of laboratory officials.

Investigators discovered that while on that trip, Dr. Lee called the Los Alamos computer help desk to find out if he could access his classified computer. He was told he could not, but investigators later found that he had downloaded an unclassified computer code from Los Alamos to his computer in Taiwan.

Those dealings with Taiwan echoed the F.B.I.'s first contact with Dr. Lee in the early 1980's. Dr. Lee had been picked up on a wiretap, offering to help a fellow scientist who was under investigation for spying. In interviews at the time, Dr. Lee admitted to agents that he had improperly passed unclassified but restricted scientific information to Taiwanese officials.

If the investigation of the download was fueling the same old suspicions about Dr. Lee, investigators were getting the same old result.

Agents determined that 9 of 15 computer tapes Dr. Lee had made were missing, but their exhaustive search — they even visited every private storage facility in New Mexico — left them unable to refute Dr. Lee's explanation that he had destroyed them. They spent months searching the Los Alamos computer system, even shutting it down entirely for three weeks, but found no evidence that anyone had gotten into Dr. Lee's computer files. They did discover that Dr. Lee had given his password to his children so they could connect to the Internet and play computer games through his Los Alamos computer while they were at college.

And they had no evidence to counter Dr. Lee's only public explanation — in a "60 Minutes" interview in August 1999 — that he had downloaded and copied the information so he would have backup files for his work.

Investigators began to see hints of another motive. F.B.I. agents traveled to Taiwan and found that in addition to lecturing and consulting there in 1998, he also met with a company to explore job opportunities, federal investigators testified in court.

Agents discovered more evidence of Dr. Lee's job hunting when they searched his house in April 1999 — seven letters to scientific institutes and universities around the world

inquiring about job prospects. Dr. Lee wrote them in 1993 and 1994, after he had learned he was on a list of employees to be laid off in the event of a budget crunch.

The downloading that Dr. Lee eventually was charged with occurred during that same period, even though investigators discovered that he had actually begun transferring some material as early as 1988, well before his job was threatened.

Perhaps, investigators thought, the download was an insurance policy. Perhaps, entering his late 50's and contemplating retirement at 60, he figured that the secrets of Los Alamos would make him more marketable.

"We may not be able to show he was a spy," said one F.B.I. official, "but we can show he was not just a wayward scientist."

### **SECRETS AND SCIENCE**

*The government had no evidence of espionage. So it fashioned an unusual prosecution strategy based on the idea that Dr. Lee must have intended to injure the United States.*

In April 1999, federal prosecutors from Albuquerque went up the mountain to Los Alamos, where scientists gave them what one lawyer called the " `Oh, my God' speech." Having assessed Dr. Lee's security breach, the scientists told prosecutors, "There was nothing more valuable that anyone could take."

Computer forensic investigators re-created Dr. Lee's deleted files and determined that Dr. Lee had moved 806 megabytes of information (the equivalent of papers stacked 134 feet high, they said) that contained the tools for computer-simulated weapons testing, a valuable commodity in an age of nuclear test bans.

The files included computer codes, which he had helped write, that used the information from decades of actual weapons tests to simulate the detonation of bombs. He also downloaded files containing sketches and dimensions of weapons and files giving physical properties of bombs.

Experts would later testify that while the files alone would not allow someone to replicate a weapon, in knowledgeable hands they could advance a nuclear weapons program. And officials had another fear, one they were prohibited for security reasons from voicing publicly: Dr. Lee's files contained information about currently deployed weapons, which could help an enemy defend against them.

The task of translating the science into a criminal case fell to Robert J. Gorence, the first assistant to John Kelly, the United States attorney for New Mexico.

At 41, Mr. Gorence had wide experience as a prosecutor — drug cases on Indian reservations, complicated savings and loan trials, the pursuit of the runaway spy Edward Lee Howard. Intense and aggressive, Mr. Gorence threw himself into the Lee case, spending weeks at Los Alamos with other investigators, interviewing scientists and reading physics texts. Steeped in the details, he could rattle off such obscure facts as the amount of time it takes for an atom bomb to "go critical." (Fifty millionths of a second.)

At one point, Mr. Gorence went to Kirtland Air Force base in Albuquerque, where the government stores films of nuclear weapons tests in a secure vault, chilled to preserve the pictures. Impressed by the films' awful drama, he told colleagues he wanted to show them to a jury to demonstrate the power of the secrets Dr. Lee had compromised.

Even so, evidence of a crime beyond the security breach itself was limited. As Mr. Kitchen, the former F.B.I. official, put it, "Short of espionage, what do we have?"

Mr. Gorence consulted the Atomic Energy Act, which he had read a few years earlier in preparation for the threat of protests at Los Alamos on the 50th anniversary of the Japan bombings. He focused on the only two provisions in American law that allow life sentences for mishandling secrets even without proof of espionage, seemingly a perfect fit for Wen Ho Lee.

No one had ever been prosecuted under those statutes, according to court testimony, and proving the charges, one prosecutor acknowledged, was "hardly a slam dunk." But federal officials all the way up to the attorney general, Janet Reno, signed on to the charges, which accused Dr. Lee of acting with "intent to injure the United States, and with the intent to secure an advantage to a foreign nation."

Prosecutors had no hard evidence that he planned to give away the secrets, but they reasoned that the simple absence of an innocent explanation showed his criminal intent. They emphasized the deliberate nature of the download — they estimated it had taken him 40 hours over 70 days. And they argued that his long experience at Los Alamos and secretive manner showed he knew what he was doing was wrong. In fact, after the download was discovered, he at first denied making the tapes, according to Congressional testimony.

They argued further that his actions injured the United States by denying it exclusive possession of the secrets, and they began lining up Pentagon officers to testify about the potential effect on American military strategy. Proving that Dr. Lee had aided another nation was more difficult, but prosecutors argued that they did not have to prove he had a specific country in mind when downloading the material, only that he eventually intended to help one.

The strength of the prosecution's case, one Justice Department official said, lay in the sheer "depth and scope" of the material. But that was also a major potential pitfall.

Many cases involving classified information are not brought to trial for fear of divulging secrets. In the Lee case, top government officials, including the attorney general, the director of central intelligence and the national security adviser, met at the White House on a Saturday in December 1999 to discuss the risk of prosecution. They decided the case had to go forward, lest Dr. Lee's tapes be passed to a foreign country, since efforts to strike a deal had failed. One letter from Mr. Kelly, the United States attorney, to defense lawyers ended in blunt frustration: "In short, we want you to tell us why he made the tapes!"

If they ended up having to go to trial, the officials decided, they would try to thread a needle on the secrets issue, allowing only summaries of the data on Dr. Lee's files to be used.



Still, as Mr. Kelly conceded in an interview, "no one wanted to go to trial." And bringing powerful charges, another government lawyer said, was partly a strategy to get information from Dr. Lee, and perhaps force a plea.

The indictment, handed up Dec. 10, made no mention of the W-88 or of spying. But in bail hearings, prosecutors presented a dark image of Dr. Lee by sweeping together all they knew about him — from his earliest suspicious contacts with foreign scientists to his attempts to delete his downloaded files.

At the first bail hearing, Stephen M. Younger, the associate director for nuclear weapons at Los Alamos, said the information on the missing tapes could "in the wrong hands, change the global strategic balance."

A magistrate denied bail and two weeks later, after Dr. Lee appealed, prosecutors raised the ante before Judge James A. Parker of Federal District Court. "This court, I believe, faces a you-bet-your-country decision," Paul Robinson, president of the Sandia National Laboratories, told the judge.

The judge indicated he was leaning toward a restrictive form of house arrest, but in a secret hearing the prosecution warned of dire circumstances.

Dr. Lee could be "snatched and taken out of the country" by a hostile element looking for the missing tapes, Mr. Kelly said, according to a transcript of the hearing.

Robert Messemer, the F.B.I. agent brought in as the lead investigator because of his background in espionage cases and proficiency in Chinese, was more pointed.

"We anticipate a marked increase in hostile intelligence service activities both here in New Mexico and throughout the United States in an effort to locate those tapes," he said. "Our surveillance personnel do not carry firearms, and they will be placed in harm's way if you require us to maintain this impossible task of protecting Dr. Lee."

### **SOLITARY CONFINEMENT**

*Jailed for nine months, Dr. Lee found release in music, literature and science.*

Wen Ho Lee was held in solitary confinement for nine months at the Santa Fe County Detention Facility. He was kept in his cell 23 hours a day. A small light burned constantly so guards could watch him at all hours. He was allowed to see his family just one hour a week, and they had to speak English — not Mandarin, which they speak at home — so the F.B.I. could listen. And like other prisoners in solitary confinement, he was shackled whenever he left his cell, even while exercising or meeting with his lawyers.

Early last January, when Dr. Lee's lawyers demanded that his conditions be eased, prosecutors responded that Ms. Reno had personally approved them.

"These special administrative measures were requested for one reason and one reason only: to restrict Dr. Lee's ability to pass information through intermediaries that could have the devastating consequence of disseminating the nuclear secrets he had stolen from Los Alamos," Ms. Reno later told a Senate hearing.

Eventually, the government loosened its restrictions. Officials arranged for a Mandarin-speaking agent so Dr. Lee could talk to his family in his native language. They gave him a radio and removed his chains during exercise.

But if the government hoped Dr. Lee would crack, he displayed hardly a fissure.

Dr. Lee is a meticulous man, obsessively neat and ordered. In a recent picture-taking session at his home, Dr. Lee led a visitor to a small room that his daughter, Alberta, called "his room." It was impeccably clean and sparsely furnished — a bed, a desk with a few books, an amplifier, turntable and speakers and Dr. Lee's collection of classical and opera records, stacked neatly on shelves. His daughter said he would stay there for hours, listening to music. In the garage, Dr. Lee's used but clean gardening tools were laid neatly on a shelf. Later, cooking dinner, he moved with methodical precision, chopping, arranging food in piles and cleaning the cooking area before sitting down to eat with guests.

In prison, he re-created his world. He listened to classical music on the radio. He read novels. He wrote large parts of a mathematics textbook. A friend, Cecilia Chang, recalls him saying that while physically he was in prison for nine months, "spiritually, I lived with my music and my literature and my science."

The government's case had created a storm, but, once again, the man at the center seemed curiously unchanged. When a jail monitor visited him, a federal official later told Congress, Dr. Lee said that, other than his freedom, his only wish was for "additional fruit at the evening meal."

### **FIGHTING BACK**

*The defense knew it had to fight two battles: one in court, the other in the public arena.*

The defense lawyers were not as serene as their client. Their man was in prison. The public seemed convinced he was a spy for China. And the government was throwing heavy resources at the case.

The lead lawyer was Mark Holscher, then 36, a white-collar criminal specialist at the Los Angeles law firm of O'Melveny & Myers. A former federal prosecutor, he had made his reputation, in part, prosecuting Heidi Fleiss, known as the Hollywood Madam. Mr. Holscher agreed to take the Lee case pro bono after being found by Dr. Lee's daughter.

The second lawyer, John D. Cline, had handled the classified material issues for Oliver North's defense in the Iran-Contra prosecution. As time wore on, and donations to the defense increased, more lawyers were added.

They saw two battles, Mr. Holscher said, "one in the court and the other in the public at large." They fought on both fronts.

The government provided the defense with a secure room on the top floor of the imposing federal courthouse in Albuquerque where they could prepare their case and meet with their client under the eye of a security camera.

The first crack in the prosecution appeared as they sifted through testimony from the December bail hearing. A Los Alamos computer expert had testified that the downloaded files were classified under a category called PARD, "protect as restricted data" — a rule for handling computer-generated material that includes some secrets in a sea of more ordinary information.

Defense lawyers recognized that meant that the files themselves were not classified "top secret" or "secret." It was a perfect opportunity to strike at the heart of the government's claim that the files represented the nation's "crown jewels." Prosecutors acknowledge that they had not been fully aware of the PARD issue. While there was still little question Dr. Lee had downloaded important secrets, they knew the defense would press the issue with a jury.

The defense found its next opening by asking prosecutors one simple question: Which country did they expect to argue Dr. Lee was intending to aid? Defense attorneys expected the answer to reveal the murky center of the government's most powerful allegations, but even they were surprised by the results.

Mr. Gorence resisted answering, arguing that the government was under no obligation to say. But by the spring of 1999, Mr. Gorence was no longer the lead prosecutor on the case. Mr. Kelly had left his post to run for Congress. Officials in Washington not only declined to appoint Mr. Gorence as United States attorney but also, without any public explanation, brought in a new prosecutor.

He was George A. Stamboulidis, a federal prosecutor on Long Island who had long experience with organized crime and other complex cases. Fresh on the Lee case, he made his first substantive move.

Under orders from Judge Parker, Mr. Stamboulidis answered the defense's question. He filed a document listing Australia, France, Germany, Hong Kong, Singapore, Switzerland and Taiwan — the countries on the job search letters found in Dr. Lee's house. Mr. Stamboulidis also threw in China.

Defense lawyers had believed that the government's suspicions of Dr. Lee as a spy for China had waned. Indeed, under Mr. Gorence, the government was building a case that Dr. Lee might have been aiding Taiwan. But Australia and Switzerland?

"These are not countries which anyone other than the prosecutors have identified as presenting any kind of nuclear threat to the United States," Mr. Holscher said, snickering.

Judge Parker had a more sober, but equally damaging, view. Writing later in a decision releasing Dr. Lee, he said, "Enhancing one's resume is less sinister than the treacherous motive the government, at least by implication, ascribed to Dr. Lee at the end of last year."

Defense lawyers began another assault in July, announcing in a secret hearing that they intended to bring a nuclear bomb to court. Not a real bomb, but something just as audacious — an actual bomb blueprint.

One of the government's constant refrains had been that Dr. Lee had stolen "electronic blueprints" for nuclear weapons. Therefore, the defense argued, it had the right to rebut that by introducing a real blueprint. The defense knew the government would resist, and hoped that might persuade the judge to drop the charges on fair-trial grounds.

This was a preview of the defense's strategy on secrets. Using the classified material, Mr. Cline said at the closed hearing, would be necessary for proving four central defense arguments: that most of the downloaded material was already in the public domain; that some of the computer codes contained flaws that made them less useful; that the codes were related to Dr. Lee's work; and that they were difficult to use without user manuals, which were not on the tapes.

The case ended before Judge Parker could decide whether to allow the use of the bomb blueprints or other secrets at a trial. But based on early rulings that some secrets might be relevant to the defense, Ms. Reno testified later, prosecutors expected to be forced to cross "an exposure threshold we had already determined posed an unacceptable risk."

### **QUESTIONS OF FAIRNESS**

*Accusations of racial profiling and overzealous prosecution helped turn the case in Dr. Lee's favor.*

As much as anything, what ultimately undid the prosecution were questions of fairness. The image of the diminutive Wen Ho Lee — still untried, not even charged with espionage — chained in a cocoon of silence, transformed him in the public eye from villain to victim.

Asian-American groups, energized by the case, charged that Dr. Lee was a victim of racial profiling, unfairly singled out for prosecution. Scientific and civil rights groups joined in. The clearest, loudest voice belonged to Alberta Lee, a 26-year-old technical writer who gave speech after speech hammering away at a message defense lawyers were arguing in court.

A defense motion claiming selective prosecution contrasted Dr. Lee's treatment with that of John M. Deutch, the former director of central intelligence, whom the Justice Department initially declined to prosecute for keeping national security secrets on his home computer. (The department eventually opened an investigation, but Mr. Deutch was among those pardoned by Bill Clinton on his last day as president.)

Defense lawyers made sure their legal papers got to reporters. One document that particularly resonated was a declaration from Robert Vrooman, former head of counterintelligence at Los Alamos, stating that a major reason investigators initially suspected Dr. Lee had spied for China was because he was ethnic Chinese.

Indeed, Dr. Lee's race was one strand of investigators' suspicion. In an affidavit seeking permission to search Dr. Lee's house in April 1999, an F.B.I. agent stated that Chinese "intelligence operations virtually always target overseas ethnic Chinese with access to intelligence information."

But Mr. Vrooman knew there was more to investigators' suspicions. Mr. Vrooman himself had raised concerns about Dr. Lee's contacts with Chinese scientists in the late 1980's and had identified Dr. Lee to Energy Department investigators as a potential suspect in the W-88 case. Beyond that, Mr. Vrooman was one of three laboratory officials reprimanded for the handling of the Lee case, and his critics said that gave him a motive to criticize the investigation.

Even so, supporters of Dr. Lee saw Mr. Vrooman's declaration as further evidence of overzealous prosecution. Their view was bolstered at a new bail hearing in August, ordered by Judge Parker.

In testimony, Mr. Messemer, the lead F.B.I. agent, acknowledged having misstated important evidence against Dr. Lee. For example, Mr. Messemer had testified in December 1999 that Dr. Lee had lied by asking a colleague to borrow his computer to download a resume. In fact, Dr. Lee was downloading nuclear secrets, and that testimony seemed to show Dr. Lee's deception — an element in proving the intent charges.

But defense lawyers discovered that the colleague, in interviews with the F.B.I., had never said Dr. Lee told him he was downloading a resume. Mr. Messemer told the judge he had made "an honest error," and never intended "to mislead you or anyone in this court or any court."

Next he acknowledged that after further investigation, there was no evidence that the job-search letters found in Dr. Lee's house had been sent. That undercut the prosecution's image of Dr. Lee feverishly job-hunting.

If Dr. Lee needed one more nudge to turn the case in his favor, it was delivered by John L. Richter. A plain-talking Texan and veteran bomb designer, Dr. Richter was making his second pivotal appearance in the Lee case.

In 1995, he was the first to suggest that the Chinese might have significant information about the W-88 warhead. Even though he eventually backed off that opinion, it helped start the investigation that led to the discovery of Dr. Lee's download and his jailing.

Now, asked about the danger of Dr. Lee's tapes falling into enemy hands, Dr. Richter responded: "I think that keeping him locked up the way he is is much more injurious to the reputation of the United States. And that is one reason that I am here."

Without having reviewed the downloaded information, he minimized its importance, saying "99 percent of it was unclassified in the open literature."

In a subsequent interview and Congressional testimony, Dr. Richter said his "99 percent" statement referred only to the basic physics underlying the computer codes. But he said other elements of the files did hold important secrets.

Dr. Richter had seen the testimony of laboratory officials that helped jail Dr. Lee as hyperbole. Having played a role in starting the Lee affair, he now thought it was time to end it.

"If I had any influence in getting him out," he said recently, "I figured that's a payoff."

### **APOLOGY FROM THE BENCH**

*After pleading guilty to a single charge, Dr. Lee walked free. The judge said he had been 'induced' to jail Dr. Lee unfairly.*

On Aug. 24, 2000, Judge Parker issued a brief order saying he had decided to release Dr. Lee under stringent conditions.

Just days before, Mr. Stamboulidis had warned that the risk of freeing Dr. Lee was "of a caliber where hundreds of millions of people could be killed." But after the judge's order, prosecutors began trying to cut a plea deal. By early September, they had one.

Dr. Lee agreed to plead guilty to one felony count of illegally gathering and retaining national security data. He did not admit to intending to harm the United States or aid a foreign country. He agreed to a sentence of time served, with no probation, and to undergo 60 hours of debriefing, under oath, by the government.

Dr. Lee had one last surprise before entering the guilty plea. Asked for the first time by the government, he acknowledged having made copies of the tapes. It made prosecutors suspicious all over again, but they went ahead.

On Wednesday, Sept. 13, Dr. Lee stood in court and admitted his guilt. But the drama of the day was Judge Parker's soliloquy.

"What I believe remains unanswered," he said, "is the question, What was the government's motive in insisting on your being jailed pretrial under extraordinarily onerous conditions of confinement until today, when the executive branch agrees that you may be set free essentially unrestricted? This makes no sense to me.

"A corollary question, I guess, is, Why were you charged with the many Atomic Energy Act counts for which the penalty is life imprisonment, all of which the executive branch has now moved to dismiss and which I just dismissed?"

The judge blamed Clinton administration decision makers, saying, "I was induced" to jail Dr. Lee before his trial. But it had become clear that "it was not necessary."

He ended, "I sincerely apologize to you, Dr. Lee, for the unfair manner you were held in custody by the executive branch."

### **EPILOGUE**

*Even now, the case is not quite over. Agents continue to look at some of Dr. Lee's activities, and the W-88 mystery remains unsolved.*

The government's debriefing of Dr. Lee ended late last year. He acknowledged making as many as a dozen trips to Taiwan over the last two decades — more than officials previously knew about — although it remains unclear how many were for purely personal reasons.

According to people knowledgeable about the case, investigators are looking at aspects of two of those trips, taken in 1998 with full knowledge of laboratory officials. One was his

six-week visit to the Chung Shan military institute, where he received a consulting fee of about \$5,000; the second was paid for by a private company in Taiwan. Investigators are also interested in small family accounts in Taiwanese and Canadian banks.

And they are continuing to examine Dr. Lee's relationships with Chinese scientists, including a dinner he held for one scientist where officials say they have information that a computer code might have been discussed.

Mr. Holscher, Dr. Lee's lawyer, called any suggestion of wrongdoing false, adding, "even more disappointing is that anonymous government officials risk violating federal criminal law by talking about the investigation."

Under the plea agreement, prosecutors have the option of submitting Dr. Lee to another lie detector test.

As for the missing computer tapes, they were not found in a thorough search of the Los Alamos landfill.

Dr. Lee is getting a curtain call. He recently agreed to tell his story. This time it will not be under oath. He has a contract for a book and mini-series.

Notra Trulock, who began the W-88 investigation as the intelligence director at the Energy Department, is now the spokesman for the Free Congress Foundation, a conservative research group in Washington. He has a contract for a book that he is thinking of calling "Kindred Spirit: The Inside Story of the Chinese Espionage Scandal."

After Dr. Lee's release, President Bill Clinton rebuked his own Justice Department, saying, "I always had reservations about the claims that were made denying him bail." He added, "The whole thing was quite troubling to me."

The W-88 investigation itself is stalled. Just as the downloading case was gathering steam in the summer of 1999, the F.B.I. was coming to grips with the flaws of its initial inquiry.

After interviewing scientists who had conducted an analysis for the Energy Department in 1995, F.B.I. officials determined that many of them had disagreed with the conclusion that China, using stolen secrets, had built a weapon like the W-88.

At the same time, a White House panel pointed out that the stolen information about the W-88 could have come not just from Los Alamos but from numerous energy and defense installations as well as private contractors. And intelligence experts say they have no evidence that China has actually deployed any long-range weapons that incorporate the lost secrets, though they believe a new generation of weapons may do so by 2015.

In September 1999, Attorney General Janet Reno and Louis J. Freeh, the F.B.I. director, ordered federal agents to broaden their spy investigation. But the new trail proved so cold and so wide open that investigators made little headway. "You're looking at potentially thousands of points of compromise," a senior federal official said, "so it becomes an undoable problem."

Neil J. Gallagher, the bureau's national security chief, said in a recent interview that if the bureau had known in the beginning what it eventually learned, it would not have been so quick to focus on Wen Ho Lee. He said he would have labeled the investigation the "potential" compromise of the W- 88.

The chief suspect, he said, "would have been unknown."