

## **The Wen Ho Lee Story** **By Santi Suthinithet**

It was hyped as one of the worst cases of espionage in American history. Wen Ho Lee, a Chinese American scientist, had been charged with fifty-nine counts of mishandling classified information related to America's "crown jewels" of nuclear weapons - thirty-nine of which carried life sentences. In the end, Lee was only charged with one count, "unauthorized possession of and control over documents and writing relating to the national defense...." There was no mention of the documents ever having been classified. No one has ever been charged for conducting espionage of non-classified documents, except Wen Ho Lee.

"Trouble came roaring into my safe and steady world on December 23, 1998," Lee wrote in his book, *My Country Versus Me*. On that day, the FBI, using a polygraph machine, interrogated him for four hours. Lee had just returned to work from a trip to Taiwan, and was unaware that he was suspected of providing classified information about the U.S. W-88 nuclear warhead to the People's Republic of China. He passed the polygraph and the local Kirtland FBI office report failed to develop any evidence of wrongdoing. However, this could not protect Lee from having his security clearance yanked temporarily as the investigation continued. In the politically toxic environment of Washington DC, the FBI leadership, under pressure from Congressman Christopher Cox's congressional committee and the press, could not accept the results from their own field office and dispatched agents directly from Washington. After several spy scandals that had highlighted FBI complacency and incompetence, Wen Ho Lee was to be the case for the FBI to prove their worth. In the end though it further damaged their reputation and highlighted the dangers of letting political considerations and publicity drive espionage investigations.

Lee was an unassuming scientist who had worked on behalf of the United States for almost 15 years. He was a code writer for the Los Alamos National Lab (LANL) specializing in hydrodynamics—the study of fluids and how they react in different environments. His wife Sylvia also worked at LANL as a translator, and ironically, later assisted the FBI as an informant. Lee was also a cooperative source for the Bureau when he returned from his overseas trips approved by LANL. How did this mild-mannered family man, an avid gardener, and fisherman, become America's "greatest threat?"

To understand this predicament, it is first necessary to look at the political climate of the era. The Cold War had just ended but suspicions still remained. The Clinton Administration was embroiled in various controversies and the Republicans controlled Congress. There were numerous allegations that the

Clinton campaign had received political campaign funding from the Chinese government and other unsavory sources.

In 1995, a Chinese defector approached the CIA office in Taiwan with classified documents containing information about the W-88. This convinced Department of Energy investigators that the secrets of the nuclear warhead had been compromised.

“They leaped to the conclusion that the loss was the result of visits between Chinese and American scientists,” noted the writers of another prominent book on the Lee case, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*. “That bad guess—by officials who disapproved of the visits—sent the FBI down the wrong trail for years.”

One of the most influential advocates of this now-discredited theory was Notra Trulock, a former Energy Department intelligence officer. It was Trulock who later leaked the flawed—and classified--information to the New York Times newspaper accusing Lee of espionage. But Trulock would first find his audience with the Cox Committee, which arose out of the increasingly bitter tension between the Republicans in Congress and the Clinton White House. The committee was chaired by California Republican Rep. Christopher Cox and put together by then-House Speaker Newt Gingrich. Its objective was to investigate any possible wrongdoing in regards to Sino-U.S. dealings by the Clinton Administration.

It appears that Lee had been under suspicion since 1982 when he made a phone call to Gwo-Min Bao, a scientist at the Lawrence Livermore National Laboratory, who was being watched by the FBI as part of an operation named “Tiger Trap.” The FBI had picked up Lee’s call, and a year later three agents came to question him. In another of the case’s many ironies, when questioned, Lee said that he only contacted Bao because he was concerned that the Taiwanese government might be spying on Americans:

“I had never met this Livermore scientist before... An article said that a Taiwanese nuclear scientist was fired from Lawrence Livermore because he gave lectures in China and Taiwan. In those days, Taiwanese in America had to worry about being spied on by the military regime of the Kuomintang (KMT) Party in Taiwan. It was well known that the KMT used many spies and informants against its own citizens and even against Taiwanese in the U.S. ... I couldn’t help wondering if someone in the Taiwan government was making trouble for the scientist for some reason, perhaps he gave a talk. I was also planning to give a talk in Taiwan about nuclear reactor safety...I was worried that what had happened to him could happen to me. I found the man’s phone number in a telephone directory and contacted him...He wasn’t interested in speaking ... so I hung up after a brief conversation.”

Lee was given a polygraph test—which he passed. He then even assisted the FBI by agreeing to meet Bao in person to try to obtain more information. In the end although Bao was never convicted of any crimes Lee remained under suspicion.

“I felt that the polygraph had verified my loyalty by assisting the FBI—and that was the end of the story. Until of course this new suspicion that I had committed espionage. Today, the FBI claims that I lied to them when asked about the Livermore scientist. In later Congressional hearings and in the news media, it was reported that I had denied calling the other scientist and that this was evidence of my deceptive nature.”

Later, Lee and his attorneys learned that the FBI had lost the files for the 1983 and 1984 meetings with him and that they had “reconstructed” the missing information.

In the late 1990s Lee began traveling to China and Taiwan numerous times for both work and family related matters. Although he received authorization from LANL for all of the trips and engaged in official debriefs upon returning, questions continued to be raised regarding Lee’s meetings and interactions with high-level Chinese government officials. In response to these concerns, the FBI mounted a “false-flag” operation in the summer of 1998 where a FBI agent posed as a Chinese intelligence officer and contacted Lee to see if he could get him to “do or say anything incriminating.” When the agent tried to arrange a meeting, Lee refused and told him that, “departmental policy at LANL requires him to report to his superior if he meets with a representative of a foreign government.”

Meanwhile, the press was also probing into reports of nuclear spying and would soon play an enormous role in the public’s perception of Lee. In December 1998, the *New York Times* published the article “House Panel Says Chinese Obtained U.S. Arms Secrets” which revealed classified findings related to the investigations. The story asserted that: “over the last twenty years China obtained, sometimes through theft, some of the most sensitive of American military technology, including nuclear weapons design.” In addition, the article reported a “pattern by the Chinese of stealing design technology from American nuclear laboratories.”

On March 5, 1999 the FBI inadvertently stumbled unto what would be one of the most incriminating pieces of evidence in their case against Lee.

Starting in 1993-94 Lee begin transferring files used to design weapons from LANL’s classified network onto the “green” unclassified, open network, and then was said to have created, at least, fifteen copies of the files on portable tapes over the next few years. The amount of information was massive, equaling roughly 400,000 pages.

Lee and his defenders argued that, while he may have committed a security infraction, he was not attempting to hide anything or commit espionage:

“It was sickening to see people believe the government’s propaganda that I “stole” files that I worked with every day for years, yet nobody even whispered that John Deutch “stole” the many CIA files he downloaded and took home, because people said he worked on them. (Deutch was the then CIA director who’d downloaded secret documents onto his unsecured home computer multiple times and was later pardoned for his crimes by Clinton.) So did I, but then again, I was Chinese American, and he was a “real” American.

The reason I downloaded these files was very simple and mundane: I wanted to protect them from loss in the event that LANL changed the computer operating system again or experienced a computer crash—both had occurred in the past, causing serious problems for me... There was nothing clandestine or hidden about my files or tapes. I gave the files very obvious filenames.”

The very next day, the *Times* published the story which completely blew the case open: "Breach at Los Alamos: China Stole Nuclear Secrets for Bombs, U.S. Aides Say." In the 4000 word article the writers all but named Wen Ho Lee as the main suspect.

With this information suddenly revealed to the American public, government officials felt forced to take action. Two days after the *Times* article, the Energy Secretary at the time, Bill Richardson, wanting to neutralize the situation quickly, fired Lee, and ratcheted up the investigation. Just a few months later, on December 10, 1999, Lee was arrested and locked in solitary confinement under “special administrative measures,” where he initially remained under constant 24 hour watch by guards and was allowed out of his cell only to take a shower.

To the surprise and frustration of his captors, Lee’s resistance did not waiver. The prominent law firm who had agreed to represent him sprang into action. His family, friends, colleagues, along with a network of activists began to mobilize on his behalf. Leading the way was his daughter, Alberta, who evolved into a tireless crusader on behalf of her father.

Eventually, the government’s case would fall apart. It was “riddled with weak spots” detailed an article in the *Village Voice*:

“[Ninety-nine] percent of the "crown jewels" of national defense data that Lee supposedly stole turned out to be easily accessible public information, according to defense experts, and was only classified as secret or confidential after he was arrested; from a list that included several non-Asians suspected of similar offenses, only Lee was singled out for investigation; no substantive evidence emerged to suggest that China actually possessed the nuclear secrets in question; prosecutors were unable to charge Lee with espionage and in fact had trouble deciding whether to assign his loyalties to China or Taiwan; an FBI agent admitted to repeatedly giving false testimony that cast Lee as deceptive and too dangerous to be released on bail.”

Finally on September 13, 2000, after serving nine months in jail without conviction, Wen Ho Lee was set free. He accepted a plea bargain and was convicted of only one of the original fifty-nine charges, “unauthorized possession of and control over documents and writing relating to the national defense....” In his book Lee commented on his mixed feelings about the plea bargain:

“I wasn’t happy about pleading guilty to the one count. I felt that I had not committed a criminal offense, and no one else who had violated security rules was ever treated this way. I was willing to stay in jail and fight it out. On the other hand, the legal costs were enormous, and my imprisonment was so hard on my family...It was not worth it the risk of spending the rest of my life in prison.”

Before the court adjourned that day, something unusual occurred—Judge James Parker, issued an apology to Lee in the courtroom:

“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.”

Why was so much of the investigation focused solely on Lee if the lives of Americans were at stake? Even Robert Vrooman, the former Counter Intelligence Chief at LANL commented in a 60 Minutes interview that: “The investigators failed to look at all possible places where this leak could have occurred. They went to one laboratory and looked at one individual.”

One part of the controversy that lingers on is the involvement of the Secretary of Energy at the time—Bill Richardson, became Governor of New Mexico, ran for President in 2008, and was unsuccessfully nominated for US Commerce Secretary by the Obama Administration in 2009 (against the opposition of many Asian Americans.) There are many who view Richardson’s motivation for firing Lee as motivated by opportunistic careerism and a token gesture on behalf of the Clinton administration to prove that the Democrats were not “soft on China.” Some media organizations also suspect Richardson was another source for damaging government leaks about Lee that were later proven to be false.

The question of racial profiling also came up as it was proved that race did play a major factor in the accusations against Lee, much to the embarrassment of all those who were involved. There are FBI records arguing that Lee’s ethnicity was a justifiable reason to search his home. An unnamed FBI expert is quoted as saying that the, “People’s Republic of China (PRC) intelligence operations virtually

always target overseas ethnic Chinese with access to intelligence information.” J. Edgar Hoover made similar allegations in 1958, highlighting a history within the FBI that views all ethnic Chinese and Chinese Americans as potential espionage agents for Chinese intelligence.

Yet empirical evidence points to the contrary. In *A Convenient Spy*, the authors note that out of the small numbers of Chinese Americans who have actually been approached by the PRC to engage in espionage, almost none of them ever agreed. Disgraced men like former CIA officer Aldrich Ames and former FBI agent Robert Hanssen, who were both tried and convicted for actual espionage, as well as countless other spies throughout American history, should prove that spying and betraying one’s country are equal opportunity jobs with no regard for race.

Lee’s case galvanized and brought together many different groups of people, from Chinese and Asian American groups to members of the scientific community, to speak out against the singling out of Lee, about civil rights, and about the cost to the nation caused by government suspicions about Asian American scientists working in national laboratories and other institutions.

In June 2006, Wen Ho Lee received \$1.6 million in a settlement for the civil suit he’d brought against the US Government and media organizations including the New York Times, Los Angeles Times, Associated Press, ABC News, and Washington Post, for leaking his name before any formal charges had been brought against him. As the Washington Post noted though, “The media payments, which were the result of a court-ordered mediation, are the only money Lee will pocket personally. The government payment is conditioned on it being devoted only to his lawyer’s fees and the taxes on the media’s payments. Government lawyers insisted that the government not pay anything that would be perceived as damages to Lee.”

It should be noted that Lee does not see himself as any kind of martyr. “I think that’s wrong. I have no interest in being a symbol,” he said in his book. “But my case did bring many Chinese American people together who are raising their voices to say, ‘We are not weak.’ This case will remind people of what needs to be done for a long time.”

Wen Ho Lee also made clear that the lessons and ironies of the case will not be forgotten by him either: “I know that many Asian Americans have been speaking up long before I learned how important it is to do so. Still it is not too late for someone, even at my age, to learn the importance of getting involved in the American democracy.”

“The fact that I could be released after being so wrongly accused is evidence of the good in America. I can still say that I am truly glad that I am an American.”

A little over a year after Lee’s case ended, America would be embroiled in the war on terror following the most horrific terrorist attack ever committed on its soil.

Clear thinking and the avoidance of making gross assumptions based on ethnic prejudices became even more important in counter-terrorism operations. The unanswered questions from Lee's case again became relevant and urgent: What actions are justifiable in the name of national security?