

The United States vs Wen Ho Lee: An Error of Cooperation, Prioritization, and Imagination

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Introduction

It goes without saying that a nuclear laboratory should be one of the most protected environments when it deals with technology relevant to national security. Governments normally employ a great deal of security and background checks on the personnel working; however, the Wen Ho Lee case leaves much to be desired in this ambit. According to Dr. Wen Ho Lee's book, *My Country versus Me*, "[h]e was a patriotic American scientist born in Taiwan who had devoted almost his entire life to science and to helping improve U.S. defense capabilities."^[1] However, in December 1999 Dr. Wen Ho Lee was arrested for allegedly spying on the United States for the Chinese government. It was later proven that Dr. Wen Ho Lee was innocent. Nevertheless, the analysis of the Wen Ho Lee case shows that there were three guilty subjects involved. The first was the Department of Energy (DOE), for its lack of counterintelligence methodology and interference in the case; the Federal Bureau of Investigation (FBI), which failed to be accountable of its own jurisdiction in the case; and Dr. Wen Ho Lee, who as innocent as he was, provoked the whole ordeal with his conspicuous and naïve behavior.

In retrospect, the Department of Energy and Federal Bureau of Investigation's approach and behavior towards the Wen Ho Lee case leaves much to be desired. The primary problem with the Wen Ho Lee case was the FBI's initial disinterested approach towards the case. In addition to disinterest, the FBI proved unable to use good practices when it came to interrogating Dr. Lee. Moreover, another factor that influenced the outcomes was the interference of the Department of Energy in the investigation. Another contributing issue was that the FBI and DOE fixated solely on Dr. Lee and neglected the rest of the people working at Los Alamos. Nonetheless, although the issue was resolved once the FBI realized that Dr. Lee could not be charged with any of the counts of espionage, the long tedious procedure deprived a man from his freedom for eight months. Still, one cannot be too careful in a world where espionage is a top concern, and especially when it involved state-of-the-art nuclear technology. The primary point in this essay is to argue that the failure in the Wen Ho Lee case was due to the FBI's inadequate approach to the case.

Lee and the Tiger Trap Investigation

During the Clinton administration, the American government sought to expand diplomatic and trade relations with China, and Chinese espionage against American technology targets received widespread publicity.^[2] In 1992, the scientists at the Los Alamos Nuclear Laboratory (LANL), who were following Chinese nuclear testing, concluded a sudden advance in the miniaturization of Beijing's nuclear warhead, and consequently that China had the basis of a modern nuclear force.^[3] According to scientists at LANL, China could have only reached such stage in nuclear development through stealing US secrets.^[4] Subsequently, based on the opinion from bomb experts and from the scientists working at LANL, an investigation concluded that the theft of the W-88 nuclear warhead data from Los Alamos had occurred in the 1980s and that there was evidence of continuous Chinese espionage during the 1990s.^[5] Since there were a limited number of scientific personnel working at LANL with access to the w-88 information, the investigators quickly focused on identifying who was responsible for the apparent leak.^[6] The information of the investigation led to a particular subject: Dr. Wen Ho Lee, a Taiwanese-American nuclear scientist. The reason for the authorities to focus on Dr. Lee was that, during the 1980s, he had been brought to attention when

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he was involved in the Tiger Trap investigation. Dr. Lee had communicated with Gwo-Bao Min, another Taiwanese-American nuclear scientist, who had recently lost his job.[7] What Dr. Lee did not know is that Min had been the target of an FBI investigation, for the alleged open-handed sharing of classified information to the PRC concerning data about the W-70, commonly known as the neutron bomb.[8] The FBI started an investigation on Min when it learned that he had been checking out documents from the library at Lawrence Livermore on topics that ranged beyond his responsibilities, and that his activity would spike right before he took a trip to China.[9]

In 1982, Dr. Lee placed a call to Min. He introduced himself as another fellow nuclear scientist and suggested that they should meet, and talk in order to find out who had made reports on him. This was a surprise to Min; and to the FBI agents secretly taping all of Min's phone calls.[10] It is understandable for the FBI agents to have become suspicious from a random call by another Taiwanese-American nuclear scientist, and it was perhaps inherent to Dr. Lee's personality traits to be naïve and show solidarity towards a fellow countryman. However, it is preposterous to also suggest that Dr. Lee did not realize the seriousness of his actions when making the call. The wiretappings gave no results; however, in 1983 the FBI confronted Dr. Lee regarding his contact with Min, and he denied all the accusations until the FBI showed him the recordings of the conversations. It was at that point that the FBI resorted to ask Dr. Lee to cooperate with them, and he agreed.[11] Nevertheless, the effort did not pay off and the case remained open, but this operation surely played a big role in directing attention to Dr. Lee in the decade that followed. Furthermore, the Tiger Trap investigation was not the only event that made Dr. Lee a strong candidate for the investigations. In 1994, Dr. Lee surprised laboratory officials when he appeared uninvited at a Los Alamos briefing for visiting Chinese scientist and warmly greeted China's leading bomb designer.[12] According to a translator at the party, Dr. Hu, the bomb designer, thanked Dr. Lee for computer software and calculations on hydrodynamics Lee had supplied, and Dr. Hu added that the information had aided China greatly.[13] It is evident why the FBI and the DOE fixated on Dr. Lee as the primary suspect. Because of his ambiguous and "naïve" attitude towards security, the sharing of sensitive information, and also due to inefficient work done by the DOE and FBI, Dr. Lee would become the primary suspect in an investigation that would terminate his career as a nuclear scientist and would put him in the front page of newspapers.

Explaining the Failure

Dr. Wen Ho Lee's public ordeal started on March 6, 1999, when the New York Times published an article about an alleged breach of security at LANL involving one of America's most advanced thermonuclear warheads, the W-88.[14] The W-88 warhead belonged to a new missile warhead family, and it was specifically designed for use with the Trident II (D5) submarine-launched ballistic missile (SLBM).[15] The W-88 was the pinnacle of weapons evolution, with a design that allowed eight of them to be packed on a single Trident II D-5 missile.[16] In the New York Times article, James Risen and Jeff Gerth, the authors, stated that China had made a "leap in the development of nuclear weapons: the miniaturization of its bombs, according to Administration officials." [17] Consequently, two days after the New York Times published the article, Dr. Wen Ho Lee was personally fired by Bill Richardson, the then Secretary of Energy; Dr. Lee's name was then leaked to the press. Eventually he was arrested and indicted on 59 counts of violating provisions from the Atomic Energy Act.[18] Almost a year later, in September 2000, the Wen Ho Lee case was closed and ended with an official apology from U.S. District Judge James A. Parker to Dr. Lee.[19] [20]

There were many issues that amassed and rendered this case to be a failure for the FBI and the DOE. There are two probable scenarios in the Wen Ho Lee case. The first scenario, the most likely, was that the Bureau did not manage to carry out good practices in counterintelligence (CI). This is the most tactile and debatable scenario. According to Frederick L. Wattering, a retired CIA operations officer, the United States counterintelligence is alive but not well.[21] Pointing out CI deficiencies is a feasible explanation for the Bureau's and the DOE failure. The second scenario, and very unlikely, is that Dr. Lee was actually a sleeper agent for the Chinese government. This is far fetched and unsupported by evidence, but it is something to take into consideration. This would mean that the FBI and DOE were right, and that Dr. Lee was a failed effort by part of the People's Republic of China. The PRC has unusual ways to carry out espionage. The Chinese intelligence methodology involves receiving vast amounts of intelligence from Chinese students, businessmen, and civil servants, who visit and have dealings with Western countries.[22] For good or bad, the Wen Ho Lee case serves the purpose of either learning from mistakes, or to be more vigilant while

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still learning from past mistakes. The common denominator among the two is the need to learn from past practices.

According to Wetters, American counterintelligence serves three functions: protecting secrets, frustrating attempts by foreign intelligence services to acquire those secrets, and catching Americans who spy for those foreign intelligence services.[23] In the Wen Ho Lee case, it is palpable to state that the DOE failed in protecting and frustrating the espionage efforts, and the FBI failed in catching those who spied for China. The Bureau's duty during this case was not to protect secrets or to frustrate attempts to do so by foreign governments. The main duty for the FBI was to investigate Dr. Wen Ho Lee, and to assess whether he had taken part in delivering sensitive information to the Chinese government regarding the W-88 warhead. However, the first function of counterintelligence, to protect secrets, was not properly enforced by the DOE, regardless of its security measures. According to information in the 1999 Defense Authorization Bill, 6,398 foreigners had visited the three DOE weapons laboratories (Los Alamos, Sandia, and Lawrence Livermore) in 1998.[24] One can only postulate that the numbers were more or less the same in years past, even more so when the DOE welcomed Chinese scientists in 1994. Prior to 1998, foreign visits to the weapons laboratories went largely unreported to DOE counterintelligence, especially after the end of the Cold War.[25]

In retrospect, the issue of the PRC acquiring the W-88 technology was due to a failure by the DOE in controlling the influx of foreigners into premises where sensitive data was available. In theory, this makes more sense. If the DOE had applied more rigorous measures, and had restricted foreign access and visits to the premises, there is a good chance that the W-88 would not have been stolen. So, as to encapsulate the whole Wen Ho Lee case, the mishandling of CI practices by the DOE was the root of the whole issue. Another criticism for the DOE in failed counterintelligence methodology was regarding personnel security. The threat could have been internal. According to Wetters, this is "where the counterintelligence community has traditionally failed badly, and continues to do so." [26] The DOE needed to employ rigorous background investigations and re-investigations, polygraph examinations, and the 'need to know' principle.[27] Furthermore, the DOE lacked information security (infosec), as it was pointed out by the Cox Committee Report, that at DOE, "classified information had been placed on unclassified networks, with no system for either detection or reliable protection." [28] It is therefore, no surprise that the PRC was able to obtain information on nuclear technology through espionage at LANL. Because of this lack of preventive security measures is that spies such as Aldrich Ames, and without a single doubt, the person who handed the W-88 information to the PRC were so successful.

What is hard to believe is to which extent the DOE took its time to restrict Dr. Lee's access to sensitive information. The DOE needed to keep track of the computer of those scientists who had access to important information at LANL. In November 1996, the FBI counterintelligence investigation sought advice from the National Security Law Unit (NSLU) about searching Lee's LANL computer; however, much remains a mystery regarding the response from NSLU regarding this request.[29] It would make sense that because it was a counterintelligence investigation the NSLU would be obligated to help the FBI, but it is apparent that the requests were disregarded. Moreover, the computer should have been, but was not searched in 1994, 1996, 1997 or 1998.[30] This is an incompetency by part of the DOE that could not keep track of its employees, especially when they had some knowledge that China was developing a warhead based on the W-88 since 1992. The story about the access to Dr. Lee's computer does not stop there. According to the Bellow's Report, "the FBI's attempt to gain access to LANL computer systems used by Wen Ho Lee was a catalog of missed opportunities, bad communication, inadequate legal advice, undue caution, lack of investigative zeal and ingenuity." [31] The quote condenses explicitly what went wrong in the case.

On June 30, 1997, the FBI submitted an application to the Department of Justice's (DOJ) Office of Intelligence Policy and Review (OIPR), requesting the approval for electronic surveillance of Wen Ho Lee under the Foreign Intelligence Surveillance Act (FISA).[32] The application, however, was not approved by the OIPR due to insufficient evidence to establish probable cause that Dr. Lee was a spying for the PRC.[33] The rejection of the FISA application proved to be problematic for the case. The FBI had thought that a FISA order and probable cause was required to search Dr. Lee's computer; however, they never considered questioning those at LANL who were interviewed about Lee's work with computers, who were most knowledgeable about LANL's computer systems, and who would have been most helpful in completing the minimum requirements for the FISA application.[34] The FBI tried once again in 1998, but decided not to because of insufficient evidence.[35] It is clear that the FBI had an overly relaxed attitude because the

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Wen Ho Lee case did not represent a matter of immediate security concern; not seeking aggressively sufficient proof for the completion of the FISA application led to an unnecessary prolongation of the investigation. Later in the investigation, it was known that as early as 1993, Dr. Lee began transferring classified files from the secure LANL computer systems to the open system, and he had even tampered with the files in order to remove the classified marker preventing their transfer; however, the most sensitive of all tapes was downloaded by Lee in April 1997 and it contained the most information of all.[36] Of all the tapes that Dr. Lee downloaded, seven are unaccounted for.[37] This represents a major deficiency in DOE security procedures and in the FBI's effort to seek enough evidence to search the computer. The codes included in the documents downloaded by Dr. Lee and according to Deputy Director of X Division (weapons design division) at LANL, Richard Krajcik, these codes represented the crown jewels of the nuclear weapons program in the United States.[38] The agency located at the epicenter of the whole ordeal was the DOE for not following adequate measures to regulate the flow of information in and out of the laboratory, which was complemented by the FBI's reluctance to give the case its importance.

Now, it is important to ask: to which extent did the Bureau do its job appropriately in carrying out the investigations? The answer is that it did not do a formidable job due to ongoing interference by the DOE among other factors. The Bureau did not handle the case in such a way that avoided cross-contamination by the initial investigation carried out by the DOE. But, the issue did not stop there. It was on the FBI's jurisdiction to carry out the investigation, and allowing the DOE to intervene and to actually do a polygraph examination on Dr. Lee led to ambiguity. Moreover, the Bureau had a lack of clear and concise focus in the case; hence the ongoing change of agents assigned to the investigations. By this time, the FBI's focus had shifted to the threat of terrorism; still, this is not a justification for the lack of interest in the case. If the Bureau had designated a "permanent" task force to the investigation, then consequently, the investigation would have rendered optimal and earlier results. Also, much criticism can be found in the way that the FBI conducted the interrogation on Dr. Lee in March 1999. This left much to be desired, and more than a professional practice, it seemed as an act of desperation by part of the Bureau to find evidence, of any type, to prosecute Dr. Lee.

Dan Bruno and Notra Trulock were in charge of counterintelligence division for the DOE. In 1995, Trulock told Bruno that the Chinese had stolen the design of the W-88.[39] The two started investigating how it was possible that such sensitive information had fallen in Chinese hands. In the same year John Ritcher, Bobby Henson and Larry Booth, three scientists who were used to the world of intelligence, assured Trulock that the Chinese test on September 25, 1992 was a primary test from which the w-88 technology was involved, and probably obtained through espionage.[40] Soon enough Trulock and his subordinates were gathered to come up with the names of potential suspects.[41] This is where things went sour for the DOE. Years later, a U.S. Department of Justice review, teamed headed by federal prosecutor Randy Bellows, found a handwritten list, dated June 6, 1995 which included the names of Wen Ho Lee and Sylvia Lee (Dr. Lee's wife).[42] Trulock and Bruno denied that they ever approved the list or that they were ever present in the same room when the list was written; however, Henson admitted to be there, although he testified he did not participate in naming the suspects, stated that Trulock, Bruno, Booth, Carl Henry of Los Alamos, and Fred Wattering from the CIA were present when the list was formed.[43] What is even more interesting is that, according to Henson, the list also included non-Chinese names; among these were Los Alamos' Danny Stillman and Terry Hawkins.[44] One can only speculate the possibility of one of the two Americans mentioned to be the responsible for the handling of W-88 data to the PRC.

The DOE's judgment of the case was biased from the start, since Trulock had substituted his personal opinion (that China had stolen the design of the W-88) for the panel's conclusion during the series of briefings he started in 1995.[45] In late May 1996, the FBI opened the investigation on Wen Ho Lee when it received the DOE report (also known as the Administrative Inquiry); however, instead of taking its own initiative, the Bureau accepted the DOE's finding as confirming their own suspicions about Dr. Lee and shipped it out to the field.[46] The AI was an opportunity that both DOE and the FBI failed to take advantage of. The AI was essentially a foreign counterintelligence investigation, a matter that required expertise peculiarly within the expertise of the FBI.[47] According to the Bellow's Report, the AI represented a miserably inadequate investigation into the "facts and circumstances relative to the loss of the W-88 weapons design information." [48] Aside from numerous contradictions in the AI, the DOE compromised and undermined the FBI's own investigative efforts in the matter; most importantly, the AI caused the FBI to ignore and exclude numerous other possible subjects and numerous other

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possible venues which might have been the source of the actual leak of the W-88 data to the PRC.[49] It was because of the AI, and because of the FBI deferment of the DOE assessment that led to the conviction of a single suspect instead of a broad identification of potential suspects.[50] It is natural to have had Dr. Lee as one of the suspects since it had been on the FBI scope since the 1980s, but it is inconceivable that out of all the personnel working at the LANL he was the only suspect to be investigated. Still, the blame at the beginning of the investigation is to be not only shared by the DOE, but by the Bureau as well. The FBI had partaken in the development of the AI. One problem with the FBI during the AI proceedings was that the FBI agent detailed to support the AI did not participate in, nor review the changes made to the AI, although his name appeared on the final AI as one of the two "Case Officers" for the AI.[51] It is amazing that although the FBI had allocated officers to be working with the DOE in the AI, the officers did not bother to be involved in the process. This shows a lack of prioritization by part of the agents involved early in the case. However, the disinterest by part of the Bureau did not occur just at this stage, it was further magnified in the following parts of the inquiries.

Although the FBI had sole jurisdiction in the Wen Ho Lee case the DOE was allowed to intervene and issued the first interview on Dr. Wen Ho Lee, which resulted on a cross-contaminated investigation. In a Memorandum of Understanding (MOU) between DOE and the FBI, dated October 1992, explicitly defined their respective counterintelligence responsibilities; the MOU imposed on DOE a requirement that the FBI be promptly notified for referral if an investigation led to the allegation of possible intelligence activity or unauthorized contact on part of DOE personnel with a foreign power.[52] None of this was followed. Although it was the decision of the DOE to start the AI, it did however, inform the FBI of it. Nevertheless, the FBI failed to take on full responsibility for the investigation, as it should have according to the MOU. The FBI received three notifications from the DOE prior to the AI, but none of them called on the interest of the FBI; instead, the FBI simply requested that it be kept apprised of developments.[53] Because of the FBI passive and lenient approach towards its responsibilities, the AI became a vehicle to select a single target as the primary suspect of the case instead of being a preliminary investigation limited to a discreet review, which could point out at possible leads on which the FBI could then work on.[54]

Polygraphs and Interrogations

The FBI's disinterested approach towards the Wen Ho Lee case gave room to the lack of effort and a laid back attitude, partially complemented by unnecessary bureaucracy which blurred the picture. On December 23, 1998, the DOE issued a polygraph examination and interview on Dr. Lee.[55] This is where the legal boundaries conflicted. Although the FBI had showed little interest in the case, the DOE should not have issued the polygraph examination. The DOE, however, did notify the FBI about the polygraph and interview, but the FBI seemed reluctant to intervene in any matter. During the DOE polygraph examination, the Wackenhut polygraphers, as they came to be known since they were under supervision of George Wackenhut, concluded that Dr. Lee "was not deceptive when answering the questions listed." [56] Now, the problem is not that the Wackenhut polygraphers concluded that Dr. Lee was not deceptive, but that later on the DOE's Office of Counterintelligence Polygraph Program Manager corrected the polygraphers and told them that their judgment was a mistake.[57] This had a negative implication on the case. Since the DOE had admitted that Dr. Lee had passed the polygraph, this caused Bureau to nearly shut down the case when it should have been intensified.[58] Owing to this, the tapes that Dr. Lee possessed with valuable nuclear weapons information could not be recovered, as they had disappeared mysteriously after the polygraph.[59] It should be noted that the DOE failed to keep the FBI fully informed on the polygraph in a timely fashion; the charts were not prioritized for scrutiny, although, according to a February 26, 1999 memorandum, DOE employees were instructed not to provide the FBI with the results of the polygraph, and only with a summary.[60] The DOE not only interfered with the investigation when it should not have, it also interfered with the timeliness of the results. If the FBI had done the polygraph, there is the possibility of the case being closed before time, and the tapes would have been recovered before they mysteriously disappeared.

The FBI's share of the blame does not stop there. A fundamental question raised by the Bellow's Report was: "Did the FBI devote to this investigation the resources that the matter warranted and deserved? The answer is unequivocally no." [61] It was because of the FBI's lack of interest in the case that they did not get involved until 1998. This matter was never handled within the FBI due to its low importance, and according to the Bellow's Report the case was undermined by eight factors: the lack of priority by FBI-HQ and FBI-AQ; the problematic choice of

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agents working in the case; the decision by FBI-AQ to not allocate the necessary amount of agents to the case; the frequency in which the agents assigned were replaced, resulting in case agents having to learn the case over again; failure by managers to advance the case; the tense relationship between FBI-HQ and FBI-AQ; the failure to successfully file the FISA application and the FBI for not pursuing evidence aggressively.[62] These factors more or less account for the FBI's deficiencies at the time of the investigations. However, one important issue, more than the organizational aspect, was the way that the interrogation was carried out by the FBI in March, 1999.

During the 1998 polygraph and interview by the DOE, Dr. Lee had perceived himself to be the subject of an espionage investigation, as he made apparent during the January 17, 1999 polygraph.[63] It could have been that upon realizing that the DOE and the FBI were investigating him for espionage, Dr. Lee decided to disappear the tapes, but there is no evidence to conclude this outcome. Aside from implementing polygraphs, a grave mistake was made by part of the FBI during the March 7, 1999 interrogation on Dr. Lee. The Bellow's Report praises in part the agents involved in the interview on March 5, 1999, by demonstrating genuine planning and foresight, and for the interview being conducted in a professional manner; yet for the interrogation this was not the case.[64] The agent in charge of doing the interrogation confronted Dr. Lee and asked him:

"Do you who the ROSENBERGs are? *** The ROSENBERGs are the only people that never cooperated with the Federal Government in an espionage case...[T]hey electrocuted them, WEN HO...they electrocuted them." [65]

In addition to that the interrogator made further psychological attacks by comparing him to Aldrich Ames:

"Okay, ALDRICH AMES. You know ALDRICH AMES? He's going to rot in jail! *** He's going to rot in jail, WEN HO. *** He's going to rot in jail" [66]

One of the most disturbing statements made by the interrogator was with reference to the cancer Dr. Lee had faced years before:

"Your kids are going to have to live with this, okay. *** You're going to have to live with it. Your wife is going to have to live with it. This is going to eat away, at them like a cancer. Just like the cancer that you had, but all the way..." [67]

Some of the FBI manuals such as the "Cross-cultural, Rapport-based" make reference to either the 1963 CIA KUBARK Counter-intelligence Manual or to the 1983 Human Exploitation Resource Manual, and that shows just from where the hostility towards Dr. Lee came from.[68] In fact, some of the FBI documents quote the 1983 manual, and one such quote is:

"The principle of generating pressure inside the source without the application of outside force can be accomplished by manipulating [the prisoner] psychologically until his resistance is sapped and his urge to yield is fortified." [69]

The quote above from the torture manual reflects Dr. Lee's interrogation. By manipulating him psychologically the FBI thought that they could get a confession, but it did not work. They could only prosecute him for the mishandling of information. Nevertheless, the way the FBI approached the interrogation leaves much to be desired and it reflects as an act of desperation by the Bureau to have a confession from Dr. Lee.

Thinking Outside of the Box

Another controversial topic raised by this particular case is whether or not Dr. Lee was a target of racial profiling by the FBI and DOE. By the time of the Bellows report, Trulock and Bruno denied ever writing the names of Dr. Lee and his wife in the list. This was probably due to the fact that they were afraid of being accused of racial profiling. Not targeting Caucasians during the investigations was due to a lack of imagination. This lack of imagination was due to the firm belief in the Chinese *modus operandi* when recruiting spies. The AI should have considered a number of other suspects; instead, it ended up as a funnel from which only Wen Ho and Sylvia Lee emerged.[70] One can argue that they were targeted because of their ethnicity. After all, Trulock and his subordinates had come up with a list of other possible suspects, which included Caucasians working in the laboratory. Nevertheless, it is important to

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point out that the reason that they chose Dr. Lee as the primary suspect was not precisely because of his ethnicity. It was because his name had come up during the Kindred Spirit records in June 1995, before the AI even began.[71] Due to his naïve character, Dr. Wen Ho Lee seemed to always be involved in suspicious situations, such as the Tiger Trap Operation in the 1980s, which drew even more attention to him during the investigations. At the end, Dr. Wen Ho Lee served time in prison in vain, and the real spy, or spies, was never caught. This only enforces the thought that the FBI should have been looking everywhere instead of fixating on a particular suspect. The FBI missed opportunities.

Regardless of the negative outcomes in the case one can look at this particular incident and still wonder: Was Dr. Wen Ho Lee a successful Chinese attempt to spy on America? If so, this would indicate that the FBI and the DOE were right all along; nevertheless, both agencies still lacked enough effort and motivation to properly conduct the investigations. But, what can be learned for future references? First, it should be noted that although Dr. Lee was not prosecuted for espionage, his behavior was everything but normal. Meeting with the leading Chinese nuclear designer Dr. Hu in a Beijing hotel and not reporting it to the DOE is a red flag.[72] Also, the fact that Dr. Lee offered to help Min, the suspect and target of the Tiger Trap investigation, raises suspicion as to why would he go the extra mile to help someone who he did not even know? Moreover, the downloading of classified data into tapes, some of which disappeared after the first polygraph in 1998, seems extra suspicious. There is a direct parallel with the Min case study. Min's downloading of data would peak a short time before he flew to Taiwan. According to the Bellow's Report and to the scarce literature available on the case, Dr. Lee's downloading activity would also peak just days before he had his trips to China. This is a major red flag that the DOE failed to see.

Concluding Remarks

In conclusion, the truth is that the way that the events unfolded the guilt in the case rest on three subjects. The first is on the DOE. If the DOE had implemented better counterintelligence methodology then the W-88 data would not have been stolen. The second at fault is the FBI. The Bureau should not have allowed the DOE to intercede in its matters, let alone carry a polygraph examination. Moreover, the FBI should have broadened its interests on other possible suspects. The third at fault is Dr. Wen Ho Lee. If he had been mindful of his actions and interactions, he would have avoided special attention to him by the authorities.

Overall, the Wen Ho Lee case proves to be very complex. Not only it is full of conflicting dates between the DOE, the FBI and the DOJ, but some of the information coming from all the parties at times seems to be ambiguous and/or incomplete; though there is only a limited amount of official documents available for analysis. If there are more documents available they have not been declassified yet, and until then the case will continue to be regarded as ambiguous. The Chinese are more than cunning when it comes to espionage. It would not come as a surprise if Dr. Lee was indeed a spy. Although it is known that he is innocent of the W-88 allegations, there is no reason why not to think that he did not handed the PRC with any of the data contained in any of the tapes he recorded. It is inconceivable to believe that a man as intelligent as Dr. Lee would be so naïve to keep falling into suspicious predicaments, unless he was acting as a distraction while the real perpetrators did the dirty work. This will never be known, but what can be learned from this is to cooperate among agencies, prioritize counterintelligence investigations, question every subject involved and to use this case study as an example of how not to do a counterintelligence investigation.

Bibliography

Anon. "Chronology: Wen Ho Lee Case" www.wenholee.org. 01/05/2009. Available at: http://wenholee.org/files/010509/WHL_chronology_01-05-09.pdf. Accessed on: 21/02/2013.

Anon. "Excerpts from Testimony at Hearing on the Wen Ho Lee Case," New York Times, September 27, 2000. Available at <http://www.nytimes.com/2000/09/27/us/excerpts-from-testimony-at-hearing-on-the-wen-ho-lee-case.html>. Accessed on: 15/04/2013.

Anon. "Four Chinese Espionage Investigations" PBS Available at:

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<http://www.pbs.org/wgbh/pages/frontline/shows/spy/spies/four.html>. Accessed on: 22/04/2013.

Anon. "The W88 Warhead" [www.nuclearweaponarchive.org](http://www.nuclearweaponarchive.org/Usa/Weapons/W88.html). 01/10/2013 Available at: <http://nuclearweaponarchive.org/Usa/Weapons/W88.html>. Accessed on: 04/03/2013

Anon. "What Happened?" www.wenholee.org 02/12/2008. Available at: <http://www.wenholee.org/what>. Accessed on: 21/02/2013

Asimov, Isaac. *Pebble in the Sky*. New York: Orb Books, 1950.

Attorney General. "Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation." www.fas.org. 12 Dec. 2001., p. 397 Available at: <http://www.fas.org/irp/ops/ci/bellows/>. Accessed on: 10/03/2013.

Broad, William J. "Files in Question in Los Alamos Case Were Reclassified," *New York Times*, April 15, 2000. Available at: <http://www.nytimes.com/2000/04/15/us/files-in-question-in-los-alamos-case-were-reclassified.html?pagewanted=all&src=pm>. Accessed on: 15/04/2015.

Broad, William J. "Ideas & Trends: Bombshells; Are There Any Nuclear Secrets Left to Steal?" *New York Times*, September 03, 2000. Available at: <http://www.nytimes.com/2000/09/03/weekinreview/ideas-trends-bombshells-are-there-any-nuclear-secrets-left-to-steal.html>. Accessed on: 15/04/2013.

Drogin, Bob. "Wen Ho Lee Freed; Judge Scolds U.S. over Case Tactics" *LA Times*, September 14, 2000. Available at: <http://articles.latimes.com/2000/sep/14/news/mn-20908>. Accessed on: 20/04/2013.

Gerth, Jeff and Risen, James. "1998 Report Told of Lab Breaches and China threat," *New York Times*, May 02, 1999. Available at: <http://www.nytimes.com/1999/05/02/world/1998-report-told-of-lab-breaches-and-china-threat.html?pagewanted=all&src=pm>. Accessed on: 15/04/2013.

Gerth, Jeff and Risen, James. "A Visit from China: New Spy Case; Intelligence Report Points To 2d China Nuclear Leak," *New York Times*, April 08, 1999. Available at: <http://www.nytimes.com/1999/04/08/world/visit-china-new-spy-case-intelligence-report-points-2d-china-nuclear-leak.html?pagewanted=all&src=pm>. Accessed on: 15/04/2013.

Johnston, David. "Suspect in Loss of Nuclear Secrets Unlikely to Face Spying Charges" *New York Times*, June 15, 1999. Available at: <http://www.nytimes.com/1999/06/15/world/suspect-in-loss-of-nuclear-secrets-unlikely-to-face-spying-charges.html>. Accessed on: 15/04/2013.

Johnston, David and Risen, James. "The Los Alamos Secrets Case: The Overview; Nuclear Weapons Engineer Indicted in Removal of Data," *New York Times*, December 11, 1999. Available at: <http://www.nytimes.com/1999/12/11/us/los-alamos-secrets-case-overview-nuclear-weapons-engineer-indicted-removal-data.html?pagewanted=all&src=pm>. Accessed on: 15/04/2015.

Kaye, Jeff. "New Documents Shows FBI Interrogation Advice Draws on CIA Torture Manuals" *Firedoglake*, August 5, 2012. Available at: <http://my.firedoglake.com/valtin/2012/08/05/new-document-shows-fbi-interrogation-advice-draws-on-cia-torture-manuals/>. Accessed on: 18/04/2013.

Lee, Wen Ho with Zia, Helen. *My Country versus Me: The First-Hand Account by the Los Alamos Scientist Who Was Falsely Accused of Being a Spy*. New York: Hyperion, 2001.

Miller Beebe, Sarah and Randolph H. Pherson, Randolph H. *Cases in Intelligence Analysis: Structured Analytic Techniques in Action*. Los Angeles: Sage, 2012.

Pincus, Walter. "Suspect in Probe of China Atomic Spying Fails Polygraph," *The Washington Post*, March 7, 1999.

The United States vs Wen Ho Lee: An Error of Cooperation, Prioritization, and Imagination

Written by Efren R. Torres

Available at: <http://www.jonathanpollard.org/1999/030799f.htm>. Accessed on: 15/04/2013.

Purdy, Matthew. "The Making of a Suspect: The Case of Wen Ho Lee" *The New York Times*, February 4, 2001. Available at: <http://www.nytimes.com/2001/02/04/national/04WEN-EDIT.html?pagewanted=print>. Accessed on: 12/03/2013

Purdy, Matthew. "The Prosecution Unravels: The Case of Wen Ho Lee," with James Sterngold, *New York Times*, February 5, 2001. Available at: <http://www.nytimes.com/2001/02/05/national/05WEN-EDIT.html>. Accessed on: 12/03/2013.

Risen, James and Gerth, Jeff. "Breach at Los Alamos: A special report.; China Stole Nuclear Secrets for Bombs, U.S. Aides Say" *www.nytimes.com*, March 6, 1999. Available at: <http://www.nytimes.com/1999/03/06/world/breach-los-alamos-special-report-china-stole-nuclear-secrets-for-bombs-us-aides.html?pagewanted=all>. Accessed on: 21/02/2013.

Risen, James and Gerth, Jeff. "China Spy Suspect Reportedly Tried to Hide Evidence," *New York Times*, April 30, 1999. Available at: <http://www.nytimes.com/1999/04/30/world/china-spy-suspect-reportedly-tried-to-hide-evidence.html>. Accessed on: 15/04/2013.

Risen, James. "Los Alamos Scientist Admits Contacts With Chinese, U.S. Says," *New York Times*, March 16, 1999. Available at: <http://www.nytimes.com/1999/03/16/world/los-alamos-scientist-admits-contacts-with-chinese-us-says.html>. Accessed on: 15/04/2013.

Risen, James. "Officials Describe Loss of Nuclear Secrets at Los Alamos" *New York Times*, December 12, 1999. Available at: <http://www.nytimes.com/1999/12/12/us/officials-describe-loss-of-nuclear-secrets-at-los-alamos.html?src=pm>. Accessed on: 15/04/2013.

Risen, James. "Security Issues May Delay Los Alamos Case, U.S. Says" *New York Times*, August 07, 1999. Available at: <http://www.nytimes.com/1999/08/07/world/security-issues-may-delay-los-alamos-case-us-says.html?src=pm>. Accessed on: 15/04/2013.

Risen, James and Gerth, Jeff. "U.S. Says Suspect Put Code On Bombs in Insecure Files" *New York Times*, April 28, 1999. Available at: <http://www.nytimes.com/1999/04/28/world/us-says-suspect-put-code-on-bombs-in-insecure-files.html?pagewanted=all&src=pm>. Accessed on: 15/04/2013.

Risen, James and Johnston, David. "U.S. Will Broaden Investigation Of China Nuclear Secrets Case" *New York Times*, September 23, 1999. Available at: <http://www.nytimes.com/1999/09/23/us/us-will-broaden-investigation-of-china-nuclear-secrets-case.html?pagewanted=all&src=pm>. Accessed on: 15/04/2013.

Scheer, Robert. "What's Left of Case Against Lee? Not Much" *Los Angeles Times*, December 14, 1999. Available at: <http://articles.latimes.com/1999/dec/14/local/me-43741>. Accessed on: 15/04/2013

Specter, Arlen. United States Senate, "Report on the Investigation of Espionage Allegations Against Dr. Wen Ho Lee" *www.fas.org*, March 8, 2000. Available at: http://www.fas.org/irp/congress/2000_rpt/specter.html. Accessed on: 18/04/2013.

Sterngold, James. "U.S. to reduce case against scientist to a single charge," *New York Times*, September 11, 2000. Available at: <http://www.nytimes.com/2000/09/11/us/us-to-reduce-case-against-scientist-to-a-single-charge.html?pagewanted=all&src=pm>. Accessed on: 15/04/2013.

Stober, Dan and Hoffman, Ian. *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*. New York: Simon & Schuster, 2001.

The United States vs Wen Ho Lee: An Error of Cooperation, Prioritization, and Imagination

Written by Efren R. Torres

U. S. National Security and Military/Commercial Concerns with the Peoples' Republic of China. Select Committee, United States House of Representatives, (Washington, D.C.: U.S. Government Printing Office, 1999) Vol. 1, p. 91

United States Senate, "Report on the Government's Handling of the Investigation and Prosecution of Dr. Wen Ho Lee" FAS.org Dec. 2001. Available at: http://www.fas.org/irp/congress/2001_rpt/whl.html#1 Accessed on: 05/03/2013

Wettering, Frederick L. "Counterintelligence: The Broken Triad" *International Journal of Intelligence and Counterintelligence*, 13(2000).

Wettering, Frederick L. "Chinese Espionage and the Department of Energy" www.freerepublic.com, 17/07/2002. Available at: <http://www.freerepublic.com/focus/f-news/717395/posts>. Accessed on: 19/04/2013.

[1] Wen Ho Lee with Helen Zia, *My Country versus Me: The First-Hand Account by the Los Alamos Scientist Who Was Falsely Accused of Being a Spy* (New York: Hyperion, 2001), back cover.

[2] Sarah Miller Beebe and Randolph H. Pherson, *Cases in Intelligence Analysis: Structured Analytic Techniques in Action* (Los Angeles: Sage, 2012), p. 21

[3] *ibid.*

[4] Matthew Purdy, "The Prosecution Unravels: The Case of Wen Ho Lee," with James Sterngold, *New York Times*, February 5, 2001.

Available at: <http://www.nytimes.com/2001/02/05/national/05WEN-EDIT.html>. Accessed on: 12/03/2013.

[5] Sarah Miller Beebe and Randolph H. Pherson, *Cases in Intelligence Analysis: Structured Analytic Techniques in Action*, p. 21

[6] *ibid.*

[7] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage* (New York: Simon & Schuster, 2001), p. 62

[8] *ibid.*, p. 63

[9] Anon. "Four Chinese Espionage Investigations" *PBS* Available at: <http://www.pbs.org/wgbh/pages/frontline/shows/spy/spies/four.html>. Accessed on: 22/04/2013.

[10] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*, p. 62

[11] *ibid.*, p. 65

[12] Matthew Purdy, "The Making of a Suspect: The Case of Wen Ho Lee" *The New York Times*, February 4, 2001. Available at: <http://www.nytimes.com/2001/02/04/national/04WEN-EDIT.html?pagewanted=print>. Accessed on: 12/03/2013

[13] Matthew Purdy, "The Prosecution Unravels: The Case of Wen Ho Lee," with James Sterngold, *New York Times*, February 5, 2001.

[14] Anon, "What Happened?" www.wenholee.org 02/12/2008. Available at: <http://www.wenholee.org/what>. Accessed on: 21/02/2013

The United States vs Wen Ho Lee: An Error of Cooperation, Prioritization, and Imagination

Written by Efren R. Torres

- [15] Anon. "The W88 Warhead" *www.nuclearweaponarchive.org*. 01/10/2013 Available at: <http://nuclearweaponarchive.org/Usa/Weapons/W88.html>. Accessed on: 04/03/2013
- [16] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*, p. 105
- [17] James Risen and Jeff Gerth, "BREACH AT LOS ALAMOS: A special report.; China Stole Nuclear Secrets for Bombs, U.S. Aides Say" *www.nytimes.com*, March 6, 1999 Available at: <http://www.nytimes.com/1999/03/06/world/breach-los-alamos-special-report-china-stole-nuclear-secrets-for-bombs-us-aides.html?pagewanted=all>. Accessed on: 21/02/2013
- [18] Anon, "What Happened?" *www.wenholee.org* 02/12/2008.
- [19] Anon. "Chronology: Wen Ho Lee Case" *www.wenholee.org*. 01/05/2009. Available at: http://wenholee.org/files/010509/WHL_chronology_01-05-09.pdf. Accessed on: 21/02/2013
- [20] Bob Drogin, "Wen Ho Lee Freed; Judge Scolds U.S. over Case Tactics" *LA Times*, September 14, 2000. Available at: <http://articles.latimes.com/2000/sep/14/news/mn-20908>. Accessed on: 20/04/2013.
- [21] Frederick L. Wetering, "Counterintelligence: The Broken Triad" *International Journal of Intelligence and Counterintelligence*, 13(2000), p. 265
- [22] Frederick L. Wetering, "Chinese Espionage and the Department of Energy" *www.freerepublic.com*, 17/07/2002. Available at: <http://www.freerepublic.com/focus/f-news/717395/posts>. Accessed on: 19/04/2013.
- [23] Frederick L. Wetering, "Counterintelligence: The Broken Triad", p. 265
- [24] *ibid*, p.269
- [25] *ibid*, p. 280
- [26] *ibid*, p. 270
- [27] *ibid*.
- [28] U. S. National Security and Military/Commercial Concerns With the Peoples' Republic of China. Select Committee, United States House of Representatives, (Washington, D.C.: U.S. Government Printing Office, 1999) Vol. 1, p. 91
- [29] Attorney General. "ATTORNEY GENERAL'S REVIEW TEAM ON THE HANDLING OF THE LOS ALAMOS NATIONAL LABORATORY INVESTIGATION." *www.fas.org*. 12 Dec. 2001., p. 397 Available at: <http://www.fas.org/irp/ops/ci/bellows/>. Accessed on: 10/03/2013.
- [30] *ibid*.
- [31] *ibid*, p. 398
- [32] *ibid*, p. 484
- [33] *ibid*, p. 487
- [34] *ibid*, p. 398
- [35] *ibid*, p. 628

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Written by Efren R. Torres

[36] *ibid*, pp. 399 – 400

[37] *ibid*, p. 401

[38] *ibid*, p. 402

[39] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*, p. 104

[40] *Ibid*, pp. 111 – 112

[41] *Ibid*, p. 112

[42] *ibid*.

[43] *ibid*.

[44] *Ibid*.

[45] *ibid*, p. 120

[46] Matthew Purdy, "The Making of a Suspect: The Case of Wen Ho Lee" *The New York Times*, February 4, 2001.

[47] Attorney General. "ATTORNEY GENERAL'S REVIEW TEAM ON THE HANDLING OF THE LOS ALAMOS NATIONAL LABORATORY INVESTIGATION." *www.fas.org*. 12 Dec. 2001., p. 344. Available at: <http://www.fas.org/irp/ops/ci/bellows/>. Accessed on: 10/03/2013.

[48] *Ibid*, p. 340

[49] *ibid*, p. 341

[50] *ibid*.

[51] *ibid*.

[52] *ibid*, p. 345

[53] *ibid*, p. 346

[54] *ibid*, p. 351

[55] *ibid*, p. 629

[56] *ibid*, p. 632

[57] *ibid*.

[58] United States Senate, "Report on the Government's Handling of the Investigation and Prosecution of Dr. Wen Ho Lee" *FAS.org* Dec. 2001. Available at: http://www.fas.org/irp/congress/2001_rpt/whl.html#1 Accessed on: 05/03/2013

[59] *ibid*.

[60] Arlen Specter, United States Senate, "Report on the Investigation of Espionage Allegations Against Dr. Wen Ho

The United States vs Wen Ho Lee: An Error of Cooperation, Prioritization, and Imagination

Written by Efren R. Torres

Lee" *www.fas.org*, March 8, 2000. Available at: http://www.fas.org/irp/congress/2000_rpt/specter.html. Accessed on: 18/04/2013.

[61] Attorney General. "ATTORNEY GENERAL'S REVIEW TEAM ON THE HANDLING OF THE LOS ALAMOS NATIONAL LABORATORY INVESTIGATION." *www.fas.org*. 12 Dec. 2001., p. 56

[62] *ibid*, p. 58

[63] *ibid*, p. 632

[64] *ibid*, p. 649

[65] *ibid*, p. 650

[66] *ibid*, p. 650

[67] *ibid*.

[68] Jeff Kaye, "New Documents Shows FBI Interrogation Advice Draws on CIA Torture Manuals" *Firedoglake*, August 5, 2012. Available at: <http://my.firedoglake.com/valtin/2012/08/05/new-document-shows-fbi-interrogation-advice-draws-on-cia-torture-manuals/>. Accessed on: 18/04/2013.

[69] *ibid*.

[70] Attorney General. "ATTORNEY GENERAL'S REVIEW TEAM ON THE HANDLING OF THE LOS ALAMOS NATIONAL LABORATORY INVESTIGATION." *www.fas.org*. 12 Dec. 2001., p. 343

[71] *ibid*.

[72] Dan Stober and Ian Hoffman, *A Convenient Spy: Wen Ho Lee and the Politics of Nuclear Espionage*, p. 13

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